

Pre-publication draft. Do not cite.

Towards a Characterisation of ‘Race Law’ in Medieval Wales

Teresa Phipps & Matthew Frank Stevens

Swansea University

Acknowledgements:

We are grateful to Professor Stephen Rigby, University of Manchester, for his comments on a previous draft of this article. We also thank the Journal’s two anonymous referees for their insightful comments.

Disclosure statement:

No potential conflict of interest was reported by the author(s).

Funding:

This work was supported by the British Academy under grant no. SG171150, ‘Jim Crow in Medieval Wales: a comparative approach to the long history of legal discrimination and segregation’; the National Science Centre, Poland (*Narodowe Centrum Nauki*) under grant no. UMO-2016/22/MHS3/00157; and the Polish National Agency for Academic Exchange (*Narodowa Agencja Wymiany Akademickiej*), Ulam Fellowship, under grant no. PPN/ULM/2019/1/00033/U/00001.

Notes on contributors:

Matthew Frank Stevens is associate professor of history, Department of History, Swansea University, and Ulam Fellow, Faculty of History, Nicolaus Copernicus University in Toruń.

Teresa Phipps is honorary research fellow, Department of History, Swansea University.

Emails:

m.f.stevens@swansea.ac.uk

Teresa.Phipps@swansea.ac.uk

ABSTRACT

Welsh persons were subject to legal restrictions within and near Wales, from the point of local English conquest, c.1067–1283, until the 1536 Act of Union of England and Wales. In this article we outline modern scholars' two main definitions of 'race' and 'racism' applicable to the Middle Ages, both 'race' as a structural relationship used to essentialize and disadvantage a group and 'race' as a package of presumed heritable physical, mental and moral traits. We then survey discriminatory laws in Wales, characterising them as falling into four broad categories: security, economic freedom, political rights, and legal rights. The context, nature and evolution of laws within each category are discussed. We finish by testing whether this body of law amounts to 'race law' in light of the given definitions of 'race' and 'racism', concluding that it is race law by both definitions. An appendix of indicative race law is provided.

I. Introduction

The conquest of Wales stretched from William FitzOsbern's 1067 invasion of the lands west of the Wye and Severn, comprising elements of medieval and modern Gwent and Monmouthshire, to Edward I's extinguishing of native rule in Gwynedd in 1283.¹ This long period encompassed innumerable Anglo-Welsh conflicts, local and regional, after each of which it was necessary for native Welsh and English invader to reach a settlement, both practical and legal, for coexistence and governance. The terms of this settlement were, in each instance, overwhelmingly dictated by the victor, and were sufficiently preferential to him so as to ensure that he would receive the spoils of social and economic privilege. These privileges were enshrined in the evolving customary law of the various marcher lordships of Wales and, following the 'final conquest' of 1282–83, the privileges of the English in the Principality of Wales were set out in the 1284 Statute of Wales and later royal edicts. Subsequent Welsh rebellions, especially those led by Madog ap Llywelyn in 1294–5 and Owain Glyndŵr in 1400–1415, resulted in alterations to the 1284 settlement, further restricting the rights of the Welsh and privileging the English. As we shall see, Marcher policy often echoed royal policy, and changes to it, but never exactly mirrored it.

The customary and statute law that offered English conquerors, both the soldiers and administrators who arrived first, and the immigrant peasant cultivators who followed in their

¹ Gwent was a kingdom of ancient pedigree, while Monmouthshire was formed from marcher lordships by the Laws in Wales Act, 1535. See D. Crouch, 'The transformation of medieval Gwent' and P. Courtney, 'The marcher lordships: origins descent and organization', in R.A. Griffiths, ed., *The Gwent County History, Volume 2: The Age of the Marcher Lords*, Cardiff, 2008, 1–45, 46–69.

Pre-publication draft. Do not cite.

wake, superior legal rights to their Welsh neighbours extended beyond the initial period of peace enforcement and settlement. In the main, custom and law preferential to English incomers extended from the time of local conquest to the union of England and Wales, as achieved by An Act for Laws and Justice to be Ministered in Wales in like Form as it is in this Realm, 1536 (popularly known as the ‘Act of Union’) and An Act for Certain Ordinances in the King’s Dominion and Principality of Wales, 1543. It extended far beyond securing the invader’s immediate right of conquest to become a permanent and socially normative system of what might be characterised as ‘race law’. The present article is limited to an exploration of this ‘race law’ in post-conquest customary and statute law. It does not explore, given its relative brevity, the parallel topics of either canon law in Wales, so admirably treated by Huw Pryce, or the position of the *alltudion*, that is aliens, under native Welsh law.² If must suffice here, as essential context, to recognize two points.

First, canon law did not discriminate between Welsh and English in its application. However, certain Welsh legal institutions, which differed from those of England, were contrary to canon law. Welsh law allowed divorce. Also, it did not classify children born out of wedlock as non-inheriting ‘bastards’ but, depending on whether paternity could be established, granted them inheritance rights in the father’s or mother’s family. The Church did not countenance these institutions, leading English ecclesiastics of the twelfth and thirteenth centuries ‘to condemn the Welsh as barbarous and immoral’.³

Second, Welsh law considered one a noble, or free, Welshman only should they be born to a Welsh mother and father, without taint of slave, alien (*alltud*) or ‘one-sided-pedigree’, and so was itself cognisant of what we would now consider ‘race’.⁴ The children of (presumed male) *alltudion* had no inheritance rights from their father’s family, thus, like out-of-wedlock children of unestablished paternity, they had such rights from their mother’s family. *Alltudion* had legal limitations, such as an inability to offer testimony against Welshmen in court, but their descendants *would* automatically become legally Welsh by the fourth generation.⁵ This was perhaps a pragmatic recognition of regular English encroachment across Offa’s Dyke. English law too would come to curtail periodically the rights of ‘aliens’, as anxieties grew acute in the mid-thirteenth century about foreigners in privileged positions as moneychangers, clerics and political favourites, from 1294 as

² H. Pryce, *Native law and the Church in Medieval Wales*, Oxford, 1993.

³ *Ibid.*, 71, 74.

⁴ D. Jenkins, trans., *The Laws of Hywel Dda: Law Texts from Medieval Wales*, Llandysul, 1986, 89; T. M. Charles-Edwards, *Early Irish and Welsh Kinship*, Oxford, 1993, 173.

⁵ T.G. Watkin, *The Legal History of Wales*, 2nd edn, Cardiff, 2012, 53.

Pre-publication draft. Do not cite.

potential enemies of the realm (especially French), and from the 1370s century as a privileged mercantile and artisanal elite.⁶ But categorisation *within England* focused on place of birth over blood, so much so that, given the English aristocracy's French familial and territorial entanglements, a royal statute was introduced in 1351 to clarify that the children of Englishmen born overseas were indeed English.⁷ Hence, while the Welsh status of *alltud* focused more on lack of a biological relationship with the wider community, the English status of alien focused more on lack of native birth and loyalty to the wider community. In Wales, these views would intermingle, as discussed below.

The modern popular concept of a 'race', as an arbitrarily defined grouping of persons based on visible human phenotypes – all of which exist on continuums – is objectively a nonsense. But medieval peoples did understand themselves to be members of discernible groups based on various visible *or invisible* characteristics, and based certain laws and customs on these perceived differences. Thus, the topic of 'race' and ethnicity (defined below) in medieval Wales, Britain and Europe has long been discussed by historians. The attention it has received has waxed and waned in parallel with contemporary social discourse. Patrick Geary has written of the 'poisoned landscape' of the nineteenth century when philology, material culture and other aspects of human experience were co-opted in attempts to justify emergent nationalisms.⁸ That movement inspired a wave of scholars, such as Gustaf Kossinna (d.1931), who searched for ethnic 'homelands', and whose approaches, in Germany, overlapped disastrously with the rise of academic German Idealism and its notions of political renewal, and with Nazi ideologies of race and *Volksgemeinschaft*.⁹ Parallel movements based in 'race anthropology' were manifest elsewhere in contemporary Britain and Europe but generally dissipated after World War Two.¹⁰ The civil rights movement of the late 1950s to late 1960s, and concomitant decolonization, returned 'race' to the agenda, as historians considered the experiences of historically disempowered groups. Rees Davies, in

⁶ For an overview see, W.M. Ormrod, B. Lambert and J. Mackman, *Immigrant England, 1300–1550*, Manchester, 2019, 12–41, esp. 30–34.

⁷ *Ibid.*, 13.

⁸ P. Geary, *The Myth of Nations: The Medieval Origins of Europe*, Princeton, NJ, 2002, 15–40.

⁹ *Ibid.*, 15–40 (esp. 34–35); G. Kossinna, *Die deutsche Vorgeschichte: eine hervorragend nationale Wissenschaft*, Mannus-Biblio 9 (1921); on German Idealism see N.F. Cantor, *Inventing the Middle Ages*, New York, 1991, 112–117; B. Arnold, "'Arierdämmerung': race and archaeology in Nazi Germany on the Middle Ages", 38 *World Archaeology* (2006), 11; see P. Lambert, 'The immediacy of a remote past: the Saxon wars of 772–804 in the 'cultural struggles' of the Third Reich', in P. Lambert and B. Weiler, eds., *How the Past Was Used: Historical Cultures c.750–2000*, Oxford, 2017, 181–200; F. Link and F.W. Hornburg, "'He who owns the trifles, owns the Reich": Nazi medievalism and the creation of the *Volksgemeinschaft* in the Palatinateon', 49 *Central European History* (2016), 208–239.

¹⁰ R. McMahan, *The Races of Europe: Construction of National Identities in the Social Sciences, 1839–1939*, London, 2016, ch.2, 'Race classifiers and anthropologists', esp. 42 (table 2:1).

Pre-publication draft. Do not cite.

1966, first broached the ‘Welsh condition’ in post-conquest Wales, arguing that ‘a virtual legal apartheid prevailed in certain matters’.¹¹ Ian Jack, in a 1969 survey of ‘Welsh and English in the medieval lordship of Ruthin’, highlighted Welsh legal disability and asked rhetorically ‘what was a Welshman?’ reflecting on contemporary anti-immigration politics.¹² Davies returned to the topic in his 1975 article ‘Race relations in post-conquest Wales’.¹³ In the same year William Rees, described ‘harsh’ post-conquest ethnic legislation as ‘*apartheid* in its spirit’.¹⁴ Nevertheless, although some substantial European monographs on ‘race’ laws were published in this era, such as the Paul Johansen and Heinz von zur Mühlen’s exhaustive legal and economic study of Germans and non-Germans in medieval Tallinn, no equivalent was produced for Anglo-Wales (or Anglo-Ireland, see below).¹⁵ Following the cultural turn of the later twentieth-century, British historians, including Davies, returned to the topic from the 1990s, but they increasingly eschewed the term ‘race’, perceiving it as an imprecise early-modern term that historians had employed uncritically.¹⁶ Instead they favoured examining the medieval period on its own terms and so focused on the medieval concepts articulated by the Latin words ‘*gens*’, ‘*natio*’ or ‘*lingua*’, stemming from distant mythological and immediate genealogical concepts of one’s ‘people’, ‘nation’ or ‘[shared] language’, thus shifting their discourse away from ‘race’ and towards ethnicities and identities.¹⁷

But all that was once old becomes new again and ‘race’ is once more on the agenda, propelled there by the growth of identity politics and its concomitant discourse in the humanities, especially at North American universities. Several post-2000 articles on medieval Wales addressed ‘race’ directly or indirectly, such as Diane Korngieble’s prize-winning article on post-conquest settlement entitled ‘Forty acres and a mule’, a comparative reference to the policy of making provision for freed slaves in the post-Civil War American South.¹⁸

¹¹ R.R. Davies, ‘The twilight of Welsh law, 1284–1536’, 51 *History* (1966), 151.

¹² R.I. Jack, ‘Welsh and English in the medieval lordship of Ruthin’, 18 *Denbighshire Historical Society Transactions* (1969), 23–49.

¹³ R.R. Davies, ‘Race relations in in post-conquest Wales’, *Transactions of the Honourable Society of Cymmrodorion* (1974–75), 32–56.

¹⁴ W. Rees, ed., *Calendar of Ancient Petitions Relating to Wales* [hereafter *Petitions*], Cardiff, 1975, 18.

¹⁵ P. Johansen and H. von zur Mühlen, *Deutsch und Undeutsch im Mittelalterlichen und Frühneuzeitlichen* Reval, Cologne, 1973.

¹⁶ ‘Race, n.6.’ *OED Online*, Oxford University Press <<http://www.oed.com/view/Entry/157031>> accessed 19 June 2019.

¹⁷ Bartlett, *The Making of Europe*, 197; Davies, ‘The peoples of Britain and Ireland, 1100–1400: I. Identities’, 4 *Transactions of the Royal Historical Society* (1994), 1–20; ‘II. Names, boundaries and regnal Solidarities’, 5 *ibid.* (1995), 1–20; ‘III. Laws and customs’, 6 *ibid.* (1996), 1–23; ‘IV. Language and historical mythology’, 7 *ibid.* (1997), 1–24; M.F. Stevens, ‘Wealth status and “race” in the Ruthin of Edward II’, 23 *Urban History* (2005), 17–32; M.F. Stevens, *Urban Assimilation in Post-Conquest Wales: Ethnicity, Gender and Economy in Ruthin, 1282–1348*, Cardiff, 2010.

¹⁸ D. Korngiebel, ‘(The Denis Bethell Prize essay) Forty acres and a mule: the mechanics of English settlement in northeast Wales after the Edwardian conquest’, 14 *The Haskin’s Society Journal* (2003), 91–104; *ibid.*,

Pre-publication draft. Do not cite.

This renewed interest in ‘race’ culminated in an attempt to define, and thereby to rehabilitate for analytical use, the terms ‘race’ and ‘racism’ in the benchmark essay collection *The Origins of Racism in the West* (2007).¹⁹ Here the editors employ ‘race’ to indicate a group perceived by contemporaries to be both biologically linked and to share immutable heritable traits, including both socially-selected physical traits (akin to the flawed popular modern understanding of the term race) and social and cultural attributes (now understood as ethnicity); they subscribe to Charles Hirschman’s view that ‘there is no conceptual basis for race except racism’.²⁰ ‘Racism’ is thus defined, in Benjamin Isaac’s terms, as:

An attitude towards individuals and groups of peoples which posits a direct and linear connection between physical and mental qualities. It therefore attributes to those individuals and groups of peoples collective traits, physical, mental and moral, which are constant and unalterable by human will, because they are caused by hereditary factors or external influences, such as climate or geography.²¹

That is to say, a race exists exclusively as the product of the inherently racist belief in the existence of unalterable inherited qualities of a mental and moral nature, and an attempt to rationalize that irrational belief. The editors of *The Origins of Racism* stress the need to separate racism, so defined, from other forms of prejudice.²²

Yet in 2019 this definition of ‘race’ and ‘racism’ was challenged by Geraldine Heng, in *The Invention of Race in the European Middle Ages*, who favours a much broader constructivist definition for ‘medieval race’, namely:

Race is a structural relationship for the articulation of human differences, rather than a substantive content...the differences selected for essentialism will vary in the *longue durée* – perhaps battenning on bodies, physiognomy, and sometimes attributes in one

‘English colonial ethnic discrimination in the lordship of Dyffryn Clwyd: segregation and integration, 1282–c.1340’, 23 *Welsh History Review* (2006), 1–24.

¹⁹ M. Eliav-Feldon, B. Isaac and J. Ziegler, eds, *The Origins of Racism in the West*, Cambridge, 2009; We do not take a position on volume’s claim that ‘...racism represents a form of rationalization that was unknown and could not have existed before the Greeks developed...philosophy. In this sense racism originated in the west, for nothing comparable existed [elsewhere]...’ (ibid., ‘Introduction’, 10). This thesis is confusingly analogous to equally contentious claims, eschewed by *The Origin’s* authors’ own intellectual milieu, that only the West could have given the world freedom, liberty and critical debate, for the same Hellenocentric reasons. M. Elvin, ‘Confused alarms: Duchesne on the uniqueness of the West (review of R. Duchesne, *The Uniqueness of Western Civilization*, Leiden, 2011)’, 36 *The Canadian Journal of Sociology* (2011), 361–377.

²⁰ M. Eliav-Feldon, B. Isaac and J. Ziegler, ‘Introduction’, in M. Eliav-Feldon, B. Isaac and J. Ziegler, eds., *The Origins of Racism*, 6–8; C. Hirschman, ‘The origins and demise of the concept of race’, 30 *Population and Development Review* (2004), 401.

²¹ Eliav-Feldon, Isaac and Ziegler, ‘Introduction’, 11.

²² Ibid., 4

Pre-publication draft. Do not cite.

location; perhaps on social practices, religion, and culture in another; and perhaps a multiplicity of interlocking discourses elsewhere...²³

Heng thus abandons the notion that race need necessarily be conceived as a product of racism held to be inseparable from the notion of heritable traits. This allows her to speak in terms of ‘religious race’ (for example, Jews), ‘cartographic race’ and other formulations, including ‘race-making’ through conquest, giving medieval Wales and Ireland as examples of the latter.²⁴ She criticises historians such as Robert Bartlett, who moved away from the term ‘race’ after the 1990s when discussing the medieval Welsh, Irish, Slavs and Jews.²⁵ Yet a key question raised by Heng’s work is whether such a wide-ranging conception of ‘race’ effectively broadens the term’s meaning so far as to become unhelpful. Is any historical group assumed inferior and subject to prejudice to be understood in a manner analogous to our early twenty-first century popular understanding of a ‘race’?

Surprisingly, although the inferior legal position of post-conquest Welsh people – often considered in tandem with the Irish – has been a principal reference point throughout the historiography of medieval race for the past fifty years, no attempt has ever been made to survey and categorise discriminatory law in medieval Wales. Given the centrality of the Welsh experience to the historiography of ‘race’ and ethnicity, it is vital to identify the laws in question, to understand their practical implications, and to ask to what extent they were based on race or racism as defined by Isaac or Heng. Were they indeed ‘race law’, by either definition?

Wales, as the first target of Norman conquest and colonization – initially private and later royal – within the British Isles beyond England, from the late eleventh century, would provide a template for inter-ethnic relations that was later exported to Ireland. Legal pluralism, giving to each people (*gens/natio*) their own law, was recognized by both native and conqueror from the beginning of foreign adventurism in Wales.²⁶ Within England too, sharp post-conquest legal distinctions had initially been drawn between native English and Norman-French conquerors, as exemplified by the *murdrum* fine to be paid by English communities in the vicinity of any discovered victim of a secret or concealed homicide unless sworn ‘presentment of Englishry’ should be made to establish the victim’s Englishness.²⁷

²³ G. Heng, *The Invention of Race in the European Middle Ages*, Cambridge, 2018, 27.

²⁴ *Ibid.*, 27–31, 33–42.

²⁵ *Ibid.*, 24–5.

²⁶ Davies, ‘The peoples...III. Laws and customs’, 1–4.

²⁷ G. Garnett, ‘*Franci and Angli*: the legal distinctions between peoples after the conquest’, 8 *Anglo-Norman Studies* (1985), 109–113.

Pre-publication draft. Do not cite.

But, by the end of the twelfth century, mentalities were changing. In England, divisions between conqueror and conquered were increasingly perceived as ones of class, ruling versus peasant, rather than of character.²⁸ In contrast, Gerald of Wales's contemporary writings about the supposed spiritual, moral and cultural failings of the Welsh and Irish indicate an intellectual direction of travel that would, by the late thirteenth century, infiltrate the minds of the political elite, both marcher lords and royal administrators.²⁹ As Bartlett and Davies have argued, the thirteenth century was a watershed period in which enhanced importance was assigned to certain ethno-cultural traditions, especially language and law, giving rise to ethno-linguistic nationalism at ethnic frontiers within Britain and Europe.³⁰ From the thirteenth century, 'ethnic and legal triumphalism' saw 'magnanimous pluralism' give way to 'a mean-minded exclusiveness and a tendency to regard the tolerated different as the culturally and ethnically inferior.'³¹ The 1284 Statute of Wales extended to Wales the *murdrum* fine, by then just a revenue raising device in England, indicating that it ought to apply only to 'the Welshry', making its kindreds liable for the secret or concealed killing of non-kindred (i.e. non-Welsh) persons.³² In contrast with the legal pluralism of the early period of conquest, the conclusion reached by English administrators by at least the mid-fourteenth century was that 'political cohesion depended on legal uniformity'.³³ But the achievement of legal uniformity in Wales would be forestalled until the 1536 Act of Union of England and Wales, in part by anti-Welsh laws addressing countervailing concerns for the need to maintain security against Welsh rebellion and to maintain the economic, political and legal superiority of English colonists over their Welsh neighbours.

The themes and questions considered here apply not only to medieval Wales and the relations between English and Welsh, but also to other frontier societies, particularly those within the English crown's sphere of influence and rule. Peter Crooks, like Davies, has drawn comparisons between England's conquest of Wales and its imperialist treatment of other subject or 'colonial' territories in the later Middle Ages, including Ireland, Normandy, Gascony, and Scotland; he defines 'empire' plainly as 'an extensive polity in which a core society exercises formal or informal power over outlying regions gained or maintained by coercion' and stresses that this encompasses both 'imperialism of result', as in conquered

²⁸ Ibid., 114–116, 136–137; M.T. Clanchy, *England and its Rulers, 1066–1307*, 4th edn., Chichester, 2014, 38.

²⁹ R. Bartlett, *Gerald of Wales: A Voice of the Middle Ages*, Stroud, 2006, 128–171.

³⁰ Bartlett, *The Making of Europe*, 236–242.

³¹ Davies, 'The peoples...III. Laws and customs', 5.

³² F.C. Hamil, 'Presentment of Englishry and the murder fine', 12 *Speculum* (1937), 292.

³³ Ibid., 22.

Pre-publication draft. Do not cite.

Wales and English Ireland, and ‘imperialism of intent’, as in enduring if unrealized aspirations to authority in Scotland or France.³⁴ While the breadth of such potential comparisons is too great for analysis here, it is important to note that the closest comparator to conquered Wales, in terms of discriminatory law, is colonial Anglo-Ireland. While no attempt has yet been made systematically to assess discriminatory law in Ireland, Sparky Booker’s excellent monograph on cultural exchange and identity there points the way.³⁵

The bulk of this article, Part II, comprises a characterisation of discriminatory law in Wales and how English desires to secure the land against potential Welsh rebellion and to maintain their economic, political and legal superiority were reflected in four main categories of discriminatory law set out below: ‘security’, ‘economic freedom’, ‘political rights’ and ‘legal rights’. These laws all targeted the ‘Welsh’, either of the post-conquest Principality or of various marcher lordships – the Principality and lordships having discrete legal systems –, but few individually allow clear insight into the mentality of the law-giving king or marcher lord. When was a law conceived rationally, without racism, to prevent bloodshed and perpetuate economic advantage for the English *natio*? When was a law conceived irrationally, with racism, to keep a perceived inferior in their appropriate place? The degree to which discriminatory laws collectively might be understood as having been about race, or having embodied racism, will be returned to in section III.

II. Categories of Discriminatory Law

This section seeks to point the way for future research by offering a preliminary survey of ‘race law’ in medieval Wales, and to set out a methodology for its classification and analysis. Various legal records defined and/or differentiated between Welsh and English persons. They reflect substantive law, both codified and jurisprudential, from both royal and marcher jurisdictions, and include statutes, ordinances, charters, letters patent, petitions and court rolls (see the Appendix, below). Legal sources relate variously to the royal Principality of Wales, to individual marcher lordships, to specific towns or communities, or even individuals. Given the highly fragmented legal landscape of Wales, ordinances and legal customs were only applicable in the local political-jurisdictional unit in which they were proclaimed or adopted, such as a marcher lordship or borough. This made for significant variation in the legal status

³⁴ P. Crooks, ‘State of the union: perspectives on English imperialism in the late middle ages’, 211 *Past and Present* (2011), 4, 7; R.R. Davies, *The First English Empire: Power and Identities in the British Isles 1093–1343*, Oxford, 2000.

³⁵ S. Booker, *Cultural Exchange and Identity in Late Medieval Ireland*, Oxford, 2018, 7–8, 13.

Pre-publication draft. Do not cite.

of Welsh people and the legal customs by which they lived, obviating any uniform pan-Wales system of discriminatory laws. In this respect, ‘race’ law in medieval Wales bore a greater resemblance in practice to Jim Crow in the American Old South – where the forms and intensity of segregation varied greatly from state to state and city to city – than to the national segregationist policies of latter-day South African apartheid. Extant sources provide hundreds of references to racial legal differentiation in medieval Wales. Considered together, these laws and customs paint an impressionistic picture of a system of ethnic differentiation and structural inequality between Welsh and English with many recurrent themes. Nevertheless, this was a system that was neither monolithic nor consistently enforced, as can be seen from the numerous petitions of English colonists complaining about the rights that were being unlawfully extended to Welshmen. Thus, when considering the intensity of discrimination in medieval Wales, it is crucial to remember that the entire range of restrictions was never applicable simultaneously in any one place or at any one time.

Aside from the issue of enforcement and adherence, the system of laws which emerged in Wales is revealing of the attitudes of the crown and of the various marcher lords towards their Welsh subjects. That similar laws were periodically reissued and invoked also reveals the enduring nature of these attitudes, at least when it was convenient for the purposes of the English colonists who claimed to be disadvantaged, or even threatened, by the Welsh. This is particularly evident in the many petitions from the burgesses of north Wales who sought to shore up and guard their dominant economic position within their towns (see, 1. *Economic freedom*), calling on anti-Welsh attitudes and laws in order to do so, and citing fears about what would happen to the English should the Welsh be granted full rights (see, 2. *Political rights*). Correspondence and petitions sent to the king seeking support for the English against the Welsh in times of crisis, such as following the murder of Caernarfon burgess and representative of the Prince of Wales, Henry de Shaldeford, in 1345, also referenced their ‘malevolence and enmity’ towards the English, their criminal or felonious nature and actions, and their desire to destroy the English.³⁶ One letter characterised the Welsh as ‘so proud and cruel and malicious towards the English in the said land’, who, as a result, were constantly fearful of death.³⁷ Such hyperbole no doubt stemmed from a germ of genuine apprehension.

³⁶ J.G. Edwards, *Calendar of Ancient Correspondence Concerning Wales*, Cardiff, 1935, 231–232.

³⁷ *Ibid.*, 230–231.

Pre-publication draft. Do not cite.

Perhaps surprisingly, despite the distinction which these laws drew between Welsh and English inhabitants in Wales, there is only limited evidence within the various laws as to how an individual was defined as belonging to one of these categories, although such distinctions were more likely to be defined when these identities were being contested. For instance, ordinances of 1401, titled in the *Statutes of the Realm* as ‘certain restraints laid on persons wholly born Welshmen’, defined a Welshman as ‘whole born in Wales, and having father and mother born in Wales’ whereas other examples saw Welshness defined or contested via the ethnicity only of a person’s father or from the type of land tenure that he or she held.³⁸ The statute’s implication is that the inherent nature of Welshness (or Englishness) was conveyed by ancestral blood, to which certain psychological characteristics, such as irascibility, were attached (see below, section III). This is similar to the contemporary concept of bond status as being transmitted by blood, and the concern shown for Welsh tenure similarly co-mingles the idea of Welsh tenure, like bond tenure, as both reflecting and justifying one’s legal-biological condition. By the thirteenth century, in England, an important theoretical distinction had emerged between bond tenants who held land in villeinage, that is, serfs by tenure, and serfs (*servi*) or neifs (*native*) born into bond condition as neifs by blood (*native de sanguine*).³⁹ Although, in practice, ambiguities surrounding descent and intermarriage could render one’s condition malleable and the most germane distinction was always the non-racial – unless by Heng’s definition above – divide between free and unfree tenants. In Wales, a person’s legal ethnicity, like bond status, could be malleable in certain situations, as we will see.⁴⁰ Such definition of one’s status by others is distinct from a group’s self-identity, which, in the case of the Welsh, was arguably enhanced and emphasised in the decades leading up to the English conquest of the Principality, and was underpinned by a sense of pride in their laws, language and mythology – among the learned and aristocratic class at least.⁴¹

³⁸ I. Bowen, ed., *The Statutes of Wales* [hereafter *Statutes*], London, 1908, 31; Regarding one Welsh parent, in Dyffryn Clwyd, in Llannerch in 1372, Agnes daughter of Agnes contested an *amobr* payment, claiming that her mother was English. The *amobr*wyr responsible for collecting the payment argued that her father, Madog Sclatier, was a Welshman and acknowledged Agnes to be his daughter, thus she was liable to pay this Welsh fine. The National Archives [hereafter TNA] SC 2/219/8 m.4 (All references to TNA, SC 2 have been drawn from R.R. Davies and Ll.B. Smith, eds., machine readable database, *The Dyffryn Clwyd Court Roll Database, 1294–1422*, Aberystwyth, 1995, available from the Economic and Social Research Council, award no. R000232548). On tenure determining Welsh or English status see R.R. Davies, ‘The status of women and the practice of marriage in late medieval Wales’ in D. Jenkins and M. E. Owen, eds., *The Welsh Law of Women*, Cardiff, 1980, 103.

³⁹ P.R. Schofield, *Peasant and Community in Medieval England, 1200–1500*, Houndmills, 2003, 12–17.

⁴⁰ Davies, ‘The peoples... I. Identities’, 6–7.

⁴¹ *Ibid.*, 19–20.

Pre-publication draft. Do not cite.

The four categories of laws and customs presented here represent both the key concerns that the English crown, settlers, and various marcher lords held in relation to their rule in Wales and the means by which they sought to achieve control and dominance, both marshal and otherwise. In practice, there was considerable overlap between ‘economic freedom’, ‘political rights’ and ‘legal rights’, as these liberties often went hand in hand with one another. These categories are specific to the political context of late medieval Wales, meaning that while some might translate into different frontier or colonial contexts, others may not, and individual settings, such as Anglo-Ireland, may present their own unique classification of legal differentiation.

1. Security

Laws relating to the security of English colonists and their property reflected the practical need and desire to subdue the Welsh and prevent armed conflict and rebellion. As a result, these ordinances were often issued in the aftermath of periods of conflict between native Welsh and English colonisers within the Principality. They can be understood as a reflection of the immediate, practical necessity to establish peace within a conquered land or conflict zone before political or economic development could be set in motion. Ordinances thus prevented Welsh people from bearing arms, particularly in towns within Wales as well as strategically important English towns such as Chester.⁴² These rules were sometimes also found in marcher lordships, such as the Powys town of Welshpool, after its fourteenth-century transfer to English lordship.⁴³ As prophylactic measures against insurrection, the Welsh were also prohibited from congregating in groups and from being involved in the keeping and garrisoning of castles.⁴⁴ However, they were expected to contribute to the costs of defending the conquered lands of north Wales through the payment of murage for the building and maintenance of town walls and gates, and were regularly summoned for military service in support of the English crown, even though Englishmen in Wales were typically exempted from these requirements.⁴⁵ Such laws were first instigated shortly after the conquest of north Wales; were articulated and intensified after the 1295 revolt of Madog ap Llywelyn – with special reference to the ‘walled boroughs’ of north Wales (see below); were reissued and expanded upon in the penal laws of 1401–02 during the Glyndŵr rising; and

⁴² Appendix (to this article), S1, S2, S8.

⁴³ Appendix, S3.

⁴⁴ Appendix, S4, S5, S6.

⁴⁵ Appendix, S7, S9.

Pre-publication draft. Do not cite.

were finally ‘confirmed’ during the pan-European economic depression in 1446–47. In practice, however, such laws were not consistently enforced. For example, Welshman Adda ap Llywelyn was removed from his position as lieutenant to the steward of Cardigan castle in 1348, after an unknown period of time in office.⁴⁶ Chester’s Glyndŵr-era borough charter of 1403 went into particular detail about the security rules concerning Welsh people (male and female) in the city: they were to surrender their arms upon entering the city and were not to remain overnight on pain of decapitation. They were also prohibited from entering taverns and from assembling or meeting in groups larger than two.⁴⁷ These security provisions were a direct result of the political and military tensions in Wales and on its border with England, and they reflect both practical, ‘real’ concerns about the violence of the Welsh in this particular period and broader ideologies about their violent character and hatred towards the English. Repeated violence involving groups of Welshmen in Chester suggests that these concerns may not have been entirely unwarranted.⁴⁸ These attitudes and fears about the threat posed by the Welsh were also presented as justifications in many of the petitions against the granting of economic freedom, political rights and legal rights to Welsh people, as will be discussed below.

2. Economic freedom

Other laws were introduced after the conquest of north Wales to foster the prosperity of the English settlers and often allowed them a degree of economic freedom, of which the Welsh population was, theoretically at least, deprived. Much of this economic freedom centred on the privileges associated with the towns of Wales, both in the ‘English boroughs’ of the North and in the many towns of the marcher lordships across the rest of the country. By bestowing privileges on English residents that opened up access to trade, the purchase of goods and landholding, these laws had the potential to create an economic community differentiated along ethnic lines. General ordinances relating to north Wales recited the urban privileges that were denied to Welsh residents. For instance, the ordinances against the Welsh contained within the *Record of Caernarvon*, which were probably composed in the wake of the 1295 revolt of Madog ap Llywelyn, ruled against the Welsh becoming burgesses in the walled towns of north Wales (*in villis muratis Burgis Anglicis*) – a prohibition extended, by 1400, to all colonial towns – and forbade them from merchandising outside these towns (and thereby

⁴⁶ Appendix, S5, P2.

⁴⁷ Appendix, S8.

⁴⁸ R.H. Morris, *Chester in the Plantagenet and Tudor Reigns*, Chester, 1893, 46–48.

Pre-publication draft. Do not cite.

evading tolls).⁴⁹ These ordinances were reaffirmed in 1372, and certainly enforced in practice, as can be seen when Welshmen were arrested for brewing and selling ale outside Caernarfon at Clynnog in 1375.⁵⁰ Burghal monopolies over marketing were not unique to Wales, of course, but what *was* novel was that the restriction ought only to apply to one ethnic group of perpetual non-burgesses, the Welsh.⁵¹ The denial of urban privileges to the Welsh was repeated at various points, each time in slightly different form but with the same underlying essence. For example, the crown's 1401 penal laws, reaffirmed in 1446–47, banned Welshmen from acquiring land in any 'city borough or merchant town' of Wales, not just in walled boroughs as had been stipulated in 1295. These restrictions also extended to boroughs within England.⁵² A further corollary of this was that the privileges granted to these towns relating to self-governance, trade, and legal protection from prosecution by non-burgesses, among many other things, did not apply to their Welsh inhabitants.

However, the prohibition against Welsh burgesses was not uniformly or fully enforced and, in practice, most towns in north Wales did have at least some Welsh burgesses, the numbers varying from place to place depending on each town's specific history and context.⁵³ The largest and most important towns, like Caernarfon, tended to be English-dominated, while smaller and more remote towns might actually have a Welsh majority.⁵⁴ The various prohibitions set out here are thus expressions of an ideal of separation and English superiority, now most easily discernible in the royal governance of the Principality, rather than reflecting actual patterns of settlement and *de facto* economic rights. The foundation charters of royal north Wales boroughs, including Caernarfon, Conwy, Criccieth, Beaumaris, Harlech, and Newborough, all modelled on the liberties of Hereford, did not set out any specific Anglo-Welsh ethnic differentiation, or stipulate that the burgesses were only to be English. The charter of Conwy, which formed the basis for those of Caernarfon, Rhuddlan and Flint, did however stipulate that Jews were not to dwell in the town, as did that

⁴⁹ Appendix, E6, E15; H. Ellis, ed., *Registrum Vulgariter Nuncupatum: The Record of Caernarvon* [hereafter *Rec. Caernarvon*], London, 1838; G.P. Jones and H. Owen, eds., *Caernarvon Court Rolls 1361–1402*, Caernarvon, 1951, 9–10.

⁵⁰ Jones and Owen, eds., *Caernarvon Court Rolls*, 113; K. Williams-Jones, 'Caernarvon', in R.A. Griffiths, ed., *Boroughs of Medieval Wales*, Cardiff, 1978, 98.

⁵¹ English burghal monopolies by charter over a prescribed market district, lacking the racial dimension, e.g. Salford (1230), Bolton (1253), Stockport (1260), *et alia*. Similar monopolies were granted in Scotland, e.g. Stirling (1226), Lanark (1285), *et alia*. A. Ballard and J. Tait, eds., *British Borough Charters, 1216–1307*, Cambridge, 1923, 242–246.

⁵² Appendix, E6.

⁵³ M.F. Stevens, 'Anglo-Welsh towns of the early fourteenth century: a survey of urban origins, property-holding and ethnicity', in H. Fulton, ed., *Urban Culture in Medieval Wales*, Cardiff, 2012, 138, 141.

⁵⁴ *Ibid.*, 138, 141; M.F. Stevens, *The Economy of Medieval Wales, 1067–1536*, Cardiff, 2019, 61–5.

Pre-publication draft. Do not cite.

of Beaumaris.⁵⁵ But the ordinances following, in 1295 and 1401, made clear that burghal liberties were not intended for Welsh people.⁵⁶ As the capital of north Wales, it has been suggested that the ‘racial and economic conflict was at its sharpest in Caernarfon’, though even here, exceptions were occasionally made via petitions and denizenship.⁵⁷ Perhaps the ambiguity of ethnic division in north Wales was nowhere more apparent than at Newborough, which was peculiar among the north Wales towns in being populated almost entirely by Welsh burgesses, these having originally moved there from the pre-conquest town of Llanfaes that was dissolved in 1295 to make way for the castellated borough of Beaumaris.⁵⁸ Nevertheless, despite their many loopholes (see below) or gaps in enforcement, the rules of 1295 were echoed and bolstered again in the penal legislation of 1401, during Glyndŵr’s rebellion, revealing the crown’s continued attempts to subordinate the Welsh population via the law in times of political and military crisis.⁵⁹ Further, they were reaffirmed in 1446–47, at a time of fiscal hardship during the fifteenth-century pan-European economic depression, when English merchants sought to limit competition.⁶⁰

Some towns were more explicit than others about the ‘Englishness’ required in order to be a burghess. Unlike many other north Wales towns, the charter of Bala of 1324, was addressed specifically to the ‘English burgesses’ of the town; according to Lewis, this was the only plantation borough specifically conceived to be populated by English burgesses.⁶¹ In Flintshire and some marcher towns, there was similar prejudice against the Welsh: in Hope (Flintshire), a 1351 charter, confirmed in 1378, stipulated that no Welshmen were to be received as burgesses, nor hold a burgage or enjoy its franchises.⁶² The influence of the earlier north Wales ordinances is clear here, though the chronology suggests a response to a reduced customer base (two years after the Black Death) and an attempt to reinforce the English mercantile monopoly by expelling Welsh competitors. Various Brecon (Brecknockshire) charters and confirmations also referred to burgesses as those being wholly English, with both an English father and mother – suggesting, as seen above, that having one Welsh parent made a person ‘legally’ Welsh; an early Denbigh charter of 1295 said the

⁵⁵ See borough charters in E.A. Lewis, *The Medieval Boroughs of Snowdonia*, London, 1912, 279–291; G. Usher, ‘The foundation of an Edwardian borough: the Beaumaris charter, 1296’, [1967] *Transactions of the Anglesey Antiquarian and Field Club*, 1–16.

⁵⁶ Lewis, *Medieval Boroughs*, 255

⁵⁷ Williams-Jones, ‘Caernarvon’, 97.

⁵⁸ Appendix, E6.

⁵⁹ *Statutes*, 31–37.

⁶⁰ *Ibid.*, 45.

⁶¹ Appendix, E7; Lewis, *Medieval Boroughs*, 41.

⁶² Appendix, E8.

Pre-publication draft. Do not cite.

same.⁶³ In Welshpool (Powys), originally a Welsh community that had witnessed substantial English immigration by the end of the thirteenth century, a 1406 charter echoed the ordinances of 1401, stating that no Welshmen ought to be taken into the liberty of the town, except those who were deemed faithful to the king, showing a clear link to the recent experience of Welsh rebellion.⁶⁴ A few years later in Holt (Bromfield and Yale), the town's charter made repeated references to burgesses and their English heirs and successors, and to the election of new English burgesses.⁶⁵

The laws against Welsh burgesses even extended to Englishmen who married Welsh women, and their children, as they gained a quasi-Welsh status, similar to English free tenants or their children being unfree as a result of the freeman's 'marrying down', although in late medieval England unfree tenure increasingly eclipsed notions of unfree lineage as a determiner of status.⁶⁶ In Wales, this was presumably intended to discourage unions that blurred the lines of ethnicity.⁶⁷ Equally, it seems that Welsh marriages to English women did not confer any of the advantages of Englishness. This is visible in a petition from 'Atha ab Eignon' [*sic*] of Flint and Agnes his wife, who had been dispossessed of tenements granted upon marriage by Agnes's English father, as the burgesses of Flint claimed that a Welshman could not hold borough property.⁶⁸ Atha disputed the claim, arguing that after the conquest 'it was ordered to foster peace and agreement between English and Welsh that alliances by marriage should be allowed in all the good towns of Wales which are enclosed by walls'. The mention of walls is a clear reference to the 1295 ordinance concerning the king's walled boroughs. The outcome of this petition is not known, though the fact of the intensely disputed seizure by the justice of Chester, who imposed it, indicates his and the burgesses' confidence in their right to exclude Atha and Agnes from burgage tenure.

Numerous other petitions demonstrate how the rules that sought to foster English superiority within towns, and the ideology of ethnic separation that underpinned them, were implemented by the inhabitants of various towns of north Wales. The fact that a number of such petitions were said to have come from the collective English people or English burgesses of north Wales suggests the existence of a shared identity, at least a rhetorical one,

⁶³ Appendix, E10, E11.

⁶⁴ Stevens, 'Anglo-Welsh towns', 142; Appendix, E12.

⁶⁵ Appendix, E13.

⁶⁶ P. R. Hyams, 'The proof of villein status in the common law', 89 *The English Historical Review* (1974), 738–739.

⁶⁷ On the Welsh law of *alltudion*, see above. Also, Watkin, *The Legal History*, 53.

⁶⁸ Appendix, E14.

Pre-publication draft. Do not cite.

that could be called upon when it was politically useful.⁶⁹ Yet the existence of these petitions, which tended to call for the ordinances against Welsh people to be observed, also provides evidence that, in practice, these same ordinances were not being consistently enforced. They reflected points of tension or crisis, a break from an apparent norm of tolerance and integration. They represented as much the grievances of the English population against the crown for not enforcing rules that would ensure their eminence over the conquered native population as they did the fear and distrust of the English towards the Welsh.⁷⁰ Petitioning also served as an exercise in imperial integration, allowing the king's English subjects in Wales to reinforce their ties to the crown, as well as expressing and projecting the crown's authority over imperial lands beyond England.⁷¹ Whether similar petitions were made by the burgesses of marcher boroughs to their seignorial lords is impossible to know.

A number of petitions to the king survive from the mid-fifteenth century, including one that claims that 'the Welsh have so oppressed the English in the boroughs, towns and districts [of the Principality] that they are entirely destroyed'.⁷² Similarly, there is evidence that numerous Welsh burgesses had settled in royal boroughs within England, despite the rules that theoretically disallowed this. But in 1413 when both Welsh and Irish people were ordered to return to their native lands by Christmas of that year, several individuals from Wales received licences to remain, including burgesses of Shrewsbury and Bristol.⁷³ Here we have a mixture of enforcement and individual exception. The theoretical exclusion of Welsh people from burgess rights within the royal towns of north Wales is also implied by the revocation of such rules by royal charters of 1504 and 1507, though in many towns this probably served simply as a formal acknowledgement of a pattern of toleration that was already in existence.⁷⁴ Indeed, it has been suggested that only Conwy, Caernarfon and Beaumaris remained 'real' English towns in north Wales after the Glyndŵr rising, and that elsewhere there was a 'gradual cymricising' of the English boroughs of Wales.⁷⁵ Caernarfon in particular may have held out as a bastion of Englishness within north Wales due to its

⁶⁹ For example, Appendix, E6, P5.

⁷⁰ Stevens, 'Anglo-Welsh towns', 143, 146.

⁷¹ G. Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages*, Oxford, 2007, 45–46.

⁷² Appendix, E6.

⁷³ Appendix, E18.

⁷⁴ *Calendar of the Patent Rolls* [hereafter *CPR*], *Henry VII, 1485–1509*, 2 vols., London, 1914–16, vol.2, 434 (Bromfield and Yale), 471 (Denbighshire), 586 (Dyffryn Clwyd); Lewis, *Medieval Boroughs*, 182.

⁷⁵ Lewis, *Mediaeval Boroughs*, 55, 254–257.

Pre-publication draft. Do not cite.

heightened political importance as capital of the principality. Yet even here, Welsh lived and worked in the town, even if not as burgesses.⁷⁶

Outside the boroughs and towns of the Principality and the March, the continuation of certain pre-conquest Welsh customs, services and fines also served as a form of economic discrimination against those of Welsh birth and lineage who, in many lordships, owed various fees or services that were not applicable to their English neighbours. Korngiebel has argued that together, the continuation of native legal structures and offices reinforced the differences between Welsh and English and fostered ‘a mutual sense within each ethnic group that members of the other culture were alien.’⁷⁷ While there were often English equivalents to these fines, such as *amobr* (a fine due most commonly at a woman’s marriage), *ebediw* (death duty) and *gobrestyn* (entry fine), the sums exacted via these latter Welsh fees were high compared to their English equivalents.⁷⁸ For example, in the court of Ruthin, whilst heriot fines were based on the wealth of the deceased person, often at 12d., *ebediw* constituted a fixed sum of either 10s. or 20s.⁷⁹ The collection of *amobr* was so lucrative that the office of *amobrwy* was farmed locally, and these men are found in commotal court rolls pursuing women for debt after their failure to pay the fine, a system that Davies called ‘a sordid and profitable racket’.⁸⁰ Other customs were uniquely applicable to Welsh tenants, such as the provision of subsistence money for foresters (*arrianforestour* in the Dyffryn Clwyd rolls) and the fine owed on the feast of St Bridget, once paid in the form of ale (*Cwrw gwyl Sanffraid*).⁸¹ The Welsh judge (*ynad*) was the chief arbiter of these continuing Welsh legal practices, customs and fines within the lordship, determining cases based on Welsh law and assigning fines as dictated by custom.⁸² The continued use of Welsh law in civil pleas between the Welsh (discussed below) also attracted additional fees through the payment owed to the *ynad*. The continuation of Welsh land law, particularly of partible inheritance and the inability to sell land (discussed below), may also have been detrimental to the economic position of the Welsh, though there is evidence that this continuation of Welsh law was sought by some

⁷⁶ Stevens, ‘Anglo-Welsh towns’, 145.

⁷⁷ Korngiebel, ‘English...discrimination’, 12.

⁷⁸ Appendix, E5a-e; On *amobr* see L. Johnson, ‘*Amobr* and *Amobrwy*: the collection of marriage fees and sexual fines in late medieval Wales’, 18 *Transactions of the Honourable Society of Cymmrodorian* (2012), 10–21.

⁷⁹ For example, Alice the widow of Thomas Gogh, heir of John ap Madog, paid 12d heriot upon his death (TNA, SC 2/220/9 m.2). *Ebediw* and *gobrestyn*, together, were assessed at 10s. or 20s., for example, Cyn ap Hywel heir of Hywel ap Gwilym, who paid 20s. on the death of the latter (TNA, SC 2/220/7 m.21).

⁸⁰ Davies, ‘The status of women’, 96.

⁸¹ Appendix, E5d.

⁸² Korngiebel, ‘English...discrimination’, 11.

Pre-publication draft. Do not cite.

Welsh people.⁸³ Many tenants paid their lords to convert their tenure from Welsh to English terms in order to avoid the payment of these various exactions and to sidestep such legal differentiation (discussed below), demonstrating that it was financially expedient to ‘become English’ in terms of land tenure.⁸⁴ In fact, regular profits accruing from both various discriminatory laws and the fines paid by Welsh persons seeking relief from them likely served to perpetuate the long-term retention of many of the forms of legal discrimination discussed here and below (e.g. 4. *Legal rights*, on partible inheritance), especially in times of relative peace.

3. *Political rights*

Intertwined with the frequent restriction of economic privileges to English persons was the system of laws that reserved many political rights, particularly officeholding positions, for the English residents of both the Principality and marcher lordships. Many of these were positions that were specifically urban, so the restriction of burgess status to English residents also reserved for English townsmen official posts such as borough mayor or bailiff. This was expressed in both general and specific ordinances and charters at various points in the period after 1284.⁸⁵ The 1401 penal laws gave a long list of specific urban offices that Welshmen – no women of any ethnicity held offices – were not to hold in royal boroughs. In addition, the highest offices of the English-governed Principality of north and south Wales, such as justice, chamberlain, treasurer, sheriff, steward, constable of castles, receiver, escheatour, coroner, forester or record keeper were not to be held by Welshmen, as was the case in many marcher lordships.⁸⁶

Some towns arrived at more bespoke discriminatory arrangements. This was necessary at Newborough, given its somewhat anomalous position as a royal north Wales borough arising from the displaced ‘Welsh’ burgesses of Llanfaes. Following the grant of a borough charter in 1303, which made no reference Welshness or Englishness, Edward III granted the town the right to elect a mayor in 1347, though it was stipulated that the mayor had to be an Englishman, a means of mitigating the fact that this was a primarily Welsh borough.⁸⁷

⁸³ Davies, ‘The twilight’, esp. 160–62.

⁸⁴ A.D.M Barrell and M.H. Brown, ‘A settler community in post-conquest rural Wales: the English of Dyffryn Clywd, 1294–1399’, 17 *Welsh History Review* (1995), 355.

⁸⁵ Appendix, P1; see also, Ellis, ed., *Record of Caernarvon*, 132.

⁸⁶ Appendix, P2.

⁸⁷ For Newborough’s charter, see, Lewis, *Medieval Boroughs*, 283. For English mayoralty, see, Appendix, P1.

Pre-publication draft. Do not cite.

While there were seemingly sweeping prohibitions against Welshmen gaining positions of local political power, numerous petitions from the English of north Wales again reveal not only a widespread knowledge of the bans on Welsh officeholding but also demonstrate a chronic lack of their enforcement. The earliest of these petitions came in 1308–09, when the king’s chamberlain in north Wales complained that the justices were acting illegally in appointing Welshmen as sheriffs and bailiffs.⁸⁸ However, the majority came later, after the Black Death, and represented the general discontent of English residents, often burgesses, at the encroachments of the Welsh upon their superior economic and political position. Many of the petitions from English burgesses complaining of the admission of Welsh burgesses to the royal boroughs likewise referred to the admission of Welshmen to various offices and reflected a general desire to restore all the discriminatory ordinances of 1295, later reaffirmed in 1401 and 1446–47. However, concern about officeholding was increasingly prominent in these petitions. A 1429 petition claimed that many Welshmen had acted deceitfully, pretending to the king’s council and marcher lords that they were English, in order to achieve positions of status.⁸⁹ Another sought to put a stop to the successful suits and petitions made by Welshmen to the king in order that they be excepted from the ordinances and be granted the right to become burgesses and officers.⁹⁰

This latter request may have been a direct response to the petitions of men such as Gwilym ap Gruffudd of Penrhyn, and his son William ap Gwilym ap Gruffudd (a.k.a. William Fychan ap Gwilym), who both sought the rights of Englishmen in about 1439–42, including the right to hold offices. Gwilym claimed to be ‘for the most part wholly English’ and cited his marriage to an English woman, Joan Stanley, while William, though referring to his father as Welsh, highlighted his English lineage only through his mother.⁹¹ Davies called Gwilym ap Gruffudd’s claim to English status ‘a thumping lie’, suggesting perhaps some veracity to contemporary allegations about Welshmen pretending to be English.⁹² An alternative interpretation might be official indulgence in a legal fiction that enabled the collection of profitable fines to change legal status; such fictions were common in English Common Law.⁹³ The petitions appear to have been successful, as various members of the

⁸⁸ Appendix, P2.

⁸⁹ Appendix, P1.

⁹⁰ Appendix, P1.

⁹¹ Appendix, P4.

⁹² R.R. Davies, *The Revolt of Owain Glyn Dŵr*, Oxford, 1995, 315.

⁹³ J.H. Baker, *An Introduction to English Legal History*, 5th edn., Oxford, 2019, 212–215.

Pre-publication draft. Do not cite.

family went on to hold offices in north Wales.⁹⁴ In a similar petition, Rhys ap Thomas cited his allegiance to the crown and the damage he had suffered at the hands of Glyndŵr's rebels.⁹⁵ Welshmen also sought official letters of denization, sometimes when living in England, demonstrating that the disabilities associated with being Welsh extended east of the March.⁹⁶ This was something else that the burgesses of north Wales were unhappy about, specifically petitioning that Welshmen should not be made denizens and thus granted the rights of Englishmen, for fear of destruction of the English community in Wales.⁹⁷

Marriage between English men and Welsh women also affected the political rights and status of the former, as it did in relation to the privileges of burgess status. English men who married Welsh women were precluded from holding offices, a reflection perhaps of their supposed questionable loyalty to the English crown, particularly in the wake of the Glyndŵr rising. This rule was set out in the penal laws of 1401–02.⁹⁸ William Bulkeley, an Englishman who married Elen, daughter of Gwilym ap Gruffudd, petitioned the king – like other men of his wife's family – that this rule should not apply to him.⁹⁹ The fact that such petitions were made demonstrates that the rules against officeholding by Welshmen were at least sporadically enforced, but the success of a number of such petitions shows that exceptions were made, reflecting recognition of differing degrees of 'Welshness'. A person might be 'Welsh', but to such a suitably modest degree that their 'Welshness' might be mitigated by sufficient financial and social wherewithal to petition the king, plus partial English descent, demonstrations of allegiance, or perhaps personal connections. Thus, not all Welsh people felt the effects of the various race-based laws in the same way, or to the same extent.

4. Legal rights

The continued right of the Welsh to have their own law was an instrumental part of the negotiations between Llywelyn ap Gruffudd and Edward I following the war of 1276–77.¹⁰⁰ The subsequent conquest of north Wales saw the introduction of various elements of English

⁹⁴ William ap Gwilym ap Gruffydd was deputy to various chamberlains of North Wales between 1457 and 1463, plus other roles: G. Roberts, 'Griffith of Penrhyn, Caernarfonshire', *Dictionary of Welsh Biography*, <<https://biography.wales/article/s1-GRIF-PEN-1300>> accessed 21 Aug. 2019.

⁹⁵ Appendix, P4.

⁹⁶ For example, letters of denization of John Butte, 1437 (Appendix, P5). See also, 'England's Immigrants', project database <<https://www.englishimmigrants.com/>> accessed 12 Sept. 2019.

⁹⁷ Appendix, P5.

⁹⁸ Appendix, P3.

⁹⁹ Appendix, P3.

¹⁰⁰ Davies, 'The peoples...III. Laws and customs', 2.

Pre-publication draft. Do not cite.

law within the Principality and marcher lordships in order to give the English settlers their own laws, with some specific modifications that reflected the colonial situation and acknowledged Welsh law and custom. The English of the Principality would enjoy a streamlined form of Common Law, supplemented locally by customary practice (see below).¹⁰¹ The Principality's Welsh inhabitants were allowed to continue using their own civil laws and customs provided that these neither detracted from the rights of the crown nor were deemed to be unjust.¹⁰² The differences in legal status between the Welsh and English were therefore a key part of the broader system that sought to differentiate the two populations of medieval Wales. In courts of various jurisdictions, procedural restrictions and differences in legal practice were imposed on Welsh litigants on account of their ethnicity, based on lineage – implying 'blood' – that underpinned the whole system of discriminatory laws that applied to medieval Wales. But, in a circular fashion – as with tenure discussed above – employing or allowing oneself to be subjected to ethnically specific legal practices also served to define a person's ethnic status in Wales, just as Irish laws and customs defined the Irish within the English colony there.¹⁰³ These differentiated legal rights most often regulated the way that Welsh and English engaged via litigation, affording the English an advantageous or protected position.

At its most extreme, the penal laws of 1400–02 dictated that across the Principality of Wales 'no whole Englishman' was to be convicted at the suit of a Welshman, except by the judgement of English justices or 'judgement of whole Englishmen'.¹⁰⁴ The emphasis on 'whole' Englishness, that is, having two English parents, is notable. In addition, the law that English people could not be tried by Welsh juries contributed to the notion of a need to protect the English from legal 'attacks' by the Welsh, in the same way that rules relating to security sought to protect them from military attack. The privileges granted to burgesses of the royal towns of north Wales again came into play here, as they protected them from suits brought by anyone except their fellow English burgesses, with pleas to be decided by juries consisting only of English burgesses. A petition by North Wales burgesses from the mid-fourteenth century complained that they had been convicted by 'foreign persons', specifically the Welsh, and relayed fears that if they were to be tried 'by the mouths and oaths of Welshmen, there would not...be any Englishman in Wales alive within a short time.'¹⁰⁵

¹⁰¹ L.I.B. Smith, 'The Statute of Wales, 1284', 10 *Welsh History Review* (1980), 127–154.

¹⁰² Davies, 'The peoples...III. Laws and customs', 20–21.

¹⁰³ *Ibid.*, 4, 6.

¹⁰⁴ Appendix, L3.

¹⁰⁵ Appendix, L5.

Pre-publication draft. Do not cite.

Whether or not this petition expressed a genuine fear, the bombast employed was intended to restate or reinforce the superior position of the English by playing on popular English perceptions of the Welsh as untrustworthy and as possessing an invidious hatred of the English. Similarly, the petition cited above that called for the ending of denizenship for Welshmen also called for the barring of Welshmen from juries to be enforced, and recited the same fear of the Welsh using the law to act out their hatred for the English.¹⁰⁶ Beyond North Wales, there were also restrictions on the legal actions of Welsh people, some of which overlapped with the ordinances in the Principality, while others were distinct to the context and customs of the various marcher lordships. In Swansea in the lordship of Gower, the town's 1306 charter stipulated that no burgesses were to be accused by a Welshman of any offence, echoing the privileges of the North Wales boroughs.¹⁰⁷ The withholding of political rights and economic freedom from Welsh people was therefore directly intertwined with their legal rights and their engagement with the English via the law.

The copious surviving court rolls of the marcher lordship of Dyffryn Clywd furnish the clearest evidence of the operation of differential ethno-legal processes in action. The lordship's various courts, which had jurisdiction over the seigniorial borough of Ruthin and three commotes of the lordship, had much in common with English manorial courts. However, the interaction of Welsh and English residents in both everyday life and in litigation was marked by various differences in legal rights and procedure that applied to the two ethnic communities. These are recurrent themes throughout the surviving court records, revealing the impact of these legal differences in action.¹⁰⁸ Welsh could not wage law (compurgation) nor be essoined (excused for non-attendance from court to court) versus English.¹⁰⁹ Some cases between Welsh and English litigants in the Dyffryn Clwyd courts were disrupted or cancelled on this basis, as this rule was periodically invoked by English litigants who challenged their Welsh opponents by referring to customs in use since the conquest of Wales.¹¹⁰ The fact that Welsh litigants were theoretically not allowed to wage law against English opponents again suggests the perception of the Welsh as untrustworthy litigants, who presumably would find Welsh compurgators to support their claim, whether just or not. Similarly, the rule against essoins suggests a desire to ensure that Welsh

¹⁰⁶ Appendix, L5.

¹⁰⁷ Appendix, L4.

¹⁰⁸ Korngiebel, 'English...discrimination', 17.

¹⁰⁹ L6. On essoin and default procedures in Dyffryn Clwyd, see, P.R. Schofield, 'English law and Welsh marcher courts in the late thirteenth and early fourteenth centuries', in R.A. Griffiths and P.R. Schofield, eds., *Wales and the Welsh in the Middle Ages*, Cardiff, 2011, 116.

¹¹⁰ For example, TNA, SC 2/220/9 m.31d.

Pre-publication draft. Do not cite.

defendants turned up in court, rather than permitting them to extend their cases through malingering non-attendance. Both of these rules were clearly designed to protect the English, rather than to expedite legal action, as the waging of law and the use of *essoins* were permitted in cases where both litigants were Welsh, where the defendant only was English, and where both litigants were English.¹¹¹

There were also ethnically specific arrangements for juries in Dyffryn Clwyd. When disputes between Welsh and English were decided by a jury, this jury was to be made up of equal numbers of Englishmen and Welshmen. This procedure was again designed to protect against the supposed dishonesty of the Welsh and their desire to convict the English, as was alluded to in various petitions from North Wales. The settlement of pleas by jury was increasingly common in manorial and borough courts by the late thirteenth century, and the requirement for mixed juries in the Welsh context was a unique evolution of this.¹¹² Uniformly half English and half Welsh juries are found within the earliest extant Dyffryn Clwyd court rolls, of 1294, suggesting that this practice was in place from the creation of the lordship, or shortly thereafter.¹¹³ In royal south and west Wales too, this had been policy in interethnic pleas leading to an inquest from 1315–16 until c.1400–02, when the Principality barred Welshmen from participating in juries relating to ‘whole Englishmen’.¹¹⁴ Expecting jurors of both ethnic communities to act together in dispute resolution represented simultaneously their separation and interaction, and the need for a jury that reflected the comprehensive community.

Other legal privileges were reserved for English tenants of Dyffryn Clwyd. They owed suit only to the biannual Great Court of the lordship, unless there were reasonable summons for them to attend the petty courts. The English were also exempt from merchandising tolls and were able to brew toll-free for private consumption, in contrast to Welsh tenants who owed ale fines at the feast of St Bridget.¹¹⁵ Outside Wales and the March, there was also legal inequality for those of Welsh ethnicity. In Chester, where there was much interaction between English and Welsh, the latter group had weaker rights if their goods were stolen.¹¹⁶

¹¹¹ *Essoins*, Welsh versus Welsh, e.g. TNA, SC 2/215/73 m.18d.; *essoins*, Welsh plaintiff versus English defendant, e.g. TNA, SC 2/216/4 m.20; *compurgation*, Welsh versus Welsh, e.g. TNA, SC 2/216/6 m.11.; *compurgation*, Welsh plaintiff versus English defendant, e.g. TNA, SC 2/216/10 m.17.

¹¹² Schofield, ‘English law’, 110.

¹¹³ TNA, SC 2/215/64 m. 23 (various).

¹¹⁴ Appendix, L1.

¹¹⁵ D.M. Korngiebel, ‘English...discrimination’, 8.

¹¹⁶ Appendix, L7.

Pre-publication draft. Do not cite.

The instances where these rules were contested or invoked referred to individual litigants being either ‘English and [/or] a burgess’ or ‘Welsh and of Welsh status’, the double racial reference perhaps referring to both ‘blood’ and tenure.¹¹⁷ However, it appears that, in practice, distinctions of ethnic-legal status in Dyffryn Clwyd were typically made on the basis of the type of tenure by which a person held their land.¹¹⁸ Often this aligned with a person’s ethnic status (hence being Welsh and of Welsh status), but this was not always the case. Tenants were able to petition the lord to change their tenure, and this occurred increasingly as holdings became vacant after the Black Death and rebellions.¹¹⁹ As a result, some people who challenged the essoins of Welshmen had Welsh names themselves, though they claimed English status, demonstrating the blurring of ethnic and legal differentiation.

The retention of certain aspects of Welsh law after the conquest further distinguished between the legal rights of Welsh and English people across Wales, particularly in relation to land transfer and the methods of proof in civil cases involving Welsh parties.¹²⁰ Some Welsh people apparently enjoyed and guarded the continuation of their native law and customs, and actively sought for its defence, reflecting the centrality of Welsh law to the idea of Wales and the identity of its people.¹²¹ A 1322 petition to the king asked for the restoration of the laws and customs of Cyfraith Hywel, of which Roger Mortimer had deprived Welshmen during his recent time as justice of Wales.¹²² However, the continuance of Welsh law was not universally favoured or held up as a laudable marker of Welsh identity. The Statute of Wales of 1284 stipulated that partible inheritance would remain in the Principality, though altering the practice to allow women to inherit in the absence of male heirs.¹²³ Also, the Welsh, by the customs of Cyfraith Hywel, could not alienate land as free English tenants could, though they could grant possession of it to another for an indefinitely renewable term of typically four years using the Welsh device of *tir prid*, eventually achieving alienation in effect.¹²⁴ These were both legal and economic forms of discrimination against the Welsh. The effect of

¹¹⁷ For example, TNA, SC 2/220/9 m.31d.

¹¹⁸ Korngiebel, ‘English...discrimination’, 8; Owing of suit to courts by different categories of tenants is set out in the Dyffryn Clwyd rentals, for example in 1324 (TNA, WALE 15/8/1).

¹¹⁹ Barrell and Brown, ‘A settler community’, 355.

¹²⁰ Schofield, ‘English law’, 117.

¹²¹ Davies, ‘Law and customs’, 9–10.

¹²² Appendix, L2.

¹²³ Appendix, L8.

¹²⁴ Appendix, E1. *Tir prid* was a lawyerly device in which, effectively, a sale of land was disguised as a loan, with repayment to be secured by the transfer of possession of land to the ‘creditor’. By design, however, that repayment would not be made (profits from the land not paying down the ‘loan’) and the arrangement renewed until the connection between the land and the original family would, in time, be forgotten. We thank the peer reviewer for clarifying this.

Pre-publication draft. Do not cite.

partible inheritance was to prevent individuals or families from amassing landed wealth, in contrast to the laws that applied to English settlers, something of which the two communities would have been well aware.¹²⁵ Thus, around 1320, the Abbot of Blaunchelaunde (Whitland, Carmarthenshire) – who may well himself have been ‘ethnically Welsh’ – protested of the detriment of Welsh law to himself, his brethren and his tenants; his request for English law was refused by the king.¹²⁶ A petition from ‘the king’s free tenants of north Wales’ specifically cited partible inheritance as the source of their impoverishment, claiming that the continued division of land meant that heirs ‘become each a beggar’. The request to allow English law in relation to land, including its sale, was again denied, reflecting what Davies called ‘a mean-minded exclusiveness’ on the part of the English crown.¹²⁷ At the same time, the crown and marcher lords enjoyed what Llinos Beverley Smith called ‘fat profits’ from the sale of licenses to alienate Welsh land.¹²⁸ And, from the early fourteenth century, they required the licensing of *tir prid* transactions while restricting the practice in ways that could be evaded by making fine, such as prohibiting *tir prid* transactions between Welshmen and Englishmen.¹²⁹ Providing relief from discriminatory laws was profitable, discouraging their abolition even as those subject to them petitioned for it.

The provisions of the Statute of Wales relating to changes in Welsh law were not imposed in the marcher lordships immediately: the right for women to inherit continued to be prohibited in some marcher lordships well into the fifteenth century, such as Bromfield and Yale, Dyffryn Clwyd, and Oswestry.¹³⁰ Dower rights were granted to all women within the principality in 1284, but widows whose husbands held land under Welsh tenure long continued to be barred from having dower in these three lordships, and perhaps others.¹³¹ Thus, legal rights in Wales were not simply based on ‘ethnic’ distinctions between Welsh and English, but were also determined by region or lordship.

III. Conclusion

¹²⁵ Korngiebel, ‘English...discrimination’, 9.

¹²⁶ Appendix, L2; The abbey was supported by the native Welsh, and most known abbots had Welsh names: see the ‘Monastic Wales’ project <<http://www.monasticwales.org/site/36>> accessed 11 Sept. 2019.

¹²⁷ Appendix, L8; Davies, ‘The peoples...III. Laws and customs’, 5.

¹²⁸ L.I.B. Smith, ‘The gage and the land market in late medieval Wales’, 29 *The Economic History Review* (1976), 541.

¹²⁹ *Ibid.*, 544 (n.6)–545.

¹³⁰ Davies, ‘The status of women’, 100–101 n. 19, 21; L.I.B. Smith, ‘Towards a history of women in late medieval Wales’, in M. Roberts and S. Clarke, eds., *Women and Gender in Early Modern Wales*, Cardiff, 2000, 22.

¹³¹ Appendix, L8, L9; L.I.B. Smith, ‘Towards a history’, 21.

Pre-publication draft. Do not cite.

To what extent were the systems of discriminatory law and custom that emerged in Wales unique to Welsh circumstances or original in conception?

Much of the discriminatory law, its initiation by statute, ordinance, or jurisprudential development, its invocation in petitions and court cases, and other reactions to it, can be plotted and understood in relation to the specific and evolving political circumstances that spanned over two centuries of Welsh history from 1284 onwards. Most obviously, the evolution of this body of law was tied to the English conquest of Wales in 1284, the 1294–95 rebellion, and the Glyndŵr rising of 1400–15. Plotted chronologically, the majority of the legal acts and ordinances that sought to enforce or reinforce Welsh subordination were clustered around these events, reflecting that these were crisis points when the English felt under threat.

Further smaller clusters of evidence come from periods of economic stress. The Black Death of 1348–49 and subsequent demographic upheaval destabilised the English colonial economy, driving colonists to reinforce their monopoly of economic and political power in boroughs and governance. The second quarter of the fifteenth century also saw widespread invocation of the 1295 ordinances and 1400–01 penal legislation against the Welsh. This was indicative of a continual decline in English superior status thanks to post-Glyndŵr economic dislocation, the broader pan-European economic depression, and the numerous exceptions that were being granted to Welshmen allowing them greater economic and political participation. As Lewis noted, the ordinances against the Welsh ‘partook of the character of temporary coercion acts for the purpose of coping with the Welsh nation at times of political trouble’ and that ‘during periods of political tension ... differences of race became accentuated’.¹³²

This degree of sustained legal differentiation and discrimination unsurprisingly comprises ‘race law’ by Heng’s very broad characterisation of ‘race’ as ‘a structural relationship for the articulation of human differences, rather than a substantive content... battening on social practices...culture... and perhaps a multiplicity of interlocking discourses.’¹³³ In this perspective, attempts to characterise and lock-in the Welsh as a non-political, non-mercantile peasant class based on their ethnicity projected onto them a ‘racial’ character, and the laws that maintained and sustained that characterisation were then ‘race laws’.

¹³² Lewis, *Mediaeval Boroughs*, 255.

¹³³ Heng, *The Invention of Race*, 27.

Pre-publication draft. Do not cite.

However, it would be wrong to dismiss discriminatory law in Wales as simply a ‘structural relationship’ between the English and Welsh, circumstantial to the martial, political and economic ascendancy of the English over the Welsh. It reflects more than the invention of a Welsh ‘race’, articulated through attendant ‘race laws’, as a shallow-rooted practical expedient of occupation. Wales, as a whole, experienced long periods of relative peace and stability, most notably between the revolt of Llywelyn Bren in 1316 and the Glyndŵr rebellion, from 1400. Also, individual marcher lordships, such as Radnor, experienced peace virtually throughout the thirteenth to fifteenth centuries, and yet racial distinctions remained, as Radnor maintained an administrative Welshry and Englishry. It is hard to explain the willingness of even a vocal minority of the English colonial population to expend the thought, time and energy necessary to maintain such an artificial edifice of ‘race law’ throughout long periods of peace without at least assuming some genuine belief on their part about an underlying biological, heritable and morally inferior, Welsh nature. Hence, the durability of race law in Wales across the fragmented administrative landscape even through periods of peacetime, and its tendency to remerge after extended periods of dormancy, points to an underlying ‘racism’, defined by Isaac as positing ‘a direct and linear connection between physical and mental qualities.’

This narrower sense of ‘race’, as based on heritable qualities of a mental and moral nature – as opposed to Heng’s characterisation of ‘race’ as simply a structural relationship that essentialises a group, and places it in an inferior position, based on an arbitrary characteristic, biological or otherwise – is harder to find explicitly articulated. It is continuously alluded to in race laws stipulating the roles of ‘wholly English’ or ‘wholly Welsh’ persons, as determined by the similar ethnicity of both parents, in judicial and administrative settings, as discussed above.¹³⁴ But one could still argue that the concern of such laws was ethno-political loyalty, rather than a presumption of ethnically dictated moral deficiency (i.e. ‘race’ by Heng’s definition as a group in a structural relationship with another group, but not an expression of ‘racism’ by Isaac’s definition as the characterisation of a group based on assumed heritable qualities of a mental and moral nature).

Looking at a broader range of source material serves to further the argument that ‘racism’ by Isaac’s definition, that assumes heritable mental and moral qualities, was a key factor. For example, as the English author of the *Vita Edwardi Secundi* commented of the 1316 rebellion of Glamorgan noble Llywelyn Bren, ‘This habit of the Welsh is a long-standing madness.

¹³⁴ For example, Appendix, E10, P4 and P6.

Pre-publication draft. Do not cite.

They keep quiet for ten years and then, in an instant, are ready again for battle, and what they have achieved over a long period is quickly destroyed.’¹³⁵ The motifs of being quick to anger and quick to surrender, and of the Welsh employing the subtle ‘mimicry and doubleness of “sly civility”’ to play the trickster, are ones repeated throughout Norman and English literature describing the Welsh.¹³⁶ Their reception by ordinary folk is evident in a petition of the burgesses of Llanfaes, Anglesey, made shortly after the 1282–83 conquest. The men of Llanfaes, who had ethnically Welsh names but who were probably descendants of early English-immigrant traders, complained to the king that they were ‘English in blood and nationality, as also their ancestors from ancient times’ and so ‘oppressed by the Welsh’ and yet ‘because, to tell the simple truth, they reside in Wales among the Welsh’ they are also ‘reputed Welsh by the English...[and so]...experience what is worst in either condition’.¹³⁷ Later petitions from English burgesses in north Wales also deployed images of the Welsh being deceptive and untrustworthy, as discussed above. Indeed, racial discrimination could cut both ways. If there had not been a pre-existing ideology of racial difference between Welsh and English then ‘race law’ could not have been easily imagined into existence and gained widespread and enduring currency from the very point of conquest, as at Llanfaes. Popular racist prejudices were merely translated by the law into ‘realities’ of racial difference that gave English conquerors a means by which to define and to suppress those whom they had conquered and sought to rule.

While beyond the scope of this article, this translation of racial and racist prejudices into sanctified ‘realities’ of racial difference by means of the law has two obvious antecedents in English legal tradition. The first and most obvious is the thirteenth-century process by which jurists sought with difficulty to define more closely villeinage in Common Law, with the ‘neif by blood’ being increasingly cut off from legal rights and recourse.¹³⁸ Even Bracton encountered considerable difficulty in distinguishing hereditary status from tenure in discussing villeinage law, a problem closely paralleling the vexed problem of distinguishing Welsh by tenure from Welsh legal status independent of tenure, and determining rights and responsibilities attendant to each.¹³⁹ The second antecedent is the progressive legal differentiation of Jews from the rest of English society, especially from Henry III’s belated

¹³⁵ N. Denholm-Young, ed., *Vita Edwardi Secundi*, re-edited by W.R. Childs, Oxford, 2005, 119.

¹³⁶ J.J. Cohen, ‘Hybrids, Monsters, Borderlands: the bodies of Gerald of Wales’, in J.J. Cohen, ed., *The Postcolonial Middle Ages*, Houndmills, 2001, 86–87.

¹³⁷ *Cal. Petitions*, 82–83.

¹³⁸ Schofield, *Peasant and Community*, 11–51.

¹³⁹ Hyams, ‘The proof of villein status’, 721.

Pre-publication draft. Do not cite.

translation into English law of the anti-Jewish canons (especially no. 67–70) set out under Pope Innocent III at the fourth Lateran Council in 1215.¹⁴⁰ Ultimately, this would result in the complete ostracization of the Jews from English society, and their expulsion from the realm in 1290. It is not coincidental that the charters of the last wave boroughs founded by Edward I in north Wales, for example Beaumaris, contain a provision that no Jew shall dwell within them, to be paralleled by the 1295 ordinance forbidding Welsh burgesses in walled royal towns, and in borough charters excluding Welsh and Jews alike, as at Bala.¹⁴¹

Race law in medieval Wales, like Jim Crow in the American Old South or apartheid in South Africa, was underpinned by both ‘race’ as broadly conceived in relationships of structural inequality by Heng, and in ‘racism’ as conceived in the presumption of heritable moral deficiencies by Isaac, validating comparative study. But we also argue that the further exploration of antecedents in English law, especially the law of villeinage, could offer an important avenue of future research.

¹⁴⁰ A.E. Bland, P.A. Brown and R.H. Tawney, *English Economic History: Selected Documents*, London, 1929, 45–46 (Henry III); ‘The Canons of the Fourth Lateran Council, 1215’, *Medieval Sourcebook: Twelfth Ecumenical Council: Lateran IV, 1215*, Fordham University, <<https://sourcebooks.fordham.edu/basis/lateran4.asp>> accessed 8 Aug. 2019; See also, R.R. Mundill, *England’s Jewish Solution: Experiment and Expulsion, 1262–1290*, Cambridge, 1998.

¹⁴¹ Usher, ‘The foundation of an Edwardian borough’, 9–10; Appendix, E7.

Pre-publication draft. Do not cite.

Appendix: Indicative race law.					
Ref.	Aspect of race law	Evidence/example	Year	Principality (P)/ March (M)/ other	Source
Security					
S1	Welsh cannot bear arms	Welshmen cannot carry arms to attack or defend in towns, markets, churches or congregations on penalty of loss of the same arms and imprisonment for one year.	c.1295	P	<i>Rec. Caernarvon</i> , 131.
		Welshmen shall not be armed nor bear defensible armour in merchant towns, churches, congregations, or highways, in a fray of the peace, or of the king's liege people, upon pain of imprisonment and to make fine and ransom to the king, except those which be lawful liege people to the king.	1402	P	<i>Statutes</i> , 35.
S2	Welsh cannot bear arms in towns	No Welshmen are to bear arms in the English walled towns on penalty of loss and forfeit of the arms and imprisonment.	c.1295	P	<i>Rec. Caernarvon</i> , 132.
		No Welshmen are to bear armour within such city borough or town upon pain of forfeiture of said armour and imprisonment until they have made fine in his behalf.	1401	P	<i>Statutes</i> , 31.
S3	Welsh cannot bear arms or stay	No foreign Welshman shall bear arms within the said town, but deliver them into the custody of the bailiff until his departure. No foreign	1406	M (Powys)	<i>M.C. Jones, Feudal Barons of Powys</i> , London, 1868, 49–54.

Pre-publication draft. Do not cite.

	overnight in Welshpool	Welshman tarry within the town without license beyond the setting of the sun.			
S4	Welsh cannot congregate	Welshmen cannot have congregations of Welsh in North Wales without licence of the king and his ministers.	c.1295	P	<i>Rec. Caernarvon</i> , 132.
		No congregations shall be made by the Welsh except with the assent of the chief officers of the lordship. If any insurrections or congregations are made the lords and their subjects shall use their power to bring them to the law. Repeated 1402.	1401–2	P	<i>CPR, 1399–1401</i> , 469–470; <i>Statutes</i> , 34.
S5	Welsh cannot keep castles	Welshmen shall not have castle, fortress nor house defensive of his own nor of other to keep, otherwise than was used in the time of King Edward, conqueror of Wales, upon pain of forfeiture, except bishops and other temporal lords for their own bodies.	1402	P	<i>Statutes</i> , 36.
		Order to remove Adda [Adaf] ap Llewelyn, a Welshman, who has been made lieutenant in the office of steward of the castle of Cardigan, in contravention of the ordinance made by Edward I on his conquest of Wales.	1348	P	M.C.B. Dawes, ed., <i>Register of Edward the Black Prince</i> [hereafter <i>Reg. Edward Black Prince</i>], 4 vols., London, 1930–33, vol.1, 159–60.
S6	Castles and towns to be defended by	Garrisons of castles and walled towns in Wales be purveyed and stored sufficiently of valiant English persons, strangers to the seignories where the said castles and towns be set, and not any man of the seignories in Wales or the	1402	P	<i>Statutes</i> , 36.

Pre-publication draft. Do not cite.

	English people	Marches, until the land of Wales be justified and appeased.			
S7	Welshmen to pay murage	Welsh shall pay murage for the maintenance of the walls and gates of the towns and castles in north Wales and a contribution towards the garrisoning of the castles, for three years or more at the will of the king.	1401	P	<i>CPR, 1399–1401, 469–470.</i>
S8	Welshmen expelled from Chester	Henry Prince of Wales and Earl of Chester to the Mayor, Sheriffs and Aldermen of Chester: order that ‘you cause to be driven without the walls of the city aforesaid all manner of Welshmen of either sex, male as well as female...and that no Welshman, or any person of Welsh extraction or sympathies... remain within the walls of the said city, or enter into the same before sunrise on any day... or tarry in the same after sunset, under pain of decapitation, and on no day...to enter the said city with arms upon him, under pain of forfeiture of the same arms, saving only a knife for cutting his dinner.’ Also not to enter taverns, to hold no meetings or assemblies, and not to meet in groups of more than two within the walls. Arms to be left at the gates of the city.	1403	Chester	Morris, <i>Chester</i> , 46 n.1.
S9	Welshmen summoned	Welshmen summoned from Marcher lordships for military service. No Englishmen dwelling in	1347	M (various)	<i>Reg. Edward Black Prince</i> , vol.1, 55–56.

Pre-publication draft. Do not cite.

	for military service	those parts are to be chosen among the Welshmen.			
Economic freedom					
E1	Welsh cannot alienate land, but only lease it for a term of four years (<i>tir prid</i>)	According to Welsh law no Welshman should be allowed to create an estate except for periods of four years, under pain of forfeiture of the lands.	c.1295	P	<i>Rec. Caernarvon</i> , 132.
		Kennington Petition: asking for change in the law concerning the sale of land for a term of 4 years only. Reply: that the prince does not intend to change the law.	1305	P	<i>Rec. Caernarvon</i> , 214.
		Petition from the king's free tenants of north Wales to the King: they pray that they may have leave to sell their lands... they would sell according to the law and custom of the Kingdom of England.	1320–2	P	<i>Petitions</i> , 99.
E2	Sale of land permitted	Freemen of Wales may be able for three years immediately following to sell and give lands, tenements and their rents to other free Welshmen.	1315–16	P	<i>Statutes</i> , 29.
E3	Welsh cannot hold English land without permission and fine to the lord	Conversion to English tenure in return for 3d increase in annual rent and on condition that the tenant resides and dwells on the said land and pays the annual rent faithfully at the correct terms, and does not leave the country without licence.	1414	M (Dyffryn Clwyd)	TNA, SC 2/221/8 m.15.

Pre-publication draft. Do not cite.

E4	English cannot demise land to Welsh.	Englishmen cannot demise lands or tenements in <i>tir prid</i> to any Welshman under penalty of losing all his lands and tenements.	1345	M (Dyffryn Clwyd)	TNA, SC 2/217/11 m.5.
E5a	Customary Welsh fees and services owed	<i>Amobr</i> : owed by Welsh women most commonly on marriage or loss of virginity, but sometimes extended to sex outside marriage or adultery.	1399	M (Dyffryn Clwyd)	TNA, SC 2/220/9 m.74d.
E5b	Customary Welsh fees and services owed	<i>Ebediw</i> : death duty owed to the lord by heir on entry to inherited land.	1393	M (Dyffryn Clwyd)	TNA, SC 2/220/10 m.5.
E5c	Customary Welsh fees and services owed	<i>Arrianforestour</i> : Welsh tenants to pay puture (food) for foresters, or a money equivalent.	1398	M (Dyffryn Clwyd)	TNA, SC 2/220/12 m.32d.
E5d	Customary Welsh fees and services owed	<i>Cwrw gwyl Sanffraid</i> : All Welsh tenants to pay St Bridget's Ale (fine).	1381	M (Dyffryn Clwyd)	TNA, SC 2/220/1 m.22.
E5e	Customary Welsh fees and services owed	Fees for Welsh <i>ynad</i> (judge) – owed on top of court fees.	1360–1	M (Dyffryn Clwyd)	TNA, SC 2/218/9 m.40.

Pre-publication draft. Do not cite.

E6	Welsh cannot be burgesses in English walled towns of North Wales or in England	No Welshmen are to acquire lands or tenements in the English walled boroughs (<i>in villis muratis Burgis Anglicis</i>) nor within the liberties of the English boroughs and towns.	1295	P	<i>Rec. Caernarvon</i> , 132.
		No Welshman to purchase land or tenements in England, nor within the boroughs or English towns of Wales upon pain of forfeit the same purchases to the Lords of the same lands and tenements.	1400–01	P	<i>Statutes</i> , 33–34.
		No Welshman born in Wales, with father and mother born in Wales, shall purchase lands and tenements in Chester, Salop, Bridgenorth, Ludlow, Leominster, Hereford, Gloucester, Worcester nor other merchant towns joining to the Marches of Wales or in the suburbs of the same towns on pain of forfeiture.	1400–01	English boroughs	<i>Statutes</i> , 31.
		No Welshman to be received as citizen or burgess in any City Borough or Merchant Town. And any such Welshmen which now be in any such said City Borough or Franchise Town, being citizens or burgesses, shall find surety and put a good caution of their good bearing towards the King and his heirs as for to hold their loyalty to the governance of such cities, boroughs or towns in the same Welshmen will dwell there.	1400–01	P	<i>Statutes</i> , 31.
		The exception of Newborough: petition asserting that the Welsh residents of	c.1324	P	<i>Petitions</i> , 254.

Pre-publication draft. Do not cite.

		Newborough are burgesses. The borough charter was confirmed in this year, suggesting success.			
		Petition from the commons to the King to restore ordinances against Welsh concerning holding property in English boroughs.	1429	P	<i>Petitions</i> , 328–329.
		Petition from mayors, aldermen, bailiffs and burgesses of the English castles and towns of north Wales to the King: to confirm all statutes against Welshmen and for all franchises for Welshmen to be void. Granted.	1446–7	P	<i>Petitions</i> , 38–39.
		From the English people of Wales to the King and Lords to restore ordinances against Welsh holding property in towns and offices because ‘the Welsh have so oppressed the English in the boroughs, towns and districts that they are entirely destroyed’.	c.1447	P	<i>Petitions</i> , 248–249.
E7	Welsh cannot be burgesses in Bala	Charter refers to the ‘English burgesses’ of the town.	1324	P	<i>Rec. Caernarvon</i> , 172–176.
E8	Welsh cannot be burgesses in Hope	No Welshman is to be received as burgess of Hope, nor hold a burgage, nor enjoy its franchises.	1378 (confirmation of 1351 charter)	P	<i>CPR, Richard II 1377–81</i> , 233–234.
E9	Welsh cannot be burgesses	If any burgesses sell any burgage or land lying in the bounds of the said town to any foreign Welshman, the said burgage and land so sold	1485	P	H.C.M. Lyte, ed., <i>Calendar of Charter Rolls</i> , 6 vols., London, 1903–27, vol. 6, 261.

Pre-publication draft. Do not cite.

	in Llandovery	shall be forfeited to the king according to the ancient custom			
E10	Welsh cannot be burgesses in Brecon	Charter refers to burgesses as wholly English, with English father and mother.	1365, 1411	M (Brecknock)	W. Rees, 'The charters of the boroughs and Brecon and Llandovery', 2.3 <i>Bulletin of the Board of Celtic Studies</i> (1924), 245–252.
		No Welshmen to be admitted as burgesses.	1408	M (Brecknock)	Davies, <i>The Revolt</i> , 291.
E11	Welsh cannot be burgesses in Denbigh	Charter refers to burgesses and their heirs and assigns, each being Englishmen.	1295	M (Denbigh)	J. Williams, <i>Ancient and Modern</i> , Denbigh, 1836, 302–309.
E12	Welsh cannot be burgesses in Welshpool	No Welshman ought to be taken into the said liberty except those who now stand faithful to our said lord the King.	1406	M (Powys)	Jones, <i>Feudal Barons of Powys</i> , 49–54.
E13	Welsh cannot be burgesses in Holt	Burgesses and their English heirs and successors (repeated references); the power to elect and make English burgesses, mayor and bailiffs to be chosen from English burgesses.	1411 (confirmed 1563)	M (Bromfield and Yale)	D. Pratt, 'The 1563 Charter of Holt', 23 <i>Transactions of the Denbighshire Historical Society</i> (1974), 120–123.
E14	Welsh cannot be burgesses in Flint	Petition from the burgesses of Flint to the King: Welsh villeins have bought land in the town and bake and brew, contrary to their charter and custom.	1297	Palatinate of Chester and Flintshire	<i>Petitions</i> , 178.
		Petition from Atha ab Eignon and Agnes his wife to the king: that Agnes's father, Richard de Slep, gave tenements in Flint to Atha by marriage with Agnes, but the burgesses of Flint	c.1327	Palatinate of Chester and Flintshire	<i>Petitions</i> , 172.

Pre-publication draft. Do not cite.

		‘have given the King to understand that no Welshman ought to live in an enfranchised town in Wales or purchase tenements’ so the tenements have been seized. Atha ap Eignon disputed the legality of this suggestion ‘since it was ordered to foster peace and agreement between English and Welsh that alliances by marriage should be allowed in all the good towns of Wales which are enclosed with walls’.			
E15	Limits upon where Welsh can merchandise	No Welshmen are to merchandise outside the merchant towns of north Wales or brew and sell upon forfeit of the merchandise and imprisonment.	c.1295	P	<i>Rec. Caernarvon</i> , 132.
		Hope: No Welshman shall hold a market or gild merchant of brew or sell ale within three leagues of the town. Welshmen of the lordship of Hopedale must sell at Hope Regine and no other markets.	1399	Palatinate of Chester and Flintshire	<i>CPR, 1396–9</i> , 484–485.
E16	Welshmen to only sell in England at Staple towns	People of Wales may ‘come with their said Merchandises that after they be customed and cocketted in ... Wales to any of our staples in England... [but if they] pass to any place other than to the Staples in England they shall incur the pains and forfeitures...’	1353	England	<i>Statutes</i> , 30.
E17	Licences required for people of	Mayor and sheriffs of Chester were ordered not to permit the sale of bread, ale or other provisions to men from Wales unless they had a	1402	Chester	J.E. Messham, ‘The county of Flint and the rebellion of Owen Glyndwr in the records of the

Pre-publication draft. Do not cite.

	Flintshire buying bread and ale in Cheshire	licence issued in the name of the prince. Applications were to be made by men of substance who acted as sureties on behalf of carriers and porters with assurance as to the loyalty of carriers and that they would not sell provisions to Welsh rebels.			earldom of Chester', 23 <i>Journal of the Flintshire Historical Society</i> (1967–68), 4–5.
E18	Welshmen require licences to remain in England	Various in 1413, after order that Irish and Welsh should withdraw from England by Christmas 1413. Includes Welsh burgesses in Shrewsbury and Bristol, e.g. David Coneway draper, burgess of Shrewsbury.	1413	England	<i>CPR, 1413–16</i> , 123–125.
Political rights					
P1	Welsh cannot hold offices in towns	No Welshmen to 'be received or accepted as mayor, bailiff, chamberlain, constable or warden of the ports or of the gaol, nor to the common council of such cities, boroughs or towns nor that he be in no wise made other Occupier or Officer in the same.'	1400–01	P	<i>Statutes</i> , 31.
		Newborough is the right to elect a mayor in 1347 but they must be English: 'the prince...has granted that they and their successors may elect on of themselves as mayor every year at Michaelmas, provided that the mayor so elected be an Englishman'.	1347	P	<i>Reg. Edward Black Prince</i> , vol.1, 155.
		From the commons to the King: that no Welshman shall hold any office; that 'divers	1429	P	<i>Petitions</i> , 328–329.

Pre-publication draft. Do not cite.

		Welshmen... inform the council and Lords Marcher that they are English by nature and condition, whereby they be in fact Welshmen at heart and of lineage' and as a result many Welsh have been made burgesses and placed in offices.			
		From the English people of Wales to the King and Lords: because Welshmen have sued the king to be able to purchase lands, hold offices, etc., calling for such enablements to be stopped.	1447	P	<i>Petitions</i> , 248–249.
		Holt: petition from English burgesses to Joan de Beauchamp concerning a relative of Glyndwr being made receiver of Bromfield and Yale.	1429	M (Bromfield and Yale)	D. Pratt, 'A Holt Petition', 26 <i>Transactions of the Denbighshire Historical Society</i> (1977), 153–155.
P2	Welsh cannot hold offices within the Principality of Wales	Petition from Thomas de Esthale, chamberlain of the King in north Wales to King and council: that the justices of north Wales are not following the Statute and other ordinances as they appoint Welshmen as sheriffs and bailiffs. Endorsed: that no officers shall be Welsh whilst they can find others who are English to fill those offices.	1308–9	P	<i>Petitions</i> , 173–175.
		Order to remove Adda ap Llywelyn, a Welshman, who has been made lieutenant in the office of steward of the castle of Cardigan, in contravention of the ordinance made by Edward I on his conquest of Wales.	1348	P	<i>Reg. Edward Black Prince</i> , vol.1, 159–160.
		'No Welshman be made justice, chamberlain, chancellor, treasurer, sheriff, steward, constable	1402	P	<i>Statutes</i> , 26.

Pre-publication draft. Do not cite.

		of castle, receiver, escheatour, coroner, nor chief foresters nor other officers, nor keeper of the records nor lieutenant in any of the said offices in any part of Wales, nor of the council of any English Lord, except Bishops in Wales.’			
P3	Englishmen married to Welshwomen cannot hold offices	Englishmen married to Welsh women of the alliance of Glyndwr, or any other Welsh women after the rebellion, shall not be put in any office in Wales or the Marches.	1402	P/M	<i>Statutes</i> , 36.
		Petition from William Bulkeley to the commons: to be allowed to hold offices in Wales and the Marches, because he is married to Elen, daughter of William ap Gruffudd, English on her mother’s side, and that her father was a true liegeman to the King during the rebellion and all times afterwards.	c.1444	P/M	<i>Petitions</i> , 146–147.
P4	Individual exceptions to ban on Welsh officeholding (refer to the ordinances against Welsh and specifically ask that they	Rhys ap Thomas petitioned that ordinances against Welshmen should not apply to him ‘because he has suffered very great damage and destruction of his goods lands in Wales at the hands of the rebels...and has continually maintained his fidelity and allegiance to the King and crown.’ He seeks a modification to the effect ‘that he and all his heirs and issue will be as free as other loyal English lieges’. The King wills it.	1413	P	<i>Parliament Rolls of Medieval England</i> [hereafter <i>PROME</i>], < http://www.sd-editions.com/PROME/home.html > accessed 12 Sept. 2019, 1413 item 16

Pre-publication draft. Do not cite.

	not apply to them)	Owen ap Meredith: request for exemption from statute barring Welsh from holding royal offices in England and purchasing land or tenements in English towns. Granted.	1432	England	<i>PROME</i> , appendix 10; TNA, SC 8/124/6186.
		Petition from Gwilym ap Gruffudd of Penmynyth to the king to have the rights of Englishmen, including to hold offices, because he is married to an Englishwoman and is descended ‘for the most part wholly from the English race’.	1439–42	P	<i>Petitions</i> , 38.
		Petition from William ap Gwilym ap Gruffudd to the king: for the same rights (though he refers to his father as Welsh while emphasizing his mother’s Englishness).	1439	P	<i>PROME</i> , Nov. 1439 item 29.
P5	Rights of English granted to Welshmen via letters of denization	John Butte alias John Hore, born in Carmarthen, West Wales, who has been dwelling at Bridport, Dorset, for 30 years and more and intends to continue there. Grant that ‘John and his heirs may be able to be denized and able to take and demand, purchase, inherit, enjoy, have and hold and occupy lands and tenements, rents, services, advowsons, reversion, offices and other possessions whatsoever within franchises and towns and boroughs and without’. By petition in Parliament and for 5 marks paid in the hanaper. Granted on conditions that he did liege homage and contributed to scot and lot.	1437	England	<i>CPR, 1436–1441</i> , 62; <i>Petitions</i> , 144.

Pre-publication draft. Do not cite.

		From the burgesses of the towns of north Wales to restore ordinances against the Welsh: that no Welshman be made denizen and thus granted the rights of Englishmen for ‘in a short time should be the utter destruction of all Englishmen dwelling in the said towns and in the land there’. Endorsed.	1445	P	<i>PROME</i> , 1445 item 26.
P6	Rights of English granted to Welshmen via petition	Gwilym ap Gruffudd of Penmynyth, as per P4 above.	1439–42	P	<i>Petitions</i> , 38.
		His son, William ap Gwilym ap Gruffudd, as per P4 above.	1439	P	<i>PROME</i> , Nov. 1439 item 29.
		William Bulkeley, married to Ellen daughter of William ap Gruffudd petitioned to hold offices in Wales.	c.1444	P	<i>Petitions</i> , 146–147.
Legal rights					
L1	Pleas between English and Welsh	Pleas leading to an inquest should be heard before a jury half of Englishmen and half of Welshmen worthy of trust.	1315–16	P	<i>Statutes</i> , 28.
		Juries of Welsh and English summoned in Dyffryn Clywd courts: ‘Whence it was decided that inquisition should be taken; order given to the bailiff of the English to summon to the next court good and law-worthy free English and also Welsh holding by English law through whom the truth of the matter can be better known’.	various e.g. 1345	M (Dyffryn Clwyd)	e.g. TNA, SC 2/217/70 m.17d.

Pre-publication draft. Do not cite.

L2	Law of Wales in civil pleas between Welshmen	Pleas to be brought in the Welshery according to Welsh law.	1315–16	P	<i>Statutes</i> , 28.
		Continued use of Welsh law in civil pleas in Dyffryn Clywd courts, with judgement by Welsh <i>ynad</i> (judge).	various 1320s–90s	M (Dyffryn Clwyd)	e.g. TNA, SC 2/216/6 m.11d.
		Petition from the Welsh liegemen of West Wales to the King and council: to have their laws and customs of Cyfraith Hywel, which they have used until the thirteenth year of the present king when Roger Mortimer, formerly Justice of Wales, introduced the law of England.	1322	P	<i>Petitions</i> , 245–247.
		Petition from Abbot of Blaunchelaunde (Whitland) to the King: that he has suffered much from Welsh law which does not permit the use of a sergeant; prays that he, his brethren and tenants may have a sergeant in pleas as well as 12 good and faithful men, according to the Common Law. Endorsement: the King does not wish the laws to be changed.	c.1320	P	<i>Petitions</i> , 27.
L3	Englishmen not to be convicted by Welsh	No whole Englishman for the next three years shall be convicted at the suit of a Welshman within Wales, except by the judgement of English justices or the judgement of whole Englishmen burgesses or by inquest of	1400-01	P	<i>Statutes</i> , 33–34.

Pre-publication draft. Do not cite.

		boroughs, towns and Englishmen of the seignories.			
		No Englishman be convict by any Welshman in any county, hundred or court within Wales, of whatsoever estate, but by Englishmen.	1402	P	<i>Statutes</i> , 34.
L4	Welshmen cannot accuse Swansea burgesses	Swansea Borough Charter: No one from the borough is to be accused by a Welshman for any offence committed within the borough.	1306	M (Dyffryn Clwyd)	National Library of Wales, MS, PM 391.

Pre-publication draft. Do not cite.

L5	Welsh not to be on juries trying English.	Petition from English burgesses in north Wales to the King: ‘As King Edward established borough towns in north Wales, namely Caernarvon, Coneway, Beumaris, Criccieth, Harlech, Bala, Rhuddlan and Flint, and English burgesses to live in them, with certain franchises and liberties made by charter to the burgesses of each separate town, amongst which liberties that they should not be committed by any foreign persons for any appeals...Nonetheless, the ministers of the Prince before this time, when any of the burgesses have been indicted of things... have superseded going to the deliverance...of them by their fellow burgesses, according to the charters... Wherefore it may please the King in maintenance and relief and aid of the abovesaid...to order writs to be sent to the Prince, Justices of north Wales and Chester that in case any of the burgesses, be he minister of the Prince of not, be indicted or arrested on any appeals...that each of them may be delivered of his fellow burgesses... Knowing that if the burgesses should be arraigned... by the mouths and oaths of Welshmen, there would not...be any Englishman in Wales alive within a short time.’	1343–76	P	<i>Petitions</i> , 439.
----	---	--	---------	---	-------------------------

Pre-publication draft. Do not cite.

		Petition from the commons to the King and lords to restore ordinances against the Welsh who pretend to be English but are ‘in fact Welshmen at heart and of lineage’ leading Welsh to have been put on juries and try and give judgement on the English.	1429	P	<i>Petitions</i> , 328–329.
		Petition from the burgesses of the towns of north Wales to restore ordinances against the Welsh, because Welshmen have been made denizens and allowed to live in towns where ‘they partake in juries and trials of the persons and livelihoods of those towards whom they have no favour but for whom they have great hatred in heart, countenance and word’.	1445	P	<i>PROME</i> , 1445 item 26.
L6	Differing rights of Welsh in Dyffryn Clwyd courts	Welsh cannot be essoined against English	various 1320s–1390s	M (Dyffryn Clwyd)	e.g. TNA, SC 2/220/9 m.31d.
		Welsh cannot wage law against English	various 1320s–1390s	M (Dyffryn Clwyd)	e.g. TNA, SC 2/217/7 m.32d; SC 2/220/9 m.26.
L7	Differing rights of Welsh in Chester courts	Chester borough charter: If a citizen bought goods and a Welshman later claimed they were stolen, the Welshman had to refund the purchase price to the citizen in order for the goods to be returned. If a Frenchman or Englishman claimed the goods were stolen he paid nothing but the goods were returned.	1200–02	Chester	Morris, <i>Chester</i> , 482–483.

Pre-publication draft. Do not cite.

L8	Partible inheritance	Statute of Wales: ‘...that inheritance shall remain partible among like heirs as it was wont to be...with this exception, that bastards from henceforth shall not inherit...and if it happen that any inheritance should hereafter upon the failure of heir male descend unto females, the lawful heirs of their ancestor last seised thereof, We Will of our especial Grace that the same women shall have their portions thereof to be assigned them in our Court, although this be contrary to the custom of Wales before used.’	1284	P	<i>Statutes, 25–26.</i>
		Petition from the king’s free tenants of north Wales to the King: the Welsh are greatly impoverished as they do not have the laws and customs of England ‘for if a gentleman of the country has a carucate of land and has 5 sons or more, the land will be divided among them after the death of their father and so far from degree to degree so that they become each a beggar living on their parents; whereby their parents feel greatly burdened and aggrieved’. Endorsed: the King does not feel himself advised to do away with the ancient custom of Wales.	1320–22	P	<i>Petitions, 99.</i>
L9	Dower rights for Welsh women	Statute of Wales: ‘whereas heretofore women have not been endowed in Wales, the King granteth that they shall be endowed.’	1284	P	<i>Statutes, 24.</i>

Pre-publication draft. Do not cite.

L10	No dower rights in some marcher lordships	Dyffryn Clwyd: Erddlyfad lately wife of Dafydd ap Madog denied dower land in Llannynneys because the land is Welsh land and under Welsh tenure, so she ought not to have dower from it; judged a false claim for dower.	e.g. 1393	M (Dyffryn Clwyd)	TNA, SC 2/220/12 m.10d.
		Bromfield and Yale: women not to inherit land held under Welsh tenure, nor to have dower rights.	1391	M (Bromfield and Yale)	Davies, 'The status of women', 100–101; Smith 'Towards a history of women', 21–22.