For reform-minded churchmen in the twelfth and thirteenth centuries, Welsh custom and canon law were worlds apart. Writing to the pope in the 1150s, Archbishop Theobald of Canterbury alleged that the inhabitants of Gwynedd in north Wales were ‘ignorant of the divine and still more of canon law’, engaging in a slave trade with Ireland, bartering concubines, ‘and ignoring the guilt of incest’. Moreover, this lamentable behaviour was as rife amongst the clergy as the laity. Some twenty years later, at the provincial Council of Westminster in 1175, it was proposed that ‘the Welsh should not sell churches nor give them in dower nor cling to their kinsfolk nor change wives’. Significantly, this proposition was not enacted in the council’s legislation, perhaps because it was deemed unworkable. Likewise, at the end of the twelfth century Gerald of Wales noted the prevalence amongst the Welsh of incest, trial marriage, concubinage (reflected in the equal rights of inheritance granted to both illegitimate and legitimate children), the inheritance of ecclesiastical benefices and portionary churches. Such criticisms continued in the thirteenth century. True, Pope Honorius III gave his enthusiastic approval in 1222 to an ordinance issued by Llywelyn ap Iorwerth (d. 1240), prince of Gwynedd, abolishing ‘a certain detestable custom or rather corruption ... contrary to divine and human law’ whereby the son of the handmaiden was

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2 Councils & Synods with Other Documents relating to the English Church, ed. D. Whitelock, M. Brett, and C.N.L. Brooke (Oxford 1981) 2.967-68, 980 (c.21).
3 Giraldi Cambrensis Opera, RS 6.213-14, 225.

'Survivances romaines dans le droit de la monarchie franque, Ve-Xe siècles', repr. in La formation du droit canonique medieval (Aldershot 1980) 183.
allowed to inherit equally with the son of a free woman, and illegitimate sons were permitted equal inheritance rights with the legitimate. However, this did not mark a decisive victory for canonical norms over native custom, since over half a century later, on the eve of Edward I’s conquest of Wales in 1282-83, Archbishop Pecham of Canterbury complained vociferously about the lax attitude of Welsh law and custom to ‘legitimate marriages’, which were undermined by the inheritance rights accorded to illegitimate sons and by the repudiation of wives.

Such condemnations belonged to a tradition of rhetoric that stigmatized the Welsh as barbarians in dire need of the civilizing remedies provided by ecclesiastical reform and, more often than not, Anglo-Norman or English conquest. Yet, the contrast they highlighted between Welsh custom and the international law of the church was nonetheless real for all that. As we have seen, this was particularly true of marriage, and this is therefore the subject on which I shall focus in the following discussion.

My aim is straightforward: to assess the impact on Welsh custom of canonical notions of lawful marriage. This I shall do by examining, first, the marriages of some native Welsh rulers and, second, the compilations of Welsh customary law whose earliest surviving versions were written in the late twelfth and thirteenth centuries. Underlying the discussion is the assumption that, notwithstanding Archbishop Theobald’s comments, canon law was known in at least some quarters in Wales at this period. Indeed, there is good evidence for attempts to impose its norms on both lay and clerical marriage. Deviance from those norms thus not only throws valuable light on Welsh marriage customs but also raises important questions about the vigour with which the ecclesiastical and secular authorities sought to uphold canon law in Wales.

Archbishop Theobald’s letter to the pope vividly illustrates how difficult it could be to make a Welsh ruler conform to canonical rules on marriage within the prohibited degrees of consanguinity. Both the archbishop and Maurice, bishop of Bangor, had sought in vain to convince Owain, prince of Gwynedd, of the sinfulness of his marriage to his first cousin. Owain had, it was alleged, not only ‘induced no small portion of the clergy to defend his crimes’ but also despoiled the bishop of his possessions and then expelled him from his see, whence he fled to Canterbury. The prince similarly defied calls in the 1160s from Archbishop Thomas Becket and Pope Alexander III to separate from his wife, and he was eventually excommunicated. Nevertheless, the clergy of Bangor buried him in their cathedral at his death in 1170, prompting Archbishop Baldwin to order the exhumation of the body when he visited Bangor during his journey round Wales to preach the Third Crusade in 1188.

Two points merit emphasis with regard to Owain Gwynedd’s marriage. First, it highlights the gulf separating Welsh and canonical notions of incest. It is notable that Owain’s wife, Cristin, was his maternal uncle’s daughter, and the other examples of first cousins who married Welsh rulers in the twelfth century were likewise related to their husbands through their...

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5 Registrum Epistolae Fratris Johannis Pechham Archiepiscopi Cantuariensis, RS 2.474.
8 Letters of John of Salisbury 1.135-36.
mothers. This may suggest that only a woman related to the husband through his father counted as a kinswoman, with whom marriage was considered incestuous—a suggestion consistent with the cardinal importance attached by Welsh custom to agnatic or patrilineal kinship in determining inheritance of land. By contrast, a woman related through the husband’s mother was conceived of as belonging to a different kindred and thus marriage to her carried no stigma of incest. Second, Owain’s defiance of canon law appears to have been supported by a significant number of clergy in Gwynedd. It was two archbishops of Canterbury, albeit in Theobald’s time supported by the bishop of Bangor, who took the lead in opposing the marriage. Likewise, it was a Canterbury provincial council that, in 1175, discussed the proposal that the Welsh ‘should not cling to their kinsfolk or change wives’, while Archbishop Baldwin seized the opportunity presented by his preaching tour of Wales to try to get two other Welsh princes, namely Rhodri ab Owain Gwynedd and Gruffudd ap Madog of northern Powys, to abandon incestuous unions, although only the latter acceded to his wishes. The tolerance of native customs by Welsh clergy—who themselves came under fire from ecclesiastical reformers on account of their disregard for canonical prohibitions on clerical marriage—helps to explain why those customs remained so resilient.

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12 Councils and Synods, see n. 2 above; Giraldus Cambrensis Opera 6.126-27, 142.


Owain Gwynedd’s rejection of canon law stands in contrast to the attitude adopted by his grandson, Llywelyn ap Iorwerth, prince of Gwynedd, who died in 1240. Instead of ignoring canon law, Llywelyn manipulated it to his own advantage. At the end of the twelfth century he sought dispensation from Innocent III to marry the daughter of Reginald Godredsson, king of Man (1187-1226, d. 1229), despite her having been previously betrothed to Llywelyn’s uncle, Rhodri. Subsequently, however, Llywelyn alleged that Rhodri had known the girl carnally in order to call the marriage off. The reason for this change of mind was simple: by 1204 Llywelyn had the opportunity of marrying a more prestigious bride, none other than King John’s illegitimate daughter, Joan, whom he probably married the following year. Later, in 1222, the prince of Gwynedd obtained the approval of Pope Honorius III for an ordinance designed to ensure the succession of Dafydd, his son with Joan, at the expense of his elder son, Gruffudd, born as the result of an extra-marital relationship to a woman called Tangwystl. This was followed up in 1226 by securing papal legitimation of Joan herself.

Llywelyn’s readiness to adhere to the norms prescribed by canon law marks a significant departure from the attitude of his grandfather and of most other twelfth-century Welsh rulers. It would be wrong, however, to conclude that the prince had been compelled against his will to abandon native custom in favour of canon law. Rather, expanding political horizons made him appreciate the usefulness of that law as a tool for advancing his own dynastic interests regarding both his choice of bride and his plans for the succession to Gwynedd after his death. Most twelfth-century native rulers had made marriage alliances with other Welsh dynasties; their thirteenth-century successors, by
contrast, married into Anglo-Norman families in the Welsh March or, in Llywelyn's case, into the Angevin royal family. This change both eliminated the likelihood of contracting what, in canonical terms, were incestuous unions and encouraged conformity with the canonical view of marriage accepted by the aristocracies of England and northern France. The ordinance proclaiming Dafydd as Llywelyn's heir had received the consent of Henry III, Archbishop Stephen Langton, and the papal legate Pandulf, all of whom will have taken as axiomatic that illegitimate sons in free and aristocratic society were denied rights of inheritance.

'The detestable custom or rather corruption' condemned by Llywelyn and the pope was nevertheless widely accepted in native Welsh society, in which inheritance rights to land - and also, very probably, kingship - rested essentially on a son's recognition by his father, regardless of the marital status of the mother. In contrast to England from the early twelfth century, illegitimate birth did not automatically exclude a son of a Welsh ruler from trying to establish himself as his father's successor. It is particularly striking that, although Llywelyn succeeded in preventing his eldest son Gruffudd from succeeding on the grounds of illegitimacy, Gruffudd's son, Llywelyn ap Gruffudd (d. 1282), was not thereby prevented from making good his claims to be prince of Gwynedd in the 1250s. Moreover, it is unlikely that Llywelyn ap Iorwerth intended his ordinance to apply to inheritance of land by freemen in general. Certainly his grandson, Llywelyn ap Gruffudd, is recorded as having permitted equal inheritance rights to illegitimate sons of free tenants on the episcopal estates of St. Asaph, and it was only after Edward I's conquest of Wales that this custom was abolished in the lands formerly under the princes' rule.

The impact of canon law on the marital and succession strategies of Welsh rulers was therefore mixed and depended essentially on political circumstances. What, next, was its impact on the treatment of marriage and inheritance in the Welsh legal texts? These are sources of prime importance to the present enquiry. Compiled in both Welsh and Latin by experts in native customary law - some of whom were clerics, some laymen - the earliest surviving versions were written down in the late twelfth and thirteenth centuries, that is, at the very time that Wales was being increasingly exposed to the classical canon law. Indeed, some thirteenth-century compilers were familiar with aspects of romano-canonical law; for example, borrowing from it rules on objections to witnesses and the requisite qualities of judges. The lawbooks thus offer a unique perspective from within Welsh society on the challenge posed to native customs by canon law.

That the authors of the law-texts felt that the law they expounded was susceptible to criticism from reform-minded churchmen is strongly suggested by the prologues of the

17 Contrast, for example, the considerable efforts made by kings and princes in tenth- and eleventh-century France to avoid contracting marriages within the degrees of consanguinity prohibited by canon law: C.B. Bouchard, 'Consanguinity and noble marriages in the tenth and eleventh centuries', Speculum 56 (1981) 268-87.
19 Davies, Conquest 308-11.
compilations. The prologues were intended above all to proclaim the legitimacy and Wales-wide authority of the law by ascribing its reform to the tenth-century Welsh king, Hywel Dda (Hywel the Good, d. 950). However, they also sought to demonstrate the law's impeccable moral credentials by alleging that clergy had participated in the assembly, held in Lent, at which Hywel's legal reform took place; indeed, one version, written in early thirteenth-century Gwynedd, explicitly states that clergies were summoned to the assembly 'lest the laymen set down anything which might be against Holy Scripture'. An examination of the substance of the compilations quickly reveals the motive for such assertions, for, judged by the yardstick of contemporary canon law, the custom they depicted was in important respects gravely deficient. This was especially true of the texts' treatment of marriage and inheritance, which is shot through with assumptions clearly incompatible with canon law.

The gulf between native custom and canonical norms with regard to marriage is revealed most clearly in the section or tractate of the Welsh lawbooks on the "law of women". Admittedly this deals with marriage only inasmuch as it affected the legal position of women, particularly in respect of their rights to moveable property. However, it clearly contradicts canon law in two related respects: nowhere does it recognize or even imply that jurisdiction over marriage pertained to the church, while its rules on the division of property between a husband and wife at their separation presuppose a freedom to divorce that went far beyond the canonists' 'separatio' or 'divortium'. The provisions on divorce, referred to by the Welsh term 'ysgar' (literally, 'parting'), struck at the heart of the canonical view of marriage as an indissoluble sacrament, and their disregard for this aspect of canon law is virtually unique among compilations of European customary law in the later twelfth and thirteenth centuries. The rules certainly caused great offence to Archbishop Pecham, who complained after he had seen a copy of the laws that 'legitimate wives are spurned by the sanction given to divorce by Hywel Dda, contrary to the Gospel'. Moreover, while those rules may well reflect customs whose origins lay in the early Middle Ages and while some of their finer points of detail – such as the equal division of bedclothes between parting spouses – may have owed more to juristic ingenuity than to established custom, there are strong grounds for supposing that their basic assumptions about the dissolubility of marriage reflected social practice at the time of the earliest lawbooks' redaction in the late twelfth and early thirteenth centuries. For example, the Council of Westminster in 1175 considered prohibiting the Welsh from changing wives, while Gerald of Wales's observation that Welshmen would not marry until they had cohabited with and proved the fertility of their wives implies that the latter might be repudiated if they did not live up to expectations and is also consistent with the lawbooks' doctrine that a marriage only matured fully after seven years.

The impact of canon law on the Welsh lawbooks' representation of divorce customs in the later twelfth and

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25 Some elements in the lawbooks were congruent with canon law, though – for example, the rules on the special legal status accorded to clerics and on sanctuary rights. See Pryce, Native Law chapters 6 and 7.
26 Note also rules preventing bishops from bequeathing goods and allowing the seizure of those goods by the king or prince: Pryce, Native Law 124-26.
27 For texts and discussion see The Welsh Law of Women; see n.11 above.

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28 Pryce, Native Law 89-95.
29 Registrum Peckham 2.474.
30 Welsh Law of Women 162-63 (sentence 9).
31 Councils and Synods, see n.2 above; Girald Cambrensis Opera 6.213-14.
thirteenth centuries appears, then, to have been nil. Indeed, the only echo in the surviving texts of Welsh law of the canonical view of divorce occurs in fifteenth-century manuscripts, in a passage that includes – amongst those whose testimony is not to be believed – ‘the person who breaks his marriage publicly’ 32. Similarly, a fifteenth-century lawbook contains the only explicit acknowledgment that marriage pertained to ecclesiastical jurisdiction.33

What about the two other aspects of Welsh marriage customs that contradicted canon law, namely marriage within the prohibited degrees of consanguinity and the tolerance of extramarital unions implied by the granting of equal inheritance rights to all sons recognized by their father, irrespective of the conjugal status of their mother?

In the first case, we face a wall of silence. In contrast to some late twelfth-century Norwegian laws, for example,34 none of the surviving Welsh legal texts contains provisions concerning whom it was permissible to marry. This is probably because the question was considered irrelevant to the property consequences of marriage, which were the lawyers’ main concern. If this is so, however, it implies a rejection of the canonical view, which held that marriages within the prohibited degrees were invalid and any children issuing from them therefore illegitimate, unless papal dispensation was obtained.35 The authors of the earliest extant lawbooks must have been aware of this, since the issue of incestuous marriages was very much a live one in Welsh princely circles in the later twelfth century, and in south Wales, at least, some Welsh people were seeking dispensations by the mid- and late thirteenth century.36

By contrast, the Welsh legal texts contain explicit responses to canon law – or, more precisely, canonical norms as assimilated by English common law – regarding the inheritance rights of illegitimate sons. The response of the lawbook known as the Iorwerth Redaction, compiled in early thirteenth-century Gwynedd, was defiant:37

Church law says that no son is entitled to patrimony save the father’s eldest son by the wedded wife. The law of Hywel adjudges it to the youngest son as to the eldest, and judges that the father’s sin and his illegality should not be set against the son for his patrimony.

The passage is notable on three counts. First, what it calls ‘church law’ is in fact English common law on inheritance by primogeniture. This implies that English inheritance customs, which had assimilated canonical principles on legitimate birth, were advocated by churchmen in preference to the Welsh custom of partible inheritance among all of a man’s sons, whether born within or outside his marriage. As we have seen, this view was accepted by Llywelyn ap Iorwerth in his ordinance excluding his eldest but illegitimate son, Gruffudd, from the succession to Gwynedd, and this ordinance may explain why another version of the passage ascribes the rule of legitimate primogeniture not to ‘church law’ but to a revised statement of Welsh law.38 Second, the rule is rejected because it contradicts an alternative body of

36. For examples from the southern dioceses of Llandaf and St. David’s, see Calendar of Papal Letters I.278-79 (1252), 470 (1283), 515, 522 (1290), 532 (1291), 542-43 (1291).
law, namely the native customary law attributed to Hywel Dda, which by implication is given precedence over law approved by the church. Yet, third, the passage concedes that extra-marital relations were sinful and unlawful: this suggests that its author was not hostile to canon law as such but rather to English law's insistence on legitimate birth as a qualification for inheritance. A section datable to the late twelfth or early thirteenth century in lawbooks composed in southern Wales likewise responds to English and canonical views of legitimacy. Unlike the northern Welsh Iorwerth Redaction, however, this passage - in common with other rules in southern Welsh lawbooks written in the late thirteenth and early fourteenth centuries - accepts that illegitimate sons should be denied a share of patrimony. The triad opens by declaring that a son born before his father had married his mother was not entitled to a share of land alongside a son born after the marriage. This rule clearly bears the imprint of English law, which contradicted canon law from the later twelfth century onwards by refusing to allow the retroactive legitimization of children upon the marriage of their parents. On the other hand, the second limb of the triad, which states that the son of a cleric born before the latter had been ordained to the priesthood need not share patrimony with a brother born after his father's ordination, echoes the distinction drawn by the decretists between the legitimacy of children born to clerics before their ordination and the illegitimacy of those born thereafter.

However, while some lawbooks, particularly in south Wales, made concessions to canonically acceptable notions of lawful marriage, it is clear that those concessions were remarkably few and in no wise added up to a systematic acceptance of ecclesiastical norms and jurisdiction. Moreover, the impact of canonical views was limited to the issue of inheritance and, as far as the patrimony of laymen was concerned, was mediated via English common law. All in all, then, the Welsh lawbooks recorded and thereby helped to legitimize native notions of marriage essentially as a secular contract in which the church played no part. Such a view would not have been unusual earlier in the Middle Ages, but it contrasts sharply with virtually all other texts of European customary law composed in the later twelfth and thirteenth centuries. Even if the compilers of the Welsh lawbooks derived material from earlier texts originally written in the tenth century (and this is by no means certain), they clearly intended their compilations to provide contemporary statements of custom at the time of their redaction. True, their representation of Welsh custom was in important respects deeply conservative and can indeed be interpreted as a reaction to challenges from reforming churchmen, English kings and lords, and, above all perhaps, modernizing Welsh princes. Nevertheless, with regard both to divorce and especially to inheritance by illegitimate sons, it reflected social practices attested in other sources from this period. In other words, the lawbooks' overall disregard for canonical norms regarding marriage probably articulated norms that enjoyed a broad measure of acceptance in native Welsh society.

This brings us, finally, to the most fundamental question that arises from the foregoing discussion: why was Welsh custom

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40 Pryce, Native Law 106-8.
41 Pryce, Native Law 100-2.
44 Pryce, 'Prologues' 176-79; Pryce, Native Law 71-81.
so impervious to canon law on marriage in the later twelfth and thirteenth centuries? In attempting to answer this question, I shall focus on Gwynedd, the region of Wales least subject to Anglo-Norman and English influence before Edward I's conquest of 1282-83, and the one in which the contrast between native custom and canon law is attested most starkly.

The limited impact of canon law on marriage and inheritance customs in Gwynedd is best explained in terms of three factors. The most important is the lack of effective ecclesiastical authority to impose canonical norms. True, some bishops of Bangor, whose diocese included the heartlands of the native principality of Gwynedd, were committed to upholding those norms (most notably Cadwgan, bishop 1215-36, who composed a treatise on confession quite possibly inspired by the Fourth Lateran Council), but their efforts were at best intermittent and sometimes excited opposition from the native princes. The see of Bangor was effectively vacant for most of the first twenty years of the twelfth century and again from 1161 to 1177. In addition, as we have seen, Bishop Maurice was forced into exile as a result of his stand against Owain Gwynedd's marriage, while in the thirteenth century Bishop Richard (1237-67) was in exile for a substantial period of his episcopate, and his successor Anian I (1267-1305) eventually fled the power of Llywelyn ap Gruffudd. Nor could the bishops count on the support of most of their diocesan clergy, the majority of whom probably belonged to clerical kindreds who shared the outlook of their lay counterparts. During his visitation of the northern Welsh dioceses of St. Asaph and Bangor in the summer of 1284, Archbishop Pecham complained of the clergy's ignorance, lax behaviour, and disregard for celibacy.

Second, little support was generated for the canonical norms from within lay society. Episcopal ineffectiveness was compounded by princely reluctance to help promote those norms and especially by the failure of many princes of the later twelfth century to adhere to them in their own marriages. Admittedly, this changed in the thirteenth century to the extent that princes avoided marriages within the prohibited degrees of consanguinity. However, the controversy generated by Llywelyn ap Iorwerth's decision to proclaim his eldest legitimate son, Dafydd, as his successor illustrates the strength of the belief that the marital status of a son's mother was immaterial to the son's rights of inheritance. In contrast to the aristocracies of England and much of France by the twelfth century, the upper echelons of Welsh free society showed no inclination to devise inheritance strategies in respect of patrimony that involved privileging either legitimate birth or primogeniture as means of preventing the

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45 It should be noted that the Perfeddwlad, or Gwynedd east of the river Conwy, a territory over which princes of Gwynedd exercised periodic control in the twelfth and thirteenth centuries, fell mostly within the diocese of St. Asaph. On Cadwgan and his treatise see J. Goering and H. Pryce, 'The De modo confitendi of Cadwgan, bishop of Bangor', Mediaeval Studies 62 (2000). The earliest known diocesan synod held by a bishop of Bangor at which constitutions for the clergy were issued took place after the Edwardian conquest, in 1291 (Williams, Welsh Church 72).


48 See the comments on Norway from the eleventh to thirteenth centuries in B.E. Crawford, 'Marriage and the status of women in Norse society', Marriage and Property, ed. E.M. Craik (Aberdeen 1984) 76: 'It must have been almost impossible for the church to impose its ideas of moral conduct when the highest social levels constantly offended against them'.

49 Lloyd, History of Wales 2.686-87; J.B. Smith, Llywelyn ap Gruffudd, Prince of Wales (Cardiff 1998) 14; Pryce, Native Law 99 n. 84.
fragmentation of estates. Significantly, the prohibition of illegitimate sons from inheriting was eventually imposed from outside, by Edward I in 1284, underlining the close connection between canonically acceptable norms and English domination, a connection that surely provides a further key to understanding the reluctance of the Welsh to abandon their customs.

The most dedicated and sophisticated advocates of native custom (and this brings me to my third point) were the experts in Welsh law, whose lawbooks sought to legitimate that custom by committing it to writing and presenting it as a body of long-established national law. How far the compilation of lawbooks helped to reinforce Welsh marriage customs against the prescriptions of canon law is, admittedly, difficult to assess. Much turns on who had access to the texts, the extent to which their rules were considered authoritative, and the social prestige of their compilers. That the texts were widely known and respected is suggested, however, by three things: the likelihood that there were over a dozen legal manuscripts in north Wales by the mid-to-later thirteenth century, the production of many of the surviving thirteenth-century manuscripts in ecclesiastical scriptoria (and in most cases probably for ecclesiastical use), thereby indicating that some churchmen, at least, felt that the law-texts—notwithstanding their questionable contents—were important enough to be worth acquiring; and the fact that the legal experts who compiled and used the texts acted as local judges, which implies that both they and the law they conserved and transmitted enjoyed some influence in their local communities. At the very least, the existence in Gwynedd of lay families of lawyers, comparable to those of Gaelic Ireland, who were dedicated to the preservation of native custom, must have made that custom more resistant to canonical norms. In short, it is difficult to escape the conclusion that, before the Edwardian conquest, the supporters of Welsh custom in north Wales were both more numerous and more influential than the protagonists of canan law.

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51 Statutes of the Realm 167-68 (c. 13).

52 There survive eight manuscripts of Welsh law deriving from north Wales in the mid-to-later thirteenth century (Charles-Edwards, Welsh Laws 100, 102); if allowance is made for exemplars and other legal manuscripts that have subsequently been lost, this total can probably be at least doubled. See, for example, The Latin Texts of the Welsh Laws, ed. H.D. Emanuel (Cardiff 1967) 98, 270, and the stemma in Lawyers and Laymen, ed. T.M. Charles-Edwards, M.E. Owen, and D.B. Walters (Cardiff 1986) 138.

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53 Pryce, Native Law 18-19; R.R. Davies, 'The administration of law in medieval Wales: the role of the ynad cymnd (judex patriae)', Lawyers and Laymen 261-70.

54 This will have been less true of south Wales, where native lawyers, some of whom were clerics, were more receptive to canonical norms—including, as shown above, those regarding marriage and inheritance—than lawyers in the north (Pryce, Native Law 254-55). On Irish lawyers, see K. Simms, 'The brehons of later medieval Ireland' Brehons, Serjeants and Attorneys: Studies in the History of the Irish Legal Profession, ed. D. Hogan and W. N. Osbornour (Dublin 1990) 51-76.

55 I am very grateful both to the British Academy and to University of Wales, Bangor for awarding me grants towards the costs of attending the congress at Syracuse.