

Concepts of Law and Justice in Medieval Welsh Poetry: reflections on Dafydd ab Edmwnd's elegy to Siôn Eos

R. Gwynedd Parry

Introduction

There existed a close kinship between poets and lawyers in medieval Wales. Many of the poets were also lawyers, or were closely related to lawyers, and both poets and lawyers sat at the same high tables. It is little wonder that in the poetry of both the *gogynfeirdd*, the poets of the princes (pre-1282), and *beirdd yr uchelwyr*, the poets of the nobility (post-1282), we find a richness in legal imagery and terminology, and sometimes evidence of acute understanding of legal phenomena.¹ This paper's aim is to demonstrate the potential dividends of exploring this dynamic between law and poetry, specifically in the Welsh context, by focusing on a poem from the fifteenth century, that of Dafydd ab Edmwnd's elegy (which can also be appropriately described as an eulogy) to Siôn Eos. It offers a new interpretation of the poem and demonstrates its evidential value to both cultural and legal historians seeking to make sense of a period when a transition in legal culture was underway, a transition which highlighted complex clashes of both cultural norms and concepts of justice.

Context

Before turning to the poem, it may be helpful to put matters in context. According to the native Welsh laws, *Cyfraith Hywel* or the Law of Hywel Dda, the *taeog* class could not exercise the "honourable crafts of the poet and blacksmith", which were reserved for the nobility.² The poets were men of status, close to the centres of power and influence. The *bardd teulu* (family poet) served an important function in his lord's court, and the best poets were recognized as *penceirddiaid* (master poets) under a self-regulating poetic cadre which

¹ See, further, R. Gwynedd Parry, *Y Gyfraith yn ein Llên* (Cardiff: University of Wales Press, 2019), chapters 2 and 3.

² Dafydd Jenkins, *Cyfraith Hywel: Rhagarweiniad i Gyfraith Gynhenid Cymru'r Oesau Canol* (Llandysul: Gwasg Gomer, 1970), 19.

was independent of royal authority.³ The Welsh laws stipulated the duties of the *bardd teulu* and the *pencerdd*, the difference between the two, and what was owed to them by the king and his court.⁴ The *bardd teulu* would entertain the court during the feast, and he had certain privileges, such as the right to a gold ring from the Queen or to be gifted a cow from the spoils of war.⁵ The *pencerdd* also enjoyed privileges according to the laws, and would sit alongside the judge at the King's court.⁶ His privileges included the right to payment of *amobr* when a maiden married and lost her virginity.⁷ And after the conquest of 1282, many of the poets of the nobility would come from the *uchelwyr* caste, which indicated the continuing esteem with which the craft of the bard was held.⁸

The *penceirddiaid* were not the itinerant minstrels, rhymers or wasters portrayed derogatorily by the English kings (although the lesser, unlicensed poets may have been fairly described as such).⁹ On the contrary, many were noblemen whose poems were addressed to other noblemen, almost in the spirit of an aristocratic-poetic dialogue. In addition, many of the poets were also lawyers or related closely to lawyers.¹⁰ For example, in the age of the native princes, we find Einion ap Gwalchmai, a nobleman descended from Meilyr Brydydd (Meilyr the poet), who was a poet and lawyer, and who served as a court magistrate (*ynad llys*) in the court of Llywelyn ab Iorwerth (c. 1173- 1240).¹¹ He was one of Llywelyn's most important counsellors, and there is evidence that he took a leading role in many of the most important constitutional events of the period. For instance, he is named as one of Llywelyn's *gwyrda* (counsellors) in the Treaty of Worcester of 1218.¹² Exchanging his lawyerly mantle

³ Dafydd Jenkins, "Pencerdd a Bardd Teulu", *Ysgrifau Beirniadol* XIV (1988), 19-46. Also T. M. Charles-Edwards, *Wales and the Britons 350-1064* (Oxford: Oxford University Press, 2013) 676.

⁴ There is an interesting discussion on the differences between the family poet and the pencerdd by Tudur Hallam, "Croesholi Tystiolaeth y Llyfrau Cyfraith: Pencerdd a Bardd Teulu", *Llên Cymru*, 22 (1999), 1-11.

⁵ Aled Rhys William, *Llyfr Iorwerth* (Cardiff: University of Wales Press, 1960), 10; also Dafydd Jenkins, *The Law of Hywel Dda* (Llandysul: Gomer, 2000), 20.

⁶ William, *Llyfr Iorwerth*, 21-22; also see Jenkins, *The Law of Hywel Dda*, 38-39.

⁷ Dafydd Jenkins, "Bardd Teulu and Pencerdd", in T. M. Charles-Edwards, Morfydd E. Owen and Paul Russell, eds., *The Welsh King and his Court* (Cardiff, University of Wales Press, 2000), 142-166.

⁸ Comments on the craft requirements of the lawyer and poet under the Welsh laws can be found in Sara Elin Roberts, "Addysg Broffesiynol yng Nghymru yn yr Oesoedd Canol: y Beirdd a'r Cyfreithwyr", *Llên Cymru*, 26 (2003), 1-17.

⁹ As represented in laws introduced by Henry IV in response to Owain Glyndŵr's rebellion. See 4 Henry 4, c. 27 (1402), *Act Against Wasters, Minstrels, &c., in Wales*: "Item, to eschew many diseases and mischiefs which have happened before this time in the Land of Wales by many Wasters, Rhymers, Minstrels and other Vagabonds; It is ordained and stablished that no Waster, Rhymer, Minstrel nor Vagabond be in any wise sustained in the Land of Wales to make Commorthies or gathering upon the Common people there". See, further, Ivor Bowen, *Statutes of Wales* (London: T. F. Unwin, 1908), 34.

¹⁰ See Morfydd E. Owen, "Noddwyr a Beirdd". in Morfydd E. Owen and Brynley F. Roberts, eds., *Beirdd a Thywysogion: Barddoniaeth Llys yng Nghymru, Iwerddon a'r Alban* (Cardiff and Aberystwyth: University of Wales Press and National Library of Wales, 1996), 75-107, in particular 84-85.

¹¹ See Roberts, "Addysg Broffesiynol yng Nghymru yn yr Oesoedd Canol", 6.

¹² J. E. Caerwyn Williams and Peredur I. Lynch, eds., *Gwaith Meilyr Brydydd a'i Ddisgynyddion ynghyd â*

for a poet's chair, he also crafted an awdl praising Llywelyn and hailing his virtues as a lion and an adversary of the English.¹³

Other poets who were of lawyerly stock were Einion ap Madog ap Rhahawd, and Gruffudd ab yr Ynad Coch. They were both distant cousins, descended from a famous breed of lawyers if not the dominant legal family of the Middle Ages, namely the tribe of Cilmin Droetu of Uwch Gwyrfa in Arfon.¹⁴ One of Einion's brothers was Iorwerth ap Madog, the purported author of the *Llyfr Iorwerth* manuscript, one of the most important extant law manuscripts of the thirteenth century.¹⁵ Gruffudd's legal links as a son of Madog Goch Ynad are evident from the father's sobriquet (Madog the Red Judge, or, possibly, Red Madog the Judge), although it is as the author of the great elegy to Llywelyn ap Gruffudd (c. 1223-1282) that he is best remembered.¹⁶

The poet and the lawyer were thus closely linked as practitioners of noble crafts and, in some cases, the connections were tribal if not familial.¹⁷ A few personified both lawyer and poet, and it is believed that some of the poet-lawyers authored the law books. Indeed, the literary styles of the law books betray the influences of the literary ideas and devices of the poets.¹⁸ It is believed, for example, that the consistent use of the *trioedd* (triads), the grouping of threes, in the law books was inspired by their use in prose and poetry. This supports the theory that the lawyers, like the poets, relied on memory in exercising their craft.¹⁹

An awareness of the traditions associated with the person of Hywel Dda is much in evidence in the law books of the thirteenth century, which is indicative of the influence of culture and tradition, particularly ideas about the unity of the nation and the authority of the king, on the content and nature of the law books.²⁰ These close associations between the

Dwy Awdl Ddi-enw o Ddeheubarth (Cardiff: University of Wales Press, 1994) *Cyfres Beirdd y Tywysogion* I, 427-503, 429.

¹³ Williams and Lynch, eds., *Gwaith Meilyr Brydydd a'i Ddisgynyddion*, 439-440, Poem 25, l. 7.

¹⁴ See Dafydd Jenkins, "A family of Medieval Welsh Lawyers", in Dafydd Jenkins, ed., *Celtic Law Papers: Introductory to Welsh Medieval Law and Government* (Bruxelles: Librairie Encyclopédique, 1973), 121-34.

¹⁵ Dafydd Jenkins, "Iorwerth Ap Madog: Gŵr Cyfraith o'r Drydedd Ganrif Ar Ddeg", *National Library of Wales Journal*, 8 (1953), 164-70.

¹⁶ Rhian M. Andrews et al., eds., *Gwaith Bleddyn Fardd a Beirdd Eraill Ail Hanner y Drydedd Ganrif ar Ddeg* (Cardiff: University of Wales Press, 1996), *Cyfres Beirdd y Tywysogion VII*, 414-433, Poem 36.

¹⁷ See Sara Elin Roberts, "The Welsh Legal Triads", in Thomas Glyn Watkin, ed., *The Welsh Legal Triads and other Essays* (Bangor: Welsh Legal History Society, 2012), 1-22, especially 7-10.

¹⁸ Discussed by Morfydd E. Owen, "Gwŷr Dysg yr Oesoedd Canol a'u Rhyddiaith", *Ysgrifau Beirniadol*, 17 (1990), 42-62.

¹⁹ A detailed approach to the legal triads is provided by Sara Elin Roberts, *The Legal Triads of Medieval Wales* (Cardiff: University of Wales Press, 2007); see also Morfydd E. Owen, "Welsh Triads: An Overview", *Celtica*, 25 (2007), 225-50.

²⁰ See Robin Chapman Stacey, "Law and Literature in Medieval Ireland and Wales", in Helen Fulton, ed., *Medieval Celtic Literature and Society* (Dublin: Four Courts Press, 2005), 65-82.

lawyer and the poet continued after the conquest of 1282 and reforms brought about with the Statute of Rhuddlan (or Statute of Wales) of 1284. Cyfraith Hywel thereafter ceased to be the primary legal code, although it would take many centuries before it would be completely extinguished.²¹ As a result of the Statute of Rhuddlan, the laws of the English were imposed on the principalities, and especially the criminal law.²² However, Welsh laws were tolerated, at least to some degree. The constitutional settlement was summarised thus: "although many material alterations were at the same time made in the Welsh laws, the conquered people still retained several provincial immunities and disabilities".²³ And so certain Welsh laws relating to land and other property would endure for some time, as would elements of the Welsh laws on inheritance, *cyfran*, despite the increasingly hostile political climate.²⁴

If there existed a degree of tolerance of Welsh laws and customs in the principalities, Welsh laws also survived in those regions where the Statute of Rhuddlan did not have jurisdiction, such as in the March of Wales. The March was a collection of semi- autonomous lordships which enjoyed greater autonomy from royal interference than the traditional strongholds of the native princes in the west. In these territories, a combination of legal codes, Welsh, English, and hybrid, were applied, usually dependant on the ethnicity of the litigating parties.²⁵ Indeed, the legal code would often be applied according to whether the parties were English or Welsh, and separate procedures catered for the two.²⁶ Put simply, those who were ethnically Welsh could expect to be tried by Welsh law and custom, and those who were English would be tried by English law and custom. Matters were not that straightforward, of course, and the marcher lordships would, for want of a better phrase, do their own thing when it came to the administration of justice, combining elements of Welsh and English custom that best suited the needs of expediency.²⁷ Wales was thus a collection of

²¹ See, for example, R. R. Davies, "The Administration of Law in Medieval Wales: The Role of the Ynad Cwmwd (Judex Patrie), in T. M. Charles-Edwards, Morfydd E. Owen and D. B. Walters, eds., *Lawyers and Laymen* (Cardiff: University of Wales Press, 1986), 258-73, at 269.

²² Llinos Beverley Smith, "The Statute of Wales, 1284", *Welsh History Review* 10 (2) (1980), 127-154; also Paul Brand, "An English Legal Historian Looks at the Statute of Wales", in T. G. Watkin, ed., *Y Cyfraniad Cymreig: Welsh Contributions to Legal Development* (Cardiff: Welsh Legal History Society, 2005), 20-56.

²³ Theodore F. T. Plucknett, *Taswell-Langmead's English Constitutional History* (London: Sweet & Maxwell, 1960), 235.

²⁴ R. R. Davies, *The Age of Conquest: Wales 1063-1415* (Oxford: Oxford University Press, 2000), 368; also See Dafydd Jenkins, "Law and Government in Wales before the Act of Union", in J. A. Andrews, ed., *Welsh Studies in Public Law* (Cardiff: University of Wales Press, 1970), 7-29.

²⁵ R. R. Davies "The Law of the March", *Welsh History Review* 5 (1), (1970), 1-30.

²⁶ The position is summarised by Sir Goronwy Edwards in 'The Language of the Law Courts in Wales: some Historical Enquiries', *Cambrian Law Review* 6, (1975), 5-9.

²⁷ For an interesting discussion on this, see Diane M. Korngiebel, "English Colonial Ethnic Discrimination in the Lordship of Dyffryn Clwyd: Segregation and Integration, 1282-c.1340", *Welsh History Review*, 23 (2), (2007), 1-24

separate or loosely connected legal jurisdictions, some under the direct authority of the crown, others subject to the jurisdiction of a marcher lord.²⁸ But native Welsh laws enjoyed a greater longevity in the March than that of the principalities subject to the jurisdiction of the Statute of Rhuddlan of 1284.

Although the demise of Llywelyn ap Gruffudd and the end of the native princely line was hailed as a disaster by some of the poets, in truth, the native minor Welsh gentry came quickly to terms with the new regime.²⁹ Many adapted and embraced the opportunities for self-advancement which arose, thereby becoming loyal servants of the crown. Simultaneously, they sought to preserve and patronise Welsh culture, maintaining many of the old practices of giving succour to the poets which they had inherited from their forefathers.³⁰

Due to the willingness of the Crown to tolerate the continuation of some of the Welsh laws, and because of their longevity in the March, the adaptation and copying of Welsh legal texts continued well until the sixteenth century.³¹ As knowledge of the native laws remained important to the nobility who were the principal upholders of law and order, they continued to be versed in the Welsh legal tradition.³² The traumas of disinheritance and the importation of English legal officers to implement English laws had taken their toll on the native Welsh nobility in the immediate aftermath of conquest, of course.³³ The native princes and their families had been substantially extinguished, as had happened in England after 1066.³⁴ But whereas hardly none of the English nobility in Norman and Plantagenet England traced their lineage to the Saxons, many of the Welsh nobility of the later middle-ages were descended from the pre-conquest noble tribes, such as those of Marchudd ap Cynan, Collwyn ap Tango or Hwfa ap Cynddelw.³⁵ A process of rehabilitation in the fourteenth century had restored

²⁸ Owen Hood Phillips and Paul Jackson, *Constitutional and Administrative Law*, 8th Edition, (London: Sweet & Maxwell, 2001), 16.

²⁹ J. Beverley Smith, *Llywelyn ap Gruffudd: Prince of Wales* (Cardiff: University of Wales Press, 1998), 569-571.

³⁰ Dafydd Johnston, *Llên yr Uchelwyr: Hanes Beirniadol Llenyddiaeth Gymraeg 1300-1525* (Cardiff: University of Wales Press, 2005), 3.

³¹ See Huw Pryce, "Lawbooks and Literacy in Medieval Wales", *Speculum* 75 (2000), 29-67, at 40-47.

³² Johnston, *Llên yr Uchelwyr*, 451.

³³ R. R. Davies, *The Age of Conquest: Wales 1063-1415*, 360-61.

³⁴ For an overview, see R. Allen Brown, "The Norman Conquest" *Transactions of the Royal Historical Society* 17 (1967), 109-130.

³⁵ It is indeed striking to note that the majority of the nobility of North Wales were descended from native pre-conquest nobility and even native royal stock: see, generally, J. E. Griffith, *Pedigrees of Anglesey and Caernarvonshire Families* (Horncastle: W. K. Morton, 1914).

many of the native nobility to positions of authority and influence, as they practised “the arts of coexistence” with their English overlords.³⁶

It is arguable that this degree of continuity in the social order from the age of the princes to the age of the nobility was an important contributor to cultural continuity, including legal and poetic culture. As the Welsh nobility continued to take an interest in *Cyfraith Hywel* after the conquest of 1282, so they also took up the mantle of their forebears and gave patronage to the poets.³⁷ Those poets adapted successfully to the constitutional changes and found refuge in the halls of their new benefactors. The poem that is the focus of this paper belongs to the period after 1282, the age of *beirdd yr uchelwyr*, and it is to this period that we now turn our attention.

Legal Poetry

This context is key to our appreciation of the nature of the legal references found within the works of *beirdd yr uchelwyr*, and of the interplay between *cyfraith* and *cynganedd* in the fourteenth and fifteenth centuries. Evidence of poetic legal literacy often appears in the context of praise singing, elegies or poetry seeking favour or patronage, where the patron has legal credentials which the poet is keen to glorify. This, of course, was the stock in trade of the professional Welsh bard. Llywelyn Goch ap Meurig Hen (fl. 1350-90), declared the importance of having an understanding the law for a gentleman of his era, as he described in a poem his functions as law tutor in his nephews’ household.³⁸ Guto’r Glyn (c. 1435- c.1493) was also prolific in his deployment of legal terms in his poetry. He would praise the nobility as upholders of law and order, such as in his poem to Siôn Hanmer, whom he hailed effusely as, “Sesar dadlau a sesiwn/Swydd Elsmer yw’r Hanmer hwn” (A Caesar of pleading and session/ at Ellesmere’s court is this Hanmer).³⁹ The surname Hanmer is highly significant for this paper, and will shall be returning to it shortly.

The greatest Welsh poet of the middle ages, Dafydd ap Gwilym (c. 1315- c. 1370), in a *cywydd* to his chief patron, Ifor Hael (Ifor the Generous), praises him as “ynad hoywfoes”,

³⁶ R. R. Davies, *The Age of Conquest: Wales 1063-1415*, 415.

³⁷ R. R. Davies, *The Age of Conquest: Wales 1063-1415*, 417-19..

³⁸ Dafydd Johnston, ed., *Gwaith Llywelyn Goch ap Meurig Hen* (Aberystwyth: University of Wales Centre for Advanced Welsh and Celtic Studies, 1998) 1-11.

³⁹ J. Llywelyn Williams and Ifor Williams, eds., *Gwaith Guto’r Glyn* (Cardiff: University of Wales Press, 1939), 168; Poem LXIII, lines 9-10.

a courteous judge.⁴⁰ Dafydd ap Gwilym was closely associated with the law at a personal level, as his uncle, Llywelyn ap Gwilym, who may have been his tutor as a poet, was Constable of Newcastle Emlyn, and thereby responsible for the administration of the law in that region.⁴¹ The Constable's many legal credentials are mentioned in both the praise poem and the elegy which Dafydd crafted in his honour.⁴² They are rich in Welsh legal terms, such as *brawdwr* (judge), *canllaw* (counsellor) and *penrhaith* (chief witness or judge). In an elegy to Llywelyn ap Gwilym in the form of *englynion*, we become aware that the Constable met his death in sinister circumstances. The suggestion is that he was murdered, or, as Dafydd put it in verse, "honni mawr alanas" (a great murder is claimed).⁴³

A mystery surrounded the identity of the person responsible for the murder and the motive for it, and the use of the word *dyngnoll* twice in the elegy is significant, as it means a profound loss and is also a legal term.⁴⁴ In *Cyfraith Hywel*, reference is made to *dri dyngnoll cenedl*, a legal principle that arose when a family member had killed another and the family had paid their share of what was owed in compensation to the victim's kindred, but the killer had paid compensation that was short of a penny. Because the compensation was not fully paid by the killer, the family of the victim could legally exact revenge and kill the perpetrator.⁴⁵ As such, the killer's family lost one of their members and, at the same time, lost the compensation they originally paid.⁴⁶ As the purpose of compensation under *Cyfraith Hywel* was to avoid reprisals, the family of the killed was allowed to take steps to retaliate for the murder where no compensation was paid in full.⁴⁷ In the elegy to Llywelyn ap Gwilym, what is meant is the double loss of death and the loss of compensation for the death. There is therefore a sense of injustice coupled with a threatening tone, with the extensive use of the legal vocabulary and a constant emphasis on retaliation for the murder.⁴⁸

⁴⁰ Thomas Parry (ed.), *Gwaith Dafydd ap Gwilym* (Cardiff: University of Wales Press, 1952), 78, Poem 16, line 37; also notes at 28.

⁴¹ Regarding Dafydd ap Gwilym's use of legal terminology, see R. Gwynedd Parry, *Y Gyfraith yn ein Llên*, 49-54; also, Dafydd Johnston, *Iaith Oleulawn: Geirfa Dafydd ap Gwilym* (Cardiff: University of Wales Press, 2020), chapter 8.

⁴² Parry (ed.), *Gwaith Dafydd ap Gwilym*, 31-38; also Dafydd Johnston et al. (eds.), *Cerddi Dafydd ap Gwilym* (Cardiff: University of Wales Press, 2010), 24-37.

⁴³ Johnston, *Cerddi Dafydd ap Gwilym*, 32, Poem 6, line 74.

⁴⁴ Johnston, *Cerddi Dafydd ap Gwilym*, 30-32, Poem 6, lines. 38, 70.

⁴⁵ Jenkins, *The Law of Hywel Dda*, 146, 339.

⁴⁶ Johnston, *Cerddi Dafydd ap Gwilym*, 596.

⁴⁷ Thomas Glyn Watkin, *The Legal History of Wales* (Cardiff: University of Wales Press, 2007), 67.

⁴⁸ For a detailed discussion, see Sara Elin Roberts, "Dafydd ap Gwilym, ei Ewythr a'r Gyfraith", *Llên Cymru* 28, (2005), 100-114.

Dafydd ap Gwilym is remembered chiefly for his love poems (and judging by their volume, he was indeed a prolific lover). In some of these love poems he employs the law's processes in a metaphorical sense when he, for example, pleads for reconciliation with the object of his desire and offers compensation for the wrongs that have been committed by him towards her, or vice versa, when he claims recompense in cases where he is the injured party. And in other poems he adopts a courtroom scene when he appeals for an advocate on his behalf to plead for his lover's forgiveness.⁴⁹

Other legal references arise in what might be described as political poetry, where the bard is critiquing or commenting on the law and its administration, expressing opinions about the state of the legal order or the injustices of this world. Tudur Aled (c. 1465- 1525) was taught his bardic craft by his uncle, Dafydd ab Edmwnd.⁵⁰ Tudur Aled presents a powerful critique of English law in a poem from the late fifteenth century. In it, he entreats Hwmffre ap Hywel ap Siencyn and his kindred to reconcile their differences and forgo litigation before the courts. This was a case of familial civil war. The source of the family feud was a will in which the *penteulu*, the head of the family, had left the family estate to the eldest male son in accordance with the increasingly fashionable practice of primogeniture. Tudur Aled was a poet acting as an arbitrator in his pleading for reconciliation and blamed the entire affair on the importation of English legal culture. Here is an extract which illustrates vividly Tudur Aled's views on the matter:

Cymru'n waeth, caem, o'r noethi, Lloegr yn well o'n llygru ni. Can bil a roed acw'n bwn- Croes Iesu rhag rhyw sesiwn! Câr yn cyhuddo arall, Hawdd i'r llaw gyhuddo'r llall. ⁵¹	Wales is worse for this stripping, England better from our shame. A hundred bills heaped on us there; Jesus' cross, shield us from sessions! One kinsman blames another, Easily this hand blames that. ⁵²
--	---

⁴⁹ See R. Geraint Gruffydd, "A Glimpse of Medieval Court Procedure in a Poem by Dafydd Ap Gwilym", in C. Richmond, and I. Harvey, eds., *Recognitions: Essays Presented to Edmund Fryde* (Aberystwyth: National Library of Wales, 1996), 165-176.

⁵⁰ T. Gwynn Jones, ed., *Gwaith Tudur Aled* (Cardiff: University of Wales Press, 1926), 282-83, Poem LXX, lines. 29-30.

⁵¹ Jones, ed., *Gwaith Tudur Aled*, 267, Poem LXVI, lines. 77-82.

⁵² For the translation, see Joseph Clancy, *Medieval Welsh Poems* (Dublin: Four Courts Press, 2003), 355.

This was a conflict which had its roots in the contamination of Welsh customs by the increasing encroachment of English justice. Recourse to the English courts seemed to be commonplace among the Welsh gentry, and, for Tudur Aled, this was to the detriment of Welsh ways and traditions. The cost of litigation, especially where it is a case of brother against brother, and where only the lawyers at the sessions profit, clearly had animated the bard.⁵³

It would be misleading to suggest that Tudur Aled's viewpoint represented the general consensus on the importation of English legal custom. Hywel Swardwal (fl. 1430-70) was a poet who traced his ancestry to the Norman Surdeval family, who were among the earliest Norman settlers in Brycheiniog in the twelfth century.⁵⁴ Although Gwent and Glamorgan were his poetic hinterlands, there are legal references in his ode to Hywel ap Siancyn of Nanhyfer (Nevern in Pembrokeshire), when his benefactor's knowledge of the law is praised.⁵⁵ There is reference to two laws, which suggests that two legal codes were in force in this part of Dyfed: "Efô a fedrai dröi/Y ddwy gyfraith i'n iaith ni" (He could apply/ both laws in our language).⁵⁶ It may refer to the common law or ecclesiastical law in addition to *Cyfraith Hywel*.

A call for retaliation is what we encounter in his elegy to Watcyn Fychan of Brodorddyn (Bredwardine), murdered by an Englishman in the city of Hereford in 1456.⁵⁷ There was considerable tension between the Welsh and English inhabitants of city during that period, linked to the conflict that later became known as the Wars of the Roses. Watcyn was killed by a stray arrow during the conflict, to which there was an immediate and violent response by William Herbert of Raglan, Earl of Pembroke and patron of bards (died 1469), who was also a kinsman of the deceased. The city's mayors and justices were threatened and forced to place the blame for the murder on an Englishman named John Glover, along with five of his friends, who were thereafter hanged at the scene. Legal processes were ignored as Herbert secured the verdict he sought, and the subsequent inquest was held in Bredwardine rather than in Hereford, which would have been expected under the normal procedure.⁵⁸ It

⁵³ For a detailed analysis of this poem, see Gruffydd Aled Williams, "Tudur Aled ai cant yn dda om barn i: Cywydd Cymod Wmffre ap Hywel ap Siancyn o Ynysmaengwyn a'i Geraint", *Llên Cymru* 30, (2007), 57-99.

⁵⁴ Dylan Foster Evans, ed., *Gwaith Hywel Swardwal a'i Deulu* (Aberystwyth: University of Wales Centre for Advanced Welsh and Celtic Studies, 2000), 1-5.

⁵⁵ Evans, ed., *Gwaith Hywel Swardwal a'i Deulu*, 174.

⁵⁶ Evans, ed., *Gwaith Hywel Swardwal a'i Deulu*, 56; Poem 13, lines 43-44.

⁵⁷ Evans, ed., *Gwaith Hywel Swardwal a'i Deulu*, 89; Poem 23.

⁵⁸ See Dylan Foster Evans, "Murder in the Marches: Poetry and the Legitimation of Revenge in Fifteenth-Century Wales" *Proceedings of the Harvard Celtic Colloquium* 18/19, (1998-99), 42-72.

was there that the coroner and jury were held captive in the church until they gave the verdict that Herbert expected.⁵⁹

Grief along with hatred towards the murderer are the dominant themes of the poem, with the fact that an Englishman had committed the deed adding to the poet's anger. Although the poem does not offer much detail about the legal processes, the line “*Aur am Watgyn nis myn merch*” (his widow did not wish gold for Watcyn's life) implies that the widow of the victim was not willing to accept gold as compensation for his killing.⁶⁰ This is not an appeal for *Cyfraith Hywel* with its emphasis on compensation, but a call for the punitive methods of English law.⁶¹

The Hanging of a Harpist

We now turn to the poem which is arguably the most striking in the canon of *Beirdd yr Uchelwyr* which critiques a legal subject. A Welsh harpist called Siôn Eos is sent to the gallows by the Constable of Chirk after being found guilty by a jury of killing a man in brawl in one of the taverns in the town. All that we know of the fate of Siôn Eos is contained in a poetic elegy by Dafydd ab Edmwnd (fl. 1450-97), a doyen among the Welsh poets of the fifteenth century, and, as already mentioned, an uncle to Tudur Aled (whose mother was Dafydd's sister).⁶² Besides his poetic credentials, Dafydd ab Edmwnd may also have been learned in the law, and was certainly a member of a renowned juristic dynasty, the Hanmers, a Norman family who had settled in north-east Wales in the thirteenth century.⁶³ An ancestral uncle, David or Dafydd Hanmer, was a lawyer of distinction, and became a justice at the King's Bench Court in 1383. Margaret, or Marred, one of Dafydd Hanmer's daughters, was married to Owain Glyndŵr, and his sons fought for Glyndŵr's during the struggle for independence.⁶⁴ He was also a patron of poets, as the many poems in his honour testify.⁶⁵

⁵⁹ Evans, ed., *Gwaith Hywel Swrdwal a'i Deulu*, 190-91.

⁶⁰ Evans, ed., *Gwaith Hywel Swrdwal a'i Deulu*, 89; Poem 23, line 61.

⁶¹ Evans, ed., *Gwaith Hywel Swrdwal a'i Deulu*, 195.

⁶² See his entry in Meic Stephens, *Cydymaith i Lenyddiaeth Cymru* (Cardiff: University of Wales Press, 1986), 28-29.

⁶³ See J. E. Griffith, *Pedigrees of Anglesey and Caernarvonshire Families* (Horncastle: W. K. Morton, 1914), 286.

⁶⁴ Davies, *The Revolt of Owain Glyndŵr*, 137-38; also Gruffydd Aled Williams, “More than ‘skimble-skamble stuff’: the Medieval Welsh Poetry Associated with Owain Glyndŵr”, *Proceedings of the British Academy* 181 (2012), 1-33.

In common with other English families that had settled in north Wales, such as the Pulestons of Hafod Wern and other seats, or the Salusbury family of Llyweni and its branches, the Hanmers were a new breed of Norman-Welsh in the immediate post-conquest period.⁶⁶ But by the time of Dafydd ab Edmwnd, many branches of this family were fully integrated and had even adopted the Welsh patronymic tradition of surnaming.⁶⁷ Paradoxically, Dafydd ab Edmwnd was directly descended in the male line from Sir Thomas de Macclesfield who was an officer in the service of Edward I, the English king who put paid to Welsh independence.⁶⁸ Even so, the extent of Dafydd ab Edmwnd's earnest Welshness is seen most clearly in a poem where he entreats a nobleman from Anglesey not to take an English wife. In his *Cywydd i Rys Wyn ap Llywelyn ap Tudur o Fôn rhag Priodi Saesnes*, he counsels against the marriage with a descendant of Hengist and Horsa, what he describes as a "Saesnes o ryw Seisnig" (an English woman of English stock).⁶⁹ Indeed, it appears that this suspicion of mixed marriages was one commonly shared within the bardic fraternity.⁷⁰

Dafydd ab Edmwnd was a landowner and the owner of Yr Owredd estate in Maelor Saesneg on the porous and somewhat ill-defined border of England and Wales (in what would later become a detached part of Flintshire).⁷¹ He was sufficiently established to be able to craft poetry according to his personal inclinations and without that dependency on patronage which typified his contemporaries. His poetic repertoire was wide, and included praise, eulogies, poems seeking favour (*canu gofyn*), love poems and religious poems. Dafydd ab Edmwnd, besides his personal output as a poet, would leave a permanent mark on the Welsh bardic tradition as the leading agent in standardising the bardic strict meter conventions at the Carmarthen Eisteddfod of 1451.⁷²

Although the consensus among scholars is to place Dafydd ab Edmwnd in the second class of Welsh poets in what was a golden period, it is also recognised that he has work that

⁶⁵ See Bleddyn Owen Huws, "Rhan o Awdl Foliant Ddienw i Syr Dafydd Hanmer", *Dwned* 9, (2003), 43-64; also, Bleddyn Owen Huws, "Gramadeg Barddol Honedig Syr Dafydd Hanmer", *Llên Cymru* 28, (2005), 178-80.

⁶⁶ Their history is given account by John Lord Hanmer, *The Parish and Family of Hanmer* (London: Privately Printed at the Chiswick Press, 1876).

⁶⁷ The significance of Anglo-Welsh names and surnames in Wales during the middle ages is considered by Laura Radiker, "Observations on Cross-Cultural Names and Name Patterns in Medieval Wales and the March", *Proceedings of the Harvard Celtic Colloquium* 26/27, (2006/2007), 160-198.

⁶⁸ See also the note on the Hanmer family in the *Dictionary of Welsh Biography* (on-line).

⁶⁹ Thomas Roberts, ed., *Gwaith Dafydd ab Edmwnd* (Bangor: Jarvis and Foster, 1914), 91-93 (poem XLVII).

⁷⁰ See Helen Fulton, "Class and Nation: Defining the English in Late-Medieval Welsh Poetry", in Ruth Kennedy and Simon Meecham-Jones, eds., *Authority and Subjugation in Writing of Medieval Wales* (New York: Palgrave Macmillan, 2008), 191-212, at 204.

⁷¹ W. T. R. Pryce, "Migration and the Evolution of Culture Areas: Cultural and Linguistic Frontiers in North-East Wales, 1750 and 1851", *Transactions of the Institute of British Geographers* 65, (1975) 79-107.

⁷² See Roberts, ed., *Gwaith Dafydd ab Edmwnd*, at vii-xvii.

reaches the highest peaks.⁷³ And the elegy to Siôn Eos, as Saunders Lewis acknowledged, was among his finest works.⁷⁴ The poem is crafted in the *cywydd* strict meter and is a beautiful and personal lament for a master harpist. Corroborating the aptness of his sobriquet “Eos”, which is Welsh for nightingale, the *cywydd* claims that neither angel nor man could fail to weep at hearing Siôn’s renditions. But in addition to its aesthetic virtues, the elegy also offers a pungent critique of a legal order which, it is claimed, facilitated a miscarriage of justice.

Chirk, the scene of the events, was a marcher lordship where the Welsh and English shared an uneasy coexistence in the years following the ill-fated Glyndŵr rebellion. Due to the uncertainty about the precise date of the events concerned, we cannot be certain as to who was the Constable of Chirk who condemned the harpist to his fate. Authority in the March of Wales was in a state of constant flux, made worse by the attrition caused by the dynastic struggle that became later known as the war of the roses, a struggle in which the Welsh had more than a passing interest.⁷⁵ There is evidence to suggest that Thomas Strange was Constable of Chirk at the time of Henry V's death in 1422.⁷⁶ He was a member of the Lestrangle family who had been prominent marcher lords in the area in question since soon after the Norman conquest. But Thomas Strange was dead by 1436, well before the events in question. A more likely candidate is Sir Otewell Worsley, an Englishman who married the daughter of Edward ap Dafydd Trevor of one of the native noble families of the Welsh borders.⁷⁷ One source suggests that he was appointed Constable of Chirk in 1445, but another source states that the date of appointment was 24 June 1461.⁷⁸ Worsley held the post before the time of Wiliam ap Siôn Edwart, the constable on whom Tudur Aled lavished praise.⁷⁹ Thomas Roberts recounted the tradition that the Constable of Chirk may have executed the harpist as an act of revenge on the Constable of Oswestry, who had earlier executed one of the servants of the Constable of Chirk for some unknown offence. As the Constable of

⁷³ Johnston, *Llên yr Uchelwyr*, 252.

⁷⁴ See Saunders Lewis, *Meistri a'u Crefft* (Cardiff: University of Wales Press, 1981), 124.

⁷⁵ Victoria Flood, “Henry Tudor and Lancastrian Prophecy in Wales”, *Proceedings of the Harvard Celtic Colloquium* 34 (2014), 67-86.

⁷⁶ Margaret Mahler, *A History of Chirk Castle and Chirkland* (London: G. Bell & Sons Ltd., 1912), 85, 87.

⁷⁷ Douglas Richardson and Kimball G. Everingham, *Magna Carta Ancestry: A Study in Colonial and Medieval Families IV* (2nd ed.) (Salt Lake City: Genealogical Publishing Company, 2011), 107.

⁷⁸ Nathen Amin, *The House of Beaufort: The Bastard Line that Captured the Crown* (Stroud: Amberley Publishing Limited, 2017), chapter 24.

⁷⁹ Jones, ed., *Gwaith Tudur Aled*, Poem LXIII, 253-56.

Oswestry was a known benefactor and friend of Siôn Eos, the driving motivation behind his hanging, according to this theory, was pure revenge.⁸⁰

The poem can be best analysed as an epic in three parts. The first part is that which provides us with an account of the circumstances that led to the execution. The poet's grievance is that the hanging was an unduly harsh and futile penalty for what had been an unintentional killing in the heat of the moment because of a "petty cause". From the outset, we are told that the harpist was hanged for killing another in a "chance brawl". This is a crucial point to which we shall return. No good could come from executing the perpetrator, the poet claims, and the hanging risked escalation and creating an appetite for revenge and bloodfeud.⁸¹

Drwg i neb a drigo'n ôl Dau am un cas damweiniol. Y drwg lleiaf o'r drygwaith Yn orau oll yn yr iaith. O wŷr, pam na bai orau, O lleddid un na lladd dau? Dwyn, un gelynwaed, a wnaeth Dial ein dwy elyniaeth. Oedd oer ladd y ddeuwr lân Heb achos ond un bychan. ⁸²	Wrong for one who remains after To stay mum about a chance brawl, The least wrong of wrongdoings By the best of all in our tongue. Oh men, were it not better, If one's slain, not to slay two? Avenging one enemy's blood Has made the enmity double. Sad was two good men's slaying For naught but a petty cause. ⁸³
---	--

Dafydd ab Edmwnd then presents us with his first ground of appeal, which is that the condemned was tried and punished according to English law, although he was, ethnically, a Welshman, and should therefore have been availed of the principles of Cyfraith Hywel:

⁸⁰ Roberts, ed., *Gwaith Dafydd ab Edmwnd*, 155.

⁸¹ The version studied here is as it appears in contemporary orthography in Thomas Parry, ed., *Oxford Book of Welsh Verse* (Oxford: Oxford University Press, 1962), thereafter OBWV, 138-41, Poem 75. See also Roberts, ed., *Gwaith Dafydd ab Edmwnd*, 78-81. The poem survives in several manuscripts, including Cardiff MS 7 and MS 19, and the British Museum MS 31 and MS 48.

⁸² OBWV, Poem 75, lines 1-10.

⁸³ Joseph Clancy, *Medieval Welsh Poems* (Dublin: Four Courts Press, 2003), 332-34, at 332.

<p>Sorraais wrth gyfraith sarrug Swydd y Waun, Eos a ddug. Y Swydd, pam na roit dan sêl I'th Eos gyfraith Hywel? Ar hwn wedi cael o'r rhain Wrth lawnder, cyfraith Lundain, Ni mynnent am ei einioes Noethi crair na thorri croes. Y gŵr oedd dad y gerdd dant, Yn oeswr ni barnasant Deuddeg, yn un oeddyn', Duw deg, ar fywyd y dyn.⁸⁴</p>	<p>I was angered by Chirk's Surly law, it took Eos. Chirk, why not under seal Apply Hywel's law to your Eos? When these imposed upon him, In its fullness, London's law, They would not, for his life's sake, Cut a cross or bare a relic.⁸⁵ The man who was music's father, They'd judged that he should not live, The twelve, they were united, Dear God, on taking his life.⁸⁶</p>
--	--

Dafydd ab Edmwnd may have had a valid legal point, as it was likely that the laws applied in the lordship of Chirk were dependant on the ethnicity of the accused. The execution of Siôn Eos came about because the laws of England, or the laws of London as they are described in the poem, were applied rather than the native Welsh laws. Had the Welsh laws, or the laws of Hywel, been applied in this case, the outcome would have led to compensation for the victim's family rather than punishing the perpetrator. Accordingly, the accused's life would have been spared. This is not merely a legal point, but an appeal to fairness and rationality.

We are also informed that the harpist was tried by a jury of twelve, the great English legal innovation that had been imported to Wales, and that no mercy was shown towards him.⁸⁷ This poetic reference to the jury is reminiscent of the *cywydd* crafted by Gruffudd Llwyd ap Dafydd ab Einion Llygliw (c. 1380-1420), towards the end of the fourteenth century, which also mentions the jury. His *Cywydd y Cwest ar Forgan ap Dafydd o Rydodyn* lists the names of twelve poets who could be summoned to serve on a jury in an inquest. That poem was a response to the case of Morgan ap Dafydd, who was accused of killing a legal

⁸⁴ OBWV, Poem 75, lines 23-34.

⁸⁵ The translation of this line is not faithful to the Welsh original, and a more accurate version would be "to lay bare a relic nor to make the sign of the cross", both being indicative of forgiveness.

⁸⁶ Clancy, *Medieval Welsh Poems*, 332-33.

⁸⁷ See Dafydd Jenkins, "Towards the Jury in Medieval Wales", in John W. Cairns and John McLeod, eds., *The Dearest Birth Right of the People of England: The Jury in the History of the Common Law* (Oxford: Hart, 2002), 17-46.

officer somewhere between Cardigan and Carmarthen, and subsequently brought before the judge Sir David Hanmer (Dafydd ab Edmwnd's great uncle) in Carmarthen.⁸⁸

The mention here of the refusal to “noethi crair” and “torri croes” (not to bare a relic nor to make the sign of a cross) to save the accused's life adds an apparently religious dimension to the poet's complaint, and it is a detail which has legal significance. An ideological retreat from employing divine intervention in English legal process had followed the Lateran Council of 1215, which prohibited priests from consecrating or otherwise blessing various forms of trial by ordeal, thereby rendering the process obsolete.⁸⁹ In fact, it has been a matter of debate and speculation as to the extent to which trial by water or by hot iron were in common use prior to this.⁹⁰ Moreover, there is a consensus among scholars that trial by ordeal, whether by water, fire or by battle, does not appear in any of the Welsh legal manuscripts.⁹¹ Trial by ordeal is not mentioned in the practitioner's manual, *Llyfr Cyngawsedd*, and only in a few texts belonging to the Marcher regions is there any mention of trial by ordeal in legal process. Indeed, trial by compurgation and pleading, *rhwym dadl*, has been hailed as one of the great qualities of Welsh legal custom.⁹²

Yet the absence of trial by ordeal did not preclude the invocation of divine intercession from the precepts of *Cyfraith Hywel*, as the use of the cross and/or a holy relic appears repeatedly in the manuscripts.⁹³ Indeed, in the Welsh law of homicide, there is explicit reference to the use of a relic and the swearing of oaths in order to establish the liabilities of the killer's kindred for the compensation due to the victim and his kin.⁹⁴ Also, of passing interest, is Sara Elin Roberts's study of a religious custom in fifteenth century Brycheiniog in connection with a land action described as *dadl croes* (pleading the cross).⁹⁵ The action as described involved the use of the cross, which would have been placed on the disputed land or given to the defendant to “register that a legal action over the land had been

⁸⁸ See Thomas Roberts, “Cywydd y Cwest ar Forgan ap Dafydd o Rydodyn gan Ruffudd Llwyd ap Dafydd ab Einion”, *Bulletin of the Board of Celtic Studies*, 1 (1921-23), 237-40.

⁸⁹ H. L. Ho, “The Legitimacy of Medieval Proof”, *Journal of Law and Religion* 19(2), (2003-04), 259-98.

⁹⁰ See Margaret H. Kerr, Richard D. Forsyth and Michael J. Plyley, “Cold Water and Hot Iron: Trial by Ordeal in England”, *Journal of Interdisciplinary History*, 22 (4), (1992), 573-595, at 581.

⁹¹ As Dafydd Jenkins stated: “In Wales the classical and earlier lawbooks do not mention ordeal or battle: in a land which was never pagan, perhaps it was never thought proper to tempt God by asking for a miraculous vindication of the accused innocent. But the Welsh methods were objective: they depended on oaths sworn by the parties or by witnesses of various kinds, and the lawbooks tell the judge what oaths are required in the different kinds of case.” Jenkins, *The Law of Hywel Dda*, xxxii

⁹² See, for example, Watkin, *The Legal History of Wales*, 73; Jenkins, “Towards the Jury in Medieval Wales”, 26-28.

⁹³ For references to the Holy Cross, see Jenkins, *The Law of Hywel Dda*, 123, 159 and 207.

⁹⁴ Jenkins, *The Law of Hywel Dda*, 145.

⁹⁵ Sara Elin Roberts, “Legal Practice in Fifteenth-century Brycheiniog”, *Studia Celtica*, 35, (2001), 307-23.

initiated”.⁹⁶ The defendant might then break the cross to indicate his disputing the claim. The cross was thus a device used to initiate proceedings, and to engage the defendant in the dispute.

This ritual gives some support to the belief that in the borderlands where a combination of Welsh and English customs co-existed, the holy cross and religious relics continued to play a vital part in legal process. Indeed, customs which appealed for divine guidance involving the use of a relic or cross may have originated in *Cyfraith Hywel* and continued to be in circulation in the Welsh borders into the fifteenth century. In this case, Dafydd ab Edmwnd’s complaint was that the symbols of Christian mercy were not invoked to the detriment of his executed friend.

But the poet’s principal argument was that compensation, which would have been paid in accordance with *Cyfraith Hywel*, would have been of more benefit than the execution, and that Siôn Eos’s weight in gold would have been paid to circumvent the taking of the harpist’s life - “er byw Siôn”.

Y corff dros y corff pes caid, Yr iawn oedd well i’r enaid. Oedd, wedi addewidion Ei bwys o aur er byw Siôn. ⁹⁷	If body paid for body, Better’s recompense for the soul. Afterwards there were pledges Of his weight in gold for Siôn’s life. ⁹⁸
---	--

What is the significance of these pledges of gold, and how exactly might the application of *Cyfraith Hywel* have secured a different outcome? At the heart of the native Welsh law of homicide was the custom of *galanas*, which is referred to as one of the three columns of the law in the lawbooks.⁹⁹ *Galanas* was a term which represented both a vendetta or bloodfeud between the family of the victim and that of the perpetrator of a wrong (the Welsh word *gelyn*, meaning enemy, derives from the same root), but also the compensation designed to

⁹⁶ Roberts, “Legal Practice in Fifteenth-century Brycheiniog”, 311.

⁹⁷ OBWV, Poem 75, lines 19-22.

⁹⁸ Clancy, *Medieval Welsh Poems*, 332.

⁹⁹ For a discussion on how *galanas* is treated in the lawbooks, see Robin Chapman Stacey, *Law and the Imagination in Medieval Wales* (Philadelphia: University of Pennsylvania Press, 2018), 185-196; also see Dafydd Jenkins, “Towards the Jury in Medieval Wales” in J. W. Cairns and G. McLeod, eds., *The Dearest Birth Right of the People of England: The Jury in the History of the Common Law* (Oxford: Oxford University Press, 2002), 17-46, at 22-24.

avoid such a vendetta.¹⁰⁰ The practical application of *galanas* required the kin of the wrongdoer to pay compensation to the kin of the victim, in accordance with rules laid out which took into account the degree of relationship, and which involved kindred up to the seventh degree of relationship (descendants of a common great (x4) grandfather were thus involved).¹⁰¹ It had similar counterparts in Anglo-Saxon, Irish and Icelandic legal codes.¹⁰²

The custom of *galanas*, already on the wane in thirteenth century Gwynedd, would suffer a decline in the principalities with the introduction of English criminal law following the conquest of 1282, and the constitutional settlement in the Statute of Rhuddlan (Wales) 1284.¹⁰³ By then, the English had come to the view that the idea of paying compensation for a killing was not entirely palatable.¹⁰⁴ Yet, *galanas* endured longer in the march of Wales, where recourse to compensation rather than punishment continued as an alternative means of legal remedy.¹⁰⁵ Indeed, as Sir Rees Davies remarked, “in the march of Wales, *galanas* in the fourteenth and fifteenth centuries was still a recognized action at law and a means of terminating a case of homicide”.¹⁰⁶ This was due partly to its deep roots within the Welsh cultural psyche, but also because the marcher lords, with their proverbial eyes for the main chance, would often personally benefit from many of the Welsh customs as they also required a tax or payment to the local magnate. It was a clear example of tolerating continuation in the interests of mutual convenience.¹⁰⁷

The poet’s grievance was that the accused was not tried in accordance with the native Welsh laws, which would have spared his life. Was there another ground of appeal? The constant reference in the poem to an unintentional killing may have alerted the reader to the possibility that this was a less culpable form of killing. But the poet offers us something more specific. In this extract, the poet turns his thoughts to the compatibility of the harpist’s execution with English Law:

Er briwio’r gŵr, heb air gwad,	Though he stabbed the man, no denial,
--------------------------------	---------------------------------------

¹⁰⁰ See R. R. Davies, “The Survival of the Bloodfeud in Medieval Wales”, *History* 54, (1969), 338-357, at 344.

¹⁰¹ Jenkins, *The Law of Hywel Dda*, 144-45.

¹⁰² See Richard Ireland, *Land of White Gloves? A History of Crime and Punishment in Wales* (London: Routledge, 2015), 12-13.

¹⁰³ See W. H. Waters, *The Edwardian Settlement of North Wales in its Administrative and Legal Aspects* (Cardiff: University of Wales Press, 1935), 135-37.

¹⁰⁴ R. R. Davies, “The Twilight of Welsh Law, 1284–1536” *History* 51 (172), (1966), 143-164, at 143.

¹⁰⁵ For a case-study from Dyffryn Clwyd of the 1430s, see Llinos Beverley Smith, “A Contribution to the History of ‘Galanas’ in Late-Medieval Wales”, *Studia Celtica*, 43 (2009), 87–94.

¹⁰⁶ Davies, “The Survival of the Bloodfeud in Medieval Wales”, 344.

¹⁰⁷ Davies, “The Survival of the Bloodfeud in Medieval Wales”, 353; also Davies, “The Twilight of Welsh Law, 1284–1536”, 161.

O bu farw, ni bu fwriad. Yr oedd y diffyg ar rai Am adladd mewn siawns medlai. Ymryson am yr oesau, Rhyw yng a ddaeth rhwng y ddau; Oddyna lladd y naill wr, A'i ddial, lladd y ddeuwr. ¹⁰⁸	If he died, there was no intent. The fault was with some of them Striking back in a chance mingling. Disputing family lines, Some trouble came between them; From that, the one man's slaying, And avenging him, both men slain. ¹⁰⁹
--	---

Joseph Clancy's translation does not alert us to the fact that the original Welsh version refers to *siawns medlai*.¹¹⁰ *Siawns medlai*, a legal term, is a Welsh form of the Anglo-French phrase, *chance-medlee*, or *chaude mêlée*, which would later be Anglicised and evolve into the legal expression, chance medley. The phrase is derived from the French expression, hot fight, which became an English legal term meaning a sudden and unexpected killing during a violent struggle or affray. The essence of the chance medley was a killing without any premeditation or planning, or any malice aforethought. Chance-medley thus became a shorthand phrase to mean a killing in the heat of the moment.

The legal distinction between a reckless killing, and killing by conspiracy or with malicious intent, was becoming firmly rooted in English law by the sixteenth century, and the outcome for the perpetrator would be radically different.¹¹¹ For the killer who acted in the course of an affray, and who successfully pleaded the partial defence of chance medley, would have his property forfeited, but, crucially, his life would be spared.¹¹² Later, the lesser killing would evolve into what would become known as *voluntary manslaughter*, a less culpable homicide than murder.¹¹³ These evolving concepts of the criminal law represented a gradual shift of emphasis from measuring culpability on the basis of the injury caused to the victim, to that of the offender's state of mind and moral responsibility (known to common lawyers as the *mens rea*). Kamali's recent work has shown that even as early as the thirteenth and fourteenth centuries, the concept of *mens rea* and the role of the accused's intentions was

¹⁰⁸ OBWV, Poem 75, lines 11-18.

¹⁰⁹ Clancy, *Medieval Welsh Poems*, 332.

¹¹⁰ Neither is it to be found in the authoritative University of Wales Welsh language dictionary, *Geiriadur Prifysgol Cymru*/ A Dictionary of the Welsh Language: <https://geiriadur.ac.uk/gpc/gpc.html>.

¹¹¹ Joshua Dressler, "Rethinking Heat of Passion: A Defense in Search of a Rationale", *The Journal of Criminal Law & Criminology* 73, no. 2, (1982), 421-70, at 426.

¹¹² J. H. Baker, *An Introduction to English Legal History*, 5th edn., (Oxford: Oxford University Press, 2019), 571.

¹¹³ As explained by Bernard J. Brown, "The Demise of Chance Medley and the Recognition of Provocation as a Defence to Murder in English Law", *The American Journal of Legal History* 7 no. 4, (1963), 310-18.

discernible in English criminal law and a determinative factor for juries when assessing moral culpability. As she remarks, “mens rea played a crucial role in jury considerations from the earliest days of the criminal trial jury”.¹¹⁴

However, there was a consensus among legal historians that the chance medley defence only came of age and became established as a recognised partial defence in English law during the mid to late sixteenth century. By then the defence, if established, meant that the accused was not found guilty of murder but of manslaughter.¹¹⁵ Later, elements of the chance medley would be incorporated into the defence of provocation.¹¹⁶ But the chronology in relation to the development of the chance medley defence, and its mentioning in this poem, is significant. For a considerable time, the belief was that the defence of chance medley could only be traced back as far as 1532, when a statute of Henry VIII explicitly mentioned it. Indeed, it was generally believed that the defence only emerged as a “term of record” in the reign of the second Tudor monarch.¹¹⁷ However, Thomas Green’s painstaking research proved that the expression “chance melée” was in legal usage by the end of the fourteenth century, and was also mentioned in legal treatise at the beginning of the sixteenth century, well before the statute aforementioned.¹¹⁸ Dafydd ab Edmwnd’s claim that the killing occurred in a chance medley is therefore highly significant, and not merely to the student of medieval Welsh poetry. It at least suggests that the phrase and its meaning had already gained general currency among lawyers and those with lay interests in the law by the middle of the fifteenth century, almost a century before it was mentioned in the statute of Henry VIII. Its appearance in this poem therefore gives further support to the belief that the chance medley defence had origins and common usage in English law far earlier than previously believed.

For the poet, it gave further grounds for arguing that the verdict and execution were inappropriate, and that the punishment did not fit the crime. Indeed, the compensation to the victim’s kindred that might have resulted from the application of *Cyfraith Hywel* mirrored

¹¹⁴ Elizabeth Papp Kamali, *Felony and the Guilty Mind in Medieval England* (Cambridge: Cambridge University Press, 2019), 40-43.

¹¹⁵ See Rollin M. Perkins, “A Re-Examination of Malice Aforethought”, *Yale Law Journal* 43, (1934), 537-570, at 544; also Laurie J Taylor, “Provoked Reason in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense”, *UCLA Law Review* 33, (1986), 1679-1735, at 1684.

¹¹⁶ See Thomas Glyn Watkin, “Hamlet and the Law of Homicide”, *Law Quarterly Review* 100, (1984), 282-310.

¹¹⁷ See John R. Gillespie, “The Origin and Development of Chance-Medley in the Law of Manslaughter”, *Kentucky Law Journal* 37 no. 1, (1948), 86-90, at 86.

¹¹⁸ Thomas A. Green, “The Jury and the English Law of Homicide, 1200-1600”, *Michigan Law Review* 74, (1976), 413-99, at 467-68.

that of the power to forfeit the property of a person convicted of killing in a chance melee that was to be found in English Law. In other words, and by way of a pleading in the further or alternative, Dafydd ab Edmwnd's poem is an argument to the effect that, even if *Cyfraith Hywel* was not the appropriate legal code in this case, neither was the hanging compliant with the emerging principles of the English common law. This was surely Dafydd ab Edmwnd's legal flair applied with poetical prowess.

The second and middle section of the poem is a lament for the lost harpist. It is more conventional in terms of its tone, although the detail is remarkable and provides a vivid portrait of the executed man:

<p>Aeth y gerdd a'i thai gwyrddion A'i da'n sied wedi dwyn Siôn, A llef o nef yn ei ôl, A'i ddisgybl yn ddiysgol. Llyna ddysg! I'r llan ydd aeth; Lle ni chair lluniwch hiraeth. Wedi Siôn nid oes synnwyr Da'n y gerdd, na dyn a'i gŵyr. Torres braich tŵr Eos brig, Torred mesur troed musig; Torred ysgol tŷ'r desgant, Torred dysg fal torri tant. Oes mwy rhwng Ewas a Môn O'r dysg abl i'r disgyblion? Rheinallt nis gŵyr ei hunan, Rhan gŵr er hynny a gân. Ef aeth ei gymar yn fud, Yn dortwll delyn Deirtud.¹¹⁹</p>	<p>Music and its green mansion And its wealth's forfeit, Siôn gone, And a cry from heaven follows him, And schoolless is his disciple. Behold learning: gone to the grave; Where it's lacked, fashion longing. After Siôn there's no fine art In song, nor man who knows it. An arm broke Eos' tree-top tower: Broken the beat of music's foot, Broken was descant's schoolroom, Broken learning, like breaking a string. Is there from Ewas to Môn Sufficient learning for students? Rheinallt himself doesn't know it; Despite that, he plays a man's part. His fellow has been struck dumb, Shattered the harp of Teirtud.¹²⁰</p>
--	--

¹¹⁹ OBWV, Poem 75, lines 35-52.

¹²⁰ Clancy, *Medieval Welsh Poems*, 333.

The loss of the talented harpist who was also an accomplished tutor is the refrain. With his death, no one between Anglesey and Ewyas, the entire length of Wales in other words, could replace him. Mention is made of Rheinallt, another fine harpist from Dolgellau who had learnt his craft under the tuition of Siôn Eos.¹²¹ Lloyd, in his *History of Powys Fadog*, mentions both in these terms: “At Dolgelley was born Reinallt, a clever harper, who contended with Sion Eos for the laurel, about 1450, but was unsuccessful”.¹²² This along with what we know of Dafydd ab Edmwnd’s career, would date the execution of Siôn Eos, and Dafydd ab Edmwnd’s elegy, sometime during the second half of the fifteenth century.

In this and the subsequent sections of the elegy we are introduced to Welsh musical terminology, such as the word “desgant”, which is a borrowing from the English musical term, descant.¹²³ The repeated reference to torri, torred/torres, meaning to break, deepens the sense of irreplaceable and permanent loss. The harp of Teirtu, mentioned in this extract, is also mentioned in the legend of Culhwch ac Olwen as a magical instrument which could play itself or stop when requested: “Telyn Teirtu y’ m didanu y nos honno. Pan uo da gan dyn, canu a wna e hunan; pan uynher idi, tewi a wna” (Teritu’s harp entertained me that night. If it pleased anyone, it would play itself; if desired, it would become silent).¹²⁴ Here, the poets lament that the legendary harp has been shattered by Siôn’s death, a metaphor which further emphasises the extent of the loss.¹²⁵

Other legal references are also significant in this section of the poem. In the lines “aeth y gerdd a’i thai gwyrddion/ a’i da’n sied wedi dwyn Siôn”, the use of the word “sied” has a legal implication. It is translated by Clancy as “forfeit”, but perhaps the more technically accurate translation would be “escheated”, which derives from the Middle English word, *chete*. To “escheat” was to invoke a process in English Law that resulted in a dispossession and transfer of ownership from the estate of a deceased person to another, usually higher authority such as the king, upon certain conditions being met.¹²⁶ One of those conditions was if the landholder committed a felony. In those circumstances, the legal

¹²¹ Roberts, ed., *Gwaith Dafydd ab Edmwnd*, 155.

¹²² See J. Y. W. Lloyd, *History of Powys Fadog* Vol. VI (London: Whiting and Co., 1887), at 402.

¹²³ For further guidance on this reference, see Sally Harper, *Music in Welsh Culture before 1650: A Study of the Principal Sources* (London: Routledge, 2016), at 131.

¹²⁴ Idris Foster, Rachel Bromwich and D. Simon Evans, eds., *Culhwch ac Olwen* (Cardiff: University of Wales Press, 1988), 23, lines 627-29.

¹²⁵ Peter Crossley-Holland, “*Telyn Teirtu*”: *Myth and Magic in Medieval Wales* (Bangor: Canolfan Uwch-Astudiaethau Cerddoriaeth Cymru, 1997).

¹²⁶ See Notes, “Origins and Development of Modern Escheat”, *Columbia Law Review* 61 no.7, (1961), 1319-1340, at 1322.

reasoning was that “the felony so corrupted his blood that he could have no heirs”.¹²⁷ The consequence was that the land would be forfeited by the Crown, and the heirs would be dispossessed of their patrimony.¹²⁸

The deployment of the legal term, to escheat, had a literal meaning, as the executed felon’s land would be forfeited to the Crown because of his conviction and execution (although we have no evidence that this happened in this specific case). But was the forfeiture legal? The poet makes a significant claim in the line, “A’i da’n sied wedi **dwyn** Siôn”. It seems that the Clancy translation overlooks the added significance of the word “dwyn” as the legal term “to steal” or “to thief”.¹²⁹ The use of the word “dwyn” has heightened significance because the poet is saying that Siôn’s life was stolen or taken illegally, and that, accordingly, the forfeiture was not lawful. We are therefore presented with potentially two unlawful takings, that of the life of the harpist and his patrimony. And even if we should not read this phrase too literally, the use of the term escheat had an added metaphorical meaning in this context. It arguably conveys a sense that Siôn had no worthy heirs in his craftsmanship as a harpist, nobody who could inherit his great talent, and that a great cultural asset had been lost with his execution. For the poet, Siôn’s death led to the dispossession of music and its mansions, which might also be interpreted as the venues where the harpist would perform being at least culturally escheated by a foreign authority.

The poem thereafter continues in an elegiac tone as it eulogises Siôn Eos’s musical talent, a talent which the poet claims would cause an angel to weep. The harpist’s technical skill as a harpist is described in detail and his fingering technique is given careful attention, such as in this couplet, “Myfyrdawd rhwng bawd a bys/Mên a threbl mwyn â thribys” (A musing between finger and thumb/Mean (inner part) and sweet treble, three-fingered).¹³⁰

¹²⁷ See S. F. C. Milsom, *Historical Foundations of the Common Law*, 2nd edition (London: Butterworths, 1981), 109.

¹²⁸ Baker, *An Introduction to English Legal History*, 260.

¹²⁹ For comment on *dwyn* meaning *dwgyd*, that is, to steal, in the fifteenth century, see *Geiriadur Prifysgol Cymru/ A Dictionary of the Welsh Language*: <https://geiriadur.ac.uk/gpc/gpc.html>.

¹³⁰ For further guidance on *cerdd dant* and medieval Welsh musical terminology, see Harper, *Music in Welsh Culture before 1650: A Study of the Principal Sources*, 7-159.

<p>Ti sydd yn tewi â sôn, Telyn aur telynorion. Bu'n dwyn dan bob ewin dant, Bysedd llef gŵr neu basant; Myfyrdawd rhwng bawd a bys, Mên a threbl mwyn â thribys. Oes dyn wedi'r Eos deg Yn gystal a gân gosteg A phrofiad neu ganiad gŵr, A chwlm ger bron uchelwr? Pwy'r awran mewn puroriaeth, Pe na bai, a wnâi a wnaeth? Nid oes nac angel na dyn Nad ŵyl pan gano delyn. Och heno rhag ei chanu, Wedi'r farn ar awdur fu!¹³¹</p>	<p>You are silent, not a sound, Golden harp of the harpists. He'd hold a string under each nail, Fingers for man's voice or solo, A musing between finger and thumb, Mean and sweet treble, three-fingered. Is there one with fair Eos gone His equal for a prelude, Invention, or men's music, And twined tune before a lord? Who now in sweet harmony, Without him, could do what he did? There's not a man or angel Would not weep when he played the harp. Ah do not play it tonight After the master's judgment.¹³²</p>
---	---

In the final section, the elegy reaches a crescendo, and becomes much more than a critique of temporal legal processes. The concluding part reminds us of a further, higher jurisdiction to whom all, including the Constable of Chirk and his legal consorts, is answerable. Heaven's jurisdiction is thus the third jurisdiction to whom the poet turns. Drawing upon the familiar verses in chapter seven of Matthew's Gospel, it also reminds us that both bardic and legal culture were anchored in the mores of Christendom.¹³³

<p>Eu barn ym mhorth nef ni bydd, Wŷr y Waun, ar awenydd. A farno, ef a fernir O'r byd hwn i'r bywyd hir, A'r un drugaredd a ro A rydd Duw farnwr iddo.</p>	<p>The musician won't bear their judgement, Chirk's men, at heaven's gate. Who judges, he will have judgment From this world to long-lasting life, And the same mercy he shows God as a judge will show him.</p>
---	--

¹³¹ OBWV, Poem 75, lines 53- 68.

¹³² Clancy, *Medieval Welsh Poems*, 333.

¹³³ See Matthew 7, 1-3.

Os iawn farn a fu arno, Yr un farn arnyn' a fo. Efô a gaiff ei fywyd, Ond o'u barn newidio byd. Oes 'y nyn y sy yn nos, Oes yn Nuw i Siôn Eos. ¹³⁴	If on him just was the judgment, Be the same judgement on them. He will still possess his life, By changing worlds, 'cause of their judgment Life for man is in the night, Life in God for Siôn Eos. ¹³⁵
--	--

Conclusions

Dafydd ab Edmwnd's elegy to Siôn Eos is a potent combination of a powerful lament, a social and legal critique and an expression of faith and hope in divine justice. In its rich detail we find layers of meaning which, at first glance, can easily escape our attention. This is partly due to the beauty of the poetry and the sureness of the poet's craft, as we are effortlessly absorbed by the tragedy and the poet's grief. But when read carefully in the original, the poem discloses nuanced messages about the precarious state of law and order in what was a volatile border province where English, Welsh and Marcher laws were in a state of perpetual struggle for dominance and survival, and where, at times, none were appropriately applied.

Moreover, and with the benefit of legal historical understanding, we can see how the poetic tradition offers added insights into a period when Wales was experiencing what was often a traumatic conflict of legal culture and social values. It is a tradition that can bear vivid testimony of native responses to the importation of alien legal values. In this instance, where no official records of the specific episode survive, poetry fills the gap and serves as an unofficial source of reaction and response to a legal event. And with the benefit of hindsight, the fate of Siôn Eos can also be seen as a metaphor for the fate of the native Welsh laws. In some prophetic way, the execution of the harpist, as told by Dafydd ab Edmwnd, also foretold the end of the remaining vestiges of the native Welsh laws in the century that followed.

There are also some universal conclusions that might be drawn. In addition to a general appreciation of the value of literature as a medium for understanding the impact of

¹³⁴ OBWV, Poem 75, lines 69-80.

¹³⁵ Clancy, *Medieval Welsh Poems*, 333-34.

law and legal phenomena, literature has an added important function among conquered peoples whose experiences, historically, have been suppressed.¹³⁶ The perspectives of such peoples are only rarely preserved in the official annals.¹³⁷ Where the legal chronicles are silent, literature takes an invaluable function upon itself. It provides testimony that is otherwise hidden, including marginalized impressions of justice and authority and minoritized challenges to the validity and legitimacy of the legal order. It was the poetic tradition and, later, the folk culture that gave the Welsh people their voices throughout the centuries, and those same media gave them the means of recording their experiences of the law. Literature and other forms of popular culture, in these circumstances, become the main evidential sources of people's responses to the law. This insight is surely relevant to the legal experiences of suppressed peoples throughout the world and throughout history.

¹³⁶ See James Seaton, "Law and Literature: Works, Criticism, and Theory", *Yale Journal of Law & Humanities* 11, (1999), 479-507; Richard Weisberg, *Poethics and Other Strategies of Law and Literature* (Columbia: Columbia University Press, 1992) 3-47.

¹³⁷ In the example of Wales, see the valuable discussion of Catrin Fflur Huws, "Law, Literature, Language and the Construction of Welsh Identity", in Thomas Glyn Watkin, ed., *The Carno Poisonings and other Essays* (Bangor: Welsh Legal History Society, 2010), 99-120.