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## **Widows, Native Law and the Long Shadow of England in Thirteenth-Century Wales\***

In our familiarity with Robert Bartlett's persuasive model of medieval Latin Christendom,<sup>1</sup> at once increasingly homogeneous and aggressively expansionist, we are apt to forget the contribution of the peripheries to the core's outward thrust and to their own domination and transformation. In our traditional focus, too, on warriors, peasant farmers and churchmen, we are equally inclined to overlook women in the 'making of Europe'. To focus solely on male occupations and preoccupations, however diverse men's lived experiences, is to ignore those concerns that were shared by, or belonged exclusively to, women. The 'Celtic' lands of the British Isles, the peripheries to England's core, were, as Bartlett has demonstrated, subject to the variegated processes of conquest, colonisation and cultural change by which a new Europe was forged between the end of the first millennium and the advent of the Black Death. None of England's neighbours demonstrates quite as well as Wales both the complicity, however unwitting, of a periphery in its own subjection to the core and the part played by women and their interests in effecting change. Processes of legal transformation, which Wales shared with wider Latin Christendom in the twelfth and thirteenth centuries, were negotiated by women as well as men and as often involved the active consent of the Welsh as the imposition (in the thirteenth century) of new norms by the English.

By the thirteenth century the endgame in the Welsh struggle for self-determination and international recognition had begun. Counterintuitively, perhaps, the consolidation of native rule in the hands of the hegemonic rulers of thirteenth-century Gwynedd, Llywelyn ab Iorwerth (1195–1240) and his grandson Llywelyn ap Gruffudd (1246–1282), respectively

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<sup>1</sup> R. Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change, 950–1350* (London, 1993).

*de facto* and *de jure* prince of Wales, also damaged the prospects of Welsh self-rule. When politically fragmented and characterised by multiple internal and external enmities and alliances, as in earlier times, native Wales had been more or less impossible to subdue completely—certainly as long as the English king lacked the will or resources to try. By the final quarter of the thirteenth century, however, domestic circumstances in Wales and England were much altered. Edward I of England (1272–1307) was able and more than willing to exert his sovereign authority over England and its insular neighbours. In Wales, the proud and vigorous Llywelyn ap Gruffudd, actively pursuing centralisation, had fostered the political structures fundamental to a unified principality, and in 1267—with the signing of the Treaty of Montgomery—had been formally recognised as prince of Wales by the English Crown. Yet, economically and militarily no match for England and resented for his hegemonic dominance by many of the lesser rulers of Wales, Llywelyn was always likely to be at a disadvantage if faced with a determined English onslaught. That onslaught first came in 1276. When, amid escalating tensions between the two men, Llywelyn rebuffed Edward's demands for homage and married the daughter of Edward's enemy Simon de Montfort (d. 1265), Edward launched what he saw as a punitive expedition against a recalcitrant vassal. The first war with England in 1276–7 pushed Llywelyn back into the heartlands of his patrimony and destroyed his unique political achievement; a second, apparently begun by his brother Dafydd on Palm Sunday 1282, resulted in Llywelyn's annihilation and the annexation of his dominion to the English Crown.

It is in the eighty or so years before the final confrontation between the prince of Wales and the king of England that we find elite women enjoying land-rights to which they should not, under Welsh law, have had access. These were aristocratic widows who had married into Welsh native dominions. Some were non-Welsh women from the Marcher lordships; others were the daughters of neighbouring native rulers. All received grants of land intended to sustain them in widowhood, seemingly in the manner of dower (the widow's portion in land) as it was held in England. This is a striking anomaly. Dower, such a prominent part of the English common law during the central Middle Ages, is not an institution we normally associate with medieval Welsh law and is not generally addressed

critically by historians interested in orthodox marriage arrangements among the Welsh.<sup>2</sup> The 'law of Hywel' (*Cyfraith Hywel*), the universal native law of a politically fragmented Wales, took a different view. With its roots in the early medieval past and a legendary (but perhaps partly genuine) association with the activities of Hywel ap Cadell, king of Wales from 942 to 950, this body of law survives today in some forty manuscripts dating between *circa* 1250 and the fifteenth century.

These manuscripts are grouped into 'redactions', which are substantially different from each other, but represented by compilations similar in content, detail and organisation. All of the manuscripts may descend from a common original. The principal vernacular redactions are today known (for the lawyers given pre-eminence in each) as *Cyfnerth*, which seems to have developed in the south-western Welsh kingdom of Deheubarth; *Iorwerth*, a northern collection thought to reflect the laws in Gwynedd under Llywelyn ab Iorwerth (1194–1240) and Llywelyn ap Gruffudd (1256–82), the manuscripts of which are among the oldest of those that survive; and *Blegywryd* (the largest group), a late thirteenth-/early fourteenth-century redaction also from Deheubarth.<sup>3</sup> The manuscripts of Welsh law compiled in Latin are usually treated as a single, loose redaction.<sup>4</sup> In all its redactions, *Cyfraith Hywel* made no provision of land at all for widows and recognised women's landholding only in certain circumstances: *Blegywryd* alone concedes the right of the daughter to inherit her father's estates if there are no sons—almost certainly in response to the social change that will be discussed below.<sup>5</sup> Under Welsh law, women's property rights within and outside marriage were almost wholly limited to chattels. What is striking, then, is that the relationship of the group of aristocratic widows mentioned above to land in Wales defied the native legal orthodoxy of the Welsh law books.

This anomaly requires investigation. Historians have generally taken for granted the fact that, by the central medieval period, the Welsh did certain things rather like the English,

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<sup>2</sup> For example, R.R. Davies, 'The Status of Women and the Practice of Marriage in Late Medieval Wales', in D. Jenkins and M.E. Owen, eds., *The Welsh Law of Women* (Cardiff, 1980) [hereafter *WLW*], pp. 93–114.

<sup>3</sup> [The vernacular redactions are so named for individuals given prominence in the Prologues of each.](#)

<sup>4</sup> An instructive overview of the law of Hywel and its different manuscript groups may be found in *Llawysgrif Pomffred: An Edition and Study of Peniarth MS 259B*, ed. S.E. Roberts (Leiden, 2011), pp. 2–9, and R.C. Stacey, *The Road to Judgement: From Custom to Court in Medieval Ireland and Wales* (Philadelphia, PA, 1994), p. 17.

<sup>5</sup> *Llyfr Blegywryd*, ed. S.J. Williams and J.E. Powell (Cardiff, 1942), 75.24–5. See D. Jenkins, 'Property Interests in the Classical Welsh Law of Women', in *WLW*, pp. 69–92, at 75.

especially at the level of the social and political elites. In that context, dower after the English fashion has generally been accepted uncritically, even by scholars interested in women in medieval Wales, as standard practice among the Welsh aristocracy of the thirteenth century. The only substantive investigation of Welsh dower, that by J. Beverley Smith more than three decades ago,<sup>6</sup> moved beyond the post-conquest evidence, with its somewhat artificial emphasis on the absence of dower in Wales before 1284, to an awareness of the centrality of land in provisions for widows in native ruling society during the thirteenth century. As Smith showed, the Statute of Rhuddlan (19 March 1284), effectively a blueprint for the colonial government of the principality of North Wales, stated plainly that in Wales to that point women had not received dower. The statute provided for change to this (supposed) reality. Likewise, the surviving records of lordships in the post-'84 northern Marches—lordships such as Bromfield and Yale—demonstrate the difference in widows' provisioning between land held as Welsh tenure and that held as English tenure. In the latter case, widows received dower; in the former, they did not.<sup>7</sup> By contrast, Smith drew to our attention the divergence of native elite practice from orthodox law, and the use of dower by the leaders of Welsh society before its arrival on native soil was formally announced by the English government. What Smith's article did not do was address the mechanisms and implications of the development of Welsh dower—that is, the socio-legal process in which Welsh dower had its genesis, and the part played by both the native elites and, crucially, the dowagers themselves in these developments. That is the task of the present article.

A reconsideration of dower in Wales engages directly with questions of cross-cultural fertilisation and exchange between core and periphery, and with broad patterns of political and cultural accommodation, confrontation and domination. These are processes which led to the formation of the 'middle nations' of the Welsh Marches and English Ireland, for example, and in native Wales ultimately led to full subjugation.<sup>8</sup> As we shall see, the

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<sup>6</sup> J.B. Smith, 'Dower in Thirteenth-Century Wales: A Grant of the Commote of Anhuniog, 1273', *Bulletin of the Board of Celtic Studies*, xxx (1983), pp. 348–55. See also id., *Llywelyn ap Gruffudd, Prince of Wales* (new edn., Cardiff, 2014), pp. 304–6, and I.B. Smith, 'Towards a History of Women in Late Medieval Wales', in M. Roberts and S. Clarke, eds., *Women and Gender in Early Modern Wales* (Cardiff, 2000), pp. 14–49, at 23.

<sup>7</sup> Smith, 'Dower in Thirteenth-Century Wales', p. 348.

<sup>8</sup> See, for example, J. Lydon, 'The Middle Nation', in id., ed., *The English in Medieval Ireland: Proceedings of the First Joint Meeting of the Royal Irish Academy and the British Academy, Dublin, 1982* (Dublin, 1984), pp. 1–26.

endowment of elite widows with land in pre-conquest Wales, in a manner that defied classical native law, was not just an outcome of, but also a contributory factor in, these processes. Welsh dower provides an illustration of the developments that took place within societies which, like Wales, lay on ‘the peripheries of more powerful and established polities’,<sup>9</sup> and—critically—of the potential for women of the social elites in such regions profoundly to affect the patterns of change and exchange.

This study also elucidates the relationship between widows, land and the operation of law in thirteenth-century Wales. It places the women themselves at the heart of the transformations that made it possible, even imperative, for elite widows in pre-conquest Welsh society to hold land in the manner of dowagers subject to English common law. It makes a case for aristocratic women as agents of legal and social change in thirteenth-century Wales, and thereby introduces a new dimension to debates about the dynamics of ‘Europeanisation’ more broadly in the central medieval period. Exploring the nature of law and custom in thirteenth-century Wales (especially the differing pictures of these offered by sources both English and Welsh), and examining the strategies adopted by aristocratic widows in seeking redress in the courts, the article makes two key claims about Welsh law. The first, in line with the findings of other scholars, is a demonstration of the divergence between textbook law and practice.<sup>10</sup> The second claim is that this contrast is less stark than we might imagine, because of the law books’ recognition of custom and the flexibility that this implied. Welsh dower, while modelled on English common law, was also consistent with Welsh legal norms. It was a hybrid.

The article has three parts. The first section examines closely the relatively well documented grants made to Emma d’Audley and Angharad ferch Owain, and considers the familial, social and political contexts in which they were made. The second contends that the women received hybrid provisions, modelled on English marriage grants and intended to function in the same way as common-law dower, but given effect by existing customary practice in Wales. This section examines evidence of a law–custom dynamic in thirteenth-

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<sup>9</sup> H. Pryce, ‘Welsh Rulers and European Change, c.1100–1282’, in id. and J. Watts, eds., *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies* (Oxford, 2007), pp. 37–51, at 39.

<sup>10</sup> See, for example, R.C. Stacey, ‘Divorce, Medieval Welsh Style’, *Speculum*, lxxvii (2002), pp. 1107–27; ead., ‘Law and Literature in Medieval Ireland and Wales’, in H. Fulton, ed., *Medieval Celtic Literature and Society* (Dublin, 2005), pp. 65–82.

century Wales that enabled native rulers to endow their prospective widows in a manner that conformed to expectations in both Wales and England, and so shaped the opportunities of the dower recipients. The final part turns to the relationship of Wales to England and to Europe beyond, particularly where those relationships impinged upon the operation of law in Wales and widows' access to justice. This section argues that widows, native and foreign, played a central role in furthering legal developments and embedding them in Welsh society on the eve of its conquest by England.

## I

The first of the provisions discussed here is that made in northern Powys by Gruffudd ap Madog for his wife Emma d'Audley, daughter of the Marcher baron Henry d'Audley and childless widow of Henry Tuschet, lord of Lee Cumbray (modern-day Leegomery, in Shropshire). Our investigation begins with an inquiry into that arrangement, made upon the widowed Emma's complaint and at Edward I's instance, in early July 1277—even as the king was preparing a major offensive against Llywelyn of Wales.<sup>11</sup> Following the king's order of 6 July, a jury of eighteen named men (all of them Welsh) was assembled, under the direction of the justice of Chester, to investigate Emma's allegations—set out below—about her rights and losses in her late husband's borderland territories.<sup>12</sup> From the collection of documents returned by the jurors to Chancery on, or soon after, 15 July, pending the king's

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<sup>11</sup> The records of the inquisition and its supporting evidence—a collection of individual documents in different scribal hands—are contained in The National Archives [hereafter TNA], C 145/35(39). The record of the inquisition itself is endorsed: 'dedit x li. redditus de Maylor Seysnek' et partem dominicarum de Overton' scilicet grangiam in bosco et assartam que eadem Emma assartavit et piscarium et molendinum. Expectet reditum regis a Wallia'. The set is printed in full, though not without errors, in F. Seebohm, *The Tribal System in Wales; being Part of an Inquiry into the Structure and Methods of Tribal Society* (2nd edn., London, 1904), Appendix D, pp. 101–5, and calendared in *Calendar of Inquisitions Post Mortem* [hereafter CIPM], 1: *Henry III (1236–1272)* (London, 1905), no. 1095. The two charters of grant by Gruffudd and the confirmation deed of his sons are printed in *The Acts of W[elsh] Rulers 1120–1283*, ed. H. Pryce and C. Insley (Cardiff, 2005) [hereafter AWR], nos. 515–16 and 526, and catalogued in K.L. Maund, *Handlist of the Acts of Native Welsh Rulers, 1132–1283* (Cardiff, 1996), nos. 235–6 and 238. Evidence of Emma's previous marriage to Henry Tuschet can be found in *Henry III Fine Rolls Project* (The National Archives and King's College London, 2009), Fine Roll C 60/40, 27 Henry III, no. 57, available at [http://www.finerollshenry3.org.uk/content/calendar/roll\\_040.html](http://www.finerollshenry3.org.uk/content/calendar/roll_040.html), and *Calendar of the Patent Rolls, Preserved in the Public Record Office: Henry III, 1216–1272* (6 vols., London, 1901–13) [hereafter CPR Henry III], 1232–1247, p. 430, and 1247–1258, p. 627.

<sup>12</sup> For the details of Emma's complaint, see below.

return from Wales, we know the following. Gruffudd had granted Emma the whole of the *commote* (a native unit of land) of Maelor Saesneg ('English Maelor'), based around its chief manor of Overton, together with that manor's mill, weir and other appurtenances (attached interests), and a series of vills lying within the boundaries of the *commote*.<sup>13</sup> By a second deed he had granted her the manor of Eyton, in the contiguous *commote* of Maelor Gymraeg ('Welsh Maelor'), along with all its attached interests—property which had reverted to him on the death of his younger brother Hywel at some point after the end of September 1267.<sup>14</sup>

Emma appears to have entered into possession of these lands and incomes immediately; but both gifts were limited to the term of her life, no manner of alienation was permitted, and they were to revert to Gruffudd or his heirs when she died.<sup>15</sup> Maelor Saesneg, at least, was to remain under the authority of Llywelyn ap Gruffudd as *dominus Wallie*. Llywelyn had been Gruffudd's suzerain since September 1257, the month in which the latter abandoned his fealty to the king of England and joined the Welsh prince's allegiance. As far as Emma was concerned, her husband's gifts to her were valuable. Positioned between the western edge of England and Llywelyn's own principality, the Maelor district comprised some of the most temperate and fertile lowlands of native Wales.<sup>16</sup> Since Gruffudd's defection to the ruler of Gwynedd had prompted the seizure by

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<sup>13</sup> TNA, C 145/35(39); *AWR*, no. 515; Seebohm, *Tribal System*, [Appendix D](#), pp. 103–4. The inquisition took place on Tuesday 15 July 1277.

<sup>14</sup> TNA, C 145/35(39); *AWR*, no. 516; Seebohm, *Tribal System*, [Appendix D](#), pp. 102, 104. The charter relating to Eyton is incorrectly endorsed 'Emma daughter of Gruffudd ap Madog' ('Emma filia Gruff' ap Madogi'). Hywel ap Madog was still alive at the time of the Treaty of Montgomery on 25–9 September 1267, reproduced most recently in *AWR*, no. 363. For Hywel, see Smith, *Llywelyn ap Gruffudd*, pp. 112, 132, 138, 169, 179, 181; D. Stephenson, *Medieval Powys: Kingdom, Principality and Lordship, 1132–1293* (Woodbridge, 2016), pp. 124, 128, 203, 259, 283; *AWR*, p. 40.

<sup>15</sup> *AWR*, nos. 515–16; *The Welsh Assize Roll, 1277–1284*, ed. J.C. Davies (Cardiff, 1940) [hereafter *Welsh Assize Roll*], pp. 245–6.

<sup>16</sup> D. Stephenson, 'Potens et prudens: Gruffudd ap Madog, Lord of Bromfield, 1236–69', *Welsh History Review*, xxii (2005), pp. 409–31, at 411–12; Davies, *Age of Conquest*, p. 230. In Oct.–Nov. 1278 Maelor Saesneg was valued, for the purposes of an exchange with Edward I, at what appears to be the equivalent of 100s *per annum* from the farm of Derby, together with the manor of Claverley in Shropshire (valued at £10 in 1086, £15 in 1255, and £16 shortly after: R.W. Eyton, *Antiquities of Shropshire* [12 vols., London, 1854–60], iii. 72) and—probably—Tettenhall, then in Staffordshire (and worth 30s in 1086): *Calendar of the Patent Rolls Preserved in the Public Record Office: Edward I* (4 vols., London, 1893–1901) [hereafter *CPR Edward I*], 1272–1281, pp. 282–3. In Nov. 1278 Maelor Saesneg was itself valued at £60 *per annum*: *ibid.*, p. 283. My thanks to David Stephenson for bringing the details of Maelor Saesneg's valuation to my attention.



the Crown of Emma's dower in her first husband's lands, these grants may also have offered something in the way of compensation to his wife.<sup>17</sup> On 22 December 1270 at the hilltop fortress of Dinas Brân, their father recently dead, Emma's four sons, Madog, Llywelyn, Owain and Gruffudd, confirmed the gifts. Llywelyn ap Gruffudd, as their overlord and the princely figure 'who confirmed all grants' ('qui omnes donaciones confirmavit'), ratified the deed.<sup>18</sup> Among the witnesses to this public event were one or two men who, seven years later, would be called to serve on the jury investigating Emma's complaint.<sup>19</sup>

On the face of it, Gruffudd's charters, and that of his sons, are unremarkable deeds transferring a lifetime interest in the lands to Emma for her maintenance. The arrangements look very like dower—traditional English 'nominated dower' (*dos nominata*), by which a bridegroom specified, on the day of marriage, which of his lands his prospective widow would hold for the rest of her life. Setting aside for now the principal objection that classical native law did not allow for dower in land, Gruffudd's *acta* still raise more questions than they provide answers. For one, *dos nominata*, well-known to Glanvill in the late twelfth century, had largely been superseded in later thirteenth-century England, where an automatic, unspecified third of land held by military tenure was generally preferred.<sup>20</sup> Even the means of measuring that third had changed: the wedding day had long since lost its determinative function and dower was now generally calculated on all the lands of which the husband had been seised during the marriage, whether he brought them into the marriage or acquired them later.<sup>21</sup> Such changes in England were bound up with the gradual

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<sup>17</sup> *CPR Henry III, 1247–1258*, p. 627; *CIPM*, I, no. 156.

<sup>18</sup> Seebohm, *Tribal System*, [Appendix D](#), p. 102. On Llywelyn's oversight of the *acta* of his barons, see Smith, *Llywelyn ap Gruffudd*, pp. 304–6.

<sup>19</sup> Another juror can be found on the witness list of the charter recording Gruffudd's grant of Maelor Saesneg to Emma. See J. Masschaele, 'The Public Life of the Private Charter in Thirteenth-Century England', in B. Dodds and C.D. Liddy, eds., *Commercial Activity, Markets and Entrepreneurs in the Middle Ages* (Woodbridge, 2011), pp. 199–216, esp. 210–15.

<sup>20</sup> *The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill*, ed. G.D.C. Hall (London, 1965), pp. 58–69. Other late examples of *dos nominata* (together with evidence of seisin before the husband's death) can be found in the Marcher region. See, for example, the case of Sybil, widow of Llywelyn de la Pole (a younger son of Gruffudd ap Gwenwynwyn and Hawise Lestrangle) in *Calendar of the Close Rolls Preserved in the Public Record Office: Edward I* (5 vols., London, 1900–1908), 1288–1296, p. 424; *CIPM*, II–IV: *Edward I (1272–1307)* (3 vols., London, 1906–13), vol. iii, nos. 211–12.

<sup>21</sup> J.S. Loengard, 'Rationabilis Dos: Magna Carta and the Widow's Fair Share in the Earlier Thirteenth Century', in S.S. Walker, ed., *Wife and Widow in Medieval England* (Ann Arbor, MI, 1993), pp. 59–80; *Magna Carta*, ed. D. Carpenter (London, 2015), p. 452.

expansion of landed widows' rights under the common law, and with the greater protection of those rights in the wake of Magna Carta.<sup>22</sup> Moreover, contrary to the association of English 'church door' *dos nominata* with the actual ceremony of marriage, and despite the assertion of the jurors of 1277 that Gruffudd had made these grants 'when he took Emma to wife' ('quando Emmam ... duxit in uxorem'), the charters that were used in evidence of the jurors' claims were not drawn up on the day of marriage. The marriage took place at some point before 1 July 1244.<sup>23</sup> The deeds were witnessed by the couple's four sons and cannot have been produced before September 1257 (Maelor Saesneg) and the very end of September 1267 (Eyton) respectively. Maelor Saesneg could, it is true, have been bestowed upon Emma in spoken form at the church door in the manner of English *dos nominata*, but Eyton—in the hands of Hywel ap Madog until late 1267—was clearly not.<sup>24</sup>

Nor does contemporary written record agree on the name applied to Emma's endowment. Admittedly we are on slippery ground here. Terminology is necessarily constrained by the documentary formulae used and is here influenced by the interplay not only of divergent legal systems, but also of the several different languages associated with the two systems in question. The risks are especially great where the Welsh law of women is concerned.<sup>25</sup> Suffice it to say that the word *dos* is not used in Gruffudd's Latin charters or his

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<sup>22</sup> Widows and their dower, especially their right to enter their dower without having to pay for it, are addressed in chapters 7 and 8 of 1215 Magna Carta: see, for example, *Magna Carta*, ed. Carpenter, pp. 40–41. Subsequent promulgations had more to say about the widow's proper treatment: the 1217 issue explicitly defined dower as a third of the land held by the widow's late husband during his lifetime, unless a smaller portion had been agreed earlier (i.e. except in cases where *dos nominata* had been set in place). This marks a departure from *Glanvill* and Bracton, who restricted dower to those lands the husband brought to the marriage. For an introduction to the impact of Magna Carta on women generally, see *Magna Carta*, ed. Carpenter, pp. 101–7, and 415, 428, 450–53.

<sup>23</sup> *CPR Henry III, 1232–1247*, p. 430.

<sup>24</sup> In fact, the Eyton deed probably post-dates September 1268, the month in which Edward I gave his consent to the consecration of Einion II, bishop of St Asaph, the first of the witnesses. Einion I is ruled out by his death in 1266, when Eyton was still in the hands of Hywel ap Madog. The date of the Maelor Saesneg charter is more problematic. Although an 'Einion bishop of St Asaph' heads that witness list too, this may be Einion I (1249–1266): the use of the descriptor 'lord of Wales' for Llywelyn ap Gruffudd is suggestive of a date earlier than 1267, when the title *princeps Wallie* was confirmed to him by the Treaty of Montgomery. It may even be earlier than 1262, the year when Llywelyn first adopted the title (see D. Stephenson, 'Llywelyn ap Gruffydd and the Struggle for the Principality of Wales, 1256–1282', *Transactions of the Honourable Society of Cymmrodorion* (1983), pp. 36–47, at 37–8). See also *AWR*, p. 719, no. 515 n.

<sup>25</sup> Jenkins, 'Property Interests', pp. 80–81; Davies, 'Status of Women', p. 99; and see *The Law of Hywel Dda: Law Texts from Medieval Wales*, ed. and tr. D. Jenkins (Llandysul, 1986), pp. 314, 338 for the glossary

sons' confirmation deed, and the all-Welsh jury of July 1277 explicitly denied that the gifts were *dos*, thereby evoking a distinction articulated by the royal writ itself in commissioning the investigation. Ordered to determine whether the grant was made 'in the name of enfeoffment or dower' ('nomine feoffamenti vel dotis'), the jurors responded that it was made 'by enfeoffment' ('per feoffamentum'), as demonstrated by Gruffudd's charters. On that matter the jurors reported that it was the 'custom of Wales' ('consuetudo Wallie') that every Welshman could, if he wished, give his wife lands and tenements either before marriage or afterwards.<sup>26</sup> The case for dower in the strictest sense seems weak. It was only when, in late November 1277, Emma took her case to the royal justices of the so-called 'Welsh Assizes'—those men appointed to fulfil the commission of *oyer* and *terminer* for Wales and the Marches as mandated by the Treaty of Aberconwy (dated 9 November 1277)—that the term *dos*, clearly meaning 'dower', was used to describe her rights.<sup>27</sup>

By then the first war between England and Wales was over and the process of land redistribution underway. The territories Llywelyn had wrested from Emma, loyal to the Crown during the upheavals, were in the hands of others. Llywelyn had bestowed them on an adherent in accordance, said the jurors (with notably English legal terminology), with the custom of Wales 'that if anyone, for fear of war or for other reasons, relinquishes his lands and leaves Wales for other parts the lord is permitted to seize the land as his escheat [reversion] and do whatever he likes with it'.<sup>28</sup> In the complex and divided loyalties that so often accompanied elite intermarriage in Wales and the Marches, it happened that Llywelyn's well-favoured adherent was Emma's own eldest son, Madog. While Emma had remained loyal to the king, Madog was allied to the prince of Wales. He was married to the

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definitions of *argyfrau* and 'dower', and *WLW*, p. 191 for *argyfrau*. See also R.R. Davies, 'The Twilight of Welsh Law, 1284–1536', *History*, li (1966), pp. 143–64, at 148.

<sup>26</sup> 'Consuetudo Wallie est quod unusquisque Walicus ad voluntatem suam dare potest uxori sue terras et tenementa sua ante sponsalia uel post prout sibi cederit voluntati': Seebohm, *Tribal System*, [Appendix D](#), p. 102.

<sup>27</sup> *Welsh Assize Roll*, pp. 244–5. Contemporaries referred not to the 'Welsh Assizes', a modern label of convenience, but to 'justices of *oyer* and *terminer* in the March of Wales and the parts adjacent [the regions of native Wales directly subject to royal authority]'.

<sup>28</sup> 'quod quocienscumque aliquis pro timore guerre uel alia occasione reliquerit terram suam et recesserit de Wallia ad alias partes bene licebit domino terram illam seysire tamquam escaetam suam et facere inde voluntatem suam': Seebohm, *Tribal System*, [Appendix D](#), p. 103.

prince's sister Margaret (d. 1299)<sup>29</sup> and he had been granted Maelor Saesneg and Eyton in Maelor Gymraeg. In driving Llywelyn back into the heartlands of Gwynedd and making his presence felt in northern Powys, Edward I had assumed direct control of most of the Maelor district; but Eyton seems to have remained with Emma's daughter-in-law, Margaret. By November 1277 Margaret was also a widow, for Madog had died.<sup>30</sup>

Thus while the chief justice Walter de Hopton and his associates, sitting at Oswestry on 28 November, determined that Overton should to be restored to Emma, subject to the king's will,<sup>31</sup> the status of Eyton was more complicated. At the same session, Emma demanded Eyton and its various attached interests and incomes from her daughter-in-law. The reasoning from Emma's side was that Gruffudd had dowered her with Eyton and placed her in seisin immediately, and that she had retained possession of the manor from that point until it was occupied by Llywelyn in time of war. Llywelyn had bestowed it on Madog, who in turn had granted it to Margaret 'in the name of dower'.<sup>32</sup> Although Margaret disputed the means by which her late husband had come to possess Eyton, arguing that Emma had quite willingly, and in peacetime, transferred the manor to Madog, she offered no objection to the character of the tenure under discussion. According to Margaret too this was dower—formerly Emma's from Gruffudd, now hers from Madog.<sup>33</sup>

In the event, the matter was resolved by an indenture between the two women: Emma was to have the lordship of Eyton and Margaret to hold it of her at farm for an annual rent of 10 marks. Emma could reoccupy the property if Margaret defaulted on her payments or died.<sup>34</sup> Margaret already had plenty of other business to occupy her. She was involved at

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<sup>29</sup> *CPR Henry III, 1247–1258*, p. 660; *CCR Edward I, 1272–1279*, pp. 379, 399; J.G. Edwards, *Calendar of Ancient Correspondence Concerning Wales* (Cardiff, 1935) [hereafter *Cal. Anct. Corresp.*], pp. 93–4. Cf. *Welsh Assize Roll*, p. 247, where Margaret is incorrectly said to be Llywelyn's niece.

<sup>30</sup> *Welsh Assize Roll*, pp. 245–6; *Calendar of Various Chancery Rolls: Supplementary Close Rolls, Welsh Rolls, Scutage Rolls, A.D. 1277–1326* (London, 1912) [hereafter *Cal. Welsh Rolls*], pp. 161, 170, 180–81. Madog had formally submitted to the king on 12 April 1277: AWR, no. 527; *Littere Wallie: Preserved in Liber A in the Public Record Office*, ed. J.G. Edwards (Cardiff, 1940), pp. 53–4.

<sup>31</sup> *Welsh Assize Roll*, pp. 239, 244–5; on Hopton, see below, n. 78.

<sup>32</sup> 'Nomine dotis': TNA, JUST 1/1147, m. 7. *Welsh Assize Roll*, p. 245, translates it as 'by way of dower'.

<sup>33</sup> The original plea-roll entry for the dispute between Emma and Margaret variously describes the endowments thus: *ut dotem, in dotem, ut dotem suam*, as well as *nomine dotis*, as cited above, n. 32: TNA, JUST 1/1147, m. 7.

<sup>34</sup> *Welsh Assize Roll*, pp. 245–6 and AWR, no. 517. The grant in fee farm, a common-law institution, operated before *Quia Emptores* (1290) as a subinfeudation by which the grantor—Emma, in this case—could receive a

the time in other pleas relating to dower and to control over her sons' inheritance, interests which, at least as far as her dower was concerned, also seem to have been lost to her at the time of the war between her brother and the king of England.<sup>35</sup> Among other things, she was suing her brother-in-law Gruffudd Fychan, Emma's youngest son, over her right to dower in half of Glyndyfrdwy in Edeirnion on the western side of Powys Fadog. Like Emma, she claimed to have been placed in full seisin by her living husband and then to have been ejected in widowhood and war by Llywelyn, who transferred this territory to his adherent Gruffudd Fychan (lord of Edeirnion and Iâl). After the war with England, the prince of Wales had been permitted by the Treaty of Aberconwy to retain Gruffudd's homage for Edeirnion, but that for Iâl was transferred to the king.<sup>36</sup> In the case of Margaret's dower in Edeirnion, it was explicitly stated that Madog's grant had been made *at the church door*.<sup>37</sup> Like Emma, Margaret possessed charters in support of her claim, but their content is no longer known.<sup>38</sup> By the close of 1279 Margaret's suit against Gruffudd Fychan, caught up in the jurisdictional rivalry between the king of England and the prince of Wales, had been transferred to Llywelyn's own court and we learn nothing more about the process by which Madog ap Gruffudd had made his grant to Margaret.<sup>39</sup> Unlike the courts of the English common law, those of native Wales have left us no records of their proceedings.

Fortunately, we are permitted occasional glimpses of the widows' negotiation of their rights in this complex judicial landscape. Emma d'Audley's path to justice in the context of her Maelor properties combined extra-judicial and extra-curial processes of complaint and remedy with pleading before the king's justices. We know that she began her quest for the return of these lands shortly before 6 July 1277, by apprising the king of her grievance and procuring a royal writ ordering an investigation into her claims. She

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regular income from the land without having any direct managerial role. See J.M. Kaye, *Medieval English Conveyances* (Cambridge, 2009), pp. 104–5, 207.

<sup>35</sup> *Welsh Assize Roll*, pp. 246–7; *Cal. Anct Corresp.*, pp. 85–6, 93–4, 95–6, 107; *CCR Edward I, 1272–1279*, p. 399; *Cal. Welsh Rolls*, pp. 161, 164, 170–72, 178, 180–81, 183. See also G. Richards, *Welsh Noblewomen in the Thirteenth Century: An Historical Study of Medieval Welsh Law and Gender Roles* (Lampeter, 2009), pp. 80–86.

<sup>36</sup> *AWR*, no. 402 (c. 14).

<sup>37</sup> *Welsh Assize Roll*, p. 246; Margaret claimed Corwen (*Corveyn*), Carrog (*Carrau*), Mwstwr (*Mistwer*), Bonwm (*Bonun*) and *Rechald* (possibly Rhagad in Corwen): *Cal. Welsh Rolls*, p. 171.

<sup>38</sup> *AWR*, nos. 416, 418, 528; *Cal. Anct Corresp.*, pp. 85–6, 95–6; *Calendar of Ancient Petitions relating to Wales: Thirteenth to Sixteenth Century*, ed. W. Rees (Cardiff, 1975), p. 287.

<sup>39</sup> *AWR*, nos. 416, 418, 530; *Cal. Anct Corresp.*, pp. 85–6, 95–6, 107.

presumably appealed either directly to Edward himself, then in or near Worcester on his way to confront Llywelyn, or to the chancellor Robert Burnell, likely to have been in attendance on the king and fielding all business.<sup>40</sup> No original petition or correspondence survives; we know only what the king's writ says of Emma's complaint. This document indicates that she had set before the king or his chief minister the specifics and conditions of Gruffudd's bequests, her seisin and her dispossession during the war. The logistics of such communication are unclear, but it is possible that Emma first made contact with the king's circle through correspondence conveyed by mounted messengers (*nuntii*).<sup>41</sup> Emma turned only to the king's authority and never entertained the possibility of Llywelyn's intervention in her cause. Given her allegiances and the altered balance of power in the region, this was a reasonable position to take. A request for the king's direct intervention also made sense in the context of the judicial vacuum in the region during the conflict, when Edward was beginning to peel back the power of the 'rebel' Llywelyn and his adherents and feoffees (such as Emma's son Madog), but when the regional judicial processes attached to the post-war settlement were still several months away. The central law courts had but patchy jurisdiction beyond England's borders, and no local assizes had yet been ordained.<sup>42</sup>

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<sup>40</sup> The timeframe—nine days between the commission of inquiry to Guncelin de Badlesmere and the execution of the commission at Farndon on the Wales–Cheshire border—is probably too short for the mediation of Chancery itself.

<sup>41</sup> An extant account book of the Wardrobe for 1278 reveals that letters from the king were conveyed by a *nuncio* to the lady of Bromfield in October, while in September royal letters were conveyed to unidentified recipients in Bromfield: TNA, C 47/4/1, fos. 39, 39v, 40v. The *domina Bromfield* in question was either Emma or her daughter-in-law Margaret, who was also known by this title around the same time. It is possible that the October communications, sent from Macclesfield, relate to an agreement between Emma and the king, made at Macclesfield on or shortly before 3 Oct. 1278, in which Emma agreed to exchange her land in Maelor Saesneg for royal land of a similar value elsewhere: *Calendar of Chancery Warrants Preserved in the Public Record Office, AD 1244–1326* (London, 1927), p. 4; *CCR Edward I, 1272–1279*, p. 513; *CPR Edward I, 1272–1281*, pp. 282–3. On the other hand, Margaret appears to have had more direct and regular association with the Maelor district than Emma. Evidence tends to point to Emma's absence from the region and, as a result of the agreement with Margaret described above, to her managerial overlordship, rather than direct exploitation, of the manor of Eyton in Maelor Gymraeg. See E. Cavell, 'Emma d'Audley and the Clash of Laws in Thirteenth-Century Northern Powys', in P.E. Skinner, ed., *The Welsh and the Medieval World: Travel, Migration and Exile* (Cardiff, 2018), pp. 49–73.

<sup>42</sup> Nor was she alone that July in seeking the king's assistance with north Powysian territorial disputes. Margaret ferch Gruffudd appears to have done the same regarding a claim to Glyndyfrdwy, not against her usual adversary in Glyndyfrdwy matters, Gruffudd Fychan, but against another brother-in-law, Llywelyn. On 18 July 1277, from Chester, the king sent an order to Llywelyn to allow Margaret to hold half of Glyndyfrdwy, which her husband Madog had assigned to her for life: *CCR Edward I, 1272–1279*, p. 399. The editorial note to *AWR*, no. 528 incorrectly states that this command was to Gruffudd Fychan.

The findings returned by the jury investigating Emma's complaint largely confirm the statements contained in the king's writ, but for two key differences. The first is the matter of who was responsible for ejecting Emma from Overton: she reportedly told the king it was his bailiffs; the inquisition found that it was Llywelyn ap Gruffudd. The second difference is the jurors' identification of those two distinct customs of Wales that were said to have applied, respectively, to Emma's acquisition and loss of her Maelor properties.<sup>43</sup> The king's writ makes no explicit reference to either custom; yet its assertion that Emma held her properties 'according to the customs of those parts' could possibly be an allusion, if not to the specific *consuetudo Wallie* by which Gruffudd ap Madog was subsequently found to have given Maelor to Emma, certainly to the principle of Welsh custom more generally. Such differences aside, the king's writ and the inquisition materials concur in one important respect: they do nothing to encourage the notion of dower in the strictest sense, but endorse Emma's claim that she had held the lands in question by the gift of her late husband.

There is nothing more of this case in the extant evidence until, nearly five months later, Emma turned to the newly constituted Welsh assizes. Evidently apprised of the true circumstances of her dispossession (or of how to make her case in the form required), and backed up by the findings of the inquisition (overseen by Guncelin de Badlesmere, chief justice of Chester), she placed her case before the royal justices in terms of dower and princely dispossession. Things now look quite different from our perspective. At Oswestry in the Shropshire borderlands, in November 1277, Emma entered pleas for Eyton and Overton separately and against different parties: that for Overton against the king, who now held Maelor Saesneg; that for Eyton in Maelor Gymraeg against her daughter-in-law Margaret.<sup>44</sup> Both interests are here called 'dower'. In framing her claims as dower, a common-law institution closely aligned with the Welsh grants described above, Emma was using the language of the king's law courts and furnishing his justices with a complaint that could be remedied not by the common law of England *per se*, for it was Welsh law—interpreted, mediated, modified—that governed these suits, but in a manner familiar to the conceptual

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<sup>43</sup> For those customs, see above.

<sup>44</sup> *Welsh Assize Roll*, pp. 244–5; *Cal. Welsh Rolls*, pp. 162, 171–2. These were separate special commissions to Walter de Hopton, chief justice at the Welsh Assizes, and Roger Mortimer, baron of Wigmore, that fell outside the main assize commissions. For Hopton, see above, at n. 31 and below, n. 78.

framework and judicial processes of the common law courts and their personnel. Overton was soon restored to Emma. The plea for Eyton, initially assigned to a jury to establish the facts of the disputed possession, was ultimately terminated by the agreement with Margaret, described above, that accommodated both widows' in-court claims to dower.<sup>45</sup> The court's supervision of these processes, and the readiness with which the term 'dower' was attached to the landed interests successfully negotiated by the two women, suggests that, in the minds of all involved, the dower-like provision used by Welsh ruling society now approximated to the label and institution of dower as it was understood in English circles.

Some four or five years before Emma d'Audley and Margaret ferch Gruffudd were negotiating the politics of royal and princely justice (and the justice of royal and princely politics), a similar grant had been made that is more striking and unusual. This was the grant of the *commote* of Anhuniog in Ceredigion to Angharad, daughter of Owain ap Maredudd of Cedewain. On Tuesday 24 January 1273, at Llanbadarn Trefeglwys within Anhuniog itself, Angharad received the whole of Anhuniog from her husband, Ceredigion's native ruler, another Owain ap Maredudd (d. 1275).<sup>46</sup> This deed was ratified by Llywelyn as *princeps Wallie*, with all the regalian powers of oversight and control that this now entailed. The land derived from Owain's portion of the patrimony, which had been shared with his brothers Gruffudd and Cynan in 1265.<sup>47</sup> For Angharad's receipt of Anhuniog there also survive both a charter in which the transaction was documented and a record of litigation brought before the royal justices on the Welsh circuit in 1277–84. Again the recorded plea was for 'dower', granted *inter vivos* (although whether it was made on the wedding day is not stated) and held peacefully until the king's men intervened in the course of the first Welsh war.<sup>48</sup> Again it is not until the case comes within the purview of royal justice that the land is explicitly called 'dower'. There is much here that resembles both the grants to Emma and Margaret

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<sup>45</sup> *Welsh Assize Roll*, pp. 245–6. Richards, *Welsh Noblewomen in the Thirteenth Century*, p. 85, raises the possibility that the two women were colluding to prevent Eyton from passing out of the family and into the king's hands.

<sup>46</sup> TNA, C 146/9502; AWR, no. 71; and printed as an appendix to Smith, 'Dower in Thirteenth-Century Wales', pp. 354–5.

<sup>47</sup> Smith, *Llywelyn ap Gruffudd*, pp. 304–6.

<sup>48</sup> *Welsh Assize Roll*, p. 242; *Cal. Welsh Rolls*, p. 171. As the plea was directed against the king, who held Anhuniog, it was referred *coram rege* and we lose sight of it. It does not appear on the plea rolls of the *coram rege* bench, so could have been moved to the king in parliament or council.



and their experience of disseisin and litigation; and there is, again, similarity with contemporary practice in England.

Yet the tenure described in Angharad's charter is very strange indeed. It is a true hybrid.<sup>49</sup> Although Owain was a groom endowing his wife and prospective widow, his charter in fact conveys the land to Angharad 'in liberum maritagium' ('in free marriage'). This was a form of conveyance wholly unfamiliar in Welsh practice and which under English common law signalled the creation of the wife's dowry, not the widow's dower. In England, the dowry in land, called *maritagium*, came from the bride's family. It was quite distinct from the groom's patrimonial interests, from which dower derived. It is also clear that the arrangements for the future descent of Anhuniog, namely that it should pass to Angharad's heirs by Owain, resemble the sort of strictures often applied to English *maritagia* of this period. In England donors increasingly sought to make explicit the old customary rule that reserved the marriage portion's descent to the children of the couple themselves, against the claims of collateral heirs.<sup>50</sup>

Like Emma and Margaret, Angharad came before the royal justices of the Welsh Assizes to claim dower and other rights.<sup>51</sup> Unlike them, however, Angharad had married again—to the border lord Walter de Pedwardine.<sup>52</sup> In January 1278, Edward commissioned the bishop of Worcester and his fellows to 'hear and determine' (*oyer and terminer*) Angharad's allegation that the *commote* of Anhuniog had been granted to her as dower by her former husband.<sup>53</sup> Anhuniog, like Maelor Saesneg, had been caught in the advancing tide of royal authority in Wales during the war and was now in the king's hands: Angharad had been dispossessed not by the muscle of the prince of Wales, seeking to reward his allies, but on the authority of the king himself.<sup>54</sup> Edward's commission mandated that,

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<sup>49</sup> Smith, 'Dower in Thirteenth-Century Wales', p. 350; Smith, *Llywelyn ap Gruffudd*, p. 304 and n. 105. Angharad's endowment is also addressed by S.M. Johns, *Gender, Nation and Conquest in the High Middle Ages: Nest of Deheubarth* (Manchester, 2013), pp. 91–2, although this is a somewhat confused summary of Smith's analysis and should be read with care.

<sup>50</sup> J. Biancalana, *The Fee Tail and the Common Recovery in Medieval England, 1176–1502* (Cambridge, 2001), pp. 10, 39–69; Kaye, *Medieval English Conveyances*, pp. 139–40.

<sup>51</sup> *Welsh Assize Roll*, pp. 241–2, 243, 255–6, 286–8.

<sup>52</sup> *Welsh Assize Roll*, pp. 242, 243, 255–6, 286–8; *Cal. Welsh Rolls*, p. 177.

<sup>53</sup> *Cal. Welsh Rolls*, p. 171.

<sup>54</sup> *Welsh Assize Roll*, p. 242. See Smith, 'Dower in Thirteenth-Century Wales', p. 353, for further details of the king's seizure of Anhuniog.

saving his own rights in the *commote*, justice was to be done to Angharad ‘in accordance with the form of the peace and according to the law and custom of those parts’<sup>55</sup>—that is, by native conventions royally construed (or, perhaps, royal conventions presented as native ones), as stipulated by the Treaty of Aberconwy.<sup>56</sup> In February 1278, at Oswestry, Angharad initiated her dower suit and two further pleas, all three of them against the king, for land in Wales.<sup>57</sup> None of the disputes was resolved promptly, for all of her confiscated lands had been placed in the care of two Crown agents, but neither man was available to speak in court on the king’s behalf.<sup>58</sup> Angharad would have to wait. With some inevitability perhaps, these pleas were referred *coram rege* for further consideration,<sup>59</sup> but not before Angharad had appointed Walter de Pedwardine, with Peter de Pedwardine (presumably a kinsman) as back-up, to act as her attorney. Her dower suit disappears from our records, but later evidence suggests that her plea was unsuccessful, possibly stymied by the fact of her remarriage.<sup>60</sup> Nevertheless, in Angharad’s recorded interactions with royal justice, as her expectations were accommodated or countered by a court not unsympathetic to those

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<sup>55</sup> *Cal. Welsh Rolls*, p. 171.

<sup>56</sup> In what is arguably its best known clause, the Treaty of Aberconwy—echoing chapter 56 of Magna Carta—stipulates that all disputes in the march should be settled according to the laws of the march, and those in Wales according to the laws and customs of Wales: *AWR*, no. 402 (c. 13). A troubling lack of specificity accompanied both pronouncements: see, for example, R.R. Davies, ‘The Law of the March’, *Welsh History Review*, v (1970), pp. 1–30. [I am grateful to one of the reviewers of my article for the suggestion that these could equally have been English royal conventions masquerading as Welsh ones. It is an intriguing possibility.](#)

<sup>57</sup> The first was for various lands granted to her by her father, possibly as a marriage portion, the second for the patrimonial inheritance of Cedewain, and the third for her dower in Anhuniog: *Welsh Assize Roll*, pp. 241–2; see also pp. 255–6, 286–8 for further appearances relating to her first two claims. While the king himself had evicted her from Anhuniog, Llywelyn had been responsible for her ejection from the other properties.

<sup>58</sup> Payne de Chaworth and ‘Lewis’ ap Gruffudd (a younger son of the ruler of southern Powys and then the king’s bailiff of Cedewain. Also known as ‘Llywelyn de la Pole’, as above, n. 20): *Welsh Assize Roll*, p. 242.

<sup>59</sup> Perhaps to the king in parliament: *Welsh Assize Roll*, p. 213.

<sup>60</sup> The charter by which Owain ap Maredudd granted Anhuniog to Angharad stipulated—unusually for orthodox English dower—that the *commote* would revert to the patrimony he shared with his co-heirs in the event that she remarried. When Angharad and Pedwardine appeared again at Oswestry on 22 July that year seeking the villis of Dolforwyn, Bahaiithlon and Aberbechan as Angharad’s by the gift of her late father, they were referred to the king ‘to know his will thereon’: *Welsh Assize Roll*, pp. 255–6. It is no doubt significant to this hearing that Dolforwyn was the site on which Llywelyn ap Gruffudd had built a great fortress in 1273, a strategic stronghold which had subsequently passed into the hands of Roger Mortimer. In the case of a further, unrelated plea, for the wardship of her son and his land, initiated before the Welsh Assize justices at Builth on 8 April 1278, the lack of a suitable timeframe in which to deliberate compelled the justices to refer the case *coram rege*: *Welsh Assize Roll*, p. 243.

expectations, lie further clues to the development of dower in the native elite circles of pre-conquest Wales.

Superficially at least, in any case, it might suffice to explain the grants to the foreign-born Emma d'Audley with reference to her expectations as an Anglo-Marcher woman who had held dower of her first marriage and would anticipate nothing less of her second, and whose husband, a frontier lord himself, was not only bound by the arrangements applied to his union with a woman from the Marches, but also familiar with practices in England. This was a classic bi-cultural marriage of the sort often found among the Welsh elites of the thirteenth century. The thirteenth-century rulers of southern Powys, Gwenwynwyn ab Owain Cyfeiliog and his son Gruffudd, also courted English friendship and married Marcher women, and they too gave their prospective widows dower both in their patrimonial territories and, when fortune necessitated it, in English land provided by the king.<sup>61</sup> Similarly, Juliana de Lacy, a member of the formidable Marcher and Anglo-Irish family of Lacy, was given dower at marriage by her first husband, Maredudd ap Rhobert of Cedewain (d. 1244), in the first quarter of the thirteenth century.<sup>62</sup> In the princely circles of Gwynedd, Rhys ap Gruffudd (d. 1284), grandson of Llywelyn ab Iorwerth's *distain* (seneschal) Ednyfed Fychan, endowed Margaret Lestrangle of Knockin with the township of Tregarnedd (*Trefgarned*) in Anglesey at the time of their marriage.<sup>63</sup> There are also hints (but nothing more) of further cases. Maud de Braose, a daughter of Matilda de St Valéry and William III de Braose, and widow of the eldest son of the Lord Rhys of Deheubarth, remained in her marital family's territories after her husband's death and was, it seems, maintained either by her sons or by some dower provision until her own death in 1210.<sup>64</sup> Her younger namesake Maud de Braose (d. 1248), widow of the Lord Rhys' grandson Rhys Mechyll of

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<sup>61</sup> Both Gwenwynwyn and Gruffudd provided their wives with dower in the royal manor of Ashford in Derbyshire, which had been used by the Crown for the men's reward and maintenance during their periods in exile from Gwynedd-ruled Wales: E. Cavell, 'Welsh Princes, English Wives: The Politics of Powys Wenwynwyn Revisited', *Welsh History Review*, xxvii (2014), pp. 214–52. The dower arrangements made by Gruffudd ap Gwenwynwyn for his wife are discussed below.

<sup>62</sup> *Calendar of the Close Rolls Preserved in the Public Record Office: Henry III* (14 vols., London, 1902) [hereafter *CCR Henry III*], 1251–1253, p. 185; *AWR*, no. 15; *Welsh Assize Roll*, p. 255.

<sup>63</sup> This transaction was recorded in a charter, now lost. In April 1284 Edward I nullified the grant by Rhys ap Gruffudd while allowing for Margaret's continued tenure of the property for life, with reversion to Edward himself on her death: *Cal. Welsh Rolls*, p. 285.

<sup>64</sup> *Brut y Tywysogyon; or, The Chronicle of the Princes. Peniarth MS 20*, tr. T. Jones (Cardiff, 1952), p. 84.

Dinefwr, had a land-base at Ystrad Tywi, in her late husband's territory. This centred on the castle of Carreg Cennen, the very fortress which, according to the native annals, she 'treacherously placed in the power of the French [Anglo-Normans], out of enmity for her son'.<sup>65</sup> Perhaps this was her dower. The apparent ease with which the native power brokers of Wales provided dower in their patrimonial lands for their Anglo-Norman wives contrasts with the manner in which these questions were settled in thirteenth-century Ireland: there, as Gillian Kenny has demonstrated, such cases were rare indeed.<sup>66</sup>

It is not quite so straightforward to explain why Angharad ferch Owain, a native woman, received dower—except by Beverley Smith's contention that dowering had come to be normal practice among the Welsh rulers of the thirteenth century, regardless of whom they married.<sup>67</sup> This is probably true. Angharad's father-in-law, Maredudd ab Owain (d. 1265) of Ceredigion, had also used the church door to endow his wife Elen with the land of Gwynionydd some time before 27 August 1246.<sup>68</sup> Admittedly, the distinction between alien and native families in this period is somewhat artificial: one never has to look far in thirteenth-century Wales to find alien marriages among the kindred of couples who were themselves both members of native princely dynasties.<sup>69</sup> Angharad's paternal grandmother was that Juliana de Lacy discussed above. The little-known Elen, wife of Maredudd ab Owain of Ceredigion, may have been the daughter of a Marcher lord of west Wales.<sup>70</sup> Perhaps the influence of common law and the habit of diplomatic innovation had reached Angharad of Cedewain and Owain of Ceredigion through these channels. Nor was dower the only form of

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<sup>65</sup> *Ibid.*, p. 108.

<sup>66</sup> G. Kenny, *Anglo-Irish and Gaelic Women in Ireland, c.1170–1540* (Dublin, 2007), p. 88; *id.*, 'When Two Worlds Collide: Marriage and the Law in Medieval Ireland', in C. Beattie and M.F. Stevens, eds., *Married Women and the Law in Premodern Northwest Europe* (Woodbridge, 2013), pp. 53–70; G. Kenny, 'Anglo-Irish and Gaelic Marriage Laws and Traditions in Late Medieval Ireland', *Journal of Medieval History*, xxxii (2006), pp. 27–42, at 35–9.

<sup>67</sup> Smith, 'Dower in Thirteenth-Century Wales', p. 348.

<sup>68</sup> *AWR*, no. 69; *CPR Henry III, 1232–1247*, p. 487.

<sup>69</sup> Cf. Smith, *Llywelyn ap Gruffudd*, p. 305, and Johns, *Gender, Nation and Conquest*, p. 92, who suggest—incorrectly, in my view—that this Angharad and Owain's union was a Cambro-Marcher intermarriage. Although Angharad's grandmother was Juliana de Lacy, in all other respects both she and her husband appear to represent the native elite.

<sup>70</sup> Elen, probably Maredudd ab Owain's second wife, may have been the daughter of Gilbert de Vall of Dale in the earldom of Pembroke: see P.C. Bartrum, *Welsh Genealogies, A.D. 300–1400* (8 vols., Cardiff, 1974), iv. 781, and, for the connection between Maredudd ab Owain and Gilbert de Vall, *Littere Wallie*, ed. Edwards, pp. 14, 38–9.

land to which Angharad felt she had a claim. In court with her second husband, the Shropshire lord Walter de Pedwardine, in July 1278, she also sought to recover patrimonial territories and incomes which had nothing to do with what her first husband had given her.<sup>71</sup>

Notwithstanding the content of the native law texts, the circulation of land in the upper echelons of Welsh society in the thirteenth century clearly included women, probably far more readily than it had ever done before. Property relations in Welsh society were shifting. Female kin of Welsh rulers in the twelfth and thirteenth centuries regularly held land. They inherited it, they held it in wardship, they gave it to monasteries and they may have received it as *maritagia*.<sup>72</sup> Most significantly for our purposes, they received substantial landed settlements for their widowhood—settlements that, as we have seen, appear to be outmoded, approximated and even strangely modified versions of the arrangements made for English widows. This was not only the case for women who came to native Wales from England or the Marches, or indeed for Welsh women marrying out, but was also true (again, in marked contrast to the Irish situation) of the women of the native ruling dynasties whose marriages took place within the socio-legal structures of *pura Wallia* in the last phase of its existence. The latter group were women who, in the reactionary circumstance of the post-conquest northern Marches risked being denied inheritance and dower, in accordance with the strictest interpretation of native law—a risk that might well have been greater still for women of less exalted rank. Although certain of the extant law texts had begun to include a place for inheritance by women in rare circumstances, on the question of dower at least the thirteenth century ushered in the starkest contrast between the English common law and *Cyfraith Hywel* and (no doubt partly as a result of this)

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<sup>71</sup> Angharad claimed to have been given a manor and certain villis in Cedewain by her father (possibly as a marriage gift) and to have inherited the whole of Cedewain as his heir when he died: *Welsh Assize Roll*, pp. 241–2, 255–6. The pattern of Cedewain’s descent to Angharad is noticeably different from the inheritance ‘rules’ of English common law at the time: *ibid.*, p. 256. The vill of Bachaethlon (*Bahaithlon*) in the lordship of Ceri—claimed by Angharad as a grant from her father—had not only been part of Juliana de Lacy’s dower, but had also been assigned to Juliana by her son, Angharad’s father Owain. Juliana had subsequently surrendered Bachaethlon to Owain, who in turn granted full seisin of the vill to Angharad and made his mother Angharad’s tenant there for life: *ibid.*, p. 255.

<sup>72</sup> See Johns, *Gender, Nation and Conquest*, ch. 3, for a range of twelfth- and thirteenth-century examples of landholding by Welsh elite women.

between the dictates of the native law of women and what the Welsh ruling elites were actually doing. High-ranking dowagers were not uncommon in Wales after all.<sup>73</sup>

## II

But was what Emma and the others received really dower? Or was it something else? In fact, it was both and neither. This is no mere technicality. It is fundamental to understanding widows' land rights in native Wales before the conquest. Clearly the use of the label *dos* in the English legal and administrative sources is at odds with the absence of any word like it in the husbands' charters, and with the outright denial by the eighteen Welsh jurors responding to Emma d'Audley's complaint in July 1277. The word's presence in the English sources does not hide the fact that the forms of grant are unusual—none more so than that made to Angharad of Cedewain. It is also the case that, unlike the grants examined here, common-law dower in England was not usually conveyed by charters, but (in the case of *dos nominata*) by spoken word before witnesses, often with a physical object to betoken the transaction.<sup>74</sup> Emma d'Audley's case probably offers the best hint of an explanation of this anomaly, in that it was found by the 1277 jurors to be the 'custom of Wales' that a man could grant land to his wife at any time.<sup>75</sup> It is not clear whether there was a one-third limit on the amount a Welsh husband could give, or even how far a woman's social status had any bearing on her access to dower in this *milieu*; but in the evidence surrounding Emma's complaint we have an unequivocal, later thirteenth-century statement that in Wales a man with land could legitimately give his wife some of it, as and when he chose. This was certainly not in the 'law of Hywel'.

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<sup>73</sup> See, by way of contrast, Davies, 'Status of Women', p. 101.

<sup>74</sup> *Glanvill*, ed. Hall, pp. 58–69, esp. 64–5. A notable exception to this comes not from England, but from Anglo-Ireland and the dower grant of c.1180 by John de Courcy to his wife Affreca, daughter of the king of Man: J. Otway-Ruthven, 'Dower Charter of John de Courcy's Wife', *Ulster Journal of Archaeology*, 3rd ser., xii (1949), pp. 77–81. See also Kenny, *Anglo-Irish and Gaelic Women in Ireland*, pp. 132–3.

<sup>75</sup> Similarly, Juliana de Lacy's interests in the lands of her deceased first husband, Maredudd ap Rhobert, were recorded on the Close Roll for the year 1252, as being rightfully hers 'according to the law and custom of Wales' ('secundum legem et consuetudinem Wallie'): *CCR Henry III, 1251–1253*, p. 185. Here the term 'dower' is used.

Much obviously rests on what we make of the term *consuetudo Wallie* as it was deployed by the Welsh jury of July 1277. The operation of custom almost certainly holds the key to what we are seeing here, but so little is known about custom in medieval Welsh law that a brief investigation is needed.<sup>76</sup> The first thing to note is that there is more than one way of reading the phrase *consuetudo Wallie*. If hardly a term of art, it has an air of universality and formality about it, in contrast to those catch-all references to the ‘laws and customs of those parts’ of Wales, Ireland and so on, which pepper the *Welsh Assize Roll*, English government records and Continental sources of the period.<sup>77</sup> It contradicts the evidence of variation in local laws and customs in those lands scrutinised in 1280–81 by Edward I’s commission of inquiry into Welsh law.<sup>78</sup> It belies the sense of regional (or regnal) peculiarity implied by Henry III’s curious attempt in 1244 to reassure Gruffudd ap Madog that he wished no harm to the laws and customs of Gruffudd’s land.<sup>79</sup> Perhaps, as a mirror of the English kings’ periodic assertion of their own rights ‘according to the custom of our kingdom’, the universalising language of the Welsh jurors’ statements reflects the hegemonic pretensions of the princes of Gwynedd.<sup>80</sup>

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<sup>76</sup> The principal discussion of this topic is D. Jenkins, ‘Custom in Welsh Medieval Law’, in A. Gouron, ed., *La Coutume, deuxième partie: Europe occidentale médiévale et moderne* (Recueils de la Société Jean Bodin, 52; Brussels, 1990), pp. 421–33. See also T.M. Charles-Edwards, *The Welsh Laws* (Cardiff, 1989), p. 2; J.B. Smith, ‘Dynastic Succession in Medieval Wales’, *Bulletin of the Board of Celtic Studies*, xxxiii (1986), pp. 199–232, esp. 222–4, and, [though dated and unreliable](#), T.P. Ellis, *Welsh Tribal Law and Custom in the Middle Ages* (1926; repr. Aalen, 1982).

<sup>77</sup> For example, *Welsh Assize Roll*, pp. 90, 91, 170, 246–8; *Cal. Welsh Rolls*, p. 171; *CCR Edward I, 1272–1279*, p. 399; Davies, ‘Law of the March’, pp. 1–30; R.R. Davies, ‘Law and National Identity in Thirteenth-Century Wales’, in id., R.A. Griffiths, I.G. Jones and K.O. Morgan, eds., *Welsh Society and Nationhood: Historical Essays presented to Glanmor Williams* (Cardiff, 1984), pp. 51–69, at 60; K.M. Simms, ‘Women in Norman Ireland’, in M. MacCurtain and D. Ó Corráin, eds., *Women in Irish Society: The Historical Dimension* (Dublin, 1978), pp. 14–25, at 17–18.

<sup>78</sup> On 4 December 1280, the bishop of St David’s, Reginald de Grey and Walter de Hopton were appointed to determine the historic rights and authorities of kings of England over the rulers of Wales and their inferiors; see *Cal. Welsh Rolls*, pp. 188, 190–210. According to J.C. Davies, ‘This carefully packed commission, with its armoury of fourteen tendentious interrogatories, proceeded, by the aid of royal officials, to make inquisition before carefully selected jurors in carefully chosen preappointed areas’: *Welsh Assize Roll*, introduction, p. 70. See also J.E. Lloyd, ‘Edward I’s Commission of Enquiry, 1280–1’, *Y Cymmrodor*, xxv (1925), pp. 1–19. For Hopton see above, at n. 31 and n. 44

<sup>79</sup> *CPR Henry III, 1232–1247*, p. 430. It seems that Dafydd ap Llywelyn, then prince of Gwynedd, may have intimated to Gruffudd, as part of a ‘recruitment drive’, that the English king was planning to undermine Gruffudd’s authority: Stephenson, *Medieval Powys*, p. 116.

<sup>80</sup> E.g. King John in his *Querimonia* of 1210: D. Crouch, ‘The Complaint of King John Against William de Briouze’, in J. S. Loengard, ed., *Magna Carta and the England of King John* (Boydell, 2010), pp. 168–79, at 169–70.

It is also possible, of course, that the invocation of *consuetudo Wallie* in the 1277 inquisition may be little more than an ‘English’ explanation of what the Welsh were *accustomed* to doing—a *post hoc* description issued within the conditions, and with the resources, of the moment.<sup>81</sup> In 1277 the jurors themselves were Welsh, but they were operating in accordance with the agendas and documentary language of the royal judiciary. In other respects, as we have seen, their report is shoehorned into a shape befitting that context. The Latin vocabulary is somewhat opaque too, for *consuetudo*, like ‘custom’ (or *la coutume*), embraces a variety of meanings—a reflection of the multiple ways in which custom was understood in medieval European law.<sup>82</sup> The Middle Welsh language was not quite so constrained, but we have no way of knowing which, if any, Welsh word was intended by the jurors in communicating their findings.<sup>83</sup>

Yet the native law books did have something to say about custom to the lawyers who thumbed them. By the latter half of the thirteenth century there was evidently a sense among Welsh men of law that custom was a discrete component of their jurisprudential landscape. A distinction is drawn in the texts between law (*cyfraith*) and custom (*defod* and its variant *cynefod*).<sup>84</sup> A law–custom distinction can be found in the discussion of pannage found in the collection of judicial reasonings known, by the medieval Welsh lawyers themselves, as *damweiniau* (literally ‘happenings’ or ‘eventualities’):

For as long as this it is right to preserve woods: from St John’s Day when the pigs go under the trees until the fifteenth day after the New Year, and during that time there is

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<sup>81</sup> As, for example, in Norman attempts, evident in the Black Book of St David’s, to apply their own customary terminology to ancient Welsh tenures: T.G. Watkin, *The Legal History of Wales* (Cardiff, 2012), p. 80.

<sup>82</sup> See, for example, D. Ibbetson, ‘Custom in Medieval Law’, in A. Perreau-Saussine and J.B. Murphy, eds., *The Nature of Customary Law: Legal, Historical and Philosophical Perspectives* (Cambridge, 2007), pp. 151–75; S. Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (1984; repr. Oxford, 1992), p. 17; Bartlett, *Making of Europe*, pp. 197–8. For the meanings of custom as it surfaced in medieval Scottish law, see R. Houston, ‘Custom in Context: Medieval and Early Modern Scotland and England’, *Past and Present*, no. 211 (2011), pp. 35–76, esp. 38–44, and W.D.H. Sellar, ‘Custom in Scots Law’ in Gouron, ed., *La Coutume*, pp. 411–19, esp. 412–13.

<sup>83</sup> The principal choice is between *arfer*, which most often meant ‘use’/‘what is usual’, and *defod* (with its variants *deddfod* and *cynefod*), which usually applied to custom in contrast to established law: Jenkins, ‘Custom in Welsh Medieval Law’, pp. 427–8.

<sup>84</sup> The concern of legal theorists and practitioners with the relationship between custom and law, and between the local and ‘universal’, was neither unique to Wales nor new in the central medieval period: P. Stein, ‘Custom in Roman and Medieval Civil Law’, *Continuity and Change*, x (1995), pp. 337–44. See also Reynolds, *Kingdoms and Communities*, pp. 16, 42–5.



a right to pannage if a person finds another person's pigs in his wood, even though he should find only three head. Others say ten head: the one is law (*kevreyth*), and the other is custom (*dedvot*), namely ten head.<sup>85</sup>

Put very simply, these *damweiniau*, typically preserved as an adjunct to the law texts proper (though not synonymous with them), represent loosely arranged compilations of conditional sentences ('If ... then ...') designed to present hypothetical situations and offer resolutions.<sup>86</sup> Their purpose was probably one of 'didactic reasoning and explication'—a classroom tool used in the instruction of trainee lawyers.<sup>87</sup> They demonstrate the possibility of differences in judicial opinion. They also reflect the legal practice contemporary with their thirteenth-century composition.<sup>88</sup>

There are other indications that the medieval Welsh lawyer had to grapple with some sort of distinction, slippery and vague though it might have been, between the letter of the law and valid alternatives. The novice wishing to take up an appointment as a court judge was required to spend time in court in the king's company learning, among other things, 'laws and practices and customs and the ordinances of the King'.<sup>89</sup> This was an educational experience similar to that offered to the trainee common lawyer of late thirteenth-century England.<sup>90</sup> Among the legal triads—sets of summarised rules or principles arranged in threes and, once again, probably associated with the Welsh

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<sup>85</sup> *Hywel Dda*, ed. Jenkins, pp. 178–9, with original Welsh inserted from Jenkins, 'Custom in Welsh Medieval Law', p. 429. An accessible explanation of the *damweiniau* may be found in R.C. Stacey, 'Legal Writing in Medieval Wales: *Damweiniau I'*', in T.M. Charles-Edwards and R.J.W. Evans, eds., *Wales and the Wider World: Welsh History in an International Context* (Donington, 2010), pp. 57–85, at 59.

<sup>86</sup> Stacey, 'Legal Writing', pp. 59–62; Charles-Edwards, *Welsh Laws*, pp. 49–53. *Damweiniau* are largely found in Iorwerth, the main northern redaction of the law texts, several manuscripts of which date from the thirteenth century. They are also found in one Iorwerth-influenced manuscript from the southern redaction, Cyfnerth.

<sup>87</sup> Stacey, 'Legal Writing', pp. 62, 76.

<sup>88</sup> Stacey, *Road to Judgement*, pp. 14, 16, and ch. 7; Charles-Edwards, *Welsh Laws*, pp. 49–69.

<sup>89</sup> *Hywel Dda*, ed. Jenkins, p. 142. The requirement for the novice to spend time at court is to be found in Blegywryd.

<sup>90</sup> For the similarities with English lawyers' training, see: H. Pryce, 'Lawbooks and Literacy in Medieval Wales', *Speculum*, lxxv (2000), pp. 29–67, at 32; P. Brand, 'Courtroom and Schoolroom: The Education of Lawyers in England Prior to 1400', *Historical Research*, lx (1987), pp. 147–64; P. Brand, *The Origins of the English Legal Profession* (Oxford, 1992), pp. 110–13; A. Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester, 2001), esp. ch. 2.

lawyer's training—we find a mnemonic explication of the nature of custom in its three forms and the relationship of those forms to law:

There are three customs (*teir kynnefawt*): a custom which follows law (*kyfreith*), it is to be upheld; a custom which anticipates law, if it have royal authority, it is to be upheld; a custom which corrupts law, and it is not to be upheld.<sup>91</sup>

The triads in fact offer considerable insight into the place of custom in the educational framework within which would-be lawyers honed their skills and memorised their materials. They make clear that where competence, power and fairness strengthen custom, oppression, doubtful origin and bad example are injurious to it.<sup>92</sup> They also give the impression that custom stands in opposition to law, or at least ought to be differentiated from it. Indeed, fair custom is explicitly cited in one instance as something that can 'cut across' law (to borrow Dafydd Jenkins' term): 'Three things which [cut across] law: an agreement; an equitable custom; and death'.<sup>93</sup> This triad not only emphasises the point that a custom must be fair to carry force, but also, as Jenkins points out, appears to leave open the possibility that it need not necessarily be chosen over law.<sup>94</sup> The looseness of the relationship is critical.

Thus in Welsh (elite) society by the thirteenth century there was a range of practices, habits, or ways of doing things which were not among those laws and

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<sup>91</sup> *The Legal Triads of Medieval Wales*, ed. S.E. Roberts (Cardiff, 2007), pp. 228–9; ead., *The Welsh Legal Triads* (Selden Society Lecture, 2008; London, 2015), pp. 13–14. See also Jenkins, 'Custom in Welsh Medieval Law', p. 429.

<sup>92</sup> This is a feature of Blegywryd texts, which may reflect a particular preoccupation with legal practicalities. *Legal Triads of Medieval Wales*, ed. Roberts, pp. 230–31: 'Three things which strengthen custom: competence, and power, and fairness' ('Tri pheth a gatarnha defawt: awdurdawt, a gallu, ac aduwynder'); 'Three things which weaken custom: oppression, and doubtful origin, and bad example; and it is driven out in the face of bad example' ('Tri pheth a wanha kynefawt: gorthrymder, ac agheugant voned, a drych agreith; a hi a wrthledeir rac dryc agreith').

<sup>93</sup> Roberts, *Legal Triads of Medieval Wales*, p. 137: 'Tri pheth a tyrr ar gyfreith: amot, a defawt gyfyawn, ac agheu'; Jenkins, 'Custom in Welsh Medieval Law', pp. 428–9. Sara Elin Roberts has kindly drawn to my attention the fact that an earlier version of this triad, found in the triad collection in the Cyfnerth manuscripts, bears no mention of custom, whereas by the time it had made it into Blegywryd the triad had acquired an explicit reference to 'just custom' as one of the three things that might stand against law.

<sup>94</sup> Jenkins, 'Custom in Welsh Medieval Law', p. 429. The concern that custom be just or reasonable has its roots in Roman civil law: Stein, 'Custom in Roman and Medieval Civil Law', p. 341. See also, for the English context, A. Kiralfy, 'Custom in Medieval English Law', in Gouron, ed., *La Coutume*, pp. 379–402, at 383.

procedures frozen into the written word of the law, but which were nonetheless legitimate. The textbooks of the Welsh lawyers make room for this reality. In the case of Emma d'Audley, Margaret ferch Gruffudd, Margaret Lestrage and Elen wife of Maredudd ab Owain of Ceredigion, the non-orthodox endowments in land—either made on the day of marriage or retrospectively associated with the act and moment of marriage, and explained by Emma's jurors as deriving from *consuetudo Wallie*—most closely resembled English *dos nominata*. In England church-door dower was usually conveyed as a spoken promise uttered before assembled wedding guests and without charters, and it is always possible that Maelor Saesneg was first conveyed to Emma in that way too. This fact, combined with the reality that by the latter half of the thirteenth century the physical record, if not the written word itself, had become a necessary instrument of lordship in England, and perhaps the neighbouring lands, might explain why our evidence for these women's provisions includes charters apparently drawn up with the wisdom of hindsight (Emma's endowment) and at least one case known only through its ratification by the king of England (Elen's endowment).<sup>95</sup> The latter was also a product of the English king's close supervision of the activities of his Welsh vassals at that time, the former—at least in part—of Llywelyn's own jealous attention to his territorial rights and followers' conduct. Ambivalent relations and shaky allegiances in the Anglo-Welsh political order of the thirteenth century provided fertile ground for the documentation, in writing, of this sort of business in native Wales.

There were, moreover, certain obvious parallels between *dos nominata*, and thus the land-grants discussed above, and *cowyll*, the traditional Welsh marriage payment to a virgin bride. *Cowyll* was the promise of certain chattels made to the wife by the husband, typically as part of a bargain struck between the two parties to the marriage, in the presence of the wedding guests, *neithiorwyr*, as witnesses and before the consummation of the union (which was also witnessed by the *neithiorwyr*). As Dafydd Jenkins noted, 'the

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<sup>95</sup> M. Clanchy, *From Memory to Written Record: England, 1066–1307* (3rd edn., Chichester, 2013), ch. 2; P. Hyams, 'Disputes and How to Avoid Them: Custom and Charters in England During the Long Twelfth Century', in P. Andersson, K. Salonen, H.I.M. Sigh and H. Vogt, eds., *Law and Disputing in the Middle Ages: Proceedings of the Ninth Carlsberg Academy on Medieval Legal History* (Copenhagen, 2013), pp. 137–53.

publicity thus given to the *cowyll* would parallel that given to the English wife's dower by declaration at the church door'.<sup>96</sup>

In the more unusual case of Angharad of Cedewain, the endowment still functioned in the manner of *dos nominata*, but it was fashioned in her husband's charter as a common-law *maritagium*. It probably mattered less how the husband's grant to his prospective widow was shaped—and late thirteenth-century English practice clearly offered more than one model for Welsh adoption and adaptation—than that it was acceptable to both parties and their overlords. It also needed to be readily defensible in courts of law. The latter was to prove essential to the women's actions in widowhood. In the context of the marriages discussed above, therefore, it appears that an existing Welsh custom of *inter vivos* grant from a husband to his wife (of the sort that would be disallowed by common law), could be used to create a synthetic form of English nominated dower. The imitation on these occasions was clearly deliberate, for Gruffudd ap Madog also granted Emma interests in his territories that were never, in any context, associated with the label or institution of dower.<sup>97</sup>

Nor do we have to look far to find similarly synthetic approaches to intra-familial land distribution by Welsh rulers of the thirteenth century. Southern Powys yields its own evidence, which underscores the sense of English-influenced cultural borrowing. When Emma d'Audley's counterpart in southern Powys, Hawise Lestrangle, received a dower provision from her husband Gruffudd ap Gwenwynwyn, her endowment formed a part of a larger arrangement ostensibly melding native with non-native, Anglo-European practice. This was the preparation made by Gruffudd in the 1270s for the future of his dominion and family, embodied in a series of territorial settlements for which evidence still exists.<sup>98</sup>

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<sup>96</sup> Jenkins, 'Property Interests', p. 77. To some extent the native *agweddi*, the share of the matrimonial property to which the wife was entitled if the marriage ended within seven years, also performed a maintenance function.

<sup>97</sup> She held properties, additional to her Maelor interests, in the *commotes* of Cynllaith and Nanheudwy, along with associated rights to *amobr*: *Welsh Assize Roll*, pp. 238, 248–9, 256–7; TNA, SC 8/262, no. 13080 (printed in *AWR*, no. 520). These were life-grants from Gruffudd, in common with her interests in Maelor, but were never called dower in the proceedings of the Welsh assizes. We have no other evidence relating to the manner in which Emma was granted these.

<sup>98</sup> 12 May 1277 and Jan.–Feb. 1278. With the possible exception of one deed, dated March 1271 at Welshpool and outlining the interests of Gruffudd's second son, Llywelyn (*AWR*, no. 602; *Littere Wallie*, ed. Edwards, no. 233), the original charters of these settlement do not survive. Enrolments may be found in *AWR*, nos. 606, 607

The couple's eldest son, Owain, was to receive the entirety of southern Powys as his lordship, held as a barony of the English king, while each of his younger brothers was to hold mesne lordships within the barony by Welsh services. Their portions were to revert to Owain if they died without heirs and their disputes were to be settled in Owain's court.<sup>99</sup> In the early 1260s, Gruffudd ap Gwenwynwyn had himself been overlord to his brother Madog.<sup>100</sup> The concomitant of her eldest son's unitary inheritance was Hawise's dower. At the family's property in Buttington in Gorddwr on 12 May 1277, in the presence of a striking mix of family members and servants, English and Welsh, Hawise was allocated her dower. She was to receive the *maritagium* of her late mother-in-law, Margaret Corbet, in Gorddwr (including the manor of Buttington where the parties were gathered), as well—significantly—as what had been Margaret's own dower in the *commotes* of Deuddwr and Caereinion, and much more besides.<sup>101</sup> While our earliest information about Hawise's dower comes only from the last decade of her long marriage, it is likely that, as for Emma d'Audley, charters of the 1260s and 70s conceal church-door endowments originally made in the early 1240s. This would certainly fit the pattern we have been seeing. Few had mastered the art of survival better than the rulers of southern Powys; and Gruffudd's shrewd set-up embraced Anglo-European and Welsh inheritance practices and, most importantly, provided Hawise with dower in the manner of a common-law widow.<sup>102</sup>

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(full text); *Cal. Welsh Rolls*, pp. 171–3, 179 (abridgement); *Calendar of the Patent Rolls Preserved in the Public Record Office: Edward III* (16 vols., London, 1881–1916), 1340–1343, pp. 96–7 (enrolment temp. Edward III); G.T.O. Bridgeman, 'The Princes of Upper Powys', *Montgomeryshire Collections*, i (1868), pp. 5–194, at 124–8 (full text); *Rotulus Walliae; or, The Transactions between Edward I and Llewellyn, the Last Prince of Wales. Part I*, ed. Thomas Phillipps (Cheltenham, 1865), pp. 37–9 (full text). See Cavell, 'Welsh Princes, English Wives', pp. 240–41, for further discussion.

<sup>99</sup> Yet, by the end of the century it seems that Llywelyn ap Gruffudd ap Gwenwynwyn and his younger brother Gruffudd Fychan were regarded, or regarded themselves, as holding of the king in chief: Bridgeman, 'Princes of Upper Powys', pp. 150, 178.

<sup>100</sup> *AWR*, no. 601.

<sup>101</sup> The settlements were altered in 1291 as a result of her sons' squabbles, but Hawise's interests do not appear to have changed greatly: *Cal. Welsh Rolls*, pp. 328–32; *CIPM*, II–IV, vol. iii, nos. 90, 212; Cavell, 'Welsh Princes, English Wives', p. 242. Margaret's dower is known only through these later references.

<sup>102</sup> Smith, 'Dynastic Succession', pp. 205, 206–9, 226, has cautioned against viewing Gruffudd's arrangements as a partnership between the English baronial model of succession and native partible inheritance, seeing it instead as embodying the Welsh rulers' 'traditional adherence to the objective of a single hereditary succession'. This explanation does not suffice in the case of southern Powys, the thirteenth-century rulers of which actively exploited the benefits of English royal allegiance and Anglo-French social status. See, for

## III

We thus have evidence of a group of aristocratic women, the wives of certain thirteenth-century Welsh rulers, who were provided with land for their widowhood in a manner not envisaged by the *lex scripta* of Hywel Dda but closely resembling a form of English common-law dower. Such provisioning is only partly to be explained as the established practice among those who exercised lordship in pre-conquest Wales. Crucially, the allocation of land to these widows was carried out by a mechanism that was permissible within the very framework that embraced the redacted laws denying widows land. We should not be surprised. Such a disjunction between law-in-action and law-in-text was hardly peculiar to medieval Wales, and their coexistence was unproblematic.<sup>103</sup> Even the contemporary courts of the maturing common law in England were not wholly averse to the operation of alternatives to the 'rules' of law.<sup>104</sup> In Wales the law books being produced in our period accommodate a carefully managed law–custom (very roughly, text–practice) relationship that operated smoothly within the native legal tradition in its last phase.

We should not be surprised either that what was being created, or retrospectively justified, was the nearest approximation of an English institution. In the world in which these men and women operated, however indirect their ties to the Marcher baronage or English royal circles, boundaries were porous, the shadow of England long and the environment conducive to innovation. The impetus for the bridegrooms' actions in our examples was presumably a combination of the demands of the Anglo-French aristocratic arena, where land constituted wealth, power and prestige, and the specific expectations

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example, R.R. Davies, *Domination and Conquest: The Experience of Ireland, Scotland and Wales* (Cambridge, 1990), p. 55. The patrilineal primogeniture which governed the succession of Owain ap Gruffudd was not home-grown, but entered Wales only falteringly and in close alliance with imperatives, such as legitimacy of birth, which reflect broader trends as much as English influence. For the continental origins of some of these imperatives, see, for example, J.C. Holt, 'Politics and Property in Early Medieval England', *Past and Present*, no. 57 (1972), pp. 3–52.

<sup>103</sup> A. Taylor, 'Lex scripta and the Problem of Enforcement: Anglo-Saxon, Welsh and Scottish Law Compared', in F. Pirie and J. Scheele, eds., *Legalism: Community and Justice* (Oxford, 2014), pp. 47–75; Pryce, 'Lawbooks and Literacy in Medieval Wales'. See also J.G. Edwards, 'The Historical Study of the Welsh Lawbooks', *Transactions of the Royal Historical Society*, 5th ser., xii (1962), p. 152; Davies, *Age of Conquest*, p. 113; Charles-Edwards, *Welsh Laws*, p. 4. See also Stacey, *Road to Judgement*, chs. 1, 6 and 7.

<sup>104</sup> P. Brand, 'Local Custom in the Early Common Law', in P. Stafford, J.L. Nelson and J. Martindale, eds., *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds* (Manchester, 2001), pp. 150–59.

accompanying the marriages themselves. In the case of marriage directly into the non-Welsh baronage, the need for the Welsh groom to set aside some of his territory for his prospective widow was obvious; but in all the cases addressed here the broader political and social contexts of aristocratic marriage in thirteenth-century Wales were probably enough to ensure that dower-type arrangements had indeed become the norm among the leaders of Welsh society by this time, and Beverley Smith was certainly correct in identifying it as such.

Of course, England and its inhabitants and émigrés were not the only drivers of change in Wales, as Huw Pryce and others have shown; for Wales shared in that ‘highly variegated pattern of change’ that informed the histories of Western European societies in the twelfth and thirteenth centuries.<sup>105</sup> In common with many European societies in the central medieval period, and like England’s other insular neighbours, it was through complex processes of conquest and emulation, external pressure and internal impulses, that Wales had come to look very different on the eve of the Edwardian Conquest from its pre-Normanised self; and certain developments, as exemplified by the ecclesiastical sphere, owed more to wider trends within Latin Christendom than to the intervention of England alone—although the two phenomena were not always distinct.<sup>106</sup> Nevertheless, it is also clear that England remained a constant, sometimes transformative, presence.<sup>107</sup> This was certainly the case when it came to native law and custom relating to elite women in pre-conquest Wales.

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<sup>105</sup> Pryce, ‘Welsh Rulers and European Change’, p. 39, and see W. Davis, ‘Land and Power in Early Medieval Wales’, *Past and Present*, no. 81 (1978), pp. 3–23, generally, for Wales’ Roman heritage.

<sup>106</sup> E.g. Davies, *Domination and Conquest*, pp. 16–23; Bartlett, *Making of Europe*, ch. 11; Charles-Edwards, *Welsh Laws*, pp. 9–10, 53–4, 63–4; *Hywel Dda*, ed. Jenkins, p. xxv; Watkin, *Legal History*, pp. 47, 83; H. Pryce, *Native Law and the Church in Medieval Wales* (1993; repr. Oxford, 2003), pp. 76–7. Aspects of church reform appear to be reflected in the Welsh law of women, in the description of divorce: T. Charles-Edwards, *Wales and the Britons, 350–1064* (Oxford, 2013), p. 272. For ‘a veritable agrarian revolution [in Wales] in the years between 1100 and 1300’, brought about by both direct and indirect Norman pressures, see T. Jones Pierce, ‘Pastoral and Agricultural Settlements in Early Wales’, *Geografiska Annaler*, xliii (1961), pp. 182–9.

<sup>107</sup> See, for example, Davies, *Age of Conquest*, esp. pt. 11; R.R. Davies, *The First English Empire: Power and Identities in the British Isles, 1093–1343* (Oxford, 2000). See also Bartlett, *Making of Europe*, ch. 8. On early, Anglo-Saxon domination, see Davies, *Domination and Conquest*, pp. 4–5; id., *First English Empire*, ch. 6; R.R. Davies, ‘Colonial Wales’, *Past and Present*, no. 65 (1974), pp. 3–23, at 3–4, 9, 10; R. Frame, *The Political Development of the British Isles* (Oxford, 1995), ch. 1.

Nor was the influence of England on Welsh legal matters novel in the thirteenth century. It is clear that the very man traditionally credited with codifying Welsh custom, Hywel Dda, had regularly attended the tenth-century court of King Athelstan, and it is possible that he was an admirer of Alfred the Great's legal reforms and the legislative activity of Athelstan himself.<sup>108</sup> Anglo-Saxon influence can certainly be detected in those sections of Welsh law dealing with king and court.<sup>109</sup> The arrival of the Normans in England and parts of Wales also left trace evidence in written law and enacted practice, and from the latter half of the twelfth century a developing English common law began to make indelible marks on the Welsh legal landscape.<sup>110</sup> That English common law was itself in its infancy when it first appeared on Welsh horizons probably paved the way for a degree of accommodation with native law no longer conceivable when the Anglo-Normans invaded Ireland a century later.<sup>111</sup>

Facing oblique pressure and open challenge from several directions at once, the body of home-grown laws and practices enshrined in the law books had also, by the time of the Anglo-Welsh wars of the 1270s and 80s (indeed, partly because of these wars), taken on a boldly emblematic and ideological status, and a fictionally monolithic quality, that was directly linked to Welsh national consciousness. The earliest surviving texts were probably compiled in response to the conditions in which native law found itself in the later twelfth and thirteenth centuries—also shaped, no doubt, by the broader 'self-conscious

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<sup>108</sup> See esp. S. Keynes, 'Welsh Kings at Anglo-Saxon Royal Assemblies (928–55)', *Haskins Society Journal*, xxvi (2014), pp. 69–122.

<sup>109</sup> Watkin, *Legal History*, pp. 44–5, 47; *Hywel Dda*, ed. Jenkins, p. xii; T.G. Watkin, 'The Laws of Wales', in id., ed., *The Carno Poisonings and other Essays* (Bangor, 2010), pp. 33–48, at 34–5; Charles-Edwards, *Wales and the Britons*, pp. 270–71, 327. See also M.E. Harris, 'Compensation for Injury: A Point of Contact Between Early Welsh Law and Germanic Law?', in T.G. Watkin, ed., *The Trial of Dic Penderyn and Other Essays* (Cardiff, 2002), pp. 39–76.

<sup>110</sup> The *damweiniau*, for example, reflect possible linguistic influences from Norman French: Charles-Edwards, *Welsh Laws*, p. 50. See also Watkin, *Legal History*, pp. 80–81, 87; J.B. Smith, 'Judgement Under the Law of Wales', *Studia Celtica*, xxxix (2005), pp. 63–103, at 72; Pryce, 'Lawbooks and Literacy', p. 35.

<sup>111</sup> J. Otway-Ruthven, *A History of Medieval Ireland* (London, 1968), p. 188; R. Frame, "'Les Engleys nées en Irlande': The English Political Identity in Medieval Ireland", *Transactions of the Royal Historical Society*, 6th ser., iii (1993), pp. 83–103, p. 86; B. Smith, 'Keeping the Peace', in J. Lydon, ed., *Law and Disorder in Thirteenth-Century Ireland: The Dublin Parliament of 1297* (Dublin, 1997), pp. 57–65, at 3. For the more difficult meeting of two laws and cultures in Ireland, where women's rights were concerned, see esp. Simms, 'Women in Norman Ireland'; Kenny, 'Anglo-Irish and Gaelic Marriage Laws and Traditions'; Kenny, *Anglo-Irish and Gaelic Women in Ireland*. For the Scottish situation, more akin to that in Wales, see C.J. Neville, 'Keeping the Peace on the Northern Marches in the Later Middle Ages', *English Historical Review*, cix (1994), pp. 1–15.



juridification' of European society in the same centuries.<sup>112</sup> Although it never elicited the level of condemnation reserved for Irish law, the law of Hywel nevertheless had its detractors within and outside Wales.<sup>113</sup> Archbishop Pecham's vitriolic censure of Welsh law in 1282 is not necessarily representative of contemporary ecclesiastical sentiment;<sup>114</sup> but there were certainly reformist churchmen of the twelfth and thirteenth centuries who took exception, if not to the law itself, then at least to native habits. The looseness of the matrimonial bond and the scant regard for legitimacy of birth, the practice of consanguineous marriage, and the lack of celibacy among their clergy were some of those Welsh behavioural shortcomings remarked upon by, among others, Theobald of Bec (d. 1161), John of Salisbury (d. 1180) and Gerald of Wales (d. c.1223).<sup>115</sup> More generally the expectations of the reformed Church, readily embraced by plenty of Welsh clergymen and circulated throughout Wales in the canons of Church councils, also implied criticism of Welsh law and brought the tough new Gregorian standards of Continental Europe into contact with old Welsh customs.<sup>116</sup>

Laymen were perhaps still more of a threat to the Welsh legal tradition than scandalised churchmen. These laymen included not just Edward I, the 'English Justinian' with an ominous penchant for questioning the validity of native laws in his realm,<sup>117</sup> but also individuals who otherwise held *Cyfraith Hywel* dear. Huw Pryce has explored the part played by native rulers in opening Wales up to external, particularly English, influences in the two hundred years or so before the conquest of Wales, making clear the Welsh rulers' attempts to emulate their neighbours, in legal matters as in other things.<sup>118</sup> In an Anglo-French world of ever greater connection and contact, the leading Welsh princes of the twelfth and

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<sup>112</sup> Pryce, 'Lawbooks and Literacy', p. 34; Ibbetson, 'Custom in Medieval Law', p. 155.

<sup>113</sup> For the comparative treatment of Welsh and Irish law, see J. Lydon, 'Lordship and Crown: Llywelyn of Wales and O'Connor of Connacht', in R.R. Davies, ed., *The British Isles, 1100–1500: Comparisons, Contrasts and Connections* (Edinburgh, 1988), pp. 48–63.

<sup>114</sup> Writing to Llywelyn ap Gruffudd: *Registrum Epistolarum Fratris Johannis Peckham, Archiepiscopi Cantuariensis*, ed. Charles Trice Martin (3 vols., London, 1882–5), i. 77, 136, ii. 473–6.

<sup>115</sup> *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland*, ed. Arthur W. Haddan and William Stubbs (3 vols., Oxford, 1869–78), i. 371–4; Pryce, *Native Law and the Church*, ch. 3; R.R. Davies, 'Buchedd a moes y Cymry [The Manners and Morals of the Welsh]', *Welsh History Review*, xii (1984), pp. 174–9.

<sup>116</sup> Watkin, *Legal History*, p. 85.

<sup>117</sup> Davies 'Law and National Identity', p. 66.

<sup>118</sup> Pryce, 'Welsh Rulers and European Change'.

thirteenth centuries, notably ‘the Lord’ Rhys ap Gruffudd of Deheubarth (d. 1197) and the Llywelyns of Gwynedd (d. 1240 and 1282 respectively), increased the pace and degree of imitative change. The encroachment of Angevin judicial reform onto the Welsh legal landscape probably owed something to the intervention of the Lord Rhys, overlord of much of Wales and effectively Henry II’s lieutenant in south Wales.<sup>119</sup> The princes of Gwynedd, ascendant in the thirteenth century but facing a self-confident English Crown no longer distracted by Normandy, positioned themselves as European potentates, rulers of all Wales, and custodians and correctors of Welsh law.<sup>120</sup> Even Llywelyn ap Gruffudd, whose ‘rotund phrases’ had challenged Edward I on the right of the Welsh people to their own laws and customs, displayed an ambivalent attitude to those same laws and customs.<sup>121</sup>

Nevertheless, there were clearly limits to direct modification, not least because Welsh elites were never integrated into Anglo-French political society to the same extent as in analogous cases in the British Isles and Continental Europe.<sup>122</sup> The result was a slower-paced, less complete assimilation of foreign norms and practices. The princes too were sometimes stymied in their attempts to implement change by certain groups, such as the leading native kindreds, who felt their interests threatened.<sup>123</sup> The politicisation and ideological charge of native law probably also acted as something of a brake on radical change. The women’s property rights above offer clear evidence that altering long-established, textually embedded native laws also had its limits. In fact, we are not looking at

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<sup>119</sup> The Lord Rhys’s position in south Wales mirrored that of Ralph de Glanvill, as Justiciar of England.

<sup>120</sup> Davies, ‘Law and National Identity’, p. 55; Charles-Edwards, *Welsh Laws*, pp. 10, 12; T. Jones Pierce, ‘The Law of Wales—the Last Phase’, in *Medieval Welsh Society: Selected Essays by T. Jones Pierce*, ed. J.B. Smith (Cardiff, 1972), pp. 369–89; Stacey, *Road to Judgement*, p. 180.

<sup>121</sup> R.R. Davies, ‘The Peoples of Britain and Ireland, 1100–1400, III: Laws and Customs’, *Transactions of the Royal Historical Society*, 6th ser., vi (1996), pp. 1–23, at 1. [Llywelyn’s predecessor, Dafydd ap Llywelyn, is alleged to have abolished the native practice of galanas \(blood money\) in his dominion; and lesser laymen, such as the men of Rhos and Ceri, were similarly ambivalent about native law: Davies, \*Age of Conquest\*, p. 127; Davies, ‘Law and National Identity’, p. 63.](#)

<sup>122</sup> Pryce, ‘Welsh Rulers and European Change’, pp. 41–3; Bartlett, *Making of Europe*, pp. 53–5, 78–83, 232, 299; C.J. Neville, *Native Lordship in Medieval Scotland: The Earldoms of Strathearn and Lennox, c.1140–1365* (Dublin, 2005), ch. 2; R.D. Oram, *The Lordship of Galloway* (Edinburgh, 2000), ch. 7; P. Knoll, ‘Economic and Political Institutions on the Polish–German Frontier in the Middle Ages: Action, Reaction, Interaction’, in R. Bartlett and A. Mackay, ed., *Medieval Frontier Societies* (Oxford, 1989), pp. 151–74.

<sup>123</sup> Pryce, ‘Welsh Rulers and European Change’, p. 47; T.M. Charles-Edward and N.A. Jones, ‘*Breintiau gwŷr Powys: The Liberties of the Men of Powys*’, in T.M. Charles-Edwards, M.E. Owen and P. Russell, eds., *The Welsh King and his Court* (Cardiff, 2000), pp. 191–223.

the formal introduction of common-law dower by the prince of Wales<sup>124</sup> or its imposition by the king of England, as was certainly the case in the principality after the Edwardian Conquest. Nor is it a case of the grooms themselves disregarding Welsh legal principles in providing landed maintenance for their widows.

Such was the inherent flexibility of the native legal tradition—flexibility that is partially obscured by a façade of textual rigidity and obsolescence—that, in this case at least, home-grown law did not need to be amended or overridden for thirteenth-century Welsh elites to adopt something like the matrimonial land-distribution practices of their English neighbours, and to compete successfully in insular and European aristocratic circles. For all their archaisms, chronological mixing and burlesque interludes, along with their tendency toward the ideal over the real, the law books remained relevant to a changing Wales. They were also important for the lawyers' training, eager as these men were to remain at the forefront of their profession without compromising the ancient and venerable tradition to which they belonged.<sup>125</sup> Not only was the written word just one medium in the education and quasi-professional practice of the thirteenth-century Welsh lawyer, but the law books themselves were also open to a living legal tradition—to the existence of non-redacted law and unrecorded practice, to the survival of regional and local peculiarities, to a society's propensity for change, as well as to what Pryce described as 'the continuing vigour of customs and mentalities whose origins no doubt lay in the pre-Norman period'.<sup>126</sup>

Despite the differences between them, the several redactions of the law books themselves (in which are contained the tractate, or treatise, called 'The Law of Women', *Cyfraith y Gwragedd*) remained fairly fixed over time. Social change and legal innovation were played out much more meaningfully in what Aneurin Owen in 1841 labelled 'Anomalous Laws'—that is all of the written legal material that fell outside (what Owen deemed) the core legal texts themselves and were variously appended as 'tails' to the main

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<sup>124</sup> Cf. Pryce, 'Welsh Rulers and European Change', p. 41, who lists dower among those princely 'legal innovations ... that rode roughshod over principles of native Welsh law'.

<sup>125</sup> R.C. Stacey, 'Learning to Plead in Medieval Welsh law', *Studia Celtica*, xxxviii (2004), pp. 107–23, at 123.

<sup>126</sup> Pryce, 'Lawbooks and Literacy', p. 35. See also M. Innes, 'Memory, Orality and Literacy in an Early Medieval Society', *Past and Present*, no. 158 (1998), pp. 3–36, at 4.

texts.<sup>127</sup> Such material included legal triads and *damweiniau*, discussed above. In this way the core texts kept the law of Hywel intact.<sup>128</sup> The legal triads and *damweiniau* were, moreover, the very genres of Welsh legal writing that not only kept the lawyer up to speed with newer developments, but exercised his awareness of custom. If, as in the case of the Brehon laws of Ireland, the Welsh tractate on women was preserved in the texts in a venerable, chiefly descriptive and less practicable form that had its roots in an earlier period, the actual provisioning of aristocratic widows in thirteenth-century Wales could be negotiated beyond the reach of the written ‘rules’ on women.<sup>129</sup> (By contrast, the Gaelic women in Irish ruling circles were subject to broadly the same socio-legal principles as they had been in a much earlier age.)<sup>130</sup> The ‘custom of Wales’ that allowed a man to give his wife land in the later thirteenth century, and even its association with widows’ provisioning, may already have been fairly long-standing.<sup>131</sup> It appears that the ‘equitable custom’ of the legal triads simply needed to be—if we take the tractate on women as our guide—extra-textual and compatible with contemporary social and political expectations. Those expectations were informed by the same complex pattern of external pressures, Welsh internationalising tendencies, and pragmatic responses to social change that made its mark on the native legal tradition in this period and thrust native law to the forefront of Anglo-Welsh relations in the thirteenth century. Political and social realities determined the ‘custom of Wales’, for law (in a broad sense) was, as J.C. Holt remarked long ago, ‘beaten into shape by political necessity’.<sup>132</sup> It is not especially remarkable, then, that the rulers of

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<sup>127</sup> *Ancient Laws and Institutes of Wales: Comprising Laws Supposed to be Enacted by Howel the Good, Modified by Subsequent Regulations under the Native Princes prior to the Conquest by Edward the First, and Anomalous Laws*, ed. Aneurin Owen (2 vols., London, 1841). All of the so-called ‘anomalous laws’, with which Owen associated the Latin redactions, are placed together in volume two. While Owen’s groundwork has been invaluable to the field, his conception of Welsh law is now considered flawed.

<sup>128</sup> Pryce, ‘Lawbooks and Literacy’, p. 40. See also Stacey, *Road to Judgement*, ch. 7.

<sup>129</sup> For the Irish laws, see for example D. Ó Corráin, ‘Women in Early Irish Society’, in MacCurtain and Ó Corráin, eds., *Women in Irish Society*, pp. 1–13, and Kenny, *Anglo-Irish and Gaelic Women in Ireland*, p. 67. The Welsh tractate on women may itself have been a digest of established customary practices: Jenkins, ‘Custom in Welsh Medieval Law’, p. 431.

<sup>130</sup> Simms, ‘Women in Norman Ireland’, p. 14.

<sup>131</sup> Long practice was certainly central to the English understanding of custom: A. Kiralfy, ‘Custom in Mediaeval English Law’, *Journal of Legal History*, ix (1988), pp. 26–39, at 26; id., ‘Custom in Medieval English Law’, in Goroun, ed., *La Coutume*, pp. 386–7; A. Harding, *A Social History of English Law* (Harmondsworth, 1966), pp. 216–18; Houston, ‘Custom in Context’, pp. 37, 71. For possible evidence of pre-thirteenth-century dower or dowry in Wales, see Pryce, *Native Law and the Church*, p. 84, n. 13.

<sup>132</sup> Smith, ‘Dynastic Succession’, p. 224; Holt, ‘Politics and Property’, p. 3.

northern Powys in the late thirteenth century, some of the most strident champions of *Cyfraith Hywel*, were willing to provide their prospective widows with a very English sort of endowment.

At the centre of all this stood the women themselves. They were the high-status individuals for whom the arrangements were made. They were embroiled in the processes of innovation, imitation and change within and beyond Wales, in the dynamic interplay between group and individual expectation, in the effects of the rivalry between the prince of Wales and the English king, and in the encroachment—piecemeal and variable in extent—of English and Continental practices, institutions and judicial frameworks onto Welsh soil and into Welsh law. They were conduits of cultural transfer and objects of cultural negotiation; and they were active agents with their own agendas and (often alien) expectations. Personal, familial and dynastic right superseded shifting political borderlines and cut across legal orthodoxies, and it shaped women's actions in the law courts and outside them. The evidence relating to the end of their marriages is the most revealing. It demonstrates that by initiating actions, defending and pursuing their rights in the law courts, petitioning the king for redress, voicing complaint or defending their position, these women, the 'legal consumers' all too often overlooked by historians,<sup>133</sup> assumed active responsibility for their own interests. They also helped to shape and solidify the complex processes described above. Each of the women operated at the interface of different legal systems, political boundaries, and/or national and cultural identities; and in the reign of Edward I these phenomena loomed increasingly large and ideological. The boundaries of justice must have been even trickier to negotiate than usual. Among other things, legal choice necessitated an understanding of the specifics of their endowments and of the options for redress available, as well, perhaps, as requiring some sensitivity to the terminological imprecision generated by the intermingling of systems and languages. Our evidence comes from a period when Welsh dower was fairly well established. Yet there is no reason to doubt that women, widowed or otherwise, had always been part of the complex, organic processes described above—not just as recipients and (dowered) champions of widows' land or as passive conduits of socio-legal change, but also as key members of those

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<sup>133</sup> As noted by S.S. Walker, "Litigant Agency" in *Dower Pleas in the Royal Common Law Courts in Thirteenth and Early Fourteenth Century England*, *Journal of Legal History*, xxiv (2003), pp. 1–22, at 1.

elite kin-groups in Wales who negotiated and shaped women's, and especially widows', provisioning. No clear line can be drawn: they were surely drivers of change on both counts.

#### IV

This study sheds light on the participation (much of it unintentional) of the polity and people of Wales in their own 'Anglicisation' before the Edwardian conquest, and the place of elite women in the complex processes involved. Significantly, we see the part played by widows of native rulers not just in determining their immediate rights in this environment but also in shaping both cultural norm and associated legal resolution. Here is evidence of the mechanisms by which the ruling elites of Wales created landed endowments intended to sustain female members in widowhood, in imitation of English practice and contradiction of age-old native legal orthodoxy. The process was far more complex and deliberate than has hitherto been understood. Dower was not simply poached unaltered from England by Welsh rulers who saw themselves as competitive members of an international elite. English models of women's landholding (not all of them for dower) were adopted and refashioned in a manner that also catered to the broad parameters of the native legal system and to the domestic political dispensation of thirteenth-century Wales. Such initiatives were at once mutable, adapting to the alternative jurisdictional frameworks in which the women's interests were expressed, and distinctive—specific to the occasion, manner and requirements of their creation. They were as native as they were alien.

The actions of the widows themselves were critical. As the Welsh political order threatened to unravel, and as the lengthening shadow cast by England engendered responses from Wales that were at once rigidly ideological and flexibly creative, the women's recourse to law and extra-legal forms of redress was critical. It made them catalysts and agents in the very process of change that brought them dower-land in pre-conquest Wales and facilitated their litigation in courts of law. In availing themselves of opportunities provided by English and Continental influences, by the gulf between letter and practice in native law, and by the multiple legal jurisdictions occasioned by the widening political fissures in Welsh society on the eve of the conquest, the women helped to advance, shape and validate these changes. They were uniquely placed to do this. As the wives of native rulers, they operated at the heart of the complex interactions between England and

Wales in the final phase of Welsh independence. In marriage each had—to greater or lesser extent—traversed political, cultural, geographical and legal boundaries. They functioned, on one level, as passive channels of exchange between core and periphery, or within the core–periphery contact zone, and carried expectations of right and protection that helped to further the intrusion into Wales of English practices. In their accommodation of such expectations the Welsh rulers, too, played their part. As widows (and sometimes as wives) the women of this study actively managed their dower-like lands directly, in practical implementation of those socio-legal initiatives described above. They also articulated their expectations and negotiated their rights before (increasingly receptive) courts and by extra-curial, even extra-legal, means. In the very political, jurisdictional and judicial-legal uncertainties arising from pre-conquest interactions between England and Wales lay the opportunity for innovation and formalisation. There is every reason to suspect that the women of this study were agents and masters of these developments.

Broadly speaking, then, Welsh dower arose from the complex interactions of native Wales with England before its final domination by its more powerful neighbour, and—central to this—of elite women’s input into their own provisioning. More specifically it arose from a unique combination of the Welsh elite’s pursuit of its own interests at the expense of textbook law, and the actions of the women as liminal agents. The experience of Wales has much to tell us about the development of core–periphery relationships during the twelfth and thirteenth centuries within the British Isles and across Europe. The lesson comes with a caveat, however, for the experience of women in Ireland, for example, speaks of differences in the manner in which such relationships were determined. There the arrangements for wives and widows took an altogether different form—one that involved increasingly less accommodation between English and native law. Nevertheless, we are reminded here too that no matter how unclear or varied the ‘rules’ of widows’ provisioning in a culturally mixed environment, it was always clear, to men and women alike, that suitable provisions for women needed to be made and safeguarded.