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Judgement under the Law of Wales

J. BEVERLEY SMITH
Aberystwyth

Tres diversi iudices sunt in Kambria secundum legem Howel *Da*: scilicet, iudex curie principalis per servitoriam, id est, *swyt*, cum rege semper de Dinewr vel Aberffraw; et unus solus iudex *kymwd* vel *cantreff* per *swyt* in qualibet curia de placitis in Gwynet et Powys; et iudex per dignitatem terre in qualibet curia *kymwd* vel *cantref* de Deheubarth, scilicet, quisque possessor terre.

In its discussion of judges in Wales and the means by which judgements were given in court the text of Bodleian Rawlinson MS C821, Latin D, makes a distinction between three kinds of judges.[1] The first was the judge (*iudex)* of each of the principal courts of Dinefwr and Aberffraw, who judged by virtue of office; second, there were judges (*iudices*) by virtue of office in the court of law of each commote or cantref in Gwynedd and Powys; and, third, there were judges (*iudices*) by privilege of land in each court of a commote or cantref in Deheubarth, namely every possessor of land.[2] Judgements were distinguished in the same way, namely those of the king's court, those of a judge by virtue of office in each commote or cantref in Gwynedd or Powys, and those of a judge not by virtue of office but by privilege of land in Deheubarth.[3] The judge first identified in these passages, the judge of the court (*ynad llys, brawdwr llys or iudex curie*), looms large in the legal literature as one of the principal officers of the king's household, but the functions of his office, which have been examined elsewhere, stand apart from the subject matter of the present work and will not be noticed further.[4] This study is concerned rather with the implications of the clear differentiation made in the text of Latin D between two species of judge and two forms of judgement that could be recognized in the courts of the princes' territories, one associated with the courts of Gwynedd and Powys and the other with those of Deheubarth. Distinguishing between a form of professional judgement and

[1] The substance of this article was given in summary form at the British Legal History Conference, Durham, 1995. I am immensely grateful to three scholars who very kindly agreed to read my text and have given me the great benefit of their specialized knowledge: T. M. Charles-Edwards, Richard Ireland and Fergus Kelly. I have been very pleased to embody their suggestions in my text and to indicate the analogies that might be further pursued in the light of their remarks. In writing this article, as has been my privilege throughout the years, I have gained more than I deserve from the scholarship and, even more, the sustained encouragement of my wife Llinos Beverley Smith, with whom I am proud to associate the support and infinite practical kindnesses of our sons, Robert and Huw, each, to my great delight, a practised scholar in his own field. The paper ventures to embrace the evidence of textual and record sources and to explore the manner in which the one may illuminate the other, with an emphasis not on exhaustive search of the texts but on a quest for a historical understanding that other inquirers may be able to advance in the course of further study.

[2] *LTWL*, 349.27–33; *Bleg*, 98.28–99.6. Abbreviations are listed at the end of the article.

[3] *LTWL*, 382. 26–32 (text reads 'per dignitatem curie', *recte* 'terre'); not in *Bleg*.

[4] J. Beverley Smith, '*Ynad llys, brawdwr llys, iudex curie*', in T. M. Charles-Edwards, Morfydd E. Owen and Paul Russell (eds), *The Welsh King and his Court* (Cardiff, 2000), 94–115.

a form of collective judgement the text makes a distinction that historians have made in examining the legal practices of the several lands of western Europe.[5] The first objective of this study is to consider the veracity of the distinction made in the Latin D redaction, represented by Rawlinson MS C821 and thereafter replicated in the texts of *Llyfr Blegywryd*, as a depiction of legal practice in the late thirteenth century. Discussion will consider whether the coexistence of two forms of judgement-making was of early or more recent origin and, if the differentiation proves to be a relatively recent phenomenon, whether the contrast can be explained in historical terms. The second objective is to examine the impact of the changes brought about in the royal and marcher lands in the aftermath of the conquest of Wales, bearing in mind that by then the common law was dispensed in the realm of England, in a highly developed judicial order, by professional practitioners who presided over proceedings in court and gave judgement.

The investigation is strictly concerned with procedures in court, while acknowledging that meaningful study of the problems of dispute settlement in their entirety has to comprehend the respective roles of curial judgement and arbitration. The medieval legal literature itself provides an exposition of principles and procedures that would have been relevant to the judicial activity of practitioners engaged in curial and non-curial processes alike. The professional lawyer, the *ynad* or *brawdwr*, might fulfil his responsibility in dispensing justice in either sphere of activity, and the compatibility of the two modes is recognized in the jurist's statement that, apart from agreement among the parties themselves, a judicial settlement might be made either through arbitration (*per arbitros, id est, kymrodeddwyr, inter eosdem*) or by judgement (*iudicium*).[6] The arbitrative aspect of dispute settlement in Wales has been more fully understood in recent years, and the relationship between curial and non-curial activity better appreciated. Arbitration and judgement have been envisaged as 'complementary and interrelated, rather than as opposing phenomena' as 'curial and extra-curial activity frequently intersected or were deployed in tactical congruence'.[7] A recognition of the compatibility of curial and non-curial justice itself requires, however, that procedures adopted under each set of practices be considered in their own right and this study concentrates on judgement in court. It takes as its starting point the differentiation between two forms of judgement-making predicated in the law text already quoted, which identifies one form of judgement with Gwynedd and Powys and the other with Deheubarth. Meaningful study requires that judicial practice be grounded in its territorial context, and we shall begin our inquiry with the judicature depicted in the legal literature, represented by *Llyfr Iorwerth* and *Llyfr Colan*, associated with the northern provinces of Gwynedd and Powys.[8]

The lawbooks derived from Gwynedd lend a prominent place to the *ynad*, a professional practitioner described in the section known as 'the Judges' Test Book' (*Llyfr Prawf Ynaid*) as a judge trained in the legal profession, examined by the judge of the court and

[5] See esp. Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (Oxford, 1984), 12–66; further references below, pp. 83–4.

[6] *LTWL*, 357. 33–5; *Bleg*, 124. 5–8: 'terminus per arbitros, id est, kymrodeddwyr, inter eosdem; vel terminus per iudicium'.

[7] Llinos Beverley Smith, 'Disputes and settlements in later medieval Wales: the role of arbitration', *EHR*, 106 (1991), 835–60 (pp. 845–6).

[8] Among the numerous studies of the legal writing, see Dafydd Jenkins, 'The lawbooks of medieval Wales', in Richard Eales and David Sullivan (eds), *The Political Context of Law. Proceedings of the Seventh British Legal History Conference, Canterbury*, 1985 (London, 1987); T. M. Charles-Edwards, *The Welsh Laws, Cardiff, 1989*; more recently, Huw Pryce, 'Lawbooks and literacy in medieval Wales', *Speculum,* 75 (2000), 29–67.

invested by the ruler with the authority to give judgement.[9] No documentary record of the precise functions of the *ynad* in the courts of the pre-conquest period has survived, but the existence of the *ynad* is confirmed by the inquiry into the role of the judge (*iudex*) in the dispensation of Welsh law undertaken at the behest of Edward I in 1281, an investigation made in response to Llywelyn ap Gruffudd's insistence that the action he brought before royal justices to claim Arwystli and part of Cyfeiliog against Gruffudd ap Gwenwynwyn should be determined by a bench of *ynaid*.[10] While the testimony sworn before the commissioners, in part provided by men themselves described as *iudices*, shows that traditional procedures were not the sole means to judgement in the princes courts, a matter to which we shall return, it is clear that 'the law called *cyfraith*' to which the witnesses refer described a procedure in pleas of land in which the *ynad* played a key role.[11] Some record testimony to his functions is provided in the court rolls of Dyffryn Clwyd that extend from the late thirteenth century to the sixteenth[12] but, for a true understanding of the *ynad*'s role in the courts of the period of the princes, resort has to be made to the lawbooks and particularly a descriptive account of a plea of land in *Llyfr Iorwerth*.

The text gives a recital of procedure in an action of *ach ac edryf* that is amplified in matters of detail in *Llyfr Cynghawsedd* (The Book of Pleading).[13] The seating arrangement of the court provides for the presence before the lord or his representative, flanked by *hynafiaid* (elders) and *gwyrda* (goodmen), of the judge (*ynad*) or judges (*ynaid*) and priests, along with the litigants and their lawyers, each party having the services of two attorneys, namely a *cyngaws* and a *canllaw*.[14] Proceedings are conducted entirely by the *ynad*, who began the action by taking pledges from the litigants (living persons placed in the lord's custody for the duration of the plea), before he called on each party to identify his lawyers and confirm that he had entrusted them with responsibility for his interests in the plea. The *ynad* then required the claimant and defendant in turn to present their pleadings (*cynghawsedd*), providing opportunity for the parties to improve upon them before he recited the pleadings of each in turn.[15] It then fell to the *ynad* to establish, much in the manner of of the count (*narratio*) in common law procedure, a definitive statement of the

[9] *ALW*, i, 216–18; *LTMW,* 141–2; for the text BL, Cotton Caligula, A. iii, ff. 149–98 (MS 'C'), Daniel Huws, 'The manuscripts', *LAL*, 119–32, placing the writing in the mid-thirteenth century; commentary in *Col*, 237–41n.; Smith, '*Ynad llys*', 102–4; Pryce, 'Lawbooks and literacy', 47–51, with further citations.

[10] *CWR*, 190–210; the political circumstances in which the commission was appointed and the prince's argument are examined in J. Beverley Smith, *Llywelyn ap Gruffudd, Prince of Wales* (Cardiff, 1998), 470–89; below, pp. 71–3.

[11] The *iudices* named include Ifor ap Tegwared, Einion ap Dafydd, Grono ap Phylip and Gruffudd ap Iorwerth (*CWR*, 196–200); 'the law called *cyfraith*' is considered below, pp. 71–2, 92–3.

[12] The evidence from the court rolls is examined in R. R. Davies, 'The administration of law in medieval Wales: the role of the *ynad cwmwd (judex patrie)*', *LAL*, 258–73, cited as Davies, '*Ynad cwmwd*'.

[13] *Ior*, 72–7; *LTMW,* 83–91; Aled Rhys Wiliam, 'Llyfr Cynghawsedd', *BBCS*, 35 (1988), 73–859, cited as *Llyfr Cynghawsedd*, with references to numbered paragraphs; for later texts on procedure, here identified as 'later *cynghawsedd* texts', see n. 28. 'Book of Procedure' is used in Dafydd Jenkins, 'Towards the jury in medieval Wales', in John W. Cairns and Grant McLeod (eds), *'The dearest Birthright of the People of England': The Jury in the History of the Common Law* (Oxford, 2002), 17–46 (p. 25); 'Book of Pleadings' is preferred in this essay.

[14] *Ior*, 73.3; *Col*, 449–51; *LTMW,* 84–5: *Ior*, 73. 3, 'y deu henaf'; *Col*, 449, 'a heneyff ydau o pob parth'; the seating plan, *Ior,* 73.11, gives *heneuyd* (hynefydd, pl hynefyddion); *Llyfr Cynghawsedd*, 20: 'henyreyt e cemut'. For 'hynafgwyr y wlad', 'hynafiaid y cantref' and, in Deheubarth, *henaduriaid*, below, pp. 68, 80–2, 86, 90. For the attorneys, *LTMW,* 322, 331.

[15] *Ior*, 73.7–77.32; *Col*, 452–502; *LTMW,* 85–91. Pleading is examined in T. M. Charles-Edwards, '*Cynghawsedd*: counting and pleading in medieval Welsh law', *BBCS*, 33 (1986), 188–98; Robin Chapman Stacey, 'Learning to plead in medieval Welsh law', *Studia Celtica*, 38 (2004), 107–24.

litigants' respective positions that would then be subject to proof.[16] At proof the *ynad* established the status of the *tystion* (attestors) of the two parties, and examined in turn the *gwybyddiaid* (knowers) and the *ceidwaid* (keepers or maintainers), and in the light of this testimony, after declaring the pleadings once more, the *ynad* gave judgement, enabling the lord to release the pledges and thereby terminate the action.[17]

At the heart of the procedure lay the *ynad*'s responsibility to probe the claims of the parties and interrogate their witnesses so as to establish the proof on which he could give a terminal judgement.[18] In describing a method of proof by witnesses the texts outline a procedure of great interest which, apart from the role of witnesses in providing proof in cases in the ecclesiastical courts of the provinces of the English Church in the thirteenth century,[19] may be best compared with the role of the witnesses (*secta*) who appear in common law processes of the early part of the same century before this mode of proof was entirely superseded by the use of the jury.[20] The Welsh texts indeed describe a more developed means of proof by witnesses that allows interrogation by the *ynad*. The same procedure is reflected in the text of *Llyfr Cynghawsedd* and, as this is conserved in a manuscript that provides a text of *Llyfr Iorwerth*, BL, Cotton Titus D. ii (MS 'B'), we have a further detailed and authentic juristic statement of thirteenth-century practice in Gwynedd.[21] There is a measure of difference to the extent that in *Llyfr Cynghawsedd* the probing of the witnesses is envisaged as the work of the litigants' lawyers (*cyngaws*), a feature of a procedure that allows greater room for forensic argument between litigants' lawyers, but the *ynad*'s role remains central to the proceedings in court. Thus, after establishing that each party will abide by the law, and that the law will be allowed to take its course under the lord's authority, 'the law shall be in the hands of the *ynaid* and nothing is permitted except that which the *ynaid* shall permit'.[22] The *ynad*'s medial judgement on the admissibility of the testimony is confirmed, *Llyfr Cynghawsedd* elaborating on the particular function of *ceidwaid*, *gwybyddiaid* and *tystion*, and its account of the role of the *gwybyddiaid* in 'seeing and knowing that which they are directed to speak of' is particularly relevant to the argument at a later stage in this discussion.[23] The texts therefore

[16] For count and *narratio*, ibid., 188.

[17] The terms *tystion*, *gwybyddiaid* and *ceidwaid* are translated *testifiers*, *knowers* and *maintainers* to conform with *LTMW*, 88, 90; Jenkins, 'Towards the jury', 27.

[18] *Ior*, 77. 23–32; *LTMW,* 90–1. The *ynad* was to 'ask the *gwybyddiaid* (knowers) whether they will stand to what is being put in their mouth' ('gouen e'r guybydyeyt a sauant hue en er hyn ed edys en y dody yn eu pen huy'), and to 'test the *ceidwaid* (maintainers)' to see 'whether each of them will return that the party he supports is a proprietor' (prouy e keytweyt y edrech a duc pob rey onadunt huy bot en pryodaur e pleyt e mae en e kenhelu); for testifying before an *ynad,* see also *Llyfr Cynghawsedd*, nos. 29, 30, 31. Procedure is summarized in Charles-Edwards, '*Cynghawsedd*', 193.

[19] C. Donahue, 'Proof by witnesses in the Church courts of medieval England: an imperfect reception of the learned law', in Morris S. Arnold et al. (eds), *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne* (Chapel Hill, NC, 1981), 127–58; *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c.1200–1301,* ed. N. Adams and C. Donahue, Selden Society (London, 1981), 44–7.

[20] F. Pollock and F. W. Maitland, *A History of English Law before the Time of Edward I*, 2 vols (Cambridge, 1895), i, 638; *Bracton's Notebook*, ed. F. W. Maitland, 3 vols (London, 1887), i, 131; ii, nos. 264, 279; iii, nos. 1225, 1307, 1586 *et passim*. Richard Ireland remarks that proof by witnesses and proof by jury need not necessarily be seen in starkly opposed terms, the relationship between witness testimony and the informed deliberations of the jury being recently examined in Daniel Klerman, 'Was the jury ever self informing?', in M. Mulholland and B. Pullan (eds), *Judicial Tribunals in England and Europe 1200–1700: The Trial in History,* i (Manchester, 2003), 58–80, an essay that provides extensive reference to earlier discussion. For recent discussion of proof in Welsh practice, Jenkins, 'Towards the jury', 28–42.

[21] *Llyfr Cynghawsedd*, 9–19; discussion, with reference to *ceidwaid* and *gwybyddiaid*, in T. M. Charles-Edwards, '*Cynghawsedd*'; idem, *Early Irish and Welsh Kinship* (Oxford, 1993), 297–300.

[22] *Llyfr Cynghawsedd*, 9: 'ac o henne allan e byt e kyfreith emedyant er egneyt, ac ny byt canyat namyn a ganhyato er egneit'.

[23] Ibid., 41: 'llu guybydeit y ev gvelet ac en gvybot er hen a doter en ev pen'. The responsibility is

concur in providing a detailed and coherent account of a procedure in court that turns on the role of the *ynad* at the hearing of pleadings, at proof and in delivering terminal judgement.

The *ynad*'s role in personal actions may be best examined in connection with the law texts' discussion of suretyship which, while retaining a trace of the responsibility of the *mach* in enforcing contractual debt comparable with that of the Irish *naidm,* depicts more clearly the functions of a paying surety, with powers of enforcement exercised by the lord's court.[24] The tractate in *Llyfr Iorwerth* envisages an action in court in which the *ynad,* eliciting the facts of the case, put the debtor on oath and, if the surety were to counter-swear, he would give a medial judgement that took the debtor to compurgation, with a similar direction if the surety were to deny his suretyship and thereby prompt a counter-swearing on the part of the creditor.[25] Proof required by the *ynad* in these cases rested on compurgation rather than on witnesses,[26] though a later *cynghawsedd* text, Peniarth MS 34 (MS 'F'), conveys that upon a surety's denial a claimant would first take the relic and then testify that there were 'sufficient witnesses to whom there can be neither objection nor doubt' (*digavn o tyston ny aller na llys nac amheu arnadunt*).[27] The circumstances in which the evidence of witnesses is admissible may not be altogether clear, with intimations of developing forms of pleading and change in the means of proof,[28] but the role of the *ynad* in medial and terminal judgement is no less clear in actions in these later *cynhawsedd* texts than in the land action already considered. Here, too, *galu am uraut ar er egneyt* ('to call upon the judgement of the *ynaid*') was the point to which the pleadings led.

Account needs to be taken, however, of the presence in court, seated beside the lord or his representative, of persons named as the *hynefyddion* (elders) and the *gwyrda* (goodmen).[29] No role is accorded to either group in the account of the land action in *Llyfr Iorwerth*, but elsewhere in the text a claimant wishing to establish that his adversary had not denied his claim could call to witness not only the lord and his *ynaid* but his *gwyrda* as well.[30] A clause in *Llyfr Colan* similarly allows the lord and his *gwyrda* to determine, upon the initiation of an action in a boundary dispute, whether or not it were a legal term for the resolution of the case,[31] while *Llyfr Cynghawsedd* attributes the determination of boundary disputes to *henuriaid y cwmwd* (the elders of the commote) and, if they failed to

described, ibid., 39, as a charge placed upon persons 'who have seen in their presence [and attest] what they shall be directed to speak of': 'a gleuho (G welho) en ev guyt er hen a dotter yn eu pen bot en wyr pob peth'; further below, p. 73.

[24] For Irish and Welsh practice in suretyship, see the sections on 'Celtic suretyship' in *LAL*, 15–233; Robin C. Stacey, *The Road to Judgement. From Custom to Court in Medieval Ireland and Wales* (Philadelphia, 1994), 14–78.

[25] *Ior*, 58.1–61.8; *LTMW*, 63–8; text and commentary by T. M. Charles-Edwards, 'The Iorwerth text', *LAL*, 137–78.

[26] For proof in *briduw* and *amod*, *Ior*, 68.1–69.13; *LTMW,* 78–80; Huw Pryce, *Native Law and the Church in Medieval Wales* (Oxford, 1993), 53–65.

[27] *ALW*, ii, 174–6 (8. 1. 4); Professor Charles-Edwards points out that the text here is derived from Peniarth MS 34 (MS 'F'), of the later fifteenth century, rather than from Peniarth 35 (MS 'G'), of the first half of the fourteenth century, because a leaf is missing from G, but that the content would clearly would have been in G when it was written. For witness (*tyst*) and testimony (*tystolyaeth*), see also *ALW*, ii, 186 (8. 4. 1–3). Denial on the part of a surety is said to turn on a claimant having 'neither proof nor knowledge' ('na pravf na gvybot') of the claim *ALW*, 180–2 (8. 2. 2).

[28] *ALW*, 174–6 (8. 1. 4–6). Stacey, 'Learning to plead in medieval Welsh law', 110–11, discusses the later *cynghawsedd* texts in NLW, Peniarth MS 34, fifteenth century, and NLW, Peniarth MS 35, early fourteenth century, and refers to these as 'Llyfr Cynog'. For full discussion and text, Aled Rhys Wiliam, 'Restoration of the Book of Cynog', *NLWJ*, 25 (1987–8), 245–56; *Llyfr Cynog: A Medieval Welsh Law Digest*, ed. A. R. Wiliam, Pamphlets on Welsh Law (Aberystwyth, 1990).

[29] Above, p. 65.

[30] *Ior,* 81. 8; *LTMW,* 96.

[31] *Col*, 445.

do so on the grounds of right, the *ynaid* were empowered to judge the claim by the law of equation and divide the land into two halves.[32] Moreover, discussion of pleading envisages circumstances in which a litigant might testify to the *ynaid* and the *gwyrda*, procedure at proof in a plea of *anghyfarch* (surreption), for instance, allowing the *gwyrda* a role alongside the *ynaid* in determining the veracity of a defendant's call to warranty (*arwaesaf*).[33] After a defendant testified to *ynaid* and *gwyrda* they together 'withdrew aside to call to remembrance what may be necessary to them', and in accordance with their ruling the defendant would be adjudged the benefit of his knowers (*gwybyddiaid*). The text thus attributes to the *gwyrda* a role in the judicial process in hearing testimony and deliberation with the *ynaid* upon a medial judgement but no responsibility in terminal judgement.[34] Texts of *cynghawsedd* of later date in the same manuscript tradition accord the *gwyrda* a place alongside the *ynaid* in hearing evidence, but, except for the presence of a priest, the *ynaid* alone retired to deliberate upon judgement.[35] There is some indication that in actions of *ach ac edryf* the 'elders of the country' (*hynafgwyr y wlad*) were to establish the veracity of a plaintiff's lineage, and the 'elders of the cantref' (*hynafiaid y cantref*) determined the boundary if two townships (*trefi*) of equal status were in dispute.[36] More generally the *hynafiaid* seated at court, quite credibly testifiers to earlier practice, may have provided expert knowledge that would have been of value to the judges in their deliberation on their judgement, in a manner comparable to that in which the Irish *senchaid*, while having no role in the judgement itself, afforded necessary knowledge as 'it is on the lore of the custodians of tradition and on the clarification of the custodians of tradition that the court relies'. But none of the later texts convey any indication that either *gwyrda* or *hynafiaid* participated in judgement, and the legal literature in the Gwynedd tradition cannot be said to indicate any perceptible shift towards increased collective responsibility in judgement, nor is it possible to detect any clear trend in the indigenous judicial organization of the province towards a diminution in the functions of the *ynad* or bench of *ynaid*.

However, notwithstanding the conclusions suggested by a study of the legal literature, it will be seen presently that, before the close of the period of the princes, the *ynad* had ceased to exercise a judicial authority entirely exclusive of other means of resolution in the courts of Gwynedd.[37] At the same time, examination of the judicial dispensation in Deheubarth, revealed in the legal texts and documentary sources of the later thirteenth century, establishes the existence, already intimated in the text cited in the opening

[32] *Llyfr Cynghawsedd*, 20: 'henvyreyt e cemut'. Richard Ireland observes that *gwyrda* and *hynafiaid*, witnesses to court procedure and decisions and to land settlements, had a role, not as judges, but as remembrancers comparable to that of the knights of the shire who witnessed and thereby authenticated the oral record of the county court, a suggestion particularly pertinent in view of the county court procedures noticed at a later stage in this discussion (below, pp. 83–6, 95–7, 99 *et passim*).

[33] Ibid., 30, 31, 46, 47.

[34] Ibid., 49; a litigant looked to judgement by the *ynaid*: 'mynneu a uynnaf vraut y gan er egneyt' (ibid.).

[35] *ALW*, ii, 244–6, 252 (9. 16. 6, 9, 11, 32).

[36] *ALW*, ii, 272 (9. 27. 3); 294–6 (9. 34. 2). The presence of the *senchaid*, 'custodians of tradition', in the Irish court (in the *taebairecht*, 'side-court) is indicated in the Old Irish text on court procedure (*Peritia*, 5 (1986), 78, 85), cited below, n. 43. My realization of the relevance of the parallel with the *hynafiaid* is owed, among other valuable suggestions, to the kindness of Professor Fergus Kelly.

[37] While Irish scholars may be inclined to attribute some of the law texts (such as *Bretha Nemed toísech*) to a period later than D. A. Binchy's dating, it is possible that others may be placed earlier than he estimated. On linguistic and historical grounds the editors of *Bechbretha: An Old Irish Law-Tract on Beekeeping*, ed. T. Charles-Edwards and F. Kelly, Early Irish Law Series, 1 (Dublin, 1983) suggest (p. 13) that the text was composed 'about the middle of the seventh century', noticing, for instance, the reference to the king Congal Caech whose death is recorded in 637.

paragraph of this study, of a method of judgement substantially different from that represented in Gwynedd by the *ynad*. This diversity of practice itself suggests that the historical credentials of the *ynad* should be probed a little further than is allowed solely by examination of the known redactions of the lawbooks of Gwynedd, texts enshrined in manuscripts that date from no earlier than the middle years of the thirteenth century. As native sources on their own are unable to yield any firm conclusion on the form of judicature that may have prevailed in earlier centuries, we may benefit from a consideration of analogous practice in Ireland, and, even though our thirteenth-century texts have to be set beside Irish counterparts dating from as early as the seventh century, comparative study offers an exceedingly instructive set of conclusions with an important bearing on the argument that follows.

Comment on the functions of Welsh *ynad* and Irish *brithem* has almost invariably been marked by a concern that each practitioner might be better visualized as jurist rather than as judge, or by a sense that the role of each might be more readily understood as arbitrative than as curial in nature.[38] These reservations are of less consequence in the present discussion, however, as the inquiry is concerned with the specific question as to whether the two lawmen, quite apart from any other functions that they might fulfil, can with advantage be studied comparatively as judges who gave judgement in court. Recent study, while respectful of D. A. Binchy's emphasis on the limitations on the public enforcement of legal decisions in early Irish legal practice,[39] has affirmed the role of the *brithem* as judge and, most certainly, as a judge who gave judgement in court.[40] This is the *brithem túaithe* (judge of the *túath*) described in the texts, whose functions are comparable with those of both the *ynad llys* and *ynad cwmwd* under Welsh law. The text *Cóic Conara Fugill* describes procedure in cases heard before a *brithem,* or a bench of *brithemain*, at a court (*airecht*) where the *brithem,* after the plaintiff's advocate had chosen 'the path of judgement', took security to ensure that the judgement would be accepted, received the pleadings of the litigants' advocates and gave judgement.[41] There are close parallels with

[38] For jurist, arbitrator, or judge: *brithem*: Eóin MacNeill, 'Ireland and Wales in the history of jurisprudence', in Dafydd Jenkins, ed., *Celtic Law Papers* (henceforth *CLP*) (Brussels, 1973), 189–90; D. A. Binchy, *Críth Gablach* (Dublin, 1941), 79; idem, 'The date and provenance of *Uraicecht Becc*', *Ériu*, 18 (1958), 44–54 (p. 45); idem, *Celtic and Anglo-Saxon Kingship* (Oxford, 1970), 16, 18–19; later, reflecting his sense of 'a transition to a publicly constituted judiciary' (ibid., 19), he conveys a stronger inclination to a view of the *brithem* as judge: idem, 'An archaic legal poem', *Celtica*, 9 (1971), 152; idem '*Féchem, fethem, aigne*', *Celtica*, 11 (1976), 18–33 (p. 29), where he explicitly revises his estimate of the *brithem* as a lawyer comparable to the Roman *iuris consultus* for whom the term 'judge', preferred by Rudolf Thurneysen, was not appropriate; *ynad*: Davies, '*Ynad cwmwd*', 262–3; Dafydd Jenkins, *LTMW*, 393 (suggesting that *ynad* may have originally meant 'jurist, one learned in the law'). Jenkins (ibid and elsewhere) translates *ynad* by the term 'justice', and *brawdwr* by 'judge'; my preference for the single term 'judge' for *ynad* and *brawdwr*, each rendered as *iudex* in Latin in the medieval period, is noted in Smith, '*Ynad llys*', 111, n. 76.

[39] D. A. Binchy, 'The linguistic and historical value of the Irish law tracts', *CLP*, 71–107 (p. 94); idem, *Celtic and Anglo-Saxon Kingship*, 18.

[40] For *brithem* and procedure in court, Fergus Kelly, *A Guide to Early Irish Law* (Dublin, 1988), 51–6, with extensive citations from *Corpus Iuris Hibernici* (henceforth *CIH*) ed. D. A. Binchy (Dublin, 1978); also Liam Breatnach, 'Lawyers in early Ireland', in D. Hogan and W. N. Osborough (eds), *Brehons, Serjeants and Attorneys: Studies in the History of the Irish Legal Profession* (Dublin, 1990), 7–10.

[41] For 'the paths to judgement' and pleading in *Cóic Conara Fugill,* Kelly, *Early Irish Law,* 190–3, 280; Richard Sharpe, 'Dispute settlement in medieval Ireland: a preliminary inquiry', in Wendy Davies and Paul Fouracre (eds), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), 184–5, citing *CIH*, 1027. 21–1041. 38; 2202. 23–6; also P. L. Henry, 'A note on the Brehon law tracts of procedure and status: *Cóic Conara Fugill* and *Uraicecht Becc*', *ZCP*, 49–50 (1997), 311–19.

the procedure described in *Llyfr Iorwerth,* not least in the Irish texts' account of procedure at proof in the *airecht* by which the judge's examination of witnesses elicited the facts of the case. The statement in *Berrad Airechta* that a witness (*fíadu*) can give evidence only on what he has seen and heard certainly has a close affinity with the role of the *gwybyddiaid* in *Llyfr Iorwerth*.[42] The textual depictions of the composition and seating arrangements of the Irish and Welsh courts reflect a legal liturgy that ordains a procedure by which actions brought by litigants are resolved by the judgement of a professional judge following the examination of witnesses.[43] Studies of Irish law may still attribute the early Irish king a role as judge,[44] but reservations on this score hardly affect the essential conclusion that judgement in the *airecht* was vested in the *brithem* or a bench of *brithemain*. The closely parallel responsibilities of *brithem* and *ynad* in judgement are reflected in the very similar provisions made in the texts, despite a disparity of several centuries in the date of redaction, for the correction of erroneous judgements and particularly for the penalties incurred by an errant judge.[45]

There is no doubt that the legal literatures of Ireland and Wales reveal close affinities in their account of procedures, and especially the role of witnesses at proof, that lead to judgement by a professional judge in a court held under the authority of a king.[46] The terms employed to describe the judges are *brithem* in the Irish texts and *ynad* in the texts of Gwynedd and *brawdwr* in those of Deheubarth, the term *brawd* (judgement) being cognate with Irish *brath*, with the practitioner in each case literally 'a maker of judgement'.[47] All three terms – *brithem, ynad*, *brawdwr* – signify a professional judge and each is expressed in Latin *iudex*. The strength of the evidence for the *brithem* in the Irish sources, and the more tenuous but highly relevant indications of the presence of a *iudex* in Gaelic Scotland, suggest very strongly that the law texts of Gwynedd represented by *Llyfr Iorwerth* and *Llyfr Colan* describe a judicial provision that had been widely practised, and was possibly ubiquitous, in Insular Celtic societies over a prolonged period preceding the redaction of the earliest Welsh redactions of which we have certain knowledge in the

[42] Breatnach, 'Lawyers in Early Ireland', 7–9 (citing, p. 9, a valuable statement in *Uraicecht Becc* on the *brithem*'s role in 'judging and determining [the correct method of] procedure, and proceeding with a case after it has been determined'); Kelly, *Early Irish Law*, 202–3, citing *CIH*, 596. 28–9. The term *gwybyddiad* contains the root **weid*, from which *fíadu* is derived (Kelly, *Early Irish Law*, 202 n. 83: for Ir. *teist,* W. *tyst*, both from Lat. *testis*, ibid., 203).

[43] *Ior*, 73; Kelly, *Early Irish Law*, 193, citing *CIH*, 601. 20–602. 4; idem, 'An Old-Irish text on court procedure', *Peritia,* 5 (1986), 74–106; the seating arrangements of both texts provide for the presence with the *ynad* or *brithem* of the litgants' advocates, but the Irish text also includes witnesses.

[44] Binchy, 'Archaic legal poem', 152, argues that the king's function as a dispenser of justice had ceased well before the historic period; the king's presence at court and his role is carefully considered in Kelly, 'Court procedure', 80–1; and the duties of king in judgement emphasized in N. McLeod, 'Parallel and paradox: compensation in the legal systems of Celtic Ireland and Anglo-Saxon England', *Studia Celtica*, 16/17 (1981–2), 25–72; M. Gerriets, 'The king as judge in early Ireland', *Celtica*, 20 (1988), 29–52. The question of the role of king as judge needs, of course, to be separated from that of the place of royal jurisdiction in making judicial provision and executing judgement, on which Sharpe, 'Dispute settlement', 186–7, with reference to the thirteenth-century situation examined in G. Mac Niocaill, 'Aspects of Irish law in the late thirteenth century', *Historical Studies*, 10, ed. G. A. Hayes-McCoy (Galway, 1976), 25–42.

[45] For Ireland, Kelly, *Early Irish Law,* 54–5; for Wales, Smith, '*Ynad llys*', 104–7; in the Welsh texts the provision for correction of the judgements of the *ynad llys* is equally relevant to the judge of *cwmwd* or *cantref*.

[46] The long interval between the Irish and Welsh redactions may have seen Irish practice reflect a growth in enforcement powers comparable to those indicated in the Welsh texts, bringing the two systems into even closer approximation to one another; for seigniorial responsibility in later Irish practice (in a section that draws on the treatise of Giolla na Naomh Mac Aodhogáin cited below n. 55), see MacNiocaill, 'Aspects of Irish law', 34–40.

[47] Kelly, *Early Irish Law*, 51, n. 101.

thirteenth century.[48] Irish analogy suggests, too, that occasional references to a practising lawyer in earlier Welsh sources, perhaps in texts of a literary nature, may be more confidently taken as indications of legal practice in the period preceding that of the known redactions.[49] These conclusions are, moreover, of some relevance to the argument advanced in this study in view of the substantially different judicial order which, as I have indicated already, is depicted in the law texts of Deheubarth of the later years of the thirteenth century. These texts will be closely examined, but subsequent discussion requires that we first take account of the record testimony, specifically the crucially important evidence of the period 1281–4, that judgement by the *ynad* was not the sole means to judgement available to litigants in Gwynedd on the eve of the conquest of Wales.

The commission of inquiry appointed by Edward I in 1281 was required to elicit who were the judges who heard cases between princes and magnates, and whether the pleas were adjudged 'according to the law of Hywel Dda called *cyfraith*'.[50] The political circumstances in which the inquiry was initiated, and the fact that most of the evidence was gathered in lands under royal lordship, have on occasion raised doubt over the veracity of the testimony.[51] However, the detailed consistency in the substance of the evidence presented and its close correlation with known practice in subsequent years establish the essential authenticity of the sworn testimony recorded. The evidence taken in Gwynedd Is Conwy, the land east of the river Conwy, is of particular relevance, notably in view of its corroboration by the record of cases heard before the royal justices in these same years on the key matter of 'the law called *cyfraith*'.[52] It reveals that there, and by implication in Gwynedd Uwch Conwy, the land west of the Conwy still under the lordship of Llywelyn ap Gruffudd, two means of judgement were available in pleas of land. Successive witnesses presented, in what proved to be the core of the entire testimony, that in pleas of land it was the pleasure of the lord either to grant the parties 'the law called *cyfraith*' or that the truth of the matter should be inquired by a jury (*per patriam*).[53] This, it was insisted, was the wish of the country. Witnesses might demur to the extent that choice between the two legal processes lay with the plaintiff or defendant rather than the lord, or specify that 'the law called *cyfraith*' was used for 'old possession' and the jury for cases of 'new seisin', but the thrust of the evidence is unmistakable.[54] It indicates, not that

[48] For Scotland, G. W. S. Barrow, *The Kingdom of the Scots* (London, 1973), 69–83; D. Thomson, 'Gaelic learned orders and literati in medieval Scotland', *Scottish Studies*, 12 (1968), 57–79.

[49] J. Rowland, *Early Welsh Saga Poetry* (Woodbridge, 1990), 442, 492, 608. For the twelve lawmen (*lahmen*), six Welsh and six English, who gave law according to an agreement relating to the borderland occupied by the Dunsæte, probably in the tenth century, Alan Harding, 'Legislators, lawyers and law-books', *LAL*, 237–57 (p. 241, citing sources).

[50] *CWR*, 190–1: articles of inquiry 2, 4, 8; Smith, *Llywelyn ap Gruffudd*, 483–4; Thomas Bek, in his claim for expenses as one of its members, described the commission as an inquiry 'de consuetudinibus, tenuriis et *judiciis* Wallensium' (ibid., 494 n. 130, citing PRO, C47/3/48/7).

[51] J. E. Lloyd, 'Edward the First's commission of enquiry of 1280–1: an examination of its origin and purpose', *Y Cymmrodor*, 25 (1915), 1–20; 26 (1916), 252; David Stephenson, *Thirteenth Century Welsh Law Courts*, Pamphlets on Welsh Law (Aberystwyth, 1980), 4–5. For earlier comment, Matthew Hale, *The History of the Common Law of England*, ed. C. M. Gray (1971); [Charles Pratt, later Lord Camden], 'A Discourse against the jurisdiction of the Court of King's Bench in Wales by process of latitat', in *Collection of Tracts Relative to the Law of England*, ed. F. Hargrave (London, 1787), 378–423 (pp. 381–3), a work dating from 1744–5.

[52] *CWR*, 195–200. For 'the law called *cyfraith*' in litigation, *WAR*, 253, 257, 264–5, where pledges are given to stand by the decision of the court 'secundum quod lex Wallensium que vocatur keuereyth desiderat'; for the cases, which help to substantiate the veracity of the evidence of 1281, below, pp. 92–3.

[53] The evidence of Cynfrig Sais, Dafydd ap Richard and others: *CWR*, 195–200.

[54] For choice of procedure by parties and 'new seisin', *CWR*, 196–8. The distinction between the two

indigenous procedures were modified by the intrusion of new practices, and particularly by the introduction of the jury, but rather the availability of two distinct means of reaching judgement. It might, of course, be perfectly possible, if it were not for the certitude provided by the present evidence, to envisage the evolution of a single hybrid procedure whereby the processes conducted by the *ynad* were made subject to proof, not by the examination of witnessess, but by the verdict of a trial jury, much as the *secta* of the common law procedures were superseded by the jury verdict.[55]

The fact that litigants in Gwynedd in the thirteenth century would have been able to resolve actions in the princes' courts by the verdict of a jury need excite no surprise whatsoever, and this practice no less than judgement by the *ynad* finds its parallel in contemporary Gaelic Ireland. While the Old Irish texts do not appear to bear evidence of recourse to judgement by the verdict of a body akin to a jury, Professor Kelly has examined a legal treatise, attributed to Giolla na Naomh Mac Aodhagain (d. 1309), that has clear reference to the use of a jury in Gaelic law after the Anglo-Norman invasion. The jury provides one instance among several of a blend of traditional Old Irish law with material that reflects Anglo-Norman terminology and practice. An accusation of murder denied by the accused goes to a common jury (*finne coitchinn*), the term *finne* generally take to be a loan-word from the Anglo-Norman *visne* (*vyne*) 'jury', the composition of the jury being determined by whether the accused was of good or bad character. The embodiment of the jury as part of practice under Gaelic law probably affected the function of the *brithem*, with an indication that the *brithem* fixed the penalty after the jury had arrived at a verdict. It is not clear that practice in Gwynedd was characterized by a similar blending of traditional and innovative elements in a single legal process: the surviving texts provide no certain pointer and we have to rely on the indication in the testimony gathered by the commission of inquiry that, on the contrary, litigants had access to two alternative means to judgement. Certainly, the testimony presented in 1281 depicts a court procedure by which the presiding officer could provide a choice between, on the one hand, process 'by the law called *cyfraith*' leading to judgement by the *ynad*, and, on the other hand, a process that entailed inquisition by a jury leading to the *veredictum* by which the action was determined, with judgement then declared, presumably, by the officer who presided over the court. The record of 1281 contains indications that the princes had themselves encouraged litigants' recourse to the jury, making these procedures available upon payment of a fine. Goronwy ap Heilin was specifically cited as one who had promoted the use of the jury in his capacity as bailiff of Rhos.[56] The *cantrefi* of Gwynedd Is Conwy – Tegeingl, Dyffryn Clwyd, Rhos and Rhufoniog – had been placed under royal lordship at intervals in the thirteenth century and may thus have been exposed to the common law procedures that provided verdict by a jury. The coexistence of two parallel means to judgement in courts held under Welsh lordship is perfectly credible. Furthermore, the word of those who gave sworn testimony in 1281 that the princes had encouraged the use

Welsh procedures identified here invites analogy, perceptively suggested by Richard Ireland, between the distinction between two forms of process in English law, the older actions initiated by writ of right and the newer actions, dealing with 'new seisin', that were all triable by jury.

[55] Above, p. 66. For the thirteenth-century treatise (*CIH*, 691.1–699. 4) see F. Kelly, 'Giolla na Naomh Mac Aodhagáin: a thirteenth-century legal innovator', in D. S. Greer and N. M. Dawson (eds), *Mysteries and Solutions in Irish Legal History: Irish Legal History Society Discourse and Other Papers, 1996–1999* (Dublin, 2001), 1–14, citing (p. 6) *CIH*, 691. 9–14. Professor Kelly intends to edit the text, with a translation, in the Early Irish Law Series.

[56] *CWR*, 196–8.

of a jury is entirely consonant with an informative clause of the Statute of Wales of 1284 which, though it is said to embody the king's response to the wishes of 'the people of Wales', is specifically a reflection of the judicial practice that would have hitherto prevailed in the land with which the ordinances were mainly concerned, namely Gwynedd Uwch Conwy.

The relevant clause distinguishes between the submissions made in respect of personal actions and land actions. In personal actions the king's subjects wished 'to have the Welsh law whereto they have been accustomed'.[57] This was now envisaged as one of two alternative means to justice in personal actions. The Statute detailed the processes available to litigants who preferred to proceed by the common law writs of debt and covenant for which exemplars were provided in the text.[58] The alternative process under Welsh law would be one by which judgement was given, following proof, upon the testimony 'of those who saw and heard', or by 'witnesses whose testimony cannot be disproved',[59] royal ordinance thereby confirming the indications in the later texts of *Llyfr Cynghawsedd* of the role of witnesses – *gwybyddiaid* – in determining personal actions.[60] In regard to pleas of land, on the contrary, 'the people of Wales' are said to wish that 'the truth may be tried by good and lawful men of the neighbourhood chosen by consent of the parties', an unequivocal statement that the communities of Gwynedd Uwch Conwy had expressed their preference that pleas of land be resolved by the verdict of a jury.[61] They would then be able to avail themselves of the writs that the king made available by the provisions of the Statute, the possessory writs of novel disseisin and mort d'ancestor, as well as the writ of dower[62] and, most significantly, a specially designed 'general writ' (*breve commune*) which Llinos Beverley Smith has shown to be a key feature of the manner in which English common law procedures were adapted to the needs of litigants in the crown lands of Wales.[63] The Statute describes the procedure in pleas of land that would be determined 'by inquest or by juries' specifying four causes of suit.[64] The king's advisers were evidently responding to a request on the part of the communities of the crown lands for the continued use of Welsh procedures in personal actions, but not so in pleas of land. The distinction carries an implicit intimation that, as the testimony of the witnesses before the inquiry of 1281 avers, the communities of the princes' lands already had knowledge of the legal processes that led to the verdict of a jury and might resort to these in preference to 'the law called *cyfraith*'.[65] The evidence taken altogether suggests that, even before the changes introduced by the king's ordinances took effect, the position of the *ynad* in the dispensation of justice in the courts of Gwynedd, while not entirely undermined, had been impaired to the extent that pleas of land could be resolved by a process other than that by which cases had traditionally been conducted and determined. Change in

[57] *SR*, i, 68; *Statutes of Wales*, ed. I. Bowen (London, 1907), 26 (c. 14).

[58] *SR*, i, 61, 65–6; *Statutes of Wales*, 13–14, 20–3 (cc. 6, 9, 10).

[59] *SR*, i, 68 ; *Statutes of Wales,* 26 (c. 14).

[60] Above, p. 67.

[61] *SR*, i, 68; *Statutes of Wales*, 26 (c. 14).

[62] *SR*, i, 59–61; *Statutes of Wales*, 9–14 (c. 6).

[63] Llinos Beverley Smith, 'The Statute of Wales, 1284', *WHR*, 10 (1980–1), 127–54 (pp. 141–4); the 'general writ' is in the form of the 'praecipe quod reddat', which, it is said, 'in some cases touches right and in others possession' and is sometimes described as a 'writ of right according to Welsh law' or 'according to the custom of Wales' (*breve de recto secundum legem Wallensium* or *breve de recto secundum consuetudinem Wallie*). For pleading, ibid., 144–6.

[64] *SR*, i, 64–5; *Statutes of Wales*, 18–20 (c. 8). The four are: right by reason of possession by an ancestor, or by reversion after a term of years, or reversion after the death of a female tenant in dower, or as an escheat upon the death of a bastard.

[65] It is not clear how actions determined by a jury were initiated: Ll. B. Smith, 'Statute of Wales', 144–6, considers the possible role of plaint, equivalent to Welsh *cwyn*, and writ.

indigenous practice did not necessarily lead, however, to a form of collective judgement in preference to professional judgement. Rather the *ynad* was confronted, not with an extension of the role of *hynafiaid* or *gwyrda* in an existing legal process, but with the availability of an alternative process by the inquisition of the *patria*. In the light of this interpretation of the experience of the communities under the princes' rule in Gwynedd – envisaging judgement given by the *ynad* or alternatively provided in accordance with the *veredictum* of a jury, but with no indication of collective responsibility other than in the making of the *veredictum* – we may examine the marked contrast provided in the textual evidence for Deheubarth.

The passage from Rawlinson MS 821C quoted in the opening paragraph of this study states that, whereas there was a judge by virtue of office in the court of every commote or cantref in Gwynedd and Powys, in each of the courts of Deheubarth judgement was given by a judge 'by privilege of land'.[66] This judge – *iudex per dignitatem terre* in Latin D or *brawdwr o fraint tir* in *Llyfr Blegywryd* - exercised his judicial functions by virtue of his status as a possessor of land in the commote or cantref. He was, quite clearly, a suitor of the court. Latin D and its Welsh counterparts describe a form of collective judgement explicitly said to be different from the professional judgement exercised by the *ynad* in Gwynedd and Powys. They do so in the course of their rehearsal of the Laws of the Land in the main body of the lawbook, but the judges by privilege of land are first mentioned in an earlier passsage in the Laws of the Court that specifies the means by which an erroneous judgement is corrected. A clause common to all the lawbooks other than Latin D and *Llyfr Blegywryd – Llyfr Iorwerth, Llyfr Cyfnerth* and Latin A, B, C and E – explains in very similar terms, and in a manner closely comparable to the Irish texts, that, if a litigant were to challenge the judgement of a judge, complainant and judge should each put a pledge in the lord's hand, and if the judge were defeated his judgement was annulled and he would render to the king the price of his tongue and never pronounce judgement again. If the complainant were defeated he should render the judge his *sarhaed* and the king the price of his tongue.[67] The kernel of this corrective procedure is similarly described in Latin D but with a significant difference:

> Si aliquis iudicem prave sibi iudicare asseruerit, uterque vadimonium in manu regis mittat. Et si iudex convincatur, lege scripta vinci demonstrante, reddet regi servitoriam suam, id est, *swyt*, post, ut amplius non iudicet, et postea lingue sue precium. Si vero alter sic convincatur, suum *saraed* iudici restituet, regi vero precium sue lingue reddet … Inter autem duo vadia circa iudicium data, nulla discretio recipienda est nec credenda nisi que ostenditur de lege scripta, id est, libro legis.
>
> Precium *saraed* iudicis swytawc secundum dignitatem servitorie sue sibi reddatur. *Saraed* vero iudicis sine *swyt* sed per dignitatem terre secundum terre dignitatem sibi reddatur, quando vincet inpignorando cum suo iudicio. Sic et iudex per dignitatem terre, quam diu terram teneat, dignitatem iudicis tenebit per eandem.[68]

In summary, the text explains that if a person were to assert that he was wrongly judged, he and the judge would each place a pledge in the king's hand. If the judge were

[66] *LTWL*, 349. 27–33; *Bleg*, 98. 28–99. 6; above, p. 63.

[67] Citations from the texts are given in Smith, '*Ynad llys*', 104–5.

[68] *LTWL*, 324. 35–325. 9; *Bleg*, 15. 17–30. The two sentences 'Precium saraed iudicis swytawc … cum suo iudicio', *LTWL*, 325. 4–9, are omitted from *Bleg*.

defeated, *and written law showed his defeat*, he should return to the king the price of his tongue, surrender his office and never judge again. If the complainant were defeated he should restore his *sarhaed* to the judge and to the king the price of his tongue. No decision on a judgement should be made between two pledges unless it could be shown in written law, that is a lawbook *(lex scripta, id est libro legis*; *kyureith yscriuennedic*). Latin D then makes a crucial differentiation in the penalties incurred by two different categories of judges: the *sarhaed* of a judge by office (*iudex swytawc)* is paid according to the privilege of his office; the *sarhaed* of a judge without office, but by privilege of land (*iudex sine swyt sed per dignitatem terre*) is paid according to the privilege of the land, the judge, while he holds the land, being vested with the dignity of a judge. Compared with the versions given in the other redactions, the text in Latin D is amplified in two respects. First, error on the part of the judge is established by reference to written law, and this could be accepted as a perfectly concordant elaboration of the provisions made in the other texts. Second, Latin D introduces at this point its first reference to judges by privilege of land to whom the penalties imposed on a professional judge do not apply. Clearly, in an exposition of erroneous judgement given in a section of the Laws of the Court dealing with the judge of the court (*iudex curie*), but which might reasonably be extended to refer to other professional judges, Latin D's reference to an altogether different species of judge is decidedly incongruous. The inclusion of the judges by privilege of land in this context suggests very strongly that these are adventitious judges uneasily accommodated in the existing legal redactions of the thirteenth century.

It is clear, however, that their inclusion was a vital feature of the jurists' endeavour to provide a statement that accurately reflected legal practice in Deheubarth at the time of the redaction of Latin D. The first reference to the judges by privilege of land in the Laws of the Court is followed, in the Latin text and its Welsh counterparts, by several passages of the Laws of the Land that enlarge on the procedures by which erroneous judgements are corrected. Each time emphasis is laid on the authority of the lawbook, the written law to which reference is required in resolving a challenge to the judges' decision. A complainant would need to demonstrate from the lawbooks a better judgement than the judge had delivered.[69] Upon a challenge to a judgement pronounced by a judge without reference to a lawbook the judge would need to give a pledge against the complainant or suffer the presentation of a better judgement from written law (*de lege scripta, ynghyureith yscriuenedic*).[70] The emphasis lay entirely on judgement 'by written authority' (*de auctoritate scripta, o awdurdawt yscriuennedic*).[71] If a judgement were disputed, decision rested on written authority, for the authority, that is the lawbook, is unfailingly unbiased: *yt vyd y dosparth ar awdurdaut llythyraul, canys diledyf gyffredin vyd yr awdurdaut, sef yw hynny, brautlyuyr*.[72] The *brawdlyfr* was the authority by which rightful judgement was ensured.[73]

[69] *LTWL*, 351. 7–12: 'Deinde contradicens iudici habet ostendere de libro legis dignius iudicium quam illud quod iudex sic ostendat, si poterit. Sic vinceret iudicium. Sin autem, iudicis est victoria; quia nemo potest indignari iudicium contra vadium iudicis quin poterit ostendere dignius de scriptis'; *Bleg*, 101. 15–22.

[70] *LTWL*, 351. 16–19; *Bleg*, 101. 28–102. 1.

[71] *LTWL*, 351. 22–4; *Bleg*, 102. 5–8.

[72] *LTWL*, 326. 17–20; *Bleg*, 18. 19–21; citation from *Bleg*, with slightly different Welsh text in Latin D.

[73] *Brawdlyfr* might suggest the existence of 'judgement book' that might be envisaged as a compilation of precedent judgements separate from the lawbook. This reading would seem to be supported by references in Peniarth MS 35 ('G') to judgements appropriate to the *cynghawsedd* in question in the *brawdlyfr*: 'ac yny brawt lyuyr y mae y urawt adylyir ar y gyghawssed honn': *ALW*, 192–6 (8. 8. 3; cf. 8. 9. 4; 8. 10. 5); Stacey, 'Learning to plead in medieval Welsh law', 112. This is not, however, the meaning conveyed in redactions in the Blegywryd tradition, including

Whatever the contention, no judgement should be offered but that founded on the certitude provided by the lawbook (*de libro legis*).[74]

The exaltation of the *lex scripta* remains a feature of the lawbooks of the later medieval period compiled in Deheubarth in the tradition of legal redaction represented by Latin D, texts in the Welsh language that provide an extensive amplification of the material on judgement and legal practice and reach their fullest exemplification in BL, Add. MS 22,356 (MS 'S') of the fifteenth century.[75] The later texts embody detailed exposition of the corrective procedures followed at a further stage in a disputed judgement if there were conflicting interpretations of written law, amplifying a kernel set out in Latin D:

> Si autem dubitacio fuerit de duobus contrariis in lege scriptis, discrecio inde ponenda est super canonicis veritate usitantes, quia quicquid propinquius est veritati dignius est in legibus teneri.

If there were dispute over written law the decision would rest with 'canons versed in truth', and 'whichever shall be seen to be nearest to the truth is the most worthy to be maintained in law'.[76] This was, in fact, a third stage in the resolution of an action to which resort would be made if, as the later texts explain, a litigant were to reject a judgement (*dosbarth*) given by men empowered by the king to resolve a dispute between two parties who had placed their mutual pledges against the original judgement in the commote court.[77] Expressed in the conceptual forms of an indigenous jurisprudence, the texts here provide a juristic basis for the practical realities revealed in the administrative records of the royal lands of south-west Wales in the fourteenth and fifteenth centuries whereby, upon the challenge of a litigant to the judgement of the suitors of a commote court, the king would appoint men knowledgeable in Welsh law, *dosbarthwyr*, described as skilled in the law of Hywel Dda (*periti in lege Howel Da*) to correct the judgement. A number of the *dosbarthwyr* engaged by the crown are named in the financial records of the period 1375–1425.[78] Rhydderch ab Ieuan Llwyd and Llywelyn Fychan ap Llywelyn Goch are conspicuous instances among the *dosbarthwyr* named in the early entries.[79] Then, if the

Llanstephan 116, 42 (below, n. 75), which refers to the whole of the material comprised in the Laws of the Court and the Laws of the Land as 'yr awdyrdawd diledef, ereill a geilw y brawdlyfyr'; 'S', 2382 (below, n. 75), where *brawdlyfr* describes a volume embodying the three major parts of the 'authority of law' alternatively 'Gwyddor Cyfraith Hywel Dda'; 'S', 2410, where the term embraces the three columns of law, the value of wild and tame, land law and much else. *Brawdlyfr* clearly means, not a separate 'judgement book', but the lawbook. For the texts cited, see below, n. 75.

[74] *LTWL*, 332. 1–2: 'ibi nemo dat inter eos aliam discretionem pro iudicio quam certitudinem de libro legis que possit scripte eisdem ostendi'; this does not appear at the corresponding point in *Bleg*, 27. 16, where the Welsh text provides an account of the *maer biswail* and *rhingyll*, before proceeding as in Latin D to the Law of the Land (*LTWL*, 332. 3).

[75] Late medieval jurisprudence in Deheubarth may be represented in *The Laws of Hywel Dda from Llanstephan MS 116*, ed. Timothy Lewis (London, 1912), 42–121; BL, Add MS 22,356, ff. 59–144. Citations of BL, Add MS 22, 356, are made from Christine James, 'Golygiad o BL Add MS 22, 356 o gyfraith Hywel ynghyd ag astudiaeth gymharol ohono a Llanstephan 116' (PhD, Wales, 1984); references are to 'S', with the numbered sentences of the edited text. Citations are confined to text additional to *Bleg*. For the 'S' text, Christine James, 'Llyfr Cyfraith o Ddyffryn Teifi, disgrifiad o BL Add 22,356', *NLWJ*, 27 (1991), 383–404; idem, 'Tradition and innovation in some late medieval Welsh lawbooks', *BBCS*, 40 (1993), 148–56.

[76] *LTWL*, 351. 12–15; *Bleg*, 101. 23–7: *canonici, canonwyr* is translated 'canons' rather than 'canonists'.

[77] 'S', 1311: 'dosbarth a wnel gwyr awdyr a voynt alwedigion o bleid y brenhin y dosbarth kynen amrysson kyfrwg gwystyl a gwrthwystyl erbyn ynn erbyn a roder ynn llaw y brenhin'.

[78] Some forty cases are cited in the account rolls with the names of more than thirty *dosbarthwyr*, a number of whom are recorded in R. A. Griffiths, *The Principality of Wales in the Later Middle Ages. The Structure and Personnel of Government* (Cardiff, 1972), 117, 125 *et passim;* see index under *dosbarthwyr*.

[79] For Rhydderch ab Ieuan Llwyd and Llywelyn

corrective judgement of the *dosbarthwyr* were still to prove unacceptable, the case would be referred to the king's council.

From the beginning, this was probably the practical significance of the jurists' formulation by which a disputed judgement would be submitted to 'canons versed in truth' over whose deliberations the king would preside. Of course, the words could conceivably be interpreted as a referral to the judgement of canon lawyers, a view which the ecclesiastical aura of the Latin D redaction might tend to encourage.[80] The ecclesiastical phraseology in this connection is maintained in the subsequent textual elaborations, explaining that upon a litigant's rejection of the award of the *dosbarthwyr* the king should conduct the case and preside over the deliberations so as to 'secure an unbiased final resolution' through the canons' consideration.[81] Where dispute lay between two interpretations of law a dispassionate resolution of the matter should be sought through the appointment, by the king's mandate, of canons who would be 'either men of religion or other churchmen' to examine the case.[82] But there can be little doubt that the juristic statement reflects, not any appeal to canon lawyers, but rather the more realistic prospect that a disputed judgement would ultimately be taken to the equitable judgement of the king's council. What was envisaged, expressed in a suitably sublimated clerical phraseology, was judicial resort, not to canon law, but to a source of equity. This would be the unbiased and final resolution, for beyond this there was no further remedy at law as Hywel Dda had ordained that canons should determine the judgement 'in accordance with the wisdom of unbiassed canon (*herwyd synwyr kannon diledyf*)'.[83] The procedure is revealed in full in a case in the commote court of Cydweli in 1510 when, on the pledge of a litigant against the judgement of the suitors, the complaint was taken before *dosbarthwyr* appointed by the king and then, upon continued complaint, to the council of the Duchy of Lancaster.[84] The members assembled in the duchy chamber corresponded in reality to the 'canons' envisaged by the makers of Latin D in an exposition of juristic practice that marks an entire reorientation of legal redaction in Deheubarth in the thirteenth century. The change was made necessary by a shift in judicial practice whereby judgement was given in the commote courts not by professional judges but by judges by privilege of land. With legal dispensation no longer entrusted to a professional practitioner it became imperative to ensure that the written word of the lawbook be exalted as an authoritative work of reference.[85] It would provide the certitude of knowledge on

Fychan, Llinos Beverley Smith, 'Cannwyl disbwyll a dosbarth: gwŷr cyfraith Ceredigion yn yr oesoedd canol diweddar', *Ceredigion*, 10 (1984–7), 229–53 (pp. 236–8); J. Beverley Smith, 'Einion Offeiriad', *BBCS*, 20 (1962–4), 339–47; Daniel Huws, *Medieval Welsh Manuscripts* (Cardiff and Aberystwyth, 2000), 217–18, 246–57.

[80] A literal interpretation is advanced in Huw Pryce, *Native Law and the Church*, 31–2; idem, 'Lawbooks and literacy', 57–8. For the ecclesiastical ambience of Latin D, Emanuel, *LTWL*, 62–8 and below. nn. 85, 138.

[81] 'S', 1311.

[82] 'S', 1322. This forms part of an account of three forms of the 'gorsedd ddygynnull', a 'conventional court' or possibly a 'sessional court', where judgement rested not with judges by privilege of land but with a judge appointed by the king acting in accordance with the procedure of the court. The concept is echoed in 'S', 2388, in a discussion of 'Gwyddor Cyfraith Hywel Dda'. The manner in which these expositions relate to reality in judicial practice in the late medieval period, a matter noticed in Ll. B. Smith, 'Cannwyll disbwyll a dosbarth', 244–5, will be considered elsewhere.

[83] 'S', 1311: 'kanys Howel Da, vrenhin Kymry, o gygor y deuthon awdurdawdwyr a ossodes ynn y gyfreith ef goruod a pherthynu erbynyaw dyall y gannonwyr y dosbarth perigl a phetryster herwyd synwyr kannon diledyf'.

[84] PRO, Just 1/1156; the text of this document and the proceedings in the duchy council in the Palace of Westminster (PRO, DL 42/95, ff. 38^{v}, 41–2) will be examined as part of a study of legal procedure under Welsh law in Deheubarth.

[85] Emanuel, *LTWL*, 62–78, commenting on new material in Latin D, concentrates on its indications of

which suitors could rely in fulfilling their responsibility in a collective judgement that represented a new departure in the legal practice of the province. It was, as we shall see, a process completed, at the latest, by the last quarter of the thirteenth century.[86]

This conclusion is based on an examination of the Latin and Welsh expositions in a tradition of a legal redaction that marks a major change in the very nature of legal writing in medieval Wales. It was a departure in juristic writing that gave the lawbook of Deheubarth a function significantly different from that of the lawbooks of the other provinces. For, while the lawbooks of Gwynedd might emphasize the authority of written law, *Llyfr Colan* indeed citing the authority of the Latin text of the law of Hywel in one particular connection, the lawbook was never elevated to a place in judgement in any way comparable with that accorded the lawbook in judicial practice in Deheubarth.[87] The judicial order that created the need for this form of redaction has never been fully examined. While the contrast between the order that relied on a professional judge, as exemplified in the lawbooks of Gwynedd, and that which depended on the non-professional judge of Deheubarth has been noticed in discussion,[88] no extensive historical explanation of the contrast has been attempted. Indeed, the possibility of a late origin for collective judgement in Deheubarth has been intimated on only one previous occasion in a study by Llinos Beverley Smith.[89] Another estimate, envisaging collective judgement in the southern province as a survival of an early form of judicature, was indeed advanced by T. P. Ellis in 1926.[90] Reviewing the forms of judicature that prevailed in the several provinces of Wales, Ellis took the view that the judges by privilege of land in Deheubarth represented 'the older system': in the northern provinces, where royal power was greater than in the south, 'the popular or tribal courts had become definitely the king's courts, but in South Wales the assumption of jurisdiction by the lords had not succeeded in ousting the tribal element'. These views were endorsed by Eóin MacNeill who held that the court of the commote in Deheubarth corresponded to the king's *airecht* in an Irish *túath*, the landowners who composed the court being compared to the *sóerchéili* of the king, 'the magnates of the *tuath*, who, with certain professional dignitaries, form the king's court in *Críth Gablach*'.[91] MacNeill, expressing a view of Irish practice that would not meet with the assent of modern scholars and conveying his impression of the differing political orientation of the several Welsh dynasties, sought a historical explanation for the fact that Deheubarth 'retained a system of judicature closely comparable to the Irish system'.[92] The

an awareness of new trends in legal theory and its pronounced ecclesiastical ambience; for this influence in relation to the changes in the judicial order, below, n. 138.

[86] Below pp. 86–8.

[87] *Col*, 565. The judicial order that prevailed in Deheubarth by the later thirteenth century provides a more specific explanation for the emphasis on the written law than that suggested in Dafydd Jenkins, 'The medieval Welsh idea of law', *Tijschrift voor Rechtsgeschiedenis*, 49 (1981), 323–48 (pp. 331–2) as it relates directly to judgement. The matter of the authority of written law more generally is discussed in Pryce, 'Lawbooks and literacy', 54–65.

[88] For example, Dafydd Jenkins, *Cyfraith Hywel* (Llandysul, 1970), 97; idem, *LTMW*, 393; idem, 'A hundred years of Cyfraith Hywel', *ZCP*, 49–50 (1997), 348–66 (pp. 360–1); Davies, '*Ynad cwmwd*', 262.

[89] Ll. B. Smith, 'Cannwyll disbwyll a dosbarth', 242–3, a suggestion followed in Pryce, 'Lawbooks and literacy', 46 and n. 83.

[90] T. P. Ellis, *Welsh Tribal Law and Custom in the Middle Ages*. 2 vols (Oxford, 1926), ii, 204–5. Historical comment on early collective judgement in other lands is noticed further below, pp. 82–3.

[91] Eóin MacNeill, 'Ireland and Wales in the history of jurisprudence', *CLP*, 171–92, a review article of Ellis, *Welsh Tribal Law and Custom*, quoting from pp. 190–1.

[92] MacNeill, 'Ireland and Wales', 191. Cf. idem, *Early Irish Laws and Institutions* (Dublin, 1935), 100, for the assembly of the free community whose functions included the hearing of lawsuits and enactment of laws. MacNeill's view, 'Ireland and Wales', 191, of the *airecht* constituting 'a "bench" of all the landowners of an Irish *túath*', with its implicit intimation of a

argument offered in this study, however, suggests that Irish analogy points to the professional judgement described in the texts of Gwynedd rather than the collective judgement of the later texts of Deheubarth so far examined. The key appears to lie with the closely comparable functions of *ynad* and *brithem*.[93]

The notion of early collective judgement, broached in the study which prompted MacNeill's comments, cannot be sustained from the textual evidence already considered. The present inquiry indicates that the judges by privilege of land made their presence felt in a redaction which may be attributed to the later thirteenth century. At the same time there is no doubt whatsoever that collective judgement was widely practised in western Europe in the earlier medieval period before being, to some degree, superseded by the professional judgement that developed from the twelfth century onward, and modern studies that emphasize this interpretation will be cited at a later stage in this discussion.[94] Reflecting this important theme in historical writing it has been said that Wales conformed to this collective form of judicature, the communal element in judgement-making being 'woven into the very texture of law and custom'. The professional jurists – *ynad* and *brithem* – are thus envisaged as 'the keepers of legal lore', with the judgement-makers drawn from the local community.[95] The evidence so far adduced in this study suggests, however, that court practice in Gwynedd, closely resembling that found in Ireland, was based on the central presence of a professional judge who conducted clearly defined proceedings, marked by a sophisticated method of proof by witnesses, that led to the *ynad*'s terminal judgement. The coherence of this evidence suggests that the contrasting provision in Deheubarth needs to be explained, not as a survival of a pristine indigenous collective order, but as the consequence of late and possibly intrusive influences at work in the course of the thirteenth century. The historiography of collective judgement in Europe may thus have a bearing on this investigation, not as a means to comparative study that might inform our understanding of early Welsh practice, but rather as an explanation of the effect of extraneous influences which, at a late stage, came to be reflected in the judicial practice revealed in Deheubarth in the presence of judges by privilege of land. The relevant discussions will be noticed presently. Meanwhile, the argument set out in this study, in which understanding of the juridical position in Deheubarth so far rests upon an examination of the Latin D redaction, may be taken further in two stages. First, I shall consider the legal texts from the province that belong to an earlier stage in legal redaction than that represented by Latin D so as to determine whether an earlier stratum in juridical practice may be detected. Second, the record sources will be examined so as to consider whether a viable historical explanation of a shift from professional to collective judgement may be offered.

collective responsibility comparable to that of the suitors of the commote court in Deheubarth, is not borne out in subsequent discussion; this includes Binchy, *Críth Gablach*, 73, and esp. Kelly, *Early Irish Law*, 192–8, where judgement in the *airecht* is decidedly regarded as the responsibility of the *brithem*. Professor Kelly confirms that, though the *soercheili* were *soer,* 'noble', they were still clients in a directly dependent relationship and there is no evidence that they had a special judicial role.

[93] Above, pp. 69–71.

[94] Below, pp. 82–3, 93–4.

[95] See the remarks in Davies, '*Ynad cwmwd*', 261; idem, 'Kinsmen, neighbours and communities in Wales and the western British Isles, *c*.1100–*c*.1400', in Pauline Stafford, Janet L. Nelson and Jane Martindale (eds), *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds* (Manchester, 2001), 172–87. The author rightly includes arbitration as a key feature of Welsh judicial practice, as noticed already (above, n. 7), but arbitration is equally compatible with professional and collective methods of judgement-making in court procedures.

In considering the earlier redactions we need to examine the text of Latin A (Peniarth 28) and those of the manuscripts in the *Llyfr Cyfnerth* tradition.[96] In Latin A, enshrined in a manuscript of the mid-thirteenth century, the section of the Laws of the Court dealing with erroneous judgement, like that of *Llyfr Iorwerth*, states that when the judges (*iudices*) received a fee, *gobr cyfraith*, fixed by law (*habet mercedem legalem, id est, gober keuereyth*), the judge of the court should have the share of two men.[97] Reference to *gobr cyfraith* points to the existence of remunerated judges other than the judge of the prince's court (*iudex curie*), and the requirement that the judges should know 'the three columns of law' (*tair colofn cyfraith*) implicitly confirms the existence of a genre of professional judges quite apart from the singular judge of the court.[98] The close correspondence between the phraseology of Latin A and that of *Llyfr Iorwerth,* as well as other Latin and Welsh texts, suggests, however, a need for caution lest the prescription for the correction of error be derived from a common juristic source.[99] Closer attention may be given to an account of a plea of land in Latin A that, in form and substance, is markedly different from that of the northern texts. Though briefer and less informative on the role of the judge in conducting proceedings, the account still carries an instructive indication of the manner in which judgement is reached. After claimant and defendant have stated their positions:

> the elders of the country, that is *henaduriaid gwlad,* should carefully consider together which of the parties is affirming the truth and which not. And after the *henaduriaid gwlad* have pronounced their sentence (*sentencia*), then should the judges withdraw alone and give judgement according to the pronouncement of the elders, and the judges should declare to the king what they have judged.

In this process the *henaduriaid gwlad* examine the litigants' case and on that basis pronounce a *sententia* with which the judgement of the judges concurs.

The procedure, and crucially the function of the *henaduriaid gwlad,* contrasts with that of *Llyfr Iorwerth* to an extent that suggests that a significantly different legal procedure was

[96] In examining these texts care has been taken lest misleading conclusions be drawn from legal writing that, though associated with Deheubarth, might reflect the influence of legal redaction in the Gwynedd tradition, a caution that takes account of, for example, Dafydd Jenkins, *Col,* xxii–xxv, where it is argued, in relation to the *Cyfnerth* texts, that the work of Morgeneu and Cyfnerth had its origin in Gwynedd and that the lawbook was then taken south 'and continued to be copied there after it was superseded in Gwynedd by a more developed book'. Cf. idem, 'A family of Welsh lawyers', *CLP,* 125–32, and, for 'Proto-Cyfnerth' and 'Deutero-Cyfnerth', idem, 'Lawbooks of medieval Wales', 10–14. Furthermore, in this discussion attention is given first to Latin A for, while the Cyfnerth texts are regarded as an early ('primitive') legal redaction, the MSS cannot be dated before the early fourteenth century (below, n. 101), by which time the juridical provision they describe had long been superseded in Deheubarth. On the other hand, Peniarth 28, which conserves the text of Latin A (itself possibly based on an early text in the Cyfnerth tradition) is quite certainly a thirteenth-century MS. With regard to its date, Daniel Huws, *Medieval Manuscripts*, 169–76, who was able to establish that the MS was in the library of St Augustine's abbey, Canterbury, by the fourteenth century and to suggest that it may have been in the possession of John Pecham, attributes the manuscript on palaeographical grounds to the 'mid-thirteenth century', a term used 'for a period whose bounds might be as wide as 1230 and 1282'. The writing of the MS can, at least, be placed many years earlier than the earliest *Cyfnerth* MS, an interval of some relevance to the discussion in this study. The date of Peniarth 28, leaving the MS free from interpolation that might conceivably have affected the Cyfnerth MSS, thus affords greater confidence in treating the closely comparable substance that occurs in the *Cyfnerth* texts.

[97] *LTWL*, 115. 25–7; Smith, '*Ynad llys*', 100, with citations of corresponding entries in other Latin texts.

[98] *LTWL*, 121. 8–11.

[99] *LTWL*, 131. 11–19. A need for caution is suggested, for instance, in the use of the term *ynad* in *Llyfr Cyfnerth* where *brawdwr* might be expected (*WML*, 117. 19, 125. 13, 139. 14) and the inclusion of the text 'Pump allwedd ynadaeth' (*WML*, 112.9–14), while 'Pedair allwedd ynadaeth' is a feature of late medieval texts in the *Llyfr Blegywryd* tradition: *Llanstephan 116*; 'S', 1807–11.

employed in Deheubarth in a period preceding the redaction of Latin D. While in Gwynedd the role of the *hynafiaid* and *gwyrda* described in *Llyfr Iorwerth* is strictly circumscribed, and later texts of *Llyfr Cynghawsedd* contain no significant indications of change in practice,[100] in Deheubarth the *sententia* of the *henaduriaid gwlad,* as described in Latin A, points to a degree of collective responsibility in the formulation of judgement closely comparable with the *veredictum* of a jury that provided the basis of a judgement at English common law. None the less, the judges who act in response to the *sententia* of the *henaduriaid gwlad* were professional *iudices*, practitioners who received remuneration for their judgements, and in this important respect were closely comparable to the *ynaid* described in the texts of Gwynedd. This passage thus inspires some confidence in examining the closely similar accounts in the texts of *Llyfr Cyfnerth* which, despite the fact that the surviving manuscripts were written in a period when the juridical arrangements they describe had been entirely superseded by those registered in Latin D and *Llyfr Blegywryd*, endorse the practices described in Latin A.[101] Here too the *henaduriaid gwlad* consult together and evaluate the litigants' pleadings; they consider their opinion (*synhwyr)* and strengthen their proceeding (*dull*) by oath (*a gwedy darffo yr henaduryeit racreithaw eu synhwyr a chadarnhau eu dull trwy twg*). The judges then retire to formulate their judgement in accordance with the *dull* of the *henaduriaid gwlad* (*a barnu herwyd dull yr henaduryeit*) to secure a *dedfryd gwlad* (a verdict of the country).[102] Latin A and the *Llyfr Cyfnerth* texts, while differing from the texts of Gwynedd in the role they attribute to the *henaduriaid gwlad,* together describe a legal process in which the professional judge is still responsible for the declaration of a terminal judgement, a function from which he was entirely displaced in Latin D.

In enunciating the contrast between the juridical practices of Gwynedd and Powys on the one hand and Deheubarth on the other, the redactor of Latin D reflected, not only an awareness of the diversity of provincial practice in the making of judgements, but a sense of the change that had occurred in Deheubarth itself. The scent of adventitiousness in the account of judges by privilege of land in Latin D is not easily dispelled, and the evidence of the earlier redactions is entirely consonant with the conclusion that Latin D registers the completion of a major change in the judicial order in Deheubarth. It meant that functions once shared between *henuriaid gwlad* and a professional judge became the collective responsibility of the suitors of the court. The consummated change in legal practice in the courts called for nothing less than a reorientation in juristic writing that exalted the *lex scripta* as an essential concomitant of the new-found responsibility of the judges by privilege of land. The change was of an order that impelled the redactors of later texts in the tradition of Latin D to portray the judges by privilege of land of Deheubarth – a multitude of judges (*lliaws o frawdwyr*) – as a feature of the judicial order

[100] Richard Ireland suggests that an analogy with the Grand Assize might be pursued in this connection, not an ordinary jury but one composed of knights, the parallel in turn underlining the possibility that the earlier witnessing function of the *henuriaid* was subject to change. The matter is informed by the discussion in David Crook, 'Triers and the origins of the Grand Jury', *Journal of Legal History*, 12 (1991), 103–16, that includes instructive references to the *triatores comitatus*.

[101] For comment on the date of the *Cyfnerth* texts, Huw Pryce, 'The prologues of the Welsh lawbooks', *BBCS*, 33 (1986), 152–5; idem, 'Lawbooks and literacy', 39 (above, n. 96).

[102] *WML*, 47. 13–23. Professor Charles–Edwards points out the interest of the passage in *WML*, 54. 19–55. 1 (*Bleg*. 118. 3–10) which conveys the notion of the *henaduriaid gwlad* as *gwybyddiaid am dir* who were in a position of 'knowing' the *ach ac edryf* by which a man might establish his right to land, a matter with a bearing on the discussion of *gwybyddiaid* in Charles-Edwards, *Early Irish and Welsh Kinship*, 297–300.

of the period preceding Hywel Dda.[103] Their historical appeal to a form of judicature that prevailed even before the time of the acknowledged progenitor of all redaction is a telling indication of their realization of the true significance of the diversity in provincial practice that had been declared by their thirteenth-century precursors.

It is a matter of particular interest that the sequence of texts emanating from Deheubarth, taken together, delineate an instructive process of change embodied in the concept of the *dedfryd gwlad*. The term, used in *Llyfr Cyfnerth* to describe the final effect of a judgement that derived from the verdict of the *henaduriaid gwlad*,[104] is employed in a more extended discussion in Latin D along with *rhaith gwlad*.[105] In each case the terms are related to a judgement founded on the oath of *rheithwyr* (*iuratores*), the *curiales* who, either in specified number or forming the whole body of the court, participated in the judicial process, not as kinsmen in the manner of compurgators, but as neighbours in the community that was subject to the jurisdiction of the court.[106] The significance of this concept will be considered further at a later stage in discussion.[107] The judgement itself was no longer entrusted to the *brawdwr,* a vocational 'maker of judgements' no less than the *brithem* and the *ynad,*[108] but to the collective responsibility of the *sectatores* of the court whose judgements were founded on the authoritative *lex scripta* that is so greatly valued in the monumental redaction represented for posterity in Rawlinson MS 821C. We may now consider the historical circumstances of its composition.

The record of the inquiry by commissioners appointed by Edward I in 1281, so informative on legal practice in Gwynedd, offers brief but instructive testimony to the position in Deheubarth.[109] Witnesses from Ceredigion were emphatic that there were in its commotes no professional judge called *ynad* and that judgement was given by the court.[110] The truth was inquired by the peers or neighbours of the parties and declared on their behalf by one person, for there was no judge except lord and court. There can be no doubt that similar procedures were followed in Ystrad Tywi and that the judges by privilege of land, so well authenticated in Latin D, were indeed by this time the means by which judgements were made throughout the commotes of Deheubarth. Precisely how a development towards a collective judgement of this nature compares with trends in judgement-making in other lands is not easily summarized. Comparative study of sources from the tenth century to the twelfth indicates a widespread practice, both in the former Carolingian lands and beyond their confines, by which, in a court held before a represen-

[103] 'S', 1236: ' a llyaws o vrawdwyr o vreint tir, nyd amgen no phob perchen tir, megis yd oedynt kyn Hywel Da, herwyd kyfreith Dyfynwal'.

[104] *WML*, 47. 22–3: 'a hwnnw yw deturyt gwlat gwedy amdiffyn'; no comparable term appears at that point in Latin A (*LTWL*, 131).

[105] *LTWL*, 353. 8–19; 385. 8–13.

[106] *LTWL*, 353. 8–19. Ellis, *Welsh Tribal Law and Custom*, ii, 201, 303, 378, 408, citing the use of the term *rhaith gwlad*, recognizes ' a jury of compurgators drawn from the neighbourhood rather than from among kinsmen', thereby envisaging a process of change that led to a position where 'the determination of a question of fact became the function of the court'. The corresponding terminology of Latin D suggests that *rhaith gwlad,* literally a 'compurgation of the country' and essentially a feature of the Deheubarth texts derived from Latin D, conveys a meaning less of compurgation than of procedure by a jury. For recent comment on *rhaith gwlad*, Jenkins, 'Towards the jury', 454–5.

[107] Below, p. 88.

[108] For *brawdwr*, from *brawd*, cognate with Ir. *bráth* meaning 'judgement'; and '*brithem*', a 'maker of judgement', an agent noun from *breth*, also meaning 'judgement', Kelly, *Early Irish Law*, 51 and nn. 101–2.

[109] Above, pp. 71–3.

[110] *CWR*, 206–8, 209–10, evidence taken at Llanbadarn Fawr by men of the commotes of Ceredigion. Trahaearn ap Philip, the first witness, stated that suits were adjudged by the court; there was no judge but lord and court. Subsequent witnesses added that the truth was inquired by peers and neighbours of the parties and that pleas were determined by twelve men elected by the king's bailiff with the consent of the parties.

tative of the seigniorial lord, judgement was given by the court.[111] The *scabini* of the Carolingian lands provide a well-founded exemplar of a mode of justice in which a panel of judges exercised, within the court, a collective responsibility for the evaluation of witnesses and the resolution of a judgement.[112] Yet, practice varied considerably in the several lands of western Europe: on the one hand there was not necessarily a closely identified group of judgement-makers, and judgement might be given by the whole court;[113] on the other hand, judgement might be given by a single *iudex* or a bench of *iudices*, persons qualified to do so by their learned knowledge of the law, and these are associated particularly with areas characterized by vestigial influences of Roman law.[114]

Tendencies in the twelfth century and later towards increased royal provision of justice dispensed by professional practitioners, either through the creation of specifically empowered courts or by the intrusion of royal influence into existing courts, may have seen some erosion of collective responsibility in the provision of justice, and these tendencies will be noticed further at a later stage in this discussion. But if influences of this nature were at work, they did not spell the extinction of collective judgement. England from the twelfth century onward certainly saw a precocious growth of royal justice stemming from the *curia regis* and provided by a professional judiciary who presided over the courts of common law, a prodigious development that is both well documented and a beneficiary of extensive historical investigation.[115] At the same time the development of a professional judiciary was paralleled by the continued communal dispensation of justice in the county court. Its competence in criminal actions was no doubt impaired by the withdrawal to the royal courts of the pleas of the crown and the facility for the removal of some civil actions by the writs *praecipe*, but the county court's position may yet have been fortified by its integration into the system of common law courts by means of the viscontiel writs.[116] At the end of the thirteenth century the county court remained an active judicial institution where judgement was the collective responsibility of the doomsmen, and these were the suitors of the court or were drawn from their ranks.[117] In many instances a small group, set apart by their competence and familiarity with the

[111] Reynolds, *Kingdoms and Communities*, 23–34; idem, 'Law and communities in Western Christendom c. 900–1140', *American Journal of Legal History*, 25 (1981), 205–24. A wide range of judicial practice is surveyed in Harding, 'Legislators, lawyers and law-books', 246, whose estimation of the Welsh lawbooks as the compilations of 'a new class of professional lawyers' is relevant both in relation to earlier discussion and the 'professional law' considered later.

[112] Helen M. Cam, 'Suitors and *scabini*', *Speculum*, 10 (1935), 189–200; F. N. Estey, 'The *scabini* and the local courts', *Speculum*, 26 (1951), 119–29; F. L. Ganshof, *Frankish Institutions under Charlemagne* (Providence, RIs, 1968), 71–97, noticing pp. 78–9, a capitulary of 802 prescribing that the *iudices* judge according to the written law, not at their discretion (*ut iudices secundum scriptum legem iudicent, non secundum arbitrium suum*).

[113] Cam, 'Suitors and *scabini*', 191, distinguishes between the judgement of the men of the shire in Anglo-Saxon England, 'clearly guided by the opinion and pronouncement of the leading men', and the lawmen (*iudices*) responsible for judgement in the Danelaw who bore some resemblance to the *scabini*.

[114] Roger Collins, ' *Sicut lex Gothorum continet*: law and charters in ninth- and tenth-century Leon and Catalonia', *EHR*, 100 (1983), 491–512; idem, 'Visigothic law and regional custom in disputes in early medieval Spain', in Davies and Fouracre, *Settlement of Disputes*, 85–104 (esp. pp. 86–8, 94–5).

[115] The wealth of studies includes: R. C. Van Caenegem, *Royal Writs in England from the Conquest to Glanvill*, Selden Society (London, 1959), 195–405; Ralph V. Turner, *Judges, Administrators and the Common Law in Angevin England* (London, 1994); Paul Brand, *The Making of the Common Law* (London, 1992), 1–20, 77–102; idem, *The Origins of the Legal Profession* (Oxford, 1992).

[116] Robert C. Palmer, *The County Courts of Medieval England 1150–1350* (Princeton, 1982), 56–113, 174–219. The role of the county court is emphasized in the Statute of Gloucester, 1278, with improved viscontiel procedures.

[117] Ibid.; Pollock and Maitland, *A History of English Law*, i, 535–6; Van Caenegem, *Royal Writs*, 20–2.

procedures of the court but not professional lawyers, emerged to take responsibility for judgement. Among the generically termed *buzones* an instructive group may be identified in the *iudicatores* of the county court of Cheshire, who formed a cadre of doomsmen among the suitors of the court.[118] They belonged to a class of judgement-makers with a continued stake in English judicial provision. During the second half of the thirteenth century the author of *Hengham Magna* could declare that 'it is ordained that judgement be given by the whole county', and he urged that the suitors resist any attempt by the sheriff to intrude upon their collective responsibility, for the community of the county would be held responsible for judgement.[119] In the English manorial court, too, while the steward moderated proceedings, the judgements were the work of suitors and, though by the fourteenth century decisions were increasingly made by the verdict of a trial jury, or upon presentment by jury, the collective responsibility of those who formed the court was not entirely undermined by the directive of the seignorial officer, and innovation in procedures served to fortify the manorial court itself.[120]

It is certainly a matter of some relevance to the present study that, though the development of a 'professional law' was a characteristic of English legal development in the thirteenth century, in neither county nor manorial court was collective judgement in any sense obliterated. The collective judgement that was a feature of the practice of the English county court has a particular bearing on the position in south-west Wales where the juridical position described in Latin D may have been influenced by two related developments. The first is the effect of the political disintegration of Deheubarth occasioned by the contested succession that followed the death of Rhys ap Gruffudd at the end of the twelfth century.[121] Lordship continued to be exercised in the several parts of Ystrad Tywi and Ceredigion by princes of the dynasty of Deheubarth, but greatly changed political circumstances may have adversely affected the professional judiciary that had previously prospered in the historic province under the aegis of a single authority. A second development stemmed from the contemporaneous extension of royal authority in the province, more specifically the creation in 1241 of two royal counties centred on the castles of Carmarthen and Cardigan.[122] Royal jurisdiction was applied more immediately to the commotes that formed the royal demesnes: Derllys, the 'English county' (*comitatus Anglicorum)* of Carmarthen, and Elfed and Gwidigada, the 'Welsh county' (*comitatus Wallensium*) of Carmarthen, and Is Coed that formed the county of Cardigan. Jurisdiction was exercised through a county court, its suitors being in large part the landowners of the commotes under immediate royal lordship. But at Carmarthen the suitors included the lords of the lordships in south-west Wales – Llansteffan, Laugharne and Cydweli among them – that were held of the crown and deemed to owe suit to the county court.[123] Still more pertinent to this study, the princes who exercised lordship in Ystrad Tywi and

[118] For the *buzones*, ibid., 22; G. T. Lapsley, *Crown, Community and Parliament in the Later Middle Ages* (Oxford, 1951), 63–110; for Cheshire, Palmer, *County Courts*, 58–67.

[119] *Radulphi de Hengham Summa,* ed. W. H. Dunham (Cambridge, 1932), 14; authorship and date of composition, probably 1260–72, are discussed in Brand, *Making of the Common Law,* 369–91.

[120] John S. Beckerman, 'Procedural innovation and institutional change in medieval English manorial courts', *Law and History Review*, 10 (1992), 197–251; idem, 'Towards a theory of medieval manorial adjudication: the nature of communal judgements in a system of customary law', *Law and History Review*, 13 (1995), 1–22; Maureen Mulholland, 'The jury in English manorial courts', in *Dearest Birthright*, 63–73.

[121] J. Beverley Smith, 'The "Cronica de Wallia" and the dynasty of Dinefwr', *BBCS*, 20 (1962–4), 261–82.

[122] J. G. Edwards, 'The early history of the counties of Carmarthen and Cardigan', *EHR*, 31 (1916), 90–8; Griffiths, *Principality of Wales*, 1–2, 6–8.

[123] Ibid., 14–17.

Ceredigion were constrained to acknowledge that they and their men were justiciable at the county courts. In 1248 Rhys Fychan of Ystrad Tywi consented to receive justice 'in the king's court before Nicholas de Molis in the king's county of Carmarthen' (*in curia regis coram Nicholao de Molis in comitatu regis de Kermerdyn*), and, while he was assured that his men would be impleaded by Welsh law, subsequent reassurances to the same effect suggest that some difficulty was encountered in establishing a judicial order that set the anxieties of the princes at rest.[124] It is perfectly clear that, between 1241 and 1257, the princes of Deheubarth and their men were justiciable before the king's steward at one of the two county courts. After a hiatus between 1257 and 1277, when Llywelyn ap Gruffudd's authority confined the sphere of royal justice to the commotes that formed the royal demesne, the crown's jurisdiction was extended once more, and made more immediate, by the annexation to the counties of the commotes of Ceredigion in 1277–82 and Ystrad Tywi in 1287.[125] By then royal justice was exercised over a wide area of Deheubarth by means of the county court and the commote court, but the subject matter of this study requires that particular notice be taken of the first phase of royal intervention in 1241–57 and the introduction of a county court.

The practices of the county courts of Carmarthen and Cardigan were based on those of the county courts of England, procedures well established in south-west Wales long before the county courts were set up in the northern counties by the Statute of Wales of 1284.[126] The courts of the southern counties could meet before the sheriff or the royal steward, an officer known from 1280 onwards as the justice.[127] The justice was empowered to hear a wide range of pleas initiated by writs made in accordance with the forms provided in a Register of Writs, and his jurisdiction included the pleas of the crown.[128] The courts' jurisdiction was thus more extensive than that of a normal English county court with, in some respects, a closer resemblance to the county court of Cheshire.[129] There the justice of the earl of Chester presided, with the sheriff fulfilling a subordinate role closely comparable with that of his counterpart in south- west Wales. But whereas at Chester judgement was entrusted to a group of judges (*iudices* or *iudicatores*) drawn from within the body of of the suitors,[130] no comparable formally defined group of *iudices* emerged in the county courts of south-west Wales. Judgement was exercised by the suitors (*sectatores*), though in practice, as we shall notice later, responsibility for important transactions may have been taken by persons of substance in the community

[124] *Calendar of Close Rolls, 1247–51*, 113; J. Beverley Smith, 'The origins of the revolt of Rhys ap Maredudd', *BBCS*, 21 (1964–6), 151–63.

[125] Griffiths, *Principality of Wales*, 3–6; Smith, *Llywelyn ap Gruffudd*, 91–5, 418–2, 520–6. The position in those lands in Deheubarth not under immediate royal lordship but whose princes were under the crown's jurisdiction in 1277–82 is illustrated in a statement by Rhys Wyndod, made before royal justices during an action brought against him by John Giffard, that he should receive justice, not before the justices, but in the county court of Carmarthen and by Welsh law (ibid., 489–90, citing *WAR*, 290). The statement describes the position created in the period 1241–57.

[126] Below, pp. 95–7.

[127] Griffiths, *Principality of Wales*, 19–20.

[128] A case brought to the King's Bench from Carmarthen in 1288 illustrates the use of a Register of Writs at Carmarthen: *Select Cases in the Court of Kings's Bench under Edward I*, ed. G. O. Sayles, i, Selden Society (London, 1972), no. 115. A Register of Writs was kept at the Carmarthen exchequer.

[129] Palmer, *County Courts*, 57–9; court procedure is described in detail in a memorandum enrolled on the Cheshire court roll in 1325, quoted ibid., 62.

[130] Ibid., 72–4, where the judges are stated to be drawn from among the bailiffs of the major tenants who owed suit and who were allowed to supply an attorney in their place. *Hengham Magna*'s emphasis on the role of the suitors rather than the sheriff in giving judgement is noticed above, p. 84. Palmer, *County Courts*, 18, notes that, though there is no doubt that the suitors judged, the court rolls seldom explicitly state that they made the judgement, a matter noticed in other connections, below, pp. 91, 95–6.

or by their attorneys.[131] A record of the county court of Carmarthen sent *coram rege* in 1289, when an assize was heard before Robert Tibetot, justice of west Wales, in the county court, states that 'the suitors of the county shall judge' (*sectatores comitatus adiucent*).[132] Even when justices of the King's Bench were assigned to hear a plea at Carmarthen, they did so along with the suitors of the court.[133] From the early fourteenth century the justice heard cases in sessions held separately from the county court, a departure that may have been designed to obviate the constraints of the county court procedures, but until then the county court had provided the main instrument of royal justice in south-west Wales.[134]

Collective judgement was thus a feature of legal practice under royal jurisdiction in Deheubarth from 1241, and it would be reasonable to envisage the possibility that communal responsibility, known to have been the practice of the commote courts of the province forty years later, reflected an influence that stemmed from the county courts.[135] This may have been combined, as we shall notice later, with an influence to the same effect stemming from the great marcher lordships of south Wales. At Carmarthen judgement was given by the suitors of the 'English county' in the commote of Derllys and those of the 'Welsh county' in Elfed and Gwidigada. These were essentially commote courts with a judicial function no different from that of the other commote courts of Ystrad Tywi that remained under the princes' jurisdiction, and similarly in Ceredigion, and the men of these other commotes were themselves justiciable at the county courts and consequently familiar with their procedures. It is conceivable, on the basis of indications examined already, that influences at work within the indigenous judicial order itself tended towards a strengthening of a collective responsibility for judgement, and the respective effect of native and intrusive influences would be exceedingly difficult to disentangle. The responsibility of the *henaduriaid gwlad* to provide the *sententia* on which a judgement would be based, already noticed as a feature of the practice described in Latin A and *Llyfr Cyfnerth,* may reflect a stage in a process of change in which various influences combined.[136] It is by no means inconceivable that the conception of a *dedfryd gwlad* to which this practice relates reflects something of the judicial practice that prevailed in the royal courts of Deheubarth from 1241. The change that occurred in the following forty years, whether initiated by the influence of the royal courts or encouraged thereby, was certainly of an order of magnitude that required a radical restatement of the procedure of the commote court in relation to judgement. The redaction represented by Latin D was conceived to meet this need. The need would have arisen first in cases of judgement by Welsh law in the 'Welsh county' of Carmarthen and the county court at Cardigan, and it would then have spread to the commotes that remained under the jurisdiction of the princes until, as we know, the shift to collective judgement had been completed.

The need for an authoritative exposition of the principles and practice by which judgement was given under the law of Wales may have required, in the first instance, the preparation of a Latin text for the use of those who dispensed justice under royal lordship. Study of the earliest surviving exemplar in Rawlinson MS 821C suggests that Latin D represents an innovative redaction from which the Welsh texts of *Llyfr Blegywryd*

[131] For instances of attorneys of major tenants acting in the county courts of Carmarthen and Cardigan, below, p. 100.

[132] PRO, KB 27/114, m. 23.

[133] *CWR*, 306.

[134] For the justices' sessions after 1300, Griffiths, *Principality of Wales*, 22–3.

[135] Above, p. 82.

[136] Above, pp. 80–1.

were subsequently derived.[137] But a judicature comprised of judges by privilege of land would have required authoritative exposition in the Welsh language from a very early date. Latin D has extensive passages in the Welsh language, and this is conspicuously the case in the sections on judges and judgement, already perhaps an indication that the initial need for redaction in Latin was being superseded by the compelling need for the texts in Welsh which the several manuscripts of *Llyfr Blegywryd* then provide.[138] The *lex scripta* on which the non-professional dispensers of justice had to rely had to be available in the language of discourse in the courts themselves. The survival ratio of Latin and Welsh texts itself suggests very strongly an early supersession of Latin texts by those in the Welsh language.[139] While the earlier texts of *Llyfr Blegywryd* adhered quite closely to the substance of Latin D, later texts in the same tradition, manuscripts which, as we have seen, reach the apogee of their development with BL, Add. MS 22,356, reveal a sustained development in indigenous jurisprudence for which Welsh was the essential medium, with the sections on judgement reflecting a particularly pronounced elaboration.[140]

The precise chronology of the process of redaction cannot be established from the suriviving texts. The manuscript that embodies the only known medieval text of Latin D, Rawlinson MS 821C, is attributed by Hywel D. Emanuel 'to the close of the thirteenth century or the early years of the fourteenth century', with a date *c.*1300 still a favoured estimate.[141] This manuscript is not considered to be the archetype of the redaction, and Emanuel conveyed that there was no reason to believe that composition was much earlier than the date of the known manuscript.[142] Historical considerations suggest that the juridical needs that were met by the making of this redaction were present in Deheubarth in the period that began with the introduction of the county courts in 1241 and the process of change that saw the establishment of collective judgement in the commote courts was complete by 1281. There is thus good reason to conclude that the original redaction of Latin D may be attributed to the period 1241–81. A chronology of redaction can only be established from further textual study of the surviving exemplar, informed by the broader historical considerations broached in this study, and one potentially indicative feature may be instanced briefly.

[137] Hywel D. Emanuel, 'The Book of Blegywryd and Ms Rawlinson 821', *CLP*, 161–70; also for the texts of Deheubarth, Dafydd Jenkins and Morfydd E. Owen, 'Welsh law in Carmarthenshire', *Carmarthen Antiquary*, 18 (1982), 17–27 (p. 19).

[138] Cf. *LTWL*, 60. The legal matter that reflects the practical needs and experience of the courts may be set beside the other categories of new material that reveal the redactor's knowledge of contemporary legal thought and ecclesiastical influence (above, n. 85). The truly creative impetus certainly came from the practical needs of the courts, with the composition of the Latin redaction possibly undertaken by a person in holy orders or conceivably in monastic orders.

[139] Rawlinson Ms C 821 is the only known medieval manuscript of the Latin D redaction.

[140] For 'S', Ll. B. Smith, 'Cannwyll disbwyll a dosbarth', 244–6; Christine James, 'Tradition and innovation', 149–55.

[141] *LTWL*, 70. The Rawlinson MS is described as 'a developed Gothic book-hand of the late thirteenth or early fourteenth century', and as 'a book-hand circa 1300', with the probability of a monastic provenance (*LTWL,* 294–5). A date *c.*1300 is indicated in Daniel Huws, *Medieval Welsh Manuscripts,* 58. Emanuel conveyed that 'there is no reason to believe that the date of composition of this version was much earlier than this period' and expressed the view that 'Redaction D was compiled in the fourth quarter of the thirteenth century' (*LTWL*, 70, 72).

[142] Palaeographical dating needs to allow a margin of some twenty years either side of any notional date (Huws, *Medieval Welsh Manuscripts,* 48, grouping manuscripts in half-century brackets, conveys that 'palaeographical judgement … cannot do better than this'). Textual and historical considerations, taken together, appear to suggest composition before 1281, the date suggested by the inquiry of that year, with the periods 1241–57 and 1277–81 being those, within the forty-year span, when the requirements of the commote courts would need to have been met by a redaction comparable to Latin D.

The occurrence of the term *dedfryd gwlad* has been noticed at an earlier stage in the discussion.[143] Described briefly in Latin A and *Llyfr Cyfnerth* and at greater length in Latin D and *Llyfr Blegywryd*, the term embodied a conception of the *sententia* of the *henaduriaid gwlad*. The *dedfryd gwlad*, the basis on which judgement was founded, lies at the heart of the entire process of judicial development in Deheubarth in this period. But the *dedfryd gwlad* has a further interest by virtue of its depiction as a means by which the court could resist the unjust power of the secular authority. It was by a *dedfryd gwlad* that a court could withstand an action brought by a king's oppression.[144] The text explicitly states that it was by a *dedfryd gwlad* that a person alleging an oppression by the king, or someone acting on his behalf contrary to law, could secure right. It was in this way that a subject could secure a verdict 'against the power of a lord'.[145] The historical circumstances to which this forceful phraseology might be attributed lie beyond the bounds of the present study, and an errant lord might conceivably be a Welsh prince no less than an English king. Yet there are well-documented instances of tension between the king's government and the communities of the commotes of Deheubarth at intervals between the early signs of tension about 1248, in the years following the extension of royal jurisdiction over the commotes, and the clear expressions of concern in 1322 when, in reaction to the oppressive regime of Roger Mortimer as the king's justice of Wales during the previous years, the communities made a resolute statement that embodied an explicit assertion of their right to the law of Hywel Dda.[146] These instances may not resolve the questions that arise in considering the chronology of legal redaction, but taken together they may reflect the ambience in which the writing was undertaken. They may suggest that, if the precepts of royal justice may help to explain the development of collective judgement in Deheubarth, the vesting of the power of judgement in the adventitious judges by privilege of land was itself a factor in the processes by which the relationship of crown and community was formulated in a manner that took account of the anxieties of those subject to royal government.[147] Political and juridical considerations combined to inspire in Deheubarth a new era in the history of Welsh jurisprudence unequalled in any other province that acknowledged its allegiance to the law of Hywel Dda.

The redactor of Latin D, when he drew a distinction between the judicatures of the provinces of Wales, associated Powys with Gwynedd as a land where the professional judgement of the *ynad* prevailed.[148] In this study, however, the evidence for Welsh professional judgement, derived from law texts and records alike, has been drawn entirely from Gwynedd. No reference has been made to Powys, and investigation is undoubtedly made more difficult by the fact that law texts that may with certainty be associated with judicial practice in Powys are not readily identified. Throughout the thirteenth century, moreover, Powys formed two distinct principal entities, Powys Fadog, or northern Powys, and Powys Wenwynwyn, or southern Powys, lordships ruled by separate lineages and characterized by a markedly different political orientation, and the problems of judicial practice in the two lordships are best considered by taking them severally. This will make it easier to examine the widely different documentation for the two areas, not least the

[143] Above, p. 82.
[144] *LTWL*, 357. 41–2; *Bleg*, 124. 13–14.
[145] *Bleg*, 130. 3–10, not in Latin D. For *cof llys* and *dedfryd gwlad*, *LTWL*, 396. 6–9; *Bleg*, 129. 26–30.
[146] Smith, 'Origins of the revolt of Rhys ap Maredudd', 152–3; idem, *Llywelyn ap Gruffudd*, 62, 91–2; idem, 'Edward I and the allegiance of Wales', *WHR*, 8 (1976–7), 139–71 (pp. 161–3).
[147] Below, pp. 101–2.
[148] Above, p. 63.

availability of testimony from Powys Wenwynwyn presented to the commission of 1281 and the absence of anything comparable for Powys Fadog.

Witnesses from southern Powys stated that in Arwystli and Cyfeiliog judgement was made by the court.[149] They thereby took a position entirely contrary to that which Llywelyn ap Gruffudd had recently urged in insisting that in these lands justice was dispensed by an *ynad*.[150] These were the very lands that lay at the heart of the action against Gruffudd ap Gwenwynwyn that he had brought before the royal justices, the great cause which had prompted Edward's decision to appoint the commission of inquiry itself. Collective judgement by the suitors of the court, with the truth established by inquisition, was said to be likewise the practice in Ceri and Cydewain and indeed throughout Powys Wenwynwyn and its confines.[151] Whether this form of collective judgement was of recent origin in the province, as the redactor of Latin D implicitly conveys in insisting that the *ynad* provided for judgement in Powys, is very difficult to estimate from the available evidence. No particular circumstances comparable to those that have been cited to explain the development of collective judgement in Deheubarth may be recognized in Powys Wenwynwyn and, as we have seen, juristic testimony indubitably linked with the province is difficult to identify.

Yet we have from Powys Wenwynwyn an extremely rare instance of an early thirteenth-century documentary record of proceedings over hereditary right in land in Arwystli.[152] The dispute was resolved in procedings at Llandinam, over which the lord of Cydewain presided at the request of Llywelyn ap Iorwerth, lord of Arwystli, on a day given to resolve the case (*causa*) 'by the decision of good men with knowledge of the law of the land' (*ad arbitrium bonorum uirorum et iura terre illius scientium*). Twenty-four arbiters (*arbitri*) called *datuerwer* drawn from the 'better men of Arwystli' (*de melioribus uiris Arwistili*) examined the case and gave a decision (*arbitrantur*) that the plaintiffs had no right in the land. Their decision (*arbitrium*) was rejected by the plaintiffs who then, in the course of further proceedings, consented that twenty-four of the *optimates* of Arwystli should decide on their right in the lands, but a second adverse decision was again rejected They requested that their case (*causa*) be determined by the judgement (*iudicium*) of *sapientes* of Arwystli, who included Cynyr ap Cadwgan and two other named persons, as well as other *sapientes et discreti* from other territories (*de aliis prouinciis*) who came to the same judgement (*iudicium)*.[153] The case was conducted under the authority of a secular lord, but the procedure cannot be readily recognized as a legal judgement in court with affinities to the processes described in the juristic texts. Nor does the phraseology of the record allow any clear distinction between arbitrament and judgement in the decisions reached. Certainly, the case was determined by the collective action of men with knowledge of the facts of the case and the law of the land, rather than by men engaged to do so by virtue of their status as professional practitioners forming a bench of *ynaid* or *brawdwyr*. But neither did the decision come from the suitors of a court, and the

[149] *CWR*, 208–9.

[150] *CWR*, 195; below, p. 90.

[151] *CWR*, 206, 209.

[152] *The Charters of the Abbey of Ystrad Marchell*, ed. Graham C. G. Thomas (Aberystwyth, 1997), nos. 64, 65; discussion ibid., 19–23, 36; Stephenson, *Thirteenth Century Welsh Law Courts*, 10–14; Davies, '*Ynad cwmwd*', 260–1.

[153] The editor renders *sapientes* as 'judges' and the *alii sapientes et discreti* as 'other wise and discreet men'. The terminology of the record is not easy to translate and it may be best to retain the Latin terms in this discussion.

relationship between these transactions and later court practice is far from clear. Llywelyn ap Gruffudd's statement in 1281 that the sons of Cynyr ap Cadwgan[154] were *ex officio* judges, that is, *ynaid*, in Arwystli and Iorwerth Fychan likewise in Cyfeiliog was emphatically contradicted by witnesses from the lands themselves, who maintained that the men called *ynaid* had never judged but were known by that name because they went to Gwynedd to learn the law of Hywel Dda.[155] The s*apientes* of Arwystli may conceivably have been lawmen, or the juristic affines of the *henaduriaid gwlad* of the courts of Deheubarth, or the antecedents of those known to be giving collective judgement in Powys Wenwynwyn by 1281. It is exceedingly difficult to determine whether the case heard before Maredudd ap Robert provides any indication of the judicial procedures to which litigants would be subject in the courts of Powys Wenwynwyn in the early thirteenth century, and the collective decisions are more readily placed in an arbitrative rather than a curial context. Neither the nature nor the chronology of any process of change can be clearly discerned, and certainty is reached only with the evidence of the witnesses who in 1281 maintained, in direct contradiction of the prince of Wales, that collective judgement prevailed in Powys Wenwynwyn.

No comparable testimony was taken from Powys Fadog, the northern portion of the province soon to form the lordships of Chirk and of Bromfield and Yale, but the survey of the latter lordship completed for Richard, earl of Arundel, in 1391 provides an extensive exposition of marcher legal procedure.[156] It includes a text of a set of seigniorial ordinances in which the Statute of Wales of 1284 was adapted to the requirements of English and Welsh law in the lordship of Bromfield and Yale and it diverges from the royal statute in several important respects.[157] The Arundel Statute is none the less at one with the royal ordinances in affording the jury a central role in judicial process.[158] Indeed, it enhances the jury's sphere in relation to unwritten covenants and provides that, in actions on moveable property, cases that could not be proved by witnesses who saw and heard would go to a jury rather than to compurgation.[159] At the same time inquisition *per patriam* was firmly linked with judgement by the *sectatores* of the court. Explicitly stated in the discussion of dower – *secundum veredictum patrie procedetur ad iudicium* – the verdict (*veredictum*) of the jury was the basis for the judgement (*iudicium)* of the suitors who are known in both lordships as *iudicatores*.[160] Informed by the exposition in the Arundel

[154] For Cynyr ap Cadwgan, *Charters of Ystrad Marchell*, 36; D. Jenkins, ' Family of Welsh lawyers', 123; Stephenson, *Thirteenth Century Welsh Law Courts*, 13; Davies, '*Ynad Cwmwd*', 264–5. The attribution of legal writing to Cynyr ap Cadwgan is made in Wynnstay 36 ('Q'): see Pryce, *Native Law and the Church*, 33–5.

[155] *CWR*, 195, 208; Smith, *Llywelyn ap Gruffudd*, 484–5.

[156] BL, Add. MS 10, 013. The Arundel Statute may be derived from seignorial ordinances of the period of the Warenne lords, possibly from an early date after the conquest. The text is followed by a valuable anthology of pleas taken from the court rolls; several cases from this text and from another collection in NLW Peniarth MS 404 are cited in the discussion that follows in what is necessarily no more than an illustrative sample of cases.

[157] Variations from the Statute of 1284 cannot be noticed extensively in this study, but they include provision that those holding in Welsh tenure had recourse to two land actions, namely novel disseisin and a plea of right (f. 5–5^{v}), below, p. 101; that succession by bastard sons along with legitimate sons was permissible by *cynnwys* upon the lord's specific licence (f. 7); and that male collateral succession was preferred to succession by females in default of lineal male heirs (f. 7).

[158] Add. MS 10, 013, ff. 7–8; for the jury in the Statute of 1284, below, pp. 95–6.

[159] Add. MS 10, 013, f. 8; *SR*, i, 68; *Statutes of Wales*, 16 (c. 14).

[160] For the *iudicatores*, below, pp. 91–2.

Statute, the record of court proceedings from Bromfield and Yale and Chirk provides an insight into procedure under collective judgement with a bearing on an understanding of practice over a wide area of the march of Wales.

The court rolls present terminal judgement in various forms, on occasion registering a *iudicium* by the suitors on the basis of a *veredictum* of a jury, otherwise simply recording the verdict with the consequential terminal judgement indicated by a brief *ideo consideratum est*.[161] Alternatively, an entry might record a verdict given at the request of one or both parties for an inquisition *ex officio,* without explicit record of a judgement.[162] Parties in litigation might, however, choose not to go to inquisition but directly to the judgement of the suitors of the court, often on matters of legal principle or in procedures that required knowledge of the law and custom of the *patria*. Thus, 'the whole court gave in judgement' (*tota curie dat pro iudicio)* that a particular course was appropriate in appeals for felony,[163] or specified the circumstances in which a defendant had a right to *hawl disyfyd* in pleas of land.[164] The 'whole court' or 'the whole community' might resolve the status at law of a tenant who had sold his land and that of a son of a tenant who had done so.[165] A party might request the judgement of the suitors, often upon payment of a fine to the lord, on the facts of a case either with or without reference to custom. A case on the liabilities of bastardy brought by the lord was resolved in the defendant's favour by a judgement of the suitors founded on the ancient custom of the lordship (*ex antiqua consuetudine patrie*), though the lord demurred.[166] The personal predicament of Gwerful ferch Grono raised an issue of principle resolved by a judgement of the suitors that a woman first married to a freeman, but who subsequently married a bondman from whom she was then separated by the decree of the ecclesiastical court, remained a free person.[167] The selection of pleas appended to the Arundel Statute often cite cases that reflect a point of legal principle or procedure, but the court rolls of both Arundel lordships contain numerous instances of straightforward decisions tersely recorded as the judgements of the suitors of the courts.[168] Mid-fifteenth-century rolls frequently provide a more extended record which might tell that, called to give judgement, the suitors did so through their speaker (*tafod*), Ieuan ap Dafydd ap Madog.[169]

The evidence from these lordships is sufficient to establish that when 'a decision of the court' is recorded (*consideratum curie est*) judgement was given by the suitors, possibly upon the verdict of a jury. It is explicitly stated on occasion, noticeably in cases of outlawry, that judgement was the outcome of agreement between suitors and the steward of the court, a feature also of the court rolls of the neighbouring lordship of Whittington noticed presently.[170] It may be surmised that in practice decisions of the court were often made by agreement of suitors and steward, its normality suggested by the arrangements that were made when agreement was not possible. For in both Arundel lordships erroneous judgement alleged against the *iudicatores* of the court, either by a disaffected litigant or by the steward on the lord's behalf, went to a 'high court' (*uchel lys*) formed by

[161] NLW, Peniarth MSS, 404, f. 44; PRO, SC2/226/17, m. 2; Add MS 10,013, f. 174^{v}.

[162] Add. MS 10, 013, f. 171a. The inquisition *ex officio* is also used in Chirk with, on occasion, a specific note of the jury's *veredictum* entered with the *iudicium* of the *sectatores* (NLW, Chirk Castle, D 65, 66, 69, 70).

[163] Add. MS 10, 013, f. 172–172^{v}.

[164] Add. MS 10, 013, f. 177.

[165] Add. MS 10, 013, f. 173^{v}.

[166] Add. Ms 10, 013, ff. 176^{v}–7.

[167] Add. Ms 10, 013, f. 174.

[168] For example, SC2/226/33, mm. 3, 4, 74 (Bromfield and Yale, 1447–50); Chirk Castle 65, 70 (Chirk, 1349–50, 1367–8).

[169] SC2/226/33, m. 8 (1447–50); cf. SC2/226/34, m. 1 (1455–6).

[170] For example, Chirk Castle, D 77 (1504); for Whittington, below, p. 101.

summoning the suitors of two adjacent raglotries or commotes under the lord's jurisdiction, and in confirmed cases of error the commote would be fined 50 marks or the cantref 100 marks.[171] The lord agreed, at the behest of the Welsh community of Bromfield and Yale, that in a judgement given in ignorance, or through imperfect understanding of law and custom, the suitors would not be arraigned, but would take advice on the process and have an opportunity to correct their judgement, with the *uchel lys* delayed to the next court to affirm or annul the judgement.[172] In accordance with these precepts, a pledge by the defendants against the suitors of the court of Rhiwabon took an action to a combined session of the courts of Merford and Iâl at Holt to be affirmed as a practice consistent with the custom of the *patria*. Still disaffected, the defendant gave a further pledge against the suitors of the *uchel lys* to take the case to the lord's council.[173] A litigant in a commote court could alternatively take an action directly to council,[174] and the suitors of the *uchel lys* could similarly go to council for affirmation, while a judgement challenged on the lord's behalf might be taken to *uchel lys* or directly to council.[175] The three-tier judicial process in the Arundel lordships bears comparison with the procedures in the royal counties of south-west Wales, with, in each case, the lord's council bearing responsibility as the ultimate judicature.

The documentary record of the lordships of Powys Fadog thus provides an unusually detailed depiction of a highly developed form of collective judgement but, in the absence of testimony for northern Powys comparable to that which we have for its southern part in 1281, it remains to be considered whether the collective practices we have examined were already established by that time and endorsed by the new seigniorial authorities, or whether these practices were introduced under the auspices of the marcher lords in the immediate aftermath of conquest. The precepts adopted by the crown in Gwynedd Uwch Conwy, noticed presently, were certainly closely replicated in Powys Fadog. More immediately, account may be taken of the record of proceedings in two cases from Powys Fadog, heard before the royal justices in 1277–81, that suggest that the years immediately preceding the conquest may well have been a period of transition in judicial practice in the area.

Each of the two cases concerns dispute among the princes of the lineage of Powys Fadog over the distribution of patrimonial lands. Owain ap Gruffudd and Gruffudd Fychan, sons of Gruffudd ap Madog (d. 1269), seeking to revise the territorial arrangements previously made, urged that by Welsh law a litigant would offer proof before a judge (*iudex*), chosen by agreement to judge the case by virtue of his knowledge of Welsh law and custom.[176] The claimants were in fact seeking judgement by 'the law called *cyfraith*' that they claimed as defendants in another case heard before the justices at this very time.[177] Their request that a judge be assigned was not countenanced by the royal justices

[171] Add. MS 10,013, ff. 7^{v}–8; *The Extent of Chirkland 1391–1393*, ed. G. P. Jones (Liverpool, 1932), 60.

[172] Add. MS, 10,013, f. 8.

[173] Peniarth MS 404, f. 43^{v}; cf. Peniarth 404, f. 67, actions taken to the 'common court of Bromfield' or the 'common court of Merford and Iâl', but not to council; Peniarth 404, f. 66, a case taken to council.

[174] Peniarth MS 404, ff. 58^{v} (1403), f. 66 (1424).

[175] *Uchel lys*: judgement of the suitors of Iâl in 1389 that a person indicted by an inquisition *ex officio* of the death of a bondman should not be punished in Bromfield for a felony committed in the county of Flint if, in accordance with law and custom, he made fine for his offence; decision was affirmed by the *uchel lys* of Merford and Wrexham at Holt and then taken to council (Peniarth MS 404, f. 43). Council: NLW, Wynnstay MS 1307, a transcript of the survey of Bromfield and Yale 1391, supplying a lacuna in Add. MS 10, 013, ff. 176^{v}–9; Peniarth 404, f. 57: cases in which an issue was put to a jury and resolved on a pledge of 5s. 'ad predictum iudicium revertendum'.

[176] *WAR*, 247.

[177] *WAR*, 257; the close similarity between the legal procedure in this case and the situation depicted in

who held that the authority that the king had bestowed upon them did not extend to the delegation of jurisdiction to others. The litigants' request, made in November 1277 at an early stage in the proceedings before the justices, anticipates the claim to judgement by an *ynad* made by Llywelyn ap Gruffudd in the action that he brought against Gruffudd ap Gwenwynwyn over Arwystli, with once more an explicit demand that the case proceed 'by the law which is called *cyfraith*'.[178] It was a demand that Edward I was determined to resist, though political constraints were such that he eschewed an explicit rejection of the prince's proposition.[179] The issue of judgement under Welsh law came before the justices again three years later when Llywelyn ap Gruffudd ap Madog, himself one of the heirs to Powys Fadog and a defendant in the earlier case, insisted that a claim to the inheritance should be resolved in accordance with Welsh law by 'trustworthy persons' (*fidedigniores)* of the *patria* 'as in place of an *ynad*' (*quasi loco eygnad*).[180] Once more the notion of an *ynad* as the means to judgement by Welsh law is advanced, except that in this case *fidedigniores* of the land would be entrusted with the charge in place of the *ynad*. When the justices now pertinently asked whether it was envisaged that the *fidedigniores* would establish the truth of the matter in the form of a *veredictum,* Llywelyn said that they would deliver not a *veredictum* but a *iudicium,* and he did so in disregard of the justices' known concern that their jurisdiction should in no wise be delegated to others. It will be recalled that in Gwynedd Is Conwy in 1281 legal procedure before the *ynad* was depicted as a process 'by the law called *cyfraith*', with a clear indication that, as an alternative means of proceeding, an action might be determined by the verdict of a jury.[181] Whether those alternative processes were exactly replicated in Powys Fadog is uncertain, for the procedure leading to a decision by *fidedigniores* is not altogether clear, but a change to collective judgement seems to be indicated. The evidence of the fourteenth century that has been examined certainly indicates that collective judgement was well established in Powys Fadog and that a comparable form of decision-making was practised in Powys Wenwynwyn. The broad significance of the juridical arrangements that may be identified in Powys and Deheubarth, and the process of change that the evidence appears to indicate, will now be considered.

The interpretation suggested by the evidence examined in this study envisages that, by the late thirteenth century, in the provinces of both Powys and Deheubarth, a form of collective judgement was established in which responsibility rested with the suitors of the court. A communal responsibility for judgement, it is argued, superseded the professional judgement that is represented most clearly in the depiction of the *ynad* in the legal redactions associated with Gwynedd. The shift to collective judgement revealed over extensive parts of Wales thus envisaged would have occurred in a period when, as historians have frequently emphasized, the trend in western Europe lay towards an increased role of professional judgement.[182] Several lands, where collective judgement had hitherto prevailed, saw the growth from the mid-twelfth century onward of a 'professional law'

the evidence from Gwynedd Is Conwy in 1281 is illustrated in the insistence of the claimants that the land was 'recent seisin' and that it was not for that reason fitting to proceed by 'the law called *cyfraith';* above, p. 71.

[178] *WAR*, 264–5; Smith, *Llywelyn ap Gruffudd*, 482–3.

[179] Ibid., 483–9.

[180] *WAR*, 318.

[181] Above, pp. 71–2.

[182] Reynolds, *Kingdoms and Communities*, 51–9, sees some 'erosion' from the mid-twelfth century, collective judgement being placed under 'acute threat' by the development of royal jurisdiction (p. 55).

whose practitioners, in the judiciary and related legal vocations, carried the authority and the sanctions of a monarchy that exercised greatly increased power.[183] It is generally agreed, as has been indicated already, that the trend is conspicuously represented in the development of the central courts of the realm of England and their common law processes.[184] Reflecting this emphasis, the judicial order that was established in the lands previously ruled by the Welsh princes has been seen as a provision largely determined by the introduction, through royal statute and seigniorial ordinance alike, of the 'professional law' that now characterized the dispensation of justice in England.[185] The broad thrust of this argument cannot be questioned as a feature of the exercise of lordship in late medieval Wales. There is no doubt, however, that in relation to the particular and vital issue of judgement, the immediate post-conquest period saw collective dispensation of justice being extended or consolidated over very extensive parts of the land that now lay under the jurisdiction of either royal or marcher powers. A 'professional law' cannot be said to be the sole characteristic of the judicial practices that may be recognized in the courts of Deheubarth and Powys in the post-conquest period. In the case of Deheubarth royal policy, represented by the introduction of the county court, has already been seen as an influence conducive to the development of collective responsibility.[186] It would then be appropriate to conclude the present exploration by further consideration of the juridical situation that prevailed in Gwynedd Uwch Conwy in the post-conquest period and to do so for two closely related reasons. First, Gwynedd Uwch Conwy, as we have seen already, was the province where the professional judgement vested in the *ynad* is best reflected in the surviving evidence. Second, this was the area where the judicial order envisaged by Edward I for his conquered lands is most clearly revealed in its formal promulgation in the Statute of Wales of 1284. Moreover, royal edict and the practice that ensued created a potentially powerful influence on judicial practice in the lands in Gwynedd Is Conwy and Powys Fadog that came under marcher jurisdiction in this period. Was the professional judgement that characterized Gwynedd under indigenous rule replicated by a new form of 'professional law' introduced under the auspices of the crown, or does the evidence lead to a different conclusion?

Gwynedd Uwch Conwy, in its new guise as the Principality of North Wales, consisting of the three counties of Anglesey, Caernarfon and Merioneth, was certainly placed under the authority of a justice who carried plenary responsibility for the exercise of royal jurisdiction in the land, with the justice of Chester providing a comparable authority over the county of Flint to which royal edict applied in equal measure.[187] In North Wales the main instrument of royal jurisdiction was the justice's sessions, and its judicial processes were

[183] The term is used in idem, 'The emergence of professional law in the long twelfth century', *Law and History Review*, 21 (2003), 347–65, noticing (pp. 361–5) in England a professionalism that owed less to Roman or canon law than to the need that arose from 'the greater complexity of practice in the royal courts'. Paul Brand, 'The English difference: the application of bureaucratic norms within a legal system', ibid., 383–7, commenting on Reynolds's brief reference to judges, emphasizes that the greater complexity of the judicial order in England depended on the presence of 'professional' judges. It would be prudent to notice that the differentiation between 'professional' and 'amateur' judgement, to some extent reflecting a conceptual distinction between central and local dispensations, is itself a matter of continuing discussion and refinement, reflected in Anthony Musson, 'The role of amateur and professional judge in the royal courts of late medieval England', in Mulholland and Pullan, *Judicial Tribunals*, 37–57 (above, n. 20), and in several contributions cited.

[184] Above, p. 83.

[185] Davies, '*Ynad cwmwd*', 261.

[186] Above, pp. 84–6.

[187] W. H. Waters, *The Edwardian Settlement of North Wales in its Legal and Administrative Aspects* (Cardiff, 1935), 9–14.

defined in the Statute of Wales, the text also providing exemplars of the writs to be used to initiate actions.[188] In the trial of personal actions and covenants, for instance, the writ initiated a process before the justice whereby, if a defendant were to default or acknowledge his debt, he would be directly subject to judgement, while a denial of debt brought judgement in accordance with the verdict of a jury. Procedure in personal trespasses and land actions are described in comparable manner,[189] and the practical application of these precepts is reflected in the surviving court record, with judgement vested in the justice as the presiding officer of the court. The office was almost invariably entrusted to a royal servant or a baronial figure, and it was only very exceptionally that the justice would be drawn from the upper echelons of the English judiciary. William de Shareshull or David Hanmer in the fourteenth century were among the few instances of judges of the Westminster courts who were appointed to hear pleas in North Wales.[190] At its highest level, even so, the judicial order introduced into the Principality of North Wales reflected the 'professional law' of contemporary English practice, and the Caernarfon exchequer provided the services, in the provision of writs, the preparation of documents and the making of a record of the court, that facilitated the judicial work. At the heart of the entire order lay the professional judgement of the justice, who dispensed judgement and often did so upon the verdict of a jury, but it has to be emphasized that this was only one aspect of the provision made by the Statute of Wales.

The royal ordinances provided also for a county court and the continued existence of the commote court in the form of a hundred court. A sheriff, in holding the county court, would hear the presentment of felonies, doing so with the coroner and the suitors of the county.[191] The role of the jury in legal process is clearly stated in the Statute and, though very little is said of judgement, analogy with the shires of England would suggest that judgement would be given by the suitors of the court.[192] This is entirely borne out in the records of proceedings. Court rolls show that many cases were determined by the verdict of a jury with no explicit further record of a judgement. It is clear, however, that a termination reached without a *veredictum* but by a decision of the court (*per consideratum curie*) signified a judgement by the suitors. In the roll of the county court of Anglesey in 1346 the suitors might be given a day to deliver judgement at the next court (*sectatores habent diem ad dandum iudicium ad proximum*), or a judgement deferred to the next court for lack of suitors.[193] Cases heard at a county court were capable of transfer to the sessions held by the justice at the will of the sheriff or a litigant, but the sources studied have not suggested that a judgement revised by the justice left the suitors liable to a fine for their

[188] *SR*, i, 56–66; *Statutes of Wales,* 4–23 (cc. 3–11).

[189] *SR*, i, 65–6; *Statutes of Wales*, 20–3 (cc. 9–10).

[190] Waters, *Edwardian Settlement of North Wales,* 9–14 *et passim,* with list of justices, ibid., 168. Shareshull held pleas in north Wales in 1347 (*Register of Edward the Black Prince*, i (London, 1930), 109–10, 124, 136–7; *Registrum Vulgariter Nuncupatur 'The Record of Caernarvon'*, ed. H. Ellis Record Commission (London, 1838), 133–4; Hanmer, sergeant-at-law and justice of the King's Bench by 1386, was appointed justice of south Wales in 1381 and held pleas in north Wales in 1380 (Griffiths, *Principality of Wales*, 114–15). Neither was appointed justice of north Wales.

[191] *SR*, i, 56–8; *Statutes of Wales*, 4–7 (cc. 3–4); Waters, *Edwardian Settlement of North Wales*, 99–113. The Statute describes the manner in which the county courts and the turn should be held, with a brief statement that bailiffs of commotes should hold their commotes and do justice to parties in suit. For the respective jurisdictions of justice's sessions and county court in personal actions, Ll. B. Smith, 'Statute of Wales', 149–51.

[192] *SR*, i, 64–5; *Statutes of Wales*, 18–23 (c. 8): the text states, in relation to inquest of the country, that 'according to its verdict shall the judgement be' (*per veredictum eius judicetur*).

[193] W. H. Waters, 'Roll of the county court of Anglesey 1346', *BBCS*, 4 (1927–9), 350–1, a text of part of SC2/215/13.

error.[194] Income from fines recorded in the account rolls suggest that the county courts transacted a reasonable amount of business, but litigants may have been more inclined to take their cases to the commote courts where the *ynad* had previously dispensed justice. Here too the decisions of the court were in many cases determined by the verdict of a jury. The roll for Ardudwy in 1325–6 records that Iorwerth Gethin, accused by the community of the township of Llanaber of having kept his stock in the common pasture of the *hendref* after his neighbours had removed theirs to the mountains, was convicted *per inquisitionem*.[195] Specific records of decisions *per consideracionem curie* occur only occasionally, each of the three that occur in the Ardudwy roll being a minute of a woman's refutation of a charge of unchastity, but the rolls of the commote courts of the counties of North Wales and Flint convey that terminations not made upon the *veredictum* of a jury were made by the suitors of the court.[196] From many recorded instances, it is known that the sheriff, rather than the bailiff of the commote indicated in the Statute, was the presiding officer, and judgement is likely to have been resolved in practice by the concurrence of sheriff and suitors.

The *sectatores* of the county and commote courts of the crown lands may remain rather elusive in the sparse record, nor is there any indication of the procedure for the correction of error that marks the judicial order in the lordships of Powys Fadog.[197] There can be no doubt, however, that in both royal courts collective responsibility was reflected in the verdict of the trial jury and the judgement of the suitors of the court. Intimations in the evidence of witnesses before the commission of 1281 that litigants in land actions were already familiar with procedure leading to a *veredictum* of the *patria* suggest that the provisions of the Statute represented no precipitate initiation of new procedures in this respect.[198] At the same time its provision that, in accordance with the wishes of the community, the plaintiff's case in an action on moveables should be 'proved by those who saw and heard it' suggests that it was considered advisable to adhere to a form of proof by witnesses akin to that described in *Llyfr Iorwerth*. The extent to which this mode of proof by witnesses was used thereafter is difficult to judge from the few records of the immediate post-conquest period, though the sessions rolls of the county of Flint contain evidence of its use.[199] The surviving record is sufficient, however, to provide a basis for a firm conclusion on the essential issue raised in this discussion. In the crown lands of North Wales proof by jury was certainly linked with a professional judgement in proceedings before the justice, but in the courts of county and commote, the judicial assemblies to which the overwhelming majority of litigants would take their cases, proof by jury was associated with collective judgement by the suitors. The effect of royal ordinance in the northern counties was not the overall imposition of a 'professional law'

[194] The rolls examined contain no indication that actions were transferred to the justice's sessions by *pone* and *recordari* in the manner by which cases in English counties were removed to the Westminster courts (Palmer, *County Courts*, 141–73). In a rare instance, a case was taken from south Wales to King's Bench in the late thirteenth century (*Select Cases in the Court of King's Bench*, i, no. 115; above, n. 128).

[195] E. A. Lewis, 'The proceedings of the small hundred court of the commote of Ardudwy in the county of Merioneth from 8 October, 1325, to 28 September, 1326', *BBCS*, 4 (1927–9), 152–66, from SC2/227/28, a fuller record than that found in the other court rolls for the several courts of Merioneth in SC2/227/21–36.

[196] The court roll for the commote of Coleshill, Co. Flint, 1437–8, records the termination of cases other than those resolved *per inquisitionem* or *per patriam* in the form *ideo consideratum est* (SC2/227/4, a roll representative of the series SC2/227/1–18).

[197] Above, pp. 91–2.

[198] Above, pp. 71–2.

[199] *SR*, i, 68; *Statutes of Wales*, 26 (c. 14); above, p. 66. For the procedure prescribed by the Statute of Wales and practice in the county of Flint, Ll. B. Smith, 'Statute of Wales', 148–9.

but the founding of a judicial order that provided for a good measure of collective judgement entirely in accord with the dominant trend already recognized in Powys and Deheubarth.

Over the whole extent of the lands that came under royal or marcher lordship during the reign of Edward I, it is only in the lordships of Gwynedd Is Conwy – Dyffryn Clwyd and Denbigh (based on the *cantrefi* of Rhos and Rhufoniog) – that collective judgement by the suitors of the court cannot be seen to be a feature of judicial practice. Certainly in Dyffryn Clwyd, where the record is exceptionally rich, and possibly in Denbigh, collective responsibility was expressed solely in the verdict of a jury and this provided the basis for terminal judgement by the steward of the court.[200] In Dyffryn Clwyd, in singular contrast to practice elsewhere, 'the judgement of the court' was a judgement given by the presiding officer.[201] But there, too, we find evidence of professional judgement by the *ynad* in the person of a *iudex*, *iudicator* or *iudex Wallicus*.[202] Of the lands that were part of the former province of Gwynedd, Dyffryn Clwyd alone provides any significant evidence of judgement by the *ynad,* except that the office of *iudex* is known, from a comprehensive record of 1334, to have been exercised in each of the commotes of the lordship of Denbigh at that time, with some subsequent testimony to its continued presence until the office was finally extinguished in both lordships in the early sixteenth century.[203] In Dyffryn Clwyd the *ynad* is found giving judgement less in land actions than in personal and criminal actions, tending to be engaged in cases involving the interpretation of Welsh legal practices and customary obligations, with on occasion explicit appeal to the law of Hywel.[204] The *ynad*'s knowledge proved advantageous not only to litigants but to the seigniorial authority that might equally gain the benefit of his participation in proceedings.[205] Numerous instances of the *ynad*'s judgement occur in the rolls but, placed in relation to the massive documentation of the court proceedings of the lordship, they form only a very small proportion of the cases heard.[206] Moreover, cases that involved Welsh practice, such as the law of succession to hereditary land in the *parentela*, might go

[200] Cases from Dyffryn Clwyd are cited from the Dyffryn Clwyd Court Roll Database 1294–1422, ESRC Data Archive, Colchester, Essex, Study Number 3679, which provides a calendar of the court rolls of the entire lordship 1340–52 (SC2/217/6–218/3) and 1389–99 (SC2/220/7-SC2/221/1), and the courts of the commote of Llannerch and the Great Court 1294–1422; references are given in the form 40s 1046/1342; 90s 968/1389, Llan 1549/1417, with the PRO call number. Extensive evidence from the court rolls is embodied in the valuable discussion in Davies, '*Ynad cwmwd*', 266–9 and citations in this study have thus been curtailed.

[201] Davies, '*Ynad cwmwd*', 268.

[202] Ibid., 266; the hereditary nature of the office is noticed ibid., 265–6.

[203] *Survey of the Honour of Denbigh 1334*, ed. P. Vinogradoff and F. Morgan (London, 1914), 48, 152, 209, 270, 314. The entries do not necessarily mean that there was a *iudex* to each commote, but that in each commote a certain sum was put against the value of the office; later evidence for the *ynad* in the lordship, with the names of some persons who exercised its responsibilities, in Davies, '*Ynad cwmwd*', 265–6. The *ynad* survived in the lordships of Gwynedd Is Conwy until the early sixteenth century, the final extinction of the office probably related to the effect of the royal ordinances which extinguished Welsh land tenure and eradicated many traditional fiscal obligations (J. Beverley Smith, 'Crown and community in the principality of North Wales in the reign of Henry Tudor', *WHR*, 3 (1966–7), 145–71 (pp. 169–70).

[204] Davies, '*Ynad cwmwd*', 266–7; see, for example, in relation to a defendant's claim to *barn y diddim* a decision by the *iudicator* 'as the law of Hywel lays down' (Llan 1660/1418, SC2/221/8, m. 28).

[205] Davies, '*Ynad cwmwd*', 266: in a case in Llannerch the *iudex* had the tenth penny from a plea of covenant in accordance with Welsh law and so 8s. (96d.) was owed to the lord from the sum of £4 (960d.).

[206] Davies, '*Ynad cwmwd*', 266, 270 sees the *ynad* as one placed 'on the periphery of seignorial justice' even in these lordships.

to inquisition with no invocation whatsoever of the expertise of the *ynad*.[207] Practice in the lordship in these cases bears comparison with the manner in which proof 'by those who saw and heard', a cardinal facet of procedure according to the lawbooks of Gwynedd, was used in the courts of the county of Flint in cases resolved by the verdict of a jury.[208] Dyffryn Clwyd and possibly Denbigh were two areas of the historic province of Gwynedd where, in the period between conquest and Tudor ordinances and legislation, texts of Welsh law can be seen to have had a practical relevance in the administration of justice. Unlike those of Deheubarth in the same period, however, the law texts of the northern lordships were regarded not as a written authority on which non-professional judges could rely, but as compendia of the tenets of an indigenous law still dispensed by men whose precursors, if not they themselves, were fully professional practitioners.

Bereft of evidence of collective judgement, the lordships of Gwynedd Is Conwy may thus represent an exception to the normal outcome of judicial policy in the lands that came under royal or marcher jurisdiction in the reign of Edward I. Elsewhere, while ultimate juridical authority was vested in the officer who exercised jurisdiction in the lord's name, procedures in the courts to which the great majority of litigants would take their cases, or the courts where they would normally be summoned to answer to actions brought in the lord's name, were determined by the collective judgement of the suitors. Essential in the making of this judicial provision was the policy implemented by the officers of the crown first in the counties of south-west Wales and then those of north Wales. Royal policy in these lands may also have influenced decisions taken in several of the lordships of the new march created in the period of the conquest, practice in the lordship of Bromfield and Yale being, as we have seen, founded on the seigniorial lord's adaptation of the Statute of Wales.[209] Royal precept was, however, one of two possible influences on the manner by which the form of judicial provision was determined in the new marcher lordships. In instituting collective judgement, or in endorsing its practice, the lords of the new march brought legal provision in their lordships into conformity with that which had long prevailed in the older march of Wales. For there can be no doubt that collective judgement was a feature of the judicial practice of the lordships established in the Norman period. Search for collective judgement in Wales before the thirteenth century is rewarded, not in the lands of the princes, but in those of the marcher lords. It is true that by the later medieval period the dispensation of justice in the lordships of the southern march of Wales at its higher levels was vested in professional practitioners, its responsibilities shared between officers permanently vested with authority in the lord's name and justices specially appointed to hear pleas in sessions held under the lord's commission. The 'professional law' was thereby strengthened, but in many cases its efficacy was undermined by the practice of redemption of sessions whereby proceedings were put in abeyance upon agreement on the part of the community to pay the lord an integral fine. More relevant to the matter of this study is the fact that over a wide area of the march, if not exclusively, actions in the courts to which litigants would turn for justice were determined by the collective decision of the suitors. This was conspicuously the case in the county court (*comitatus*) of the great lordships that extended along the southern littoral from Gwynllŵg (or Newport), through Glamorgan and Gower to Pembroke.

[207] For example, Llan 334/1365, SC2/219/, m. 25.
[208] Above, n. 199.
[209] Above, pp. 90–1.

Collective judgement also prevailed in the courts of the mesne lordships and manors of these lands. Illustrative evidence may be summarized very briefly.

In the county court of Glamorgan, initially designed to provide for the needs of the shire-fee but its jurisdiction extended to embrace the entire lordship by process of error, judgement was given by the suitors of the court. Full records of proceedings are not numerous, but these are supplemented by final concords made in the *comitatus* in the thirteenth century and later. Made before eight to twelve knights and others of the lord's *fideles*, they indicate that the responsibility for decisions in transactions of some consequence rested with the leading suitors of the court.[210] Cases might be resolved by the verdict of a jury, lists of the twelve persons who composed the jury being closely comparable to those of the suitors named in other cases.[211] But there can be no doubt that, in recording a judgement *per consideracionem comitatus* in the great action that Richard de Clare, earl of Gloucester, brought against Richard Siward in 1245, the court registered a judgement entered by the suitors.[212] A roll for the *comitatus* for 1477–8 records judgement by the *sectatores* only in three cases of outlawry, but explicit citation of the suitors' judgement in outlawry does not mean that their responsibility was confined to these proceedings.[213] In the exercise of its jurisdiction in cases of error in a mesne court the judgement of the *comitatus* was returned by the suitors, an appeal by William ap Dafydd against a judgement of the court of Senghennydd, where in common with other mesne lordships judgement rested with the suitors, was reversed and a fine of £66 13s. 4d. imposed upon the court.[214] The records entirely vindicate Rice Merrick's statement that pleas heard in the courts of member lordships were returned as in the shire court 'by the tenants, being benchers, and not by the steward'.[215] Similarly a fifteenth-century roll of the *comitatus* of the English of Gower shows, apart from cases resolved by a jury, several determined by the suitors, enough to confirm indications of a long-established practice there and in the manor courts.[216] Final concords made before the steward and a number of leading tenants of the lordship[217] are in close accord with the tenor of the charter of liberties granted by William de Braose in 1305 that provides for *justitia* 'by the judgement and arbitrament' of fourteen named suitors who held the ancient fees, and 'according to their *judicia* shall execution be made'.[218] Recorded proceedings in the *comitatus* of Pembroke are few, but their indications of collective responsibility are again endorsed in final concords, with further instances provided in some number by the court of the lordship of Haverfordwest.[219]

[210] *Cartae et Alia Munimenta quae ad Dominium de Glamorgancie pertinent*, ed. G. T. Clark, 6 vols (Cardiff, 1910), ii, 543 (1247), 565 (1249), 685 (1266); iii, 991 (1299).

[211] Ibid., ii, 561 (1249); iii, 1228 (1334).

[212] Ibid., ii, 547–55.

[213] NLW, Bute MSS M1/173.

[214] Bute M1/1, account of the coroner of the lordship 1426–7; also ibid., a fine of £100 incurred by 'omnes sectatores tocius comitatus pro quodam iudicio in varacione per ipsos redditu', indicating that the suitors of the *comitatus* itself were liable to a fine for erroneous judgement.

[215] Rice Merrick, *A Book of the Antiquities of Glamorgan*, ed. Brian Ll. James, *South Wales Record Society*, 1 (1983), 34, 37.

[216] NLW, Badminton Manorial Records, 2734 (1498–1500), partly printed in W. R. B. Robinson, 'The county court of the Englishry of Gower 1498–1500', *NLWJ*, 29 (1995–6), 357–89, citing p. 372 a felony for which the accused was found guilty by the *veredictum* of a jury and the suitors were charged with returning a judgement. A court roll for Pennard 1385–6 has two entries in which the verdict of a jury is followed by an order that *boni et legales homines* be summoned to the next court, probably to return a judgement: Badminton Manorial Records 2838, printed in David Leighton, 'The demesne manor of Pennard in the lordship of Gower: a fourteenth-century court roll', *Studia Celtica*, 37 (2003), 183–220.

[217] *Cartae*, ii, 1111 (1323), 1281 (1352).

[218] *Cartae*, iii, 990 (1305).

[219] Roll of the county court 1526–7, PRO, SC2/227/44; final concords for Pembroke include

The composition of the bench of suitors in each of these lordships has a bearing on our earlier consideration of the development of collective responsibility in the courts of Deheubarth. While the practice of the county court of England has been cited as the main influence upon that of the courts of the counties of Carmarthen and Cardigan, the affinities between the written records of the counties and those of the lordships suggest that marcher practice may also have been of some relevance in determining the course of development.[220] Moreover, the accommodation of lordships such as Llansteffan, Laugharne and Cydweli within the framework of the royal counties brought within their bounds the collective practices long established in the marcher lands. In the county court of Carmarthen in 1361 a final concord concerning land in the lordship of Llansteffan was made before the sheriff and the attorneys of three named persons and other unnamed *fideles* of the prince.[221] Similar transactions upon a writ of convenant in the county of Cardigan in 1414 were completed before the sheriff and six persons or their attorneys described as suitors of the court and others of the king's *fideles*.[222] Judgement was done by substantial landowners – John Wogan, Roger Mortimer, John Clement or the abbots of Talyllychau and Vale Royal – in a manner closely comparable to the procedure in Glamorgan. The collective quality of the judgement that may be glimpsed in the record of the county courts from the late thirteenth century has a close affinity with the practice of the counties of England and the marcher lordships in like measure.

In Wales the distant juridical affines of the *scabini* are to be sought not in the lands of the princes but in those of the Anglo–Norman lords of the march. Collective judgement in Powys, where it is not possible to identify any specific influence for change within the land comparable to that exercised by the county court in Deheubarth, may owe much to the influence of contiguous lordships of the march, or indeed the manors of the border shires, as well as the effect of the ordinances and practices of the crown lands of north Wales. Testimony from Oswestry and its environs in 1281 reveals that collective practices prevailed, actions in its Welsh areas being resolved 'by inquisition and the whole court', and court rolls confirm judgement by suitors in the 'chief court' of Oswestry.[223] In

NLW, Haverfordwest 1159, made in the county court before the steward and sheriff and named suitors. *The Description of Penbrokshire, by George Owen of Henllys*, ed. H. Owen, 4 vols (London, 1902–36), i, 170, refers to fines and recoveries passed in 'the Countye Court of Pembroke, holden before the Steward of Penbrok, the Shirieffe, and certeine suiters of the saied court, which Countie Court was a Coort of Record holding all maner of pleas, of the Crowne, Reall, personall and mixte'. For the lordship of Haverfordwest there is a valuable series of some forty concords, 1285–1357, in NLW, Haverfordwest, nos. 810, 851, 852, 892, 987, 989, 992, 997, 1004, 1041 *et passim*.

[220] Above, pp. 84–6.

[221] R. A. Griffiths, *Conquerors and Conquered in Medieval Wales* (Stroud, 1994), 240–1, exemplification, from PRO Exchequer KR Ancient Deed D.4222, 12 April 1401, of a final concord, 14 October 1461, before Reginald de Hope, deputy to William Banaster, justice of south Wales, and sheriff, the attorneys of John Wogan, Morgan Fychan and the abbot of Talyllychau 'et aliis dicti domini principis fidelibus tunc ibidem presentibus'.

[222] Glamorgan Record Office, CL/DEEDSI/1530, final concord at Cardigan, 14 August 1415, before Thomas Walter, deputy to Edward, duke of York, justice of south Wales, in the county of Cardigan, Dafydd ap Thomas ap Dafydd, sheriff, Roger Mortimer, Ieuan Moel ap Ieuan ap Gruffudd, Einion ap Morgan, and the attorneys of John Clement, Thomas ap Rhys ap Gruffudd and the abbot of Vale Royal, 'sectatoribus eiusdem curie et aliis dicti domini regis fidelibus tunc ibidem presentibus'. The concord was made upon a plea of covenant concerning half the commote of Gwynionydd Is Cerdin and half the lordship of Dihewid with the advowson of the churches. Similarly, MSS of the Marquess of Bath, Longleat, 11063, transactions, 18 June 1355, before Richard de la Rivere, deputy justice, Stephen Jacob, sheriff of Carmarthen, Rhys ap Gruffudd, knight, James Daudley, knight, Richard de Penres 'et aliis dicti domini Edwardi principis fidelibus'.

[223] *CWR*, 202–4; NLW, Aston Hall 5804 (1380–1).

Whittington, close by, court records of the fourteenth century and the fifteenth have a wealth of evidence of judgements 'by the whole court' or 'the whole *patria*' or by the *sectatores* of the court.[224] A litigant might make fine with the lord to go to inquisition and receive a verdict 'by the law and custom of the *patria*', or a case could go to inquisition by the procedures of the court.[225] But alternatively the litigant could seek the judgement of the suitors of the court. As in the Arundel lordships, cases of outlawry were determined 'by the judgement of the suitors and the discretion of the steward'.[226] Representative of the practices both of neighbouring manors within Shropshire, such as Sandford,[227] and wide areas of the march along the frontier with Powys, such as the lordships of Radnor and Clun,[228] quite apart from more distant areas such as the well-documented lordship of Raglan,[229] the court rolls of Whittington probably testify to long-established juridical practices which may have had some bearing on the collective practices revealed by the late thirteenth century both in Powys Fadog and Powys Wenwynwyn.

The evidence examined in this study provides a basis for the conclusion that influences at work in the several provinces of Wales during the course of the thirteenth century, initiated before the completion of the conquest of Wales but quickened in the aftermath of conquest, brought about a significant change in the manner in which judgements were determined in the courts. The lawbooks suggest the ubiquity of the professional judge in the courts of historic provinces of Wales in the period extending to the thirteenth century, albeit a system that may still have provided for diverse forms, and varied degrees, of collective participation in the resolution of cases. The study has been concerned with judgement alone, though some reference has necessarily been made to modes of proof. Changes in these juridical practices were only part of the development of the provision of justice, with important departures made in a broad range of processes in crown and marcher lands alike. Their extent is well illustrated in the material of the Arundel lordships, and there as elsewhere processes of English common law came to be adopted as normal facets of the procedures by which Welsh litigants sought resolution of their cases in court. The Arundel Statute states unequivocally that novel disseisin and the writ of right were the two actions by which land cases were initiated by litigants holding in Welsh tenure in Bromfield and Yale.[230] Yet the same body of records reveals a tenacious adherence on the part of the community to practices that were regarded as part of the law of the *patria* and considered essential to the protection of its well-being. Conflict of interest between lord and community could still make legal practice a contentious issue, and in this continuing process of interaction the means to judgement in the courts could be a vital matter. We have seen that the lawbooks of Deheubarth of the late thirteenth

[224] For example, NLW, Aston Hall, 5827, 5833, 5835, 5837, 5847.

[225] Aston Hall 5841, 5854, 5847 ('to have inquisicion *ex officio*'); 5839, 5846, 5857, 5862 (by virtue of court procedure).

[226] Aston Hall, 5847, 5852, 5853, 5857 (fine for judgement by the suitors *ex officio*); Aston Hall, 5848, 5853, 5854, 5856, 5857 5859 (judgement of suitors based on verdict of an inquisition).

[227] Aston Hall, 5804.

[228] Radnor: SC2/227/57–8, 63, gives, for example, the form of words 'consideratum est per totam curiam'. Clun: Shropshire Records and Research Centre, Shrewsbury, 552/1/1–32 *passim*.

[229] NLW Badminton Manorial Records 1671–77, 14057; these include an instance of judgement in a case of outlawry by suitors called to do so by the steward on the lord's behalf; a similar call to the suitors leading to a conviction and death by hanging. No attempt is made in this study to provide the comprehensive survey that would illustrate the practice of collective judgement over a wide area of the march.

[230] Above, p. 90 and n. 157.

century envisage 'the verdict of the country' (*dedfryd gwlad*) as a means of withstanding a king's oppressive authority, and the textual remembrance has some resonance in the circumstances that prevailed in a period of political turmoil.[231] In a tense situation of this nature a collective responsibility for the decisions of the court, enshrined in a cohesive statement of the established custom of the *patria*, could well have provided a means of protection that the pronouncement of a professional judge might not have matched. The court record of the Arundel lordships of northern Powys reveal instances of tension between lord and community that might be expressed in a divergence of views between the lord's officers and the bench of suitors.[232] Stresses in court may indeed be set beside the interaction between lord and community indicated in the charters that the earls of Arundel were constrained to grant their tenants of the lordship of Chirk during the course of the fourteenth century.[233] The first of them was issued in evident reaction to the severity of the rule of Roger Mortimer, very recently the cause of disquiet among the men of Deheubarth which had provoked an assertion of their right to the law of Hywel Dda.[234] Those who negotiated with the Arundel lords for the charters, or pledged themselves to raise the sum agreed for their concession, belong to same social genre as those who took responsibility for the judgements returned as the collective will of the court.[235] Much may be learned of the experience of Welsh communities in the post-conquest era by a study of the textual and documentary evidence that lies along an axis that runs from south-west Wales to the north-east, a great deal of it bound up with the principles and practices of collective responsibility in judgement that are considered in this study. Examining the means by which the courts of Wales formulated their judgements provides an opportunity to visualize their experience in relation to the legal arrangements of other lands, an incentive to estimate the extent to which trends in this particular experience correspond to those that may be sensed elsewhere. At the same time it gives us an opportunity to examine an important aspect of legal history as an integral part of the processes of social change that lie at the heart of the nation's experience in the medieval centuries.

Abbreviations

ALW	*Ancient Laws and Institutes of Wales*, ed. A. Owen, 2 vols (London, 1841); citing page reference, with number of book, chapter and section in parenthesis.
BBCS	*Bulletin of the Board of Celtic Studies*.
Bleg	*Cyfreithiau Hywel Dda yn ôl Llyfr Blegywryd*, ed. Stephen J. Williams and J. Enoch Powell (Cardiff,1961), citing page and line.
CIH	*Corpus Iuris Hibernici*, ed. D. A. Binchy (Dublin, 1978).
Col	*Llyfr Colan: Y Gyfraith Gymreig yn ôl Hanner Cyntaf Llawysgrif Peniarth 30*, ed. Dafydd Jenkins (Cardiff, 1963), citing numbered sentences.
CWR	'Calendar of Welsh Rolls', *Calendar of Chancery Rolls, Various* (London, 1912).
EHR	*English Historical Review*

[231] Above, p. 88.

[232] Above, pp. 91–2.

[233] Llinos Beverley Smith, 'The Arundel charters to the lordship of Chirk in the fourteenth century', *BBCS*, 23 (1968–70), 153–66, examines the texts, in Latin and Welsh, of the charters of 1324, 1334 and 1355.

[234] Ibid., 154–5, 161–2 (1324); above p. 88.

[235] Ibid., 166.

Ior *Llyfr Iorwerth: A Critical Text of the Venedotian Code of Medieval Welsh Law mainly from BM. Cotton MS. Titus Dii* (Cardiff, 1960), citing numbered sections and unnumbered sentences.

LAL T. M. Charles-Edwards, Morfydd E. Owen, and D. B. Walters (eds), *Lawyers and Laymen* (Cardiff, 1986).

LTMW *The Law of Hywel Dda. Law Texts from Medieval Wales*, trans. and ed. Dafydd Jenkins (Llandysul, 1986).

LTWL *The Latin Texts of the Welsh Laws*, ed. Hywel D. Emanuel (Cardiff, 1967), citing page and line.

NLWJ *National Library of Wales Journal.*

PRO Public Records Office.

SR *Statutes of the Realm,* 11 vols (London, 1810–28).

WAR *The Welsh Assize Roll 1277–1284*, ed. J. Conway Davies (Cardiff, 1940).

WHR *The Welsh History Review*

WML *Welsh Medieval Law* (Oxford, 1909), citing page and line.

ZCP *Zeitschrift für celtische Philologie*