judge states that he should be degraitech sourlabhrai ‘well-spoken and eloquent’ (CIH 2103.23–24 = R. Thurneysen, ‘Aus dem irischen Recht, V’, Z Celt Philol 18 (1930) 353–408: 364.2–3).

nodofethaigthear. I emend to nodaghethaig, which I take to be 3 sg. pres. indic. of feithaigdir ‘calms, soothes’. There is no other attestation of a deponent feithaigdir, but feithaigdir and feithnaigdir (denominatives from fith ‘calm, peace’) are well attested.

EARLY IRISH CANONS AND MEDIEVAL WELSH LAW

Huw Pryce

ABSTRACT. This paper deals with the relationships between the legal traditions of Ireland and Wales in the middle ages and identifies two groups of borrowings from the early eighth-century Collectio canonum Hibernensis in the lawbooks of medieval Wales. The borrowings all come from Books xxx and xxxiv (in Wasserschleben’s edition) and deal with deposits and sureties; however, the compilers of the Welsh lawbooks, whose earliest extant redactions date from the late twelfth and thirteenth centuries, were plainly ignorant of the relevant passages’ ultimate Irish source. After close textual analysis of the passages in medieval Welsh law derived from the Hibernensis, the paper discusses how the Irish canons may have become known in Wales, and how they could have been transmitted into the surviving texts of Welsh law. Attention is drawn to the importance of the borrowings as a unique witness to the presence of the Hibernensis in medieval Wales, as well as to their significance for an understanding of the sources, ecclesiastical connections, and Irish affinities of medieval Welsh law.

KEYWORDS: legal history, medieval law, Welsh law, Irish law, canon law, Hibernia, Hibernensis, Cyfraith Hysed, Liber Landavensis.

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It is now over a hundred years since Wasserschleben noted that three of the rules in the early eighth-century Collectio Canonum Hibernensis were closely paralleled by passages in the lawbooks of medieval Wales.1 Although

1 I am very grateful to Thomas Charles-Edward and Morfydd Owen for their comments on this paper; to Professor Maurice Sheehy for providing me with a typescript of the relevant parts of his forthcoming edition of the Hibernensis; and to June Hughes for typing the paper. Its substance was presented to a seminar at the Dublin Institute for Advanced Studies’ School of Celtic Studies in December 1985; I would like to thank all those who contributed to the discussion on that and other occasions in Dublin, especially Liam Breathnach.

The following abbreviations are used: ALWA. Owen (ed), Ancient laws and institutes of Wales, Record Commission (2 vols, London 1841); BL British Library; LTWL H. D. Emanuel (ed), The Latin texts of the Welsh laws (Cardiff 1967) (references to page and line); NLI National Library of Wales; WML A. W. Wade-Evans (ed), Welsh medieval law (Oxford 1909) (references to page and line).
Wasserschleben suggested that the Welsh lawyers had influenced the Irish canonists here, the influence must in fact have worked the other way round: what we have is some unique evidence for the presence of the Hibernensis in Wales, as well as for Irish influence on medieval Welsh law. This paper will first of all identify the borrowings from the Hibernensis into Cyfraith Hywel, 'the law of Hywel', and show that they are more extensive than Wasserschleben realised; secondly, it will discuss how and when the Irish canons may have become known to the Welsh lawyers; and in conclusion it will briefly assess the borrowings' significance for the study both of the Hibernensis and of medieval Welsh law.

I

All the passages from the Hibernensis found in Cyfraith Hywel occur in Books xxx and xxiv of Wasserschleben's edition, books which deal respectively with deposits and sureties. It is worth stressing at the outset that in none of the examples do the Welsh lawyers identify their Irish source: there are no references to the Hibernensis by name in the texts of Cyfraith Hywel. By the time that the earliest surviving lawbooks were compiled in Wales in the late twelfth and early thirteenth centuries, the rules deriving from early Irish canon law had been sufficiently integrated into Welsh law for their ultimate origins to be obscured. Nevertheless, the following comparison of passages in the Hibernensis and the Welsh lawbooks demonstrates clearly that the former influenced the latter. The passages may be divided into two groups. The first consists of borrowings from CCH xxx 54 and xxiv 3 4: these are the passages whose correspondence with rules in what are now known as Latin Redactions A and B of Welsh law were noticed by Wasserschleben, although they also occur in other texts of Cyfraith Hywel, in both Welsh and Latin. The second group of passages are borrowed from CCH xxx 2a, 2b, 3b and 56, and are confined to two lawbooks in Welsh: NLW Peniarth 35 (G), a manuscript of the early fourteenth century, and the fifteenth-century manuscript, BL Additional 22356 (S).

GROUP I

(a) Item sinodus eadem: Si quis custodivert clavem domus, et furtur fuerit depositum aliquius, non reddet is, qui accipit, sed jurabit omnis domus illius, quanto magis, si cum pecunia sua furatum est. (CCH xxx 57)

(b) De personis insignis ad fidejussionem. Sinodus Hibernensis: Non est dignus fidejussor fieri servus, nec peregrinus, nec brutus, nec monachus, nisi imperante abate, nec filius, nisi imperante patre, nec femina, nisi domina, virgo sancta. (CCH xxiv 3)

(c) De tempore, quo debet rata solvere. Sinodus Hibernensis dict, ut rata reddat debita, pro quibus fixerat manus, uta uta prima XCV diebus expectet debitorem,

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6 The sigla for MSS of the Welsh lawbooks are those adopted by Aneurin Owen in ALW i, p xxxvii, with the addition of MK for the Bodorgan MS of the Cyfras of Hibernensis (see D. Jenkins and M. E. Owen (ed), The Welsh law of women: studies presented to Professor Daniel A. Birdsey on his eightieth birthday (Cardiff 1980) 133, 135). Although it has been suggested that rules in CCH liii on liability for injuries by hungry dogs may have influenced Welsh law, this is unlikely since the Welsh rules lack verbal similarities with the Irish canons similar to those noted in this paper with regard to the rules in CCH xxx and xxiv: D. Jenkins, 'The medieval Welsh idea of law', Tijdschr Rechtsgez 49 (1981) 383–48; 339; C. B. Jackson, 'On the origins of Sciemt', Law Q Rev 94 (1978) 85–102: 91–95.


8 Omitted from the A-text of CCH in BL Cotton Otho E XIII f67v.

9 Köln, Dombibliothek 210 (Kanonensammlung, 122 n b) and BL Cotton Otho E XIII (f67v) reads 'robustus' instead of 'brutus'. The B-text in Oxford, Bodleian Library, Hatton 42 (f67r) adds 'vel robustus' as a marginal gloss on 'brutus'. I thank Thomas Charles-Edwards for checking the reading of Hatton 42.

10 Hatton 42 (f67r) reads 'nec femina nisi domina, nec virgo xpiana', i.e. the 'uirgo' is separate from the 'femina', whereas in the A-text 'virgo sancta' is in apposition to 'femina, nisi domina'.

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9 H. Wasserschleben (ed), Die irische Kanonensammlung (2nd ed., Leipzig 1885) xx, ix, x, 104 n 10, 122 n 12, 12. Unless otherwise stated, all CCH references are to this edition of the A-text of CCH. For the distinction between the A- and B- texts see H. Bradshaw, The early collection of canons known as the Hibernensis: two unfinished papers (Cambridge 1893) 61–64.


10 Thus called after Hywel Dda, the tenth-century king to whom the reform and codification of Welsh law had been attributed by the twelfth century; J. G. Edwards, 'Hywel Dda and the Welsh law', Celtic law papers, 135–60; H. Pryce, 'The prelates to the Welsh lawbooks', Bull Board Celt Stud 35 (1986) 151–87.

for the rules under discussion. Instead, it may well have drawn upon another Latin lawbook, now lost — possibly the common source underlying the rules in Lat A and B.

The rules in the Latin reductions of the Welsh law are cited from Lat A, with principal variants noted from Lat B, D and E:

(a) De depositario. 16 Si depositarius depositum amiserit, re sua propria salva, ipse totum reddet. Quod si forte fur suffoderit domum et ex ea aliquid abstulerit, custode clavem domus habente, de rebus furtim ablatis nichil custos restituet. Iurabit tamen ipse et familia sua tota se sine culpa esse. 17 (LTWL 124.30–35)

There then follows a section headed 'De debitoire', which includes these two rules derived from the Hibernensis:

(b) Non debet fideiussor accipit 18 qui exul est; 19 neque qui forcius est; 20 neque monachus, nisi abbate consentiente; neque filius, nisi consentiente patre; 22 neque scolarius, nisi consentiente magistro; neque femina, nisi domina fuerit principalis debitoris. 23 (LTWL 125.8–11)

(c) A die autem solucioni prefixo, nisi eo die principalis debitor 24 solvet, fideiussore conceduntur xii dies ad solvendum, deinde xxi, postea xxxx; ad ultimum xla dies. Et postea sine ulla contradicione solvet. 24 (LTWL 125.12–15)

16 De depositario, om. BE.
17 re sua ... culpa esse: rem perditam totaliter reddet [reddat, E]. Liber Kenaac dicit quod, si fur domum foderit, et ex ea aliquid abstulerit, custode clavem habente, custos nichil restituet; iuret tamen cum omni sua familia [familia sua, E], BE; re sua salva, de iure totum amissum reddet. Liber Kynaec dicit quod si fur domum suffoderit et ex ea aliquid abstulerit custode clavem domus habente, de rebus furtim ablatis nichil custos restituet. Iurabit tamen ipse et familia eius tota se sine culpa esse. Insuiper, si rem suam amiserit, magis credendum est, D.
18 accipit: dari, BE.
19 Non ... est: Nullus exul debet esse fideiussor, B.
20 neque ... est: neque aliquis qui forcius sit illo, B; vel forcius, E.
21 neque filius ... patre: nec filius, nisi patre consentiente, id est, donec terram a domino susceperit, B.
22 neque filius ... debitoris: neque scolarius, nisi magistro consensiente; neque femina, nisi domina fuerit principalis debitoris; neque filius, nisi patre consensiente dum pater debeat esse pro filio. Quamvis autem fideiubeat, aliuscum eorum fideiussio non est compellanda, D; nec scolarius nisi consensiente magistro, neque femina nisi fuerit domina principalis debitoris, nec filius donec ad eatem legitimam veniat sine consensus patris, E.
23 debitoris: debitos creditori, add. BE.
24 postea xxxx ... solvet: ad ultimum xxx. Postea sine ulla contradicione et temporis dilatione solvet. Alii dicit quod, si super re viva fideiubeat, primo habet x [x, E] dies, deinde quinque, ad solvendum. Si vero super re mortua, xxx dies habebit, et postea solvat, BE.
The rules under discussion are found also in the Cyfneth Redaction (Cyfn). This is the most diffuse of the vernacular redactions of Welsh law, and is generally agreed to be the oldest, although the earliest manuscripts containing it date from the early fourteenth century, and are therefore later than those containing some of the Latin redactions and the Forwerth Redaction. To judge from its prologue, Cyfn was probably extant in Maelienydd in southern Wales in the late twelfth century. Its borrowings from the Hibernensis are independent of those in the Latin redactions. The first passage to be cited (based on CCH xxx 59) occurs in MSS W (BL Cotton Cleopatra A XIV, f 65r), Mk (the Bodorgan MS, p 57), X (BL Cotton Cleopatra B V, f 214v–215r), Y (NW 20143A, f 53v) and Z (NW Peniath 259B, f 83r). It is missing from MSS U (NW Peniath 37) and V (BL Harleian 4353). The reading of MS Mk agrees very, and that of MS Y fairly, closely with that of MS W; those of MSS X and Z differ from each other and from the readings of the other Cyfn MSS, but are similar in substance.

a) Or byd keitwat kyfreithafl a delyn da o e'w warn hexed yn lletrag, a bot yr allweddu gantolaef yn ei diwall, a guelet torr or y ty, Llynyr Kynaeth a dyweit bot yn haws y gredwa or dygrir da idaef ef yst a'r da arall y dyllor y gantolaef ef. Ef a dyly hagen tygu, a dynnon y ty gantolaef, oll, y uot ef yn iach o'r da heno66. Or cledir y dayar hagen y dan y ty, gueydy guenel ef y gyfreith y uot yn iach, brenhyn bieu dayar ac ny dyly keitwat o drost. Pop da a adehlo keitwat y dyuot attaef y gad6, talet, eithyr y da a dycker tr6y y dayar. (WML 63.8–20: MS W)

If there is a legal guardian and chattels are taken from his guardianship by stealth, and the keys are with him safely, and a breach is seen in the house, the Book of Cynog says it is easier to believe him if chattels belonging to him are taken together with the other chattels which were taken by stealth from him. He is, however, to swear, together with all the persons in the house, that he is clear of those chattels. If, however, the earth under the house is dug up, then, after he shall have made his law that he is innocent, the earth belongs to the king and a guardian should not be responsible for it. Every chattel which a guardian admits to have been brought to him to be kept, let him pay [for it], except the chattels which are taken through the earth.

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80 The provenance of Cyfn is disputed: for the argument in favour of Maelienydd, together with references, see Pryce, 'Prologues', 152–55, 182. For recent accounts of the MSS of Cyfn see D. Jenkins, Welsh law of women, 133, 135 and D. Huws, Lawyers and laymen, 132–35 (MS W).

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Variant of (b) from MS X:

Ny dyly nep kymyd mab in vach heb ganyad y tad tra uo adan y wialen; nac ysgolheic heb ganhwyd y athro; na manach heb ganyad y abad; na chaeth heb ganyat y arglwyd; na gwrec heb ganyad y gwr. A rei hynny nyd mach eu machnieth. (BL Cotton Cleopatra B V, f.216r)\[31\]

No one is entitled to take a son as a surety without the consent of his father while he [sc. the son] is under his rod; nor a pupil without the consent of his teacher; nor a monk without the consent of his abbot; nor a slave without the consent of his lord; nor a woman without the consent of her husband. And the suretyship of those persons is no surety.

(c) Y neb a uo mach dros dyn, onys tal y talaðdyr yn oet dyd, oet pymthec niwarnaðt a geiyf y mach yna, os ar da marwaðl y byd mach. Ac onys tal y talaðdyr yna, oet deg niwarnaðt ar huegoiint a geiyf y mach. Ac ony thal y talaðdyr yna, oet deg niwarnaðt a deugaint a geiyf y mach yna. Os ar da bywaðl y byd mach ac na thalho y talaðdyr yn oet dyd, oet pymthec niwarnaðt a geiyf y mach yna. Ac ony thal y talaðdyr yna, oet deg niwarnaðt a geiyf y mach yna. Ac ony thal y talaðdyr yna, oet pyn niwarnaðt a geiyf yna y mach. Ac ony thal y talaðdyr yna talet y mach e hunan. (MS W)

Whoever may be surety for another, unless the debtor pay on the set day, then the surety shall have a set time of fifteen days, if he be surety for dead stock. And if the debtor does not pay it then, the surety shall have a set time of thirty days. And if the debtor does not pay then, the surety has a set time of fifty days. If he be surety on live stock and the debtor does not pay on the set day, the surety shall then have a set time of fifteen days. And if the debtor does not pay then, the surety shall then have a set time of ten days. And if the debtor does not pay then, the surety shall have a set time of five days. And if the debtor does not pay then, let the surety himself pay.\[32\]

The Blewygred Redaction (Bleg) is based substantially on Latin Redaction D, a lawbook of the mid- to later thirteenth century written in southwest Wales.\[33\] Like Lat D, Bleg has rules derived from CCH xxx 5f and xxxiv 3; but in the former rule it appears to have been also influenced by Cyfn.\[34\] Lastly, the Iorwerth Redaction (Ior), written in Gwynedd in the early thirteenth century, has a list of those unable to be sureties which bears some resemblances to CCH xxxiv 3. However, unlike the other lawbooks, Ior also states that these persons cannot give sureties, a significant restriction which may point to this rule preserving a more archaic form of Welsh law than the other texts.\[35\] The persons listed are 'a monk and a hermit and a person who does not speak Welsh and a pupil of a school and every person who cannot, without the permission of another, come to act at law'.\[36\] Llyfr Colan, a revised version of Ior, combines its main source with another lawbook, almost certainly a Latin redaction. It lists 'a monk without the consent of his abbot, a pupil without the consent of his teacher, and a person who does not speak Welsh and a person who is stronger than him', and merely forbids these to be sureties.\[37\] Since Ior has no other rules derived from the Hibernesis, its list of those unable to give or be sureties may well be independent of the Irish source, and simply represent native law.\[38\] If this be so, it would suggest that the Hibernesis chiefly influenced the law of southern Wales, the provenance of Cyfn, Bleg and Lat A and D, and that it only did so because it resembled principles already found in Welsh law.

The three canons of the Hibernesis discussed so far therefore influenced all the main redactions of Welsh law, with the probable exception of the Iorwerth Redaction. The closest correspondence is with Latin Redactions A and B; since the relevant passages of those lawbooks are independent of each other, they must have drawn upon an earlier Latin lawbook. Yet, despite close correspondences of substance, particularly with regard to the rules derived from CCH xxxiv 3 and 4, the wording of Lat A and B (together with Lat D and E) differs from the Latin of the Hibernesis. As Thurneysen argued, this suggests that the rules in Lat A and B had been translated back into Latin from Welsh.\[39\] If we posit a common Latin ancestor for these rules, then it must in turn have descended from a Welsh translation of the Irish canons.

The clearest indication that the ancestor of Lat A and B did not draw

\[31\] Cited in part ibid, 188 (Cyfn 25n); and cf. 200 n 3.

\[32\] Owen, 'The 'Cyfnerth' text', 186-87 (Cyfn 10-16). These sentences mark the beginning of the Surety Tractate in MSS X and Z; ibid., 200 n 2. A text and translation of the passage in MS V is given in WML 86.13-87.1, 232.

\[33\] H. D. Emanuel, 'The Book of Blewygred and MS Rawlinson 821', Celtica law papers, 161-70; LWTL, 70-72 (though the arguments in favour of Lat D's dating from 'the fourth quarter of the thirteenth century', are unconvincing; the terminus a quo is fixed by Lat A and B, re-

\[34\] S. J. Williams and J. E. Powell, Cyfraithian Hwyl Dda yn ôl Llyfr Blewygred (2nd ed., Cardiff 1961) 46.4-12, 42.16-21 (translated in M. Richards, The laws of Hwyl Dda (the book of Blewygred) (Liverpool 1954) 56, 53). There are no substantial variant readings between the MSS containing these passages.

\[35\] Stacey, 'Archaic core', 22-23.


\[37\] D. Jenkins (ed), Llyfr Colan (Cardiff 1963) 51 and note, p. 63. There is good evidence that this lawbook used a Latin text: ibid., xxx–xxxiii.

\[38\] As argued by Stacey, 'Archaic core', 22, 40 n 52.

\[39\] Z Celt Philol 18 (1930) 370; 'Celtic law', 53.
directly upon the Latin of the Hibernensis is the rule concerning those persons not entitled to act as sureties. This derives from CCH xxxiv 3. Here it is worth stressing that the persons named in the Irish canon vary somewhat between the different manuscripts of the Hibernensis. In particular, Köln Dombibliothek 210 and BL Cotton Otho E XIII (both containing the A-text of CCH) read 'robustus' instead of 'brutus'; the B-text in Bodleian Library Hatton 42 reads 'brutus vel robustus', and distinguishes the 'femina nisi domina' from the 'uirgo christiana'; and Cotton Otho E XIII omits 'servus'.

If we turn to the list in Lat A, cited above, we can postulate the following correlation: 'peregrinus' (CCH) = 'exul' (Lat A); 'robustus' = 'qui foric est'; 'monachus nisi imperante abbate' = 'monachus nisi abbate conscientiente'; 'filius nisi imperante patre' = 'filius nisi conscientiente patre'; 'femina nisi domina' = 'femina nisi domina fuerit principalis debitoris'. These correspondences occur in the same order in both the Hibernensis and Lat A (followed by Lat B, but not the other Latin redactions). The verbal differences, especially in the first two items, point to Lat A's list having been translated back into Latin from Welsh. There are also some differences of substance. The 'servus' and the 'virgo' of the Irish source are not paralleled in the Latin redactions. In the case of the 'servus' this may of course be because the latter derived from a version of the Hibernensis like that in Cotton Otho E XIII, which itself omits 'servus'. But the omission of the 'virgo' from the Latin redactions of Welsh law cannot be explained thus (although the CCH source may well have given the 'virgo' as a separate item, rather than in apposition to the 'femina nisi domina'), and this omission, like the omission of 'servus', may well result from deliberate choice. Elsewhere in the list the Welsh lawyers clearly adapted the Irish canon to their own ends: they added the 'scholaris', and glossed the lady as the lady of the principal debtor.

The rules derived from CCH xxxv 5f and xxxv 3, 4 in Lat D and E, and Bleg, are substantially similar to those in Lat A and B, and do not amount to independent borrowings from the Hibernensis. Instead, it is possible to consider the rules in the Latin redactions and Bleg as one related group of descendants of the Irish canons, deriving from an earlier Welsh lawbook in Latin which no longer survives. In contrast, the rules in the Cyneith Redaction stand apart from this group, and represent different—and more extensive—adaptations of the Irish material from those of the Latin redactions. Thus the passage on the guardian of a deposit paraphrases CCH xxxv 5f, and adds further rules about a breach in the house and the earth's belonging to the king; the latter rule quite possibly represents the intrusion of Anglo-

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40 See above notes 8–10. These variants in the MSS of CCH are not discussed by Stacey, 'Archaic core', 21–22.

41 See above, 113.

42 Stacey, 'Archaic core', 30.

and BL. Additional 22356 (S, of the fifteenth century). The main differences between the text in MSS G and S is the latter’s omission of the second sentence (b), together with the final clause of the last sentence (d). These and the other variants noted below make it unlikely that MS S’s scribe used the text in MS G. Nevertheless, on the whole the two texts are very similar in wording and substance, and both must descend from a common source in Welsh, itself based on canons in CCH xxx. The first two sentences adhere very closely to the Irish canons, down to the alternation of the second and third persons singular of the verbs in (b); the third section (c) expands the material of CCH xxx 3b, but otherwise follows it closely, providing a unique example of a Welsh law text’s including the title of a canon from the Hibernensis in its reference to the ‘Life of the Fathers’. The correspondence between the Irish source and the Welsh lawbook is least close with respect to the final section (d), where the Welsh text gives a different reason from the Irish canon for a church’s not returning deposits; yet the first sentence of the Welsh text plainly derives from the Irish, as does the description of the church as the ‘mother of every person’. More generally, it is significant that the passage in MSS G and S follows the same order as CCH xxx in its translation and adaptation of the canons.

I cite from Peniarth MS 35, f 12v, and note the principal variants of BL. Additional MS 22356, f 101v:

(a) Pbybhynhac a gollo adneu a rodher atta64 trwy y wall of, talet kymeint ac a gollies, ac os y lledrat y duc y keitwat, talet ynd dydeublyc.

(b) Or kymereist adneu, cad6 hyt na chollo; o chyll trwy dy wall, ti tal.

(c) Yn y llywr a elwr Buched y Tadew y mae60 yn yscriuenedig kymryt o uanach adneu atta64 a g6edy y uarnu, ac na aedle yr a[n]gel a erbyna6d y eneit y uynet65 y orl6fysua yr eneiedu yny talie yr adneu; ac 65th yr hynnwyn ynhofielut yr eneit yr y cořfy


47 The MSS of the B-text of CCH use the second person throughout.

48 The MSS of the B-text read ‘vita’, rather than ‘vitis’ as found in the A-text. This source was not identified by Wasserschleben (Kanonensammlung, xix n*). A comparable but different story of a lazenman being recalled from death by an abbot to locate a deposit is found in a text entitled De vita patrum liber sexus, sive verba seniorum (PL 73, 1001–02). I owe this reference to J. G. T. Sheringham, who has independently noticed the borrowings from CCH xxx in MS S.

49 Or kymereist ... ti tal, os. M.

50 mae: ynn clang, add. S.

51 atta: y kad6, add. S.

52 a erbyna6d: erbyn, S.

53 y uynet: om. S.

54 Pen geisit peth66 kymeint a hynny gan y marn am adneu, iawn y6 keissa6 peth ma6r gan y by6.

(d) Pob adneu a dylir y talu onyt adneu eg6lys. lle gleindit y6 yr eg6lys, a mam pob dyn, a gwahardedic y6 cad6 adneu yndi canys ty gwedi y6 ac nat gog6 lladron. A chanyg gwahardedic cad6 adneu yndi ny dylir talu adneu a dyker yn lledrat ohoni, cany ducp6yt oheni dim a dylyet y adel yndi.

(a) Whoever shall lose a deposit that is given to him through his [own] fault, let him pay as much as he lost, and if the guardian took by theft, let him pay double.

(b) If you accepted a deposit, keep [it] in order that [it] might not be lost; if it is lost through your fault, you pay.

(c) In the book that is called the Life of the Fathers it is written that a monk accepted a deposit, and after he had been judged the angel who received his soul did not allow him to go into the resting-place of souls until he paid the deposit; consequently the soul returned to the body to pay the deposit. When something as great as that was sought from the dead with respect to a deposit, it is right to seek a great thing from the living.

(d) Every deposit should be paid except for a church’s deposit. The church is a place of purity, and the mother of every person, and it is forbidden to keep a deposit in it since it is a house of prayer and not a den of thieves. And since it is forbidden to keep a deposit in it, a deposit taken by theft should not be paid, since nothing was taken from it which should have been left in it.

II

Comparison of canons from Books xxx and xxxiv of the Hibernensis with rules in the Welsh lawbooks clearly demonstrates that Cyfraith Hywel owed a textual debt to early Irish canon law. This brings us to some questions of transmission. How did the Hibernensis influence medieval Welsh law, and when? These questions may be approached by asking, first, how and when the Hibernensis became known in Wales, and secondly, how it came to influence the texts of Cyfraith Hywel.

Although it has been suggested that the Hibernensis could have been compiled in Wales, or at least that it was geared to Welsh as well as Irish condi-
tions, it is most unlikely that its compilers had a Welsh audience in mind. Those canons that refer to the Britons indicate a desire to dissociate Irish clergy from the Welsh. Thus CCH xx 6 prohibits referring ecclesiastical causes ‘ad Britones, qui omnibus contrarii sunt et a Romano more et ab unitate ecclesiae se abscidunt”; the canon also forbade such causes to be referred to Jews or heretics. CCH lii 6 condemned the terrors of the Britons, and cited canons attributed to Gildas and the Romani. In this article it is assumed that the Hibernensis originated in Ireland and reflected Irish conditions.

How, then, did the Hibernensis become known in Wales, and when? Here several possibilities deserve consideration. Since only a limited amount of the canon collection influenced Welsh law, this is insufficient to establish conclusively that a complete text of the work reached Wales. The passages identified as deriving from the Hibernensis all belong to only two of its over sixty books, and incomplete texts as well as collections of extracts circulated elsewhere in Europe, although Books xxx and xxxiv do not appear to have numbered among them. Nevertheless, we cannot discount the possibility that knowledge of the Hibernensis in Wales was partial and even indirect, the canons in question being transmitted via florilegia. If this were the case, the Hibernensis could quite conceivably have entered Wales from the continent or England, rather than directly from Ireland.

If, on the other hand, we interpret the borrowings into Welsh law as representing the tip of an iceberg, and argue that a complete text of the Hibernensis was known in Wales, this still leaves the question of that text’s immediate provenance. The work was disseminated widely on the continent in the eighth and ninth centuries, and later, like the putative abridgement or collection of extracts we have just discussed, any complete text did not necessarily derive directly from Ireland. Instead of assuming an Hiberno-Welsh link, it could be maintained that a text of the Hibernensis was transmitted to Wales in the tenth or eleventh centuries in a manuscript from England, which had in turn originated, or been copied from an exemplar written in, Brittany – like Hatton 42 or Cotton Otho E XIII. Both of those manuscripts contain the early Breton law-text, the Excerpta de libris Francorum et Romanorum, formerly known as the Canones Wallici. Parts of the Excerpta occur in Latin Redactions B and E of the Welsh laws, in a version similar to, but not identical with, that of the Worcester manuscript, Cambridge, Corpus Christi College, 266. It might therefore be supposed that the material borrowed into Welsh law from the Hibernensis also had an English (and ultimately Breton) origin. This argument would be very persuasive if the material from the Hibernensis could be shown to have been transmitted together with that from the Excerpta; but this is not the case. In fact, the transmission of the Excerpta differs markedly from that of the Hibernensis: the rules from the Excerpta were copied, without substantial alteration, into only two Latin redactions of Cyfraith Hylwel, whereas the rules from the Hibernensis were not simply copied but rather translated into Welsh and modified by the jurists. Further, the rules based on the Irish canons occur in a variety of lawbooks, in both Latin and Welsh, not all of which are directly related to each other. The degree of adaptation of the material from the Hibernensis, together with its wide dissemination in the lawbooks, suggests that its transmission was longer and more complex than that of the Excerpta. This makes it most improbable that the Irish canons and Breton laws reproduced in Welsh law ultimately descended from the same source. The presence of the Excerpta in Latin Redactions B and E therefore gives no ground for postulating a Breton or English provenance for the Irish canons in Welsh law. Such a provenance cannot, of course, be disproved; but in my view it is unlikely.

The simplest and (I think) most convincing explanation for the borrowings from the Hibernensis into Cyfraith Hylwel is that they result from direct Welsh contacts with Ireland. In view of the dissemination of the Hibernensis...
on the continent in the eighth and ninth centuries, a similarly early date for its arrival in Wales is plausible. The evidence for contacts between Wales and Ireland at that period is sparse, but does include (in the ninth century) an example of an Irish scribe working in a Welsh scriptorium. In any case, such is the paucity of source-material for early medieval Wales in general, it would be unwise to conclude that contacts were few simply because few are attested. Indeed, further study of Latin scholarship in Wales at this period will probably reveal a greater debt to Hiberno-Latin learning than has hitherto been recognised. On the other hand, the Hibernensis very probably continued to be used in Ireland until the twelfth century, since no other canon law collection is known to have replaced it. Knowledge of the compilation may therefore have passed to Wales in the tenth or eleventh centuries, a period for which we also have evidence of Hiberno-Welsh relations, most notably in the career of Sulien and in Irish influence on late eleventh-century Welsh hagiography.

In whatever form it took, and from wherever it came, we can be reasonably confident that the Hibernensis found its first home in Wales in a church, whence it influenced native secular law. Just as the borrowings from the Hibernensis into early Irish law point to close connections between canon and secular law in early Ireland, and reinforce the likelihood that many Irish secular lawyers were clerics, so too do the borrowings into Cyfraith Hweyl


77 Davies, Wales in the early middle ages, 1, 198–218.


80 D. Ó Corráin, ‘Irish law and canon law’, P. Ni Chathain and M. Richter (ed), Ireland and suggest that the redaction of Welsh law could sometimes owe much to the church. That churches in Wales did not shun secular law is demonstrated by the document Braith Teilo, preserved in Liber Landavensis, the compilation of charters and other material made in the 1120s to uphold the rights and proclaim the aspirations of the church of Llandaf. Braith Teilo has two parts, the earlier probably dating from the early eleventh century, the later contemporary with Liber Landavensis itself; it is written in Welsh, and sets out the rights and privileges of the church in legal terms, many of which occur also in the lawbooks. Whether the redactor of Braith Teilo was a cleric skilled in law, or a lay jurist employed by the church, makes little difference: either way, the document is an important witness to the fundamental convergence of ecclesiastical interests and secular law. Equally, the integration of canons from the Hibernensis into Welsh law indicates redaction in an ecclesiastical milieu, and other passages in the lawbooks such as the section on the seven bishop-houses of Dyfed may have had a similar origin.

This leaves the question of how exactly the Irish canons were transmitted from their new ecclesiastical home in Wales to the pages of the lawbooks. Here we can only speculate, but it is reasonable to posit at least one intermediate source (no longer extant) between the Hibernensis and the passages deriving from it in the surviving lawbooks. If lawyers of, say, the twelfth century had had copies of the Hibernensis to hand, one might expect some signs of this, such as the preservation of more chapter-headings or even an acknowledgement that the rules were taken from Irish canon law. Instead, the redactors of the earliest extant lawbooks in the late twelfth and early thirteenth centuries seem to have assumed that these rules constituted integral elements of medieval Welsh law. Also, the borrowings were transmitted in


82 Thus also Stacey, ‘Archaic core’, 21–22.
two separate groups, despite their including rules derived from two canons which were next to each other in the Hibernensis itself (CCH xxx 5e, 5f); again this suggests that the rules had circulated for a long time in the Welsh law-texts before their appearance in the surviving manuscripts. It is therefore likely that the rules were taken from one or more earlier lawbooks or legal tracts, rather than directly from the Hibernensis itself. Moreover, we may infer from the process of transmission that the Irish canons had been incorporated into Welsh law before the twelfth century.

More tentatively, although the canons are preserved in two groups in the texts of Welsh law, they may all have descended from a common intermediate source. There is no overlap between the canons of the two groups such as to suggest two distinct processes of transmission from the Hibernensis into Cyfraith Hwael. The identity of this source is possibly revealed by the rule on the guardian whose deposit was removed by excavating under the floor of his house (based on CCH xxx 5f). Latin Redactions B, D and E, as well as Cyfn and Bleg, ascribe this rule to a Book of Cynog. Emanuel believes that Latin Redaction A was known as the Book of Cynog, since the same rule occurs in it without the ascription, but this is unlikely, since Lat B and the other lawbooks containing the rule do not appear to have derived it directly from Lat A; more importantly, only the rule derived from CCH xxx 5f, but not the preceding one found in Lat A, is ascribed to the Book of Cynog. The ascription probably already occurred in the Latin lawbook which I have argued was the source of the rules based on the Irish canons in the extant Latin redactions. In that case, the Book of Cynog was a yet earlier lawbook, presumably written in Welsh if we accept that the rules in the Latin redactions were translated back into Latin from Welsh.

We have further evidence for the Book of Cynog in three manuscripts of the fourteenth and fifteenth centuries which purport to contain some or all of it. NLW Peniarth 36C, f 33r (μ) gives as the opening of the Book of Cynog a version of the passage on the seven bishop-houses of Dyfed, as does NLW Peniarth 259B, f 42r (Z). The latter manuscript appears to provide a text of the whole of the book, since on f 56v it states that ‘this is the end of the Book of Cynog’. NLW Peniarth 35, f 76v (G) also claims to give the end of the book, but its conclusion differs from that of MS Z. Earlier, on f 19r, Peniarth 35 also cites a version of the bishop-houses passage: it is suggestive that this almost immediately follows the rules on deposits derived from CCH xxx. Although this passage on deposits is not found in the lengthy portion of MS Z (Peniarth 259B, f 42r–57v) which ostensibly reproduces the Book of Cynog, MS Z does not appear to give a complete text of that book, for it also omits the rule on the guardian losing a deposit (derived from CCH xxx 5f) which several lawbooks attribute explicitly to the Book of Cynog. The omission of the passage on deposits from f 42r–57v of MS Z is therefore not necessarily proof that the passage was lacking in the original Book of Cynog. Perhaps the book had already been lost by the time that the first surviving Welsh lawbooks were written: hence all we may have are fragments preserved in later texts.

We may conclude with the hypothesis, then, that the material based on the Hibernensis was transmitted into the extant lawbooks via a lost Book of Cynog which, to judge from its containing versions of the passage on the bishop-houses, originated in an ecclesiastical centre in Dyfed. This hypothesis would be consistent with the preponderantly southern provenance of the lawbooks containing rules derived from the Hibernensis, and would place the latter’s reception in Wales in an area of Irish settlement and of continuing Irish connections in the early middle ages.

III

In conclusion, the passages of Welsh law discussed in this paper provide a unique witness to the presence of canons from the Collectio Canonum Hibernensis in medieval Wales. They deserve notice in any general estimation of the compilation’s dissemination in Europe, and demonstrate that early Irish canon law influenced secular law in Wales as well as Ireland. When more is

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78 LTWL 256.33 (B); 376.38 (D); 499.2 (E); above 112 (Cyfn); Williams and Powell, Llyfr Blegywyrd, 45–5.
79 LTWL 16, 98.
80 Above, 110.
known of the manuscript-tradition of the Hibernensis, it may eventually be possible to go further, and establish more precisely what version of the work was used in Wales. It is already apparent, for example, that the text of CCH xxxiv 3 which underlies the rules on those not allowed to act as sureties in the Latin redactions and Bleg, probably had the reading 'robustus' rather than 'brutus', and may have distinguished the 'femina' from the 'virgo'. However, any attempt to reconstruct the exact text of the canons transmitted into Welsh law faces two limitations. First, if we accept that the Hibernensis came to Wales directly from Ireland, the version which influenced Welsh law may have differed somewhat from any of those now extant, all of which were written on the continent or in England. More fundamentally, reconstructing the exact text of the canons transmitted into Cyfraith Hywel is limited by the nature of their transmission. At best we have Welsh translations of the canons, or translations from Welsh back into Latin; we also have paraphrase and adaptation. Unlike the extracts from the Breton Excerpta in Latin Redactions B and E, which seem simply to have been copied without alteration from a manuscript containing that text, the Irish canons preserved in Welsh law are perceptible only at second hand. Consequently it is very difficult to determine how far they reflect their Irish exemplar, and how far they have been modified by jurists seeking to integrate them into Cyfraith Hywel.

The transformation of early Irish canons into medieval Welsh law is also significant for the study of Cyfraith Hywel. It is generally recognised that the extant Welsh lawbooks, compiled in the twelfth century and later, draw upon a variety of sources, some of which must be of pre-Norman date. However, identifying the early medieval components of Cyfraith Hywel is difficult because they have often apparently been modified and updated to meet changing needs and circumstances, and the surviving texts rarely name their sources. The rules on deposits and sureties examined here are therefore important because they show us Welsh lawyers at work: they offer a rare instance of borrowings from an indisputably early text, which have then been integrated into the corpus of the law to such an extent that their ultimate origin is nowhere indicated in the lawbooks which contain them. Although we cannot establish exactly when the Hibernensis first influenced Cyfraith Hywel, there are strong grounds for suggesting a date prior to 1100; further, the transmission must have been via an ecclesiastical centre and quite possibly shows that some Welsh law was redacted in churches. This raises the question of how much more early medieval material, particularly of an ecclesiastical provenance, lies embedded in the lawbooks.

Lastly, the borrowings from the Hibernensis bring a new dimension to the comparison of Welsh law with Irish law. Early Irish canon and secular law were closely related to each other: Welsh lawyers may have been especially receptive to the canons on deposits and sureties because their law already resembled Irish law on these topics in significant respects. If this were so, it would confirm the relevance of comparing Irish with Welsh law, and reinforce the likelihood that they shared important features in common, particularly in the early middle ages. But whereas those features have been (and will largely still be) explained in terms of common origins together with similar social institutions and structures, the influence of the Hibernensis on Cyfraith Hywel reveals a more intimate, textual connection between legal writing in Ireland and Wales.

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86 For a possible echo of chapter 27 of the penitential of Finnian or Winnia (Bielew, Irish penentials, Scriptores Latini Hiberniae 5 (Dublin 1983) 82) in Latin Redaction B of the Welsh laws, see LTWL 291.12.