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## PROPERTY INTERESTS IN THE CLASSICAL WELSH LAW OF WOMEN

"THE LAW the lawyers know about Is property and land", and in any system the law of marital relations is concerned mainly with rights to property. In law, marriage<sup>1</sup> is a contract which has implications for the status of the contracting parties; most of those implications affect the parties' property rights; and it has been mainly because of those property rights that law has been concerned with marital relations at all. In medieval Wales, though the social conventions were much the same as those of other medieval societies, the basic principles declared in the lawbooks allow for the legal recognition of relationships very far from those conventions. This is, in part at least, the consequence of the fact that the regularity of a marital union had little significance for the inheritance rights of the children of the union. This meant that the circumstances of the formation of the union were of much less legal significance in medieval Wales than in medieval England, where the barons (in the interest of their property rights) insisted on maintaining a stricter law of legitimacy than even the Church required.<sup>2</sup>

The Welsh picture can be most clearly seen if we concentrate on the classical law of thirteenth-century Wales, as it is set out in the lawbooks developed in Gwynedd in the favourable environment created in the first half of that century by the political success of Llywelyn the Great. Most of our information will therefore be taken from the Iorwerth text with occasional references to its variant *Llyfr Colan* and the nearly contemporary collection of case-law, "*Llyfr y Damweiniau*", but attention will of course also be given to the other, less developed and sophisticated, texts by way of contrast and explanation of the lines of development.

<sup>1</sup> No exact technical meaning is to be given to the words *marriage* and *married*, unless such a meaning is either in terms indicated or necessarily required by the context. A married woman is presumably a woman with a *mari*, however she came by him.

<sup>2</sup> The resolution of the Merton Parliament of 1236, "*Nolumus leges Angliae mutare*", meant that it was not until the twentieth century that children born out of wedlock were legitimated in English Law by the marriage of their parents. The first limb of the triad "*Tri meib yssyd ny dylyant gyfran o tir y gan eu brodyr*" (Bleg 112.3-16) seems to reflect English Law in this matter; the second is likewise quite inconsistent with Welsh Law.

We may begin by describing what social convention (as deduced from hints in the lawbooks) treats as the norm, without thereby implying that normal families were any less rare than normal eyesight. The normal Welshman of the lawbooks was a "free tribesman" (*bonheddig*), who might or might not have ascended to the status of *breyr* (or *uchelwr*)<sup>3</sup> through the death of all his male ancestors. If he was not yet a *breyr*, he would not have come into his inheritance of land, but might have land acquired in other ways, and would certainly be much more than likely to have movable property (for which we can hereafter use the convenient English technical term *chattels*). In the lawbooks' treatment of the property incidents of marital union, the free woman is usually treated as a *breyr*'s daughter, and we may assume that her rights and liabilities in relation to marital property would not be affected by the question whether her father had ascended to the full status of *breyr*, for the distinction between the *breyr* and any other *bonheddig* is one of grade within a single class. We can therefore follow the lawbooks' practice of referring to the *breyr*'s daughter, except where there is special reason not to do so.

Whether *breyr* or mere *bonheddig*, the Welsh freeman is contemplated as the man of some lord, to whom his sons would be commended at the age of fourteen. A son so commended was released from his father's authority, and until he had sons to inherit from him his lord would be his heir. In some respects the position of the villein (*taeog*, *bilain*, *ailt*) was similar to that of the freeman: he too would be the man of some lord, but instead of a commendation to that lord at the age of fourteen, the young villein could expect to be recognised (at some appropriate age, probably much lower than would seem natural to the twentieth century) as an adult member of the villein community. As such he would in his own right be entitled to a share in that community's land and subject to its obligations towards the lord, on the same footing as his father.<sup>4</sup>

Who the lord would be, in the thirteenth century, is not easy to say. At an earlier period the lord would be a patron who had provided his man

<sup>3</sup> The terms *breyr* and *uchelwr* (sometimes *mab uchelwr*) seem to be exactly synonymous and to imply no more than the status of the *bonheddig* who has no living male ancestor. In the Red Book of Hergest translation of Walter of Henley (2 BBCS 11), *Vchelwyr* translates *franc tenantz* (Walter of Henley [etc.], ed. D. Oschinsky, Oxford, 1971, p.312). In modern Welsh *uchelwr* has much more of the sense suggested by the *nobilis* found in the Latin texts, and *breyr* has therefore been chosen for use in the technical medieval sense; this word has come down in the world, since it represents *\*brogo-ris*, "king of a district", perhaps a Welsh counterpart of the Irish *rí tuaithe*, for whom see Binchy, *Kingship* 5, 14, 15, 31ff.

<sup>4</sup> DwCol §305.

with a fief of cattle;<sup>5</sup> for the villein, and probably for some freemen, the lord might be a mesne lord from whom the man held land very much on the English feudal pattern; but in the thirteenth century many Welshmen must have been in direct homage to their territorial rulers, whether they were local kings of Welsh blood or Norman marcher lords. It is at any rate clear that if no-one else could claim lordship over a particular person, the local ruler (whether he called himself king, lord, or prince) would do so, and in right of that lordship he would be entitled to payment in respect of the daughters of his men.

The Welsh freeman's son ceased to be "at his father's platter" when he was commended to the lord, and his daughter's relation to him changed in a similar way. From puberty at the age of twelve, "even if she does not take a husband, she is entitled to control what is hers, and she is not entitled to be at her father's platter unless he himself wishes it"<sup>6</sup>; no doubt he would usually wish it, at least until it had become clear that she would not be taking a husband and going on to become pregnant after reaching the age of fourteen.<sup>7</sup> If she left her father's platter the woman would apparently be directly subject to her father's lord, but in the normal case her husband would be her lord. This is categorically stated in *Llyfr y Damweiniau*, where the rule is laid down that if a woman speaks shameful words to her husband she is liable to pay him a *camlwrw*, because every woman's husband is her lord: the *camlwrw* was a penalty of three kine payable to the territorial ruler for many kinds of offence,

<sup>5</sup> My understanding of the social pattern assumed in the lawbooks owes much to Donald Howells, "The Four Exclusive Possession of a Man", (1973-4) 8/9 *Studia Celtica* 48-67.

<sup>6</sup> Ior §99/4.

<sup>7</sup> This may be the most convenient point to refer to the confusion of the texts over the age at which a woman would be presumed to be past childbearing, which some texts place at 40, others at forty years from 14: Ior §55/4. Wiliam, whose chosen manuscript reads "pedeyr blynd ar dec a deu ugeynt e dele bot en e hyuegtyt", has the note "not 'fifty-four years' (which is far too long a period) but '[the ages of] fourteen and forty' (between which child-bearing is possible)". This is unacceptable textually, for "the age of fourteen" would require "pedeyr bluyd ar dec"; and the reading of MS. G (printed in this volume) makes it clear that the passage means that the period of youth lasts from birth through puberty to the age of 54. The medieval Welsh lawyer did not, of course, suppose that every woman would be capable of childbearing to the age of 54: the age is to be regarded as a maximum, and can be compared with those at which English law courts have been willing or unwilling to presume a woman to be past childbearing for purposes of the law of trusts. The presumption has been made for a woman of 49 and refused for a woman of 54: *Stroud's Judicial Dictionary*, 4th ed. by J. S. James (London, 1974) 2099, s.v. *Presumption*. It must however be pointed out that the Iorwerth text elsewhere unequivocally makes the presumption for the purpose of *galanas* at the age of 40: Ior §99/6. Cf. Col §54, which has assimilated the text of Ior §55 to that of Ior §99, and reads "yny uo deugeinmluyt e dyly emduyn, ac ena peidyau, ac odynd nyt a yn llu na bo plant ydy, canis dyogel na bit".

and the woman's offence against her husband is here assimilated to a crime against the state.<sup>8</sup>

The young woman would normally be given to her husband by her father and kindred. It is indeed laid down that if a maiden elopes, her lord and kindred can reclaim her against her will<sup>9</sup>—but the detailed provisions of the lawbooks for “abnormal” cases show that in medieval Wales as in modern Britain the family would often acquiesce in the *fait accompli*. They had every reason to do so, if the rules given by the lawbooks were strictly followed. For according to the next sentence after that just cited, a woman who has once been with a man cannot be reclaimed when she later elopes; hence if the reclaimed daughter had lost her virginity during the first elopement, she had only to elope a second time to be irreclaimable.

It was contemplated that there would be an interval between the giving of the woman (the same technical expression, *rhodd ac estyn*, is used for a lord's grant of land) and the consummation of the union, which would follow a feast (*neithior*). A *neithior* of any importance would be attended by bards, who received a gift of 24d. to share among them, if this was the bride's first *neithior*;<sup>10</sup> a second union had in any case less need of a *neithior*, since one reason for the gathering was to have *neithiorwyr* present to witness to the husband's declaration of his gift to the wife (*cowyll*) and if need arose to testify to the husband's repudiation of the wife as not being a virgin.<sup>11</sup> If the husband did not promptly repudiate her, he was estopped from denying her virginity thereafter.<sup>12</sup> By the morrow of the *neithior* the woman's change of status was complete<sup>13</sup> and the position in relation to the various property rights concerned was clear, though some of the rights did not take immediate effect. Thus we shall see that the *cowyll*, though appropriated to the new wife, was not

<sup>8</sup> DwCol §411, cf. §444 and Lat A §52/42.

<sup>9</sup> Ior §50/5, cf. Col §63, Lat A §52/33, Cyfn §73/13a.

<sup>10</sup> WML 33.16-20, Bleg 25.14-16, Ior §40/6, DwCol §§78, 79. Whereas the other texts seem to give the whole gift to the *pencerdd*, DwCol §79 gives it to “the bards”, and §78 gives the *pencerdd* “the share of two men, whether he is present or not, if he claims it”.

<sup>11</sup> *V. infra*, p. 77.

<sup>12</sup> Ior §47/2.

<sup>13</sup> There were conflicting views about the status of a girl in the interval between the giving of her by her kindred and the consummation of the union: if she then suffered *sarhaed*, “some say that payment is made to her according to her husband's status” (so Ior §55/5); “others say that it is according to her brother's status that payment is made to her, and that she is not a wife until she has been slept with, for a son-in-law is not so called until the morrow”: Col §55, 56. The proverbial phrase “cany elwyr dau hyt trannoeth” perhaps suggests the older, traditional, view, which was being displaced in the thirteenth century under the influence of the developing canon law.

transferred to her, and that *agweddi*, though its amount was now determined, might never become payable at all.

The one obligation which involved immediate payment was that of *amobr*,<sup>14</sup> which was owed to the woman's lord. *Amobr* was payable in respect of a woman when she was formally given to a man (even if cohabitation did not follow), or when she entered into open cohabitation (without being formally given), or when she became pregnant.<sup>15</sup> The traditional view has been that *amobr* was payable only once in respect of any one woman, but this view needs closer examination and is the subject of Excursus I appended to this paper. Whether the traditional view is correct or not, it is clear that a payment was certainly expected in some second unions in the thirteenth century, and the practice of the Norman marcher lords was to make the best of both worlds by applying the Welsh rule that *amobr* was payable by the free (whereas the English counterparts *merchet* and *leyrwrite* were payable only by villeins) and the English rule that the payment was due for each new marital or extramarital relation, rather than for the original loss of virginity alone.<sup>16</sup>

Like similar payments in other countries, *amobr* has been variously explained. In particular it has been regarded as a commutation of the *ius primae noctis* or *droit de seigneur*, the alleged right of the lord to lie with the subject bride on her wedding night. The better view is that the lord's only right was a right to the payment:<sup>17</sup> *amobr* is itself the *ius primae noctis*, not a commutation of it, and the lord is entitled to it as a fee for his licence to the woman to take a husband, just as he might exact a fee if

<sup>14</sup> Some of the texts use *gobr* in preference to *amobr*, and the occasional occurrence of *amobr* in those texts suggests borrowing from others which preferred *amobr*. *Amobr* alone seems to be used in later records: the form has the obvious advantage of being unambiguous, whereas *gobr* is used for other fees and also for *bribe*.

<sup>15</sup> Ior §51/10, Col §§7, 8.

<sup>16</sup> Cf. Davies, *infra*, p. 103.

<sup>17</sup> PM i.372, citing Karl Schmidt, *Jus primae noctis* (Freiburg, 1881). The only positive evidence of the existence of the right seems to be that of certain Swiss *Weistümer*, which give a lord or his officer the right to enjoy the bride unless the bridegroom redeems the right by a stated fee. This is probably no more than a dramatic expression of the alleged sanction for non-payment of the fee: see E. Osenbrüggen, *Studien zur deutschen und schweizerischen Rechtsgeschichte* (Schaffhausen, 1868; reprinted 1969) 84ff. Osenbrüggen points out that there is no documentary evidence for the exercise of the right, “denn dergleichen pflegt nicht protokolliert zu werden”, *ibid.* 89. If the modern historian tends to a cynical doubt whether a medieval lord felt the need of any legal authority for imposing his sexual favours on a subordinate female, it may nevertheless be true that at a rather later period the exercise was facilitated by the tradition of a legal right. Such a tradition is evidenced for Scotland by the story “The Old Tribute”, translated from the Gaelic of Niall Mac-an-Rothaich, Ollamh, by the Hon. Ruairidh Erskine of Marr in his *The Old Tribute and other pieces* (London, 1929), and for Estonia by the story “The Wedding”, in Aino Kallas, *The Old Ship* (translated from the Finnish by Alex Matson; London, 1924).

he allowed a male villein to take orders. In each case the lord is losing an asset and will want compensation.<sup>18</sup>

The Welsh lawbooks, however, show a rationalisation of attitude towards the payment: in the classical law *amobr* is not a fee for permission to take a husband, but a price paid for past protection. This appears from the rules about the persons who may become responsible for the payment. The primary liability seems to be that of the woman herself, for if she elopes and is reclaimed, her father is not required to pay her *amobr*,<sup>19</sup> and it is hard to believe that the lord would forgo the payment—at least in the presumably frequent cases in which the woman was not reclaimed before she had lost her virginity. Elsewhere the principle is laid down that anyone who gives a woman to a man is liable to pay her *amobr*, and as a corollary that if a woman gives herself she must herself pay.<sup>20</sup> The principle is expressed in the alternative: “Whoever gives a woman to a man, it is his duty to pay *amobr* for her, or he shall take sureties from her for its payment”; but it can hardly be supposed that the woman’s contractual obligation to the giver would release him if the woman failed to make the payment to the lord. In another text we seem to have good advice rather than a rule of law: “Let no-one give a woman to a man without taking a *mach* for her *gobr* to the lord”,<sup>21</sup> and here the implication is perhaps that the *mach* will be taken from the man to whom she is given. That is surely the implication of the advice given to the householder who receives an eloping couple into his house to sleep together: “let the man of the house take a *mach* for her *gobr*, and if he does not take it, let him pay himself.”<sup>22</sup>

The rationalisation is even clearer where the lord’s claim is based on the woman’s loss of virginity by rape. From the archaic point of view it

<sup>18</sup> Cf. Davies, *infra*, p. 111. Though in Wales a lord need not usually fear that land would pass into undesirable hands through the woman, this could happen if the woman were given to an alien, whose sons by her could claim to share with her brothers in her father’s land. At an earlier period, when personal attachment to the lord was more significant, the lord would want to protect himself against influences which might weaken that attachment. We need to remind ourselves that the relationship of lord and vassal is originally voluntary on both sides throughout its continuance; economic necessity usually prevents the vassal from breaking it off arbitrarily, and while this in time leads to the vassal’s losing the right to break it off, it also converts the lord’s freedom to bargain for a price for concessions into a duty to grant those concessions for a reasonable (and this soon means a customary) fee. This is the underlying thesis of S. F. C. Milsom’s interpretation of the early common law: see especially his *The Legal Framework of English Feudalism* (Cambridge, 1976), and cf. Donald Howells’s article cited at n.5 *supra*.

<sup>19</sup> Lat A §52/33.

<sup>20</sup> Ior §48/1.

<sup>21</sup> Cyfn §73/25.

<sup>22</sup> Cyfn §73/26, Ior §48/2.

makes no difference to the lord that she was raped: he has lost the asset of a virgin subject and he must have his compensatory maiden-fee. But in our surviving texts the lord looks to the ravisher for *amobr*, and if he cannot get it from him he must go without, for it was his function to protect the woman from rape and he has failed to perform the function which justified his claim to the fee.<sup>23</sup> This view of the thirteenth-century attitude to *amobr* can find some support in the statement that the king is entitled to the *amobr* of any woman who has no other lord. The “normal” woman has an identifiable lord because her father has a lord, who (as already said) may be the king or some other patron. If the father is a craftsman of some kind, the head of his craft will be his lord for this purpose, so that, for instance, the *pencerdd* is entitled to the *amobr* of his subordinates’ daughters.<sup>24</sup> But it may happen that a woman has no lord because she has no father and her mother has no lord: the mother’s attempt at filiation has failed, and the mother herself either was in the same position or had found herself in the local society without ever becoming properly attached to it so as to be identified as the client of any particular patron. In such a case the woman’s *amobr* is payable to the king, and the proverbial rule that a maiden is “king’s waste” is applied to the case.<sup>25</sup> The proverb looks at the matter from the standpoint of the royal profit, but it can also be seen as an application of the principle that the king is the protector of all his subjects.

In relation to the outside world, the payment of *amobr* is the most important economic consequence of marital union. As between the parties, the basic economic principle was that while the union lasted there was community of goods, but not of land: the land was the husband’s, for only a few texts speak of a woman’s holding land in exceptional circumstances<sup>26</sup> (though she might transmit an inheritance to her sons in certain other cases), and the principle “According to the men of Gwynedd a woman is not entitled to patrimony”<sup>27</sup> seems to have had a general application.

While the union lasted, the chattels of both partners were in the common pool of matrimonial property, though control of particular items would be in the hands of one, as we shall see. If the union broke

<sup>23</sup> DwCol §124, Cyfn §73/16, 17. This clearly seems to be an addition to the nucleus of the Cyfnerth text, for it occurs only in MS. U.

<sup>24</sup> Cyfn §33/2.

<sup>25</sup> DwCol §§314-16; the mother’s status determines the amount of the *amobr*. For affiliation see Excursus II.

<sup>26</sup> Bleg 75.24-5.

<sup>27</sup> Ior §86/1, Col §600.

up, there would seldom be a simple equal division of the whole pool, for one or both of the parties would usually have a prior claim to some of the chattels. Moreover, even the residue left after the satisfaction of such prior claims would be equally shared only if the union had matured fully, by lasting for seven years.

When a union broke up *inter vivos* after less than seven years,<sup>28</sup> the wife took from this residue of the common pool only a fixed amount, called *agweddi*—if she took anything at all. Whether she was to hope for *agweddi* or for half the residue would depend on how long the union had lasted; whether she would get anything from the residue would depend on the circumstances in which the union broke up. It might break up through her fault or without her fault: on the one hand she might have left her husband without good reason or have been rightfully repudiated by him; or on the other hand she might have left him for good reason or been wrongfully repudiated by him, or the separation might have been by agreement.

If the wife was at fault,<sup>29</sup> she was nevertheless entitled to certain items of marital property, which were called her privy things.<sup>30</sup> Though the compilers of some lawbooks had difficulty in forcing their ideas into the frame of the triad, the Iorwerth form seems to give the correct picture: the three privy things are the wife's *cowyll*, her *gowyn*, and her *sarhaed*, which we are told cannot be taken from her for any cause.<sup>31</sup>

*Cowyll* corresponds to the morning-gift of Germanic society. In the Iorwerth comment on the triad, it is defined as what the girl was given for her virginity,<sup>32</sup> and though this is inadequate as a definition, it is true that only a virgin was entitled to *cowyll*. To complete the definition we must add that the *cowyll* was given (or more accurately promised) to the wife by the husband. The lawbooks specify a tariff for the *cowyll*, based on the status of the wife: in the Iorwerth text £8 for a king's daughter, £1 for a *gwrda*'s daughter, 80d. for a villein's daughter.<sup>33</sup> But these standards

<sup>28</sup> What exactly "after less than seven years" meant is not easy to decide, in the light of the various expressions used (see Walters, *infra*, p. 117)—nor necessary to discuss, for the purpose of the present study.

<sup>29</sup> "kyt gatter am y cham", Bleg 119.15-16, WML 93.2-3; "licet ob suam dimitatur culpam", Lat A §52/56; "licet culpa sua a viro suo repudietur", Lat D 376.22-3.

<sup>30</sup> The Welsh word is *prifai*, which (despite the various forms it takes) seems to be best understood as a borrowing of some form of *privé* or *privy*. The triad *Tri phrifai gwraig* also appears as *Tri anghyfarch gwraig*: cf. Howells (article cited at n.5 *supra*).

<sup>31</sup> Ior §51/1: v. *infra* for other versions.

<sup>32</sup> Ior §51/2.

<sup>33</sup> Ior §48/9. Of the variants in the other texts, the most important to notice is that of Cyfn §73/2, which says that land is paid as *cowyll* to a king's daughter, without specifying its value. Here *gwrda* seems to mean *breyr*.

must be understood as applying in the absence of contrary agreement, for the texts clearly contemplate the possibility of bargaining over the amount.<sup>34</sup> Where the wife was given by her relatives, it can be assumed that agreement on the amount would be reached in the presence of the *neithiorwyr*, since in the case of an abducted maiden, her word as to the *cowyll* promised her is conclusive against the man who took her to a place where there were no *neithiorwyr*.<sup>35</sup> Indeed, the Iorwerth text seems to imply that there must be a formal claim to *cowyll* if even the standard amount is to be allotted: the claim must be made before the wife rises from bed on the morrow of the *neithior* and it is in this context that the provision for attesting to the bride's virginity becomes comprehensible.<sup>36</sup> For once she had reached puberty, she was required to establish her virginity by oath, supported by her close relatives, as a basis for her claim to her *cowyll*; this is necessary because the *cowyll* is a privy thing, so that if the bride proves not to be a virgin, the man's repudiation of her will not deprive her of the *cowyll* promised before they went to bed. The duly supported oath is conclusive, so far as the right to *cowyll* is concerned; this is one case in which it is to be expected that the oath will be truthful, since its truth or falsehood will be subject to an immediate test by the *neithiorwyr*, and its falsehood will make those who swore it incompetent as witnesses ever after.<sup>37</sup> We can perhaps picture a ceremony in which the formal declaration of virginity by the bride's party is followed by the man's promise of a defined *cowyll*, all in the presence of the *neithiorwyr*. The publicity thus given to the *cowyll* would parallel that given to the English wife's dower by declaration at the church door.<sup>38</sup>

As the form of the tariff quoted above suggests, the size of the *cowyll* would be expressed in money terms, but it is not to be supposed that money or anything else was in fact physically transferred. The law contemplates rather that certain particular chattels will be designated as making up the *cowyll*: the rule is that the *cowyll* falls into the common pool (so that the wife loses her prior right to it) unless before rising on the

<sup>34</sup> Ior §47/2, Col §23. The latter sentence, broadly corresponding to Ior §53/7, adds the condition that the *cowyll* should have been admeasured: "O deruyd rodi moruyn y ur, a meintholy ydy y cowyll . . ." Such bargaining over the amount would be valid under the principle "Amod a dyr ddeddf", "A contract breaks a rule of law": Ior §69/12, Col §140.

<sup>35</sup> Ior §47/1.

<sup>36</sup> Ior §55/3.

<sup>37</sup> "A person can never be made a witness who has sworn falsely in testimony or elsewhere if he admits it or it can be proved against him": Col §529.

<sup>38</sup> PM ii.374-5.

morrow she "uses" it.<sup>39</sup> This she will do by naming the chattels which are to represent it: it is natural to think of the *breyr*'s daughter as choosing four particular cows to make up the standard £1, but there is no a priori reason why she should not choose inanimate chattels such as a cauldron or a harp, each worth 60d.<sup>40</sup> There could be an advantage in choosing these, for the wife would not be entitled to claim a replacement for any part of the *cowyll* which had been lost:<sup>41</sup> her right was to such part of the privy things as was still in existence when her claim matured, and harps and cauldrons can be expected to outlive cattle.

We should probably think of *sarhaed* and *gowyn* also as taking the form of specific chattels held in the common pool while the union lasted, for these too were payments from the husband which became due to the wife in circumstances described in another paper.<sup>42</sup> Here it need only be noticed that whereas any legally recognised insult to a single woman would entitle her to receive her *sarhaed* from the offender, a wife received her *sarhaed* only from her husband, and offensive conduct towards her by a third party would lead to the payment of her husband's *sarhaed* (which was three times as great as hers) to the common pool. The amount of the wife's *sarhaed* varied with her husband's status: the mere *bonheddig*'s *sarhaed* was three kine and three score pence, and his wife's therefore one cow and 20d., the equivalent of 80d., while the villein's wife's *sarhaed* was half as much.<sup>43</sup> But the wife's *gowyn* (payable to her by her husband in compensation for his adultery) did not vary with her status: for the first offence the sum due was 120d., and for the second £1. The third offence entitled the wife to leave the husband without forfeiting any of her rights; she was indeed expected to leave him, for if she condoned his adultery more than three times she was regarded as a shameful wife and could claim nothing.<sup>44</sup>

According to *Llyfr y Damweiniau*, the wife could set aside for her offspring all the goods which she received as her privy things, and if she died

<sup>39</sup> Ior §53/7: for the *defnydyo* of MS. G, MS. B has *dywetto*, "says"; but the different wording of Cyfn §73/23 and Lat A §52/59 make the meaning clear: cf. Col §23 and n.

<sup>40</sup> The mature cow (from her second calf to her fifth) and the mature ox (from its third to its sixth working season) were valued at 60d.: Ior §127/7, §128/3, 4; for harp and cauldron, see Ior §140/19, 21.

<sup>41</sup> Ior §45/2.

<sup>42</sup> Owen, *supra*, p. 51.

<sup>43</sup> Bleg 58.13-22, WML 44.6-22.

<sup>44</sup> Col §67: O deruyd y gureyc dyodef gan y gur y gaffel gan arall hvy no teyr gueyth heb owyn y huynepwerth ydau, ny dyly hy y caffel o hynny allan, canis gureyc kywylydus eu. Cf. Cyfn §73/23a.

the husband had no right to them.<sup>45</sup> It is also made clear that she took them in every case of living separation, as we have already seen. If she was at fault in separating from her husband, she took nothing more, but fault might be negatived in several ways. The husband's triple adultery has already been mentioned; unjustified repudiation by the husband would likewise leave the wife with her full rights;<sup>46</sup> and the wife was also justified in leaving if the husband was leprous or of stinking breath, or if he could not copulate with her.<sup>47</sup> Finally it can be assumed (though it is nowhere clearly stated) that the partners could separate by agreement and that if they did so the wife would have her full rights, unless the agreement provided otherwise.

This means that she would take a part of the residue of the common pool, and if the separation came before the union had matured by the lapse of seven years, that part would be the *agweddi* appropriate to her status and to the circumstances in which the union was created. If the wife's status was high enough and she had been given by her kindred to a poor enough man, her *agweddi* might well give her more than half the residue, but in most cases it is to be expected that she would take less than half. The *agweddi* of a king's daughter was £24, that of a *gwrda*'s daughter £3, and that of a villein's daughter £1: it will be realised that these sums represent 96, twelve and four standard cows or oxen respectively.<sup>48</sup>

The assumption that the *agweddi* should be thought of in terms of cattle receives strong support from the lawbooks' presentation of the *agweddi* payable on the termination of a union not established in the conventional way. The *agweddi* of a woman who eloped was three bullocks whose horns were as long as their ears.<sup>49</sup> According to the Iorwerth text, if a man slept three nights with a woman and then wished to be rid of her, he must pay her a bullock worth 20d., another worth 30d., and another worth 60d., and this may have come to very much the

<sup>45</sup> DwCol §183: Pob peth o'r daaoed a dewedassam ny uchot e gaffael, e gureyc a eyll dody e daoed hynny ar neylltu ydy y epyl, a pan escaro ac ef ny dyly rannu ac ef a ced boet maru nys dely ef.

<sup>46</sup> This is implied by the references to the privy things as remaining with the wife if she is justifiably repudiated.

<sup>47</sup> Ior §45/4, Cyfn §73/15b, Lat A §52/54.

<sup>48</sup> Ior §48/9; Cyfn §73/2a, 5, agrees with Ior, but §73/7a gives the villein's daughter £1½, which parallels the rule for *sarhaed* cited above. To think of the *agweddi* in terms of cattle immediately suggests the possibility of parallels with the bride-wealth arrangements studied by anthropologists in twentieth-century Africa.

<sup>49</sup> Ior §48/3: though the entitlement is not here specifically called *agweddi*, the wording of §48/7 implies that it ranked as *agweddi*.

same total, though the name *agweddi* is not applied to the payment.<sup>50</sup> *Llyfr y Damweiniau* seems to deal with the case more logically, and assimilates it to elopement in respect both of the payment due and of the effect on the woman's status: "If it happens that men suppose that the status of a woman who elopes and a woman who is slept with for more than three nights does not follow their husband's status because their kindred did not give them, and they suppose that their status is according to their kindred and their *sarhaed* according to their brothers' status: law says that after becoming *agweddiol* by him, she cannot leave him unless she is willing to lose her *agweddi*, and that he cannot send her away unless he is willing to pay her *agweddi* (and the *agweddi* of each of those two women is three bullocks with horns as long as their ears), and therefore law says that those women are entitled to have their status and their *sarhaed* according to their husbands' status."<sup>51</sup> It is not quite easy to see what difference there is between elopement and sleeping together for three nights: the point of the distinction may be that a night or two's casual cohabitation had no economic consequences, whereas a third night gave the wife a right to compensation and a fourth night established the relationship as an elopement, on the same footing as that of a couple who had from the first intended to have a continuing relationship.

The transient relationship of three nights gave the woman the right to a reduced *agweddi*, and here we perhaps have an example of a legalistic attitude which would assert as a general principle that any woman was entitled to an *agweddi* of some sort when she was dismissed. Such an attitude would explain the use of the word *agweddi* in one of the lawbooks for the mocking payment made to the "false maiden", the girl given to a man as a virgin and found to be "corrupted". She was given the opportunity to hold a bullock by its greased tail: if she succeeded, she took it as her *agweddi*, according to the Blegywryd text.<sup>52</sup> However, this is not consistent with the rule that a woman rightfully repudiated lost her *agweddi*, and we may have here a misinterpretation of the Latin word *dos*. The Latin Redaction D, from which the Blegywryd text is believed to have been translated, has the Welsh word, spelt *egweti*,<sup>53</sup> but the

<sup>50</sup> "Bullocks with horns as long as their ears" are the subject of an as yet unpublished study by Mr. J. G. T. Sheringham, which he has kindly allowed me to see. He shows that if similar to modern Welsh black cattle they would be yearlings; according to Ior §127 their value would then be from 12d. to 18d.

<sup>51</sup> DwCol §471.

<sup>52</sup> Bleg 61.27-31.

<sup>53</sup> Lat D 342.16.

earlier Latin Redactions A and B both have *pro dote*.<sup>54</sup> Now as it was put in Glanvill,<sup>55</sup> *dos duobus modis dicitur*, in medieval England and on the Continent,<sup>56</sup> and (as we must conclude from the Latin texts of Welsh law) in Wales too. In the traditional Roman law sense *dos* was *dowry*, the property given with the bride by her family. In England it was more often *dower*, the share of the husband's property which the wife took for her lifetime on his death, and which had probably been assured to her at the marriage. In the Latin texts from Wales, *dos* is certainly used on occasion for *agweddi*,<sup>57</sup> and perhaps for *cowyll* (which is not exactly *dos* in either of the English senses, for it is paid by the husband to the wife);<sup>58</sup> it may also be used for *argyfrau*, which is the property (*animalia* in the Latin) brought by the wife from her family, i.e. her dowry.<sup>59</sup> So in the "greased-tail" rule, *dos* may have been used for *argyfrau* and incorrectly re-translated into Welsh: *argyfrau* is the word used in *Ior*.<sup>60</sup>

According to all the texts except *Ior*, the privy things of the wife included her *argyfrau*.<sup>61</sup> In most of the texts, the inclusion of *argyfrau* means the exclusion of *sarhaed*, which is certainly wrong; the difficulty of compressing the material into a triad is avoided at one point in Latin Redaction B by swelling the triad to a pentad or hexad: "The five privy things of a woman: namely, *agweddi*, *amobr*, *argyfrau*, *gowyn*, *sarhaed*; a sixth of a maiden: namely, *cowyll*".<sup>62</sup> If the word *argyfrau* was rightly used in the context discussed in the last paragraph, there was at least one case in which the woman did not take her *argyfrau* when repudiated, and that is of course a sufficient disproof of the alleged rule. It may nevertheless be possible to resolve the apparent conflicts between the various rules.

We must start with the fact that there is no indication of any legal right to *argyfrau*, but in the "normal" case we can assume that the bride would be given a dowry by her family, and perhaps that the husband

<sup>54</sup> Lat A 52/30, Lat B 224.13.

<sup>55</sup> Glanvill vi.1, vii.1 (ed. Hall, pp.58ff, 69ff.).

<sup>56</sup> Vinogradoff, *Roman Law in Medieval Europe* 23.

<sup>57</sup> Lat A §52/1.

<sup>58</sup> Lat A §51/7.

<sup>59</sup> Lat A §52/56; Cyfn §73a/17b.

<sup>60</sup> Ior §47/5. The variants on the rule are examined and compared with a Swedish parallel in E. Anners and D. Jenkins, "A Swedish Borrowing . . . ?", (1962) 1 WHR 325-33. R. E. Megarry, *Miscellany-at-Law* (London, 1955), 157 n.2, asks "whether tying a knot in the bull's tail was an illegal practice".

<sup>61</sup> Cyfn §73/15c, Lat A §52/56, Bleg 119.15.

<sup>62</sup> Lat B 243.17-18 cf. also Lat E 494. *Pimp priuei* [MS. *Pimt riuei*] *gureic*: scilicet, *aguedi*, *amobyr*, *argyureu*, *gouin*, *sarhaet*; sextum puellae: scilicet, *cowyl*. At 222.6-9 Lat B has a version of the triad closely corresponding to that of Lat A.

would expect her to bring with her enough to cover the *agweddi* if that should become payable.<sup>63</sup> This would be very necessary if a woman of high status were given to a poor man. The normality of bargaining for a dowry is indicated by the provision that if goods are promised with a bride, and a single penny of the amount promised is not delivered, the man can repudiate the bride but gets none of the goods.<sup>64</sup> Since this provision has been interpreted as meaning that the man keeps all the goods, it is desirable to emphasise that such an interpretation strains the grammar of all versions of the provision.<sup>65</sup>

It is also inconsistent with what seems to be the most satisfactory interpretation of the next sentence of the texts, which sentence reads "There is no need of a *mach* for goods which come as endowment with a woman".<sup>66</sup> We might have expected the words to be "there is no right to a *mach*", and the actual wording supports the view that the rule is an archaic one whose significance had been forgotten by the thirteenth century. Now Dr. Donald Howells has very convincingly argued that when a patron-lord provided his client-man with cattle, no *mach* to warrant the client's right to the cattle would be given, because the client had no such right: the cattle were deposited with him, but the permanent right to them (to call that right *ownership* would beg many questions)

<sup>63</sup> Cf. Col p.45. Charles-Edwards (*supra*, pp. 28-9) seems to assume that the bride always brought with her a definable share of her father's chattels, namely half the amount to which her brother would be entitled on inheriting at the father's death. To take a concrete example, if the bride had three sisters and two brothers, whose father had sixteen cows, she would bring two cows with her: for simplicity we can neglect other chattels. There is some support for this view in the statement at Bleg 75.19-22, "Megys y mae brawt yn etiued dylyedawc o tref y tat, velly y mae y chwaer yn etiued dylyedawc o'e gwadawl, trwy yr hwn y kaffo hi wr priawt dylyedawc o tir": "As the brother is an heir entitled to land patrimony, so the sister is an heir entitled to her endowment, through which she may get a *priod* husband entitled to land." But the brother is of course an heir entitled also to a share of the father's chattels, and the statement just quoted need mean no more than that the sister has a legal right to receive the endowment (*gwaddol*) on her father's death, and that this future interest can buy her a husband. The reference to specifying goods to accompany the bride (Ior §54/8) suggests that the amount of the *argyfrau* was a matter for bargaining, and it is easy to see, by considering an extreme case, that there cannot have been a universal rule: if a sonless widower gave his only daughter in marriage, would she take all his chattels as *argyfrau*? In such a context as this (as Mr. Dafydd Walters reminded me) an English property lawyer would murmur the words *advancement* and *hotchpot*. The calculation of the bride's share would be more complicated if her father had a wife living, and even more complicated if that wife were not past childbearing.

<sup>64</sup> Ior §54/8, Col §49.

<sup>65</sup> V.C. II.i.70 translates "and she cannot reclaim any of her property", but *reclaim* would be more appropriate as a translation of *aduc*, which most manuscripts have for the *d6c* of our MS. G.

<sup>66</sup> Ior §54/9, Col §50. The word here translated *endowment* is *cynhysgaeth*, which does not seem to be used as a technical term.

remained in the lord.<sup>67</sup> He could re-claim them at any time, and the absence of a *mach* ensured that the client could not set up a legal objection to the claim. In just the same way, the bride's kindred provided the *argyfrau*, and gave no *mach*, because they would want to be free to reclaim the cattle if the circumstances seem to warrant it. On this view the *argyfrau* is not one of the wife's privy things, but on a separation where the wife is at fault the husband may nevertheless lose the *argyfrau* because the kindred can lay claim to the cattle as being theirs. In Roman-law terms they can use the procedure of *vindicatio*; in Welsh-law terms they can proceed to *damdwng*, a procedure usually mentioned in the lawbooks in the context of theft, but equally appropriate to the circumstances under consideration here.

This interpretation also explains the lawbooks' other rules about *argyfrau*. Any claim the wife may have to the *argyfrau* when the union ends is only to so much of the original gift as is still identifiable in specie;<sup>68</sup> she is therefore advised to keep the gift unconsumed until the end of the maturing period of seven years, for if she allows the gift to be used she can claim no compensation for what teeth and side have consumed.<sup>69</sup> The texts imply that after the seventh year the *argyfrau* falls into the common pool: in theory, the kindred could still claim any identifiable item of the original gift, but it is unlikely that in practice many cattle would then survive, or be worth claiming if they did survive.<sup>70</sup> In the absence of records of litigation there is no basis even for guessing how often man and wife in practice treated all their possessions as an indivisible whole from the start, but it will do no harm to remind ourselves again that the rules set out in lawbooks of every kind (and most of all, perhaps, in books of lawyers' law like the Welsh ones) more often deal with exceptional than with normal cases.<sup>71</sup>

It has already been emphasised that after continuing for seven years the most casually-inaugurated union was treated as matured and had the same legal implications as the normal union of social convention, in which the bride was formally given by her kindred. We need not here

<sup>67</sup> Howells, 8/9 *Studia Celtica* 59.

<sup>68</sup> Ior §45/2.

<sup>69</sup> Ior §48/4, 5.

<sup>70</sup> If milking heifers were among the gift, they would be past their prime after the fifth year of the union: see n.40 *supra*.

<sup>71</sup> As a modern illustration we may take the textbooks' interest in the effect of identical offers by the two parties and of an attempted revocation by telephone of a posted acceptance of an offer, in the English law of contract. Neither problem has come before a court for solution—nor is either at all likely to do so.

examine the exact limits of this seven-year period, which may have ended as early as the fourth day of the seventh year;<sup>72</sup> what concerns us is that after that period had elapsed, the common pool of chattels would be shared equally between the spouses if the union broke up. As already indicated, the wife's privy things were first taken out of the pool, and we might expect to find the husband's privy things being likewise reserved to him, but there is no triad of a husband's privy things. It is provided that if status gives the husband more, he should make his claim before sharing begins, and there is a triad or tetrad of the exclusive possessions of a man which seems to offer a parallel to the wife's privy things.<sup>73</sup> As Donald Howells points out, however, the parallel is imperfect, for most of the items named do not come into the marital property pool: they are chattels which cannot be claimed by anyone else, not because the husband has a special right to them but because even he has them only on sufferance from his patron-lord.<sup>74</sup> The correct parallel, that is, is with the wife's *argyfrau*, which may be withdrawn from the pool by the kindred who gave it without a *mach* to warrant it. Only one item in the male triad or tetrad is taken from the common pool: this is the husband's *wynebwerth*, which like the wife's is a payment in respect of adultery.

When living partners separate, they share the chattels as instructed by the law texts. The rules are no doubt meant to ensure that both parties are reasonably provided for, in default of agreement, though it is not easy to understand why the two stones of the quern, for instance, should be separated. Howells notes that though there are detailed rules for the sharing of the minor livestock, there is no mention of neat cattle, and suggests that this is because there would seldom be free cattle which could form part of the common pool: normally neat cattle would be reclaimable as a fief provided by the patron. In point of fact, the Latin A version of the *schema* allots all the cattle to the husband; this is consistent with Howells's argument, and also with the view that the whole of the *schema* is archaic and may be many centuries older than the classical manuscripts in which it appears.<sup>75</sup> The husband would take the cattle, at the earliest period, because they were really his lord's; if the wife's kin could after so long a time identify any cattle as part of the wife's *argyfrau*, they could claim them, but otherwise the husband took all. For

<sup>72</sup> See n.28 *supra*.

<sup>73</sup> Ior §55/14, 15, where the three exclusive possessions of a woman are identified as her three privy things, without naming them.

<sup>74</sup> Howells, 8/9 *Studia Celtica* 59.

<sup>75</sup> *Ibid.* 62; Lat A §52/6.

later stages of development we can perhaps assume equal sharing of cattle forming part of the common pool.

When the marital property was to be shared because one of the partners was dying, the rules which gave specific chattels to one or other did not apply, but the dying partner, with the parish priest, made the division and the healthy partner chose one of the two shares. The dying partner could then dispose of his/her share, and was in some danger of precipitating a family quarrel. For though he was in a position to express his will, his clear right to bequeath goods was limited to debts and *daered*, and if he bequeathed anything more his son could "break" the bequest—at the price of being called an uncouth or savage son.<sup>76</sup> The expression *mab anwar*, here translated in its modern sense, is believed to be a survival from common Celtic social ethics, in which the "un-warm" son was contrasted with the *mab gwâr* (in modern Welsh suggesting courtesy or civilised behaviour), whose warmth was made available to his parents in old age.<sup>77</sup>

The provisions of the previous paragraph would apply only where the dying partner had warning of the approach of death, but presumably they would apply even if death came during the first seven years of the union. This we are specifically told for separation by death (rather than "by life and death"):<sup>78</sup> where death was sudden, the allocation of specific chattels would no doubt apply, and this means that the children would inherit the dead partner's share. It will be realised that there was no question of sharing land or giving it by will: the wife would have no land, and the husband's interest in land was in effect a life interest, so that his sons would take equal shares in the land on his death.<sup>79</sup> The position of the widow could, it seems, be difficult, for we are told that she was allowed to remain in the matrimonial home for nine days after her husband's death and should then leave "after the last penny" (of her chattels), but we are not told where she was to go.<sup>80</sup> The English widow took her dower as an interest in land, which could seriously embarrass her son (and sometimes his son and even his son's son) but at least ensured that she had where to lay her head.

We can only hope that the Welsh widow found her children *gwâr*

<sup>76</sup> Ior §45/7, 8.

<sup>77</sup> D. A. Binchy, "Some Celtic Legal Terms", (1955) 3 *Celtica* 228-31.

<sup>78</sup> Ior §45/5.

<sup>79</sup> For discussion of the law of inheritance and disposal of land, see D. Jenkins, "A Lawyer looks at Welsh land law", (1967) TC 236ff., and especially 239ff.

<sup>80</sup> Ior §51/9.

enough to provide a home for her. She had one bargaining counter, in the share of her husband's chattels which she could bring with her. This would almost always be more than the share which any child took, for only if there was no bequest of *daered* and only one child would the whole of the husband's share go to the same inheritor. Daughters as well as sons shared in their father's chattels, but a daughter's share was only half a son's. The right of a child to receive its father's property did not depend on the circumstances of its begetting, though proof of entitlement was easier for what English lawyers of the thirteenth century would have regarded as legitimate children. It must be remembered that neither ecclesiastical nor secular law in medieval England regarded a religious ceremony as essential to the validity of a marriage: the commitment of the parties to each other was what created the union, and a religious ceremony was of legal importance as providing notorious evidence of a commitment which might otherwise be very difficult to prove.<sup>81</sup> In Wales the corresponding evidence would be provided by the secular *neithior* or the mere gift of the bride by her kindred, and it is consistent with this that the first of the three ways in which a child becomes an undeniable member of his father's kindred is by being begotten in the legal bed and reared at the father's expense for a year and a day. It was thus possible for a husband to repudiate his wife's child at any time during its first year of life; on the other hand, if a man contributed to the maintenance of a child "even if it be a child of bush and brake", it thereby became undeniable. Finally, a child was also undeniable if duly affiliated by its mother according to the formal rules, in the "mother church".<sup>82</sup>

To round this study off, we can look at the property implications of rape, which can be interpreted as a logical application of the principles which we have examined. This application is concisely set out in each of our texts, and all the variants are clearly related to each other.<sup>83</sup>

In the first place rape was open cohabitation which entitled the woman's lord to *amobr*, if the ravisher admitted the act or it was proved against him, though (as we have already seen) if the woman could not identify her ravisher the lord had no claim.<sup>84</sup> The rule for payment by the ravisher makes no distinction between virgin and non-virgin in respect of his liability to pay *amobr*; at another point of the tractate, however, we

<sup>81</sup> PM ii.369-77.

<sup>82</sup> DwCol §§152-4. For the procedure on affiliation, see Excursus II, *infra*.

<sup>83</sup> Ior §50/4, Cyfn §73/14, Lat A §52/35; cf. Bleg 63.23 = Lat D 343.19.

<sup>84</sup> *Supra*, pp. 74-5.

are told that *amobr* was not payable for a married woman who was raped.<sup>85</sup>

Again, rape was a union which had come to an end, without fault on the woman's part, and she was entitled to take property from it. It had not lasted seven years, so her claim was for *agweddi*, and in *Ior* to *agweddi* "according to the greatest amount to which she may be entitled": this we can probably interpret as meaning that she would get the full legal *agweddi* appropriate to her status. Her ravisher would hardly be allowed to plead his own wrong in proof that she was not given by her kindred. If she was a virgin, the loss of her virginity in the union would entitle her to *cowyll*, and here again the ravisher cannot plead his wrong to show that she did not make a claim to *cowyll*, or that she did not identify particular chattels: she seems to be entitled to the maximum *cowyll* as to the maximum *agweddi*.<sup>86</sup> A third payment, given her by all the texts, seems to be in some sense a price paid for the woman's chastity: this is her *dilysrwydd* or *dilystod*. This (originally abstract) noun is derived from the noun *llys*, meaning objection;<sup>87</sup> the *dilys* is that to which no objection can be raised, with the result that when a man has taken a second wife the first (from whom he had parted) is thereafter *dilys*: no objection can be raised to her taking another husband, and the former husband cannot re-claim her even if his experience with the second wife reveals her previously unappreciated virtues.<sup>88</sup> An unchaste wife would clearly be open to objection from her husband; if her unchastity was involuntary, this could form the basis of a claim to compensation from her ravisher, but the texts give us no hint of how that compensation should be assessed.

The violence of rape, quite apart from its sexual factor, had legal implications both private and public. Like any other assault, it was an insult to the victim, so that *prima facie* we should expect *sarhaed* to be payable to her. The *Cyfnernth* and *Blegywryd* texts indeed name *sarhaed*, and Latin *A iniuria*; the *Iorwerth* text, perhaps influenced by its use of *sarhaed* for the husband's payment to his wife for improperly beating

<sup>85</sup> Ior §54/6; see Excursus I, *infra*.

<sup>86</sup> This interpretation involves the assumption that the words "os morwyn uyd" apply only to the *cowyll* (which is supported by Cyfn §73/14), whereas the words "yn y ueint u6yhaf y dylyo" apply to both *cowyll* and *agweddi*.

<sup>87</sup> The word *llys* is used for the grounds of objection to a witness: proved perjury (as noticed at n.37 *supra*) is a *llys*.

<sup>88</sup> Ior §52/4, §46/4. *Dilysrwydd* is also used in the Law of Women in a sense very different from the present, but quite easily reconcilable with it: in Ior §54/9 the *dilysrwydd* for which no *mach* is given is the validity of the title (or "immunity from claim") to the property in question: *supra* at n.67.

her, gives the victim her *wynebwerth*. And since sexual intercourse with a man's wife was *sarhaed* to him,<sup>89</sup> it quite logically adds a provision omitted by the other text, that if his victim is married the ravisher must pay her husband his augmented *sarhaed*.

The public law consequence of the violence of rape is that a *dirwy* is payable to the king.<sup>90</sup> According to the Iorwerth text, this is a standard *dirwy* of twelve kine; the other texts do not specify the amount of the *dirwy* at this point, but elsewhere, in the context of the triad on *dirwy*, they explain that the *dirwy* for *trais* (which may there include robbery as well as rape) takes the form of the rod and cup which are paid to the king as *sarhaed*.<sup>91</sup> In that particular passage the spirit of the lawbooks is indeed far from the juristic sophistication of the classical law.

### EXCURSUS I

#### Was *amobr* payable only once?

The alleged rule that *amobr* was payable only once in her lifetime in respect of any particular woman seems to find support in a number of passages in the classical lawbooks. The most positive of these is probably that in *Llyfr y Damweiniau*:<sup>92</sup>

A woman never pays but one *amobr* by law, and that she pays according to the status of the land from which she derives . . .

In the next section there seems to be a corollary to this passage:

Whoever rapes a woman let him pay her *amobr* since a woman pays only one *amobr* . . .

but the various manuscript versions are confusing, and the passage seems to contradict the rule stated in the main text of the Law of Women, found in some of those manuscripts:<sup>93</sup>

If a married woman [*gwraig wriog*] is raped, there is no obligation to pay *amobr* for she herself paid it when she married [*pan urha6ys*].

<sup>89</sup> Ior §110/10.

<sup>90</sup> In Cyfn, Bleg, and Lat A the *dirwy* is payable to the *arglwydd/dominus*: the wording rather suggests that the same lord receives both *dirwy* and *amobr*.

<sup>91</sup> Bleg 43.31 (= Lat D 338.10), WML 123.17.

<sup>92</sup> AL IV.ii.18 (in a lacuna in DwCol).

<sup>93</sup> Ior §54/6, cf. Col §48.

The principle is also invoked in the statement of the law on payment of *amobr* in respect of a bride whose allegiance may have changed; if *amobr* was paid to the former lord, the new lord cannot claim it for three reasons of which the first is<sup>94</sup>

because there is only a right of one *amobr* from a woman.

There is also a passage found in the Iorwerth text of the Law of Women:<sup>95</sup>

Every woman is entitled to go the way she will, for she is not entitled to be car-returning and there is no right to anything from her except her *amobr*: *and one amobr at that, for a woman has no ebediw save her amobr; therefore, as a man is bound to pay only one ebediw, so likewise a woman is bound to pay only one amobr, for she has no ebediw save her amobr*

—where the italicised clauses are missing from MS. B, and may be an addition in the other branch of the manuscript tradition, for they do not appear in MS. G, and the emphasis in Col's version of this passage is different.

It is a single clause in the Col version which provides the starting point for the suggested interpretation of the rule. Col has<sup>96</sup>

A woman is free to go the way she will, for there is no constraint on her save her *amobr*. A man is bound to pay only one *ebediw*, unless he has two land-holdings under two lords; and so also a woman for her *amobr*.

It can therefore be argued that what the lawbooks are concerned about is the identification of the lord to whom the *amobr* is payable, and that when they declare that only one *amobr* is due, they mean that it will be paid only once in respect of any particular occasion. This is the only sensible meaning of the rule that a man pays only one *ebediw*: we need no lawbook to tell us that a payment due on death can arise only once. The proviso in Col, however, shows the general rule for *ebediw* being modified as the relative economic importance of land and livestock changes. The modification suggests also a change in the significance of lordship or patronage, from a relation in which the fief (whether in livestock or land) was the price of the vassal's faithful adherence to the lord to one in which the interests of both lord and man were primarily economic. The compiler of Col plainly saw no reason why a man should not hold land of two lords, but (though there is no *a priori* reason why a

<sup>94</sup> DwCol §424.

<sup>95</sup> Ior §52/5.

<sup>96</sup> Col §§26, 27.

man should not be provided with cattle by two lords) the obstacles to the establishment of two simultaneous fidelity relationships involving the same vassal are also plain.

If we now look at the texts from this standpoint, we shall see that the statements of the alleged rule all come from the classical period, when the lord-man relationship was coming to be more and more based on land. It was then important to ensure that there should not be claims to *amobr* from two persons, each having some title to be regarded as the lord of the woman's father. That seems to be the point of the rule in *Llyfr y Damweiniau* that a woman pays one *amobr* "according to the status of the land from which she derives":<sup>97</sup> if her father had two holdings from different lords, it would usually be easy enough to identify the holding from which she "derived".

There could be doubt about the lord who was entitled to a virgin's *amobr*; there could be none where a second union was in question. It is repeatedly declared that a woman was free to go where she liked, and that she had no right to return to her kindred; hence no-one could claim her *amobr* in right of his lordship over her father, and the claim must be made in relation to her residence.<sup>98</sup>

## EXCURSUS II

### Affiliation and Rearing

As has been continually emphasised, it was not "legitimacy" of birth but acceptance by the father which determined the status of a child in Welsh law:

The law of the church says that no one is entitled to patrimony [*tref tat*] save the father's eldest son by the proper wife [*o'r wreyc pryaut*]. The law of Hywel adjudges it to the youngest son as to the eldest, and judges that the father's sin and his illegality should not be set against the son for his patrimony.<sup>99</sup>

As these sentences show, the main significance of the principles for the male child was in relation to the inheritance of land; for the female, acceptance by the father meant the right to be "at his platter", and the

<sup>97</sup> *Supra*: Aneurin Owen's translation, "the land upon which she was born" is not literal enough to be justifiable.

<sup>98</sup> Cyfn §73/13c, Lat A §52/34, Col §65.

<sup>99</sup> Ior §87/5, 6. For *gwraig briod* see the Glossary. The proposition of §87/5 is less a statement of canon law than of English common law.

obligation to pay *amobr* to the father's lord rather than to the mother's lord or (in the absence of any other claimant) to the king. The amount payable would depend on the status of the father, but if the girl was not accepted or deemed to have been accepted by a father, on the status of the mother.

Nevertheless, a presumption operated in favour of the children of a regular union. For the first of the three circumstances which prevented a kin-group from disowning a son was that he had been begotten in the "legal bed" and reared at the man's expense for a year and a day.<sup>100</sup> We are not told what made the bed legal: if we could agree on the meaning of *priodas* and *gwraig briod*, we might interpret the legal bed in a corresponding way. The presumption of acceptance is not a very strong one: it can be rebutted by repudiation during the year or by mere failure to maintain the child for that period.

Maintenance of the child was a necessary condition if the child was born in what we may call regular wedlock; in other circumstances it was a sufficient condition. To give goods for rearing the child was the second limb of the triad already cited, even if the child was that of a woman of bush and brake:<sup>101</sup> it was not, we may suppose, necessary that the goods should correspond to the standards set out for a year's rearing in order to raise the presumption. These standards are stated at two points: on the one hand there is a statement of what is to be provided for a wife who is pregnant when the union ends, on the other a bare statement, in a floating fragment of the *Cyfnernth* text, of the legal substance of a year's rearing.<sup>102</sup>

The third possible qualification is formal acceptance "in the mother church as law says", for which the procedure is given in detail in the *Iorwerth* text. Subject naturally to the presumptions already discussed, the alleged father need do nothing until a formal assertion of paternity has been made by the mother. This she does by bringing the child<sup>103</sup> to the church "in which his [the father's] burying-place is"<sup>104</sup> and there swearing on the altar and its relics "to God first and to that altar and to the good relics that are on it and to the son's baptism 'that no father

<sup>100</sup> DwCol §152.

<sup>101</sup> DwCol §153. It is not clear whether the woman of bush and brake is different from the whore (*putain*) or whether the expression is merely a euphemism.

<sup>102</sup> Ior §49/3, Cyfn §44/5.

<sup>103</sup> Ior §100/2. The Welsh text has *mab*, which in this context must be taken as meaning a child of either sex.

<sup>104</sup> "er egluys e bo y uydud endy": the obvious temptation is to translate *y uydud* by "his family vault". If the father was an alien, the church was that in which he received holy water and mass bread: Ior §100/4.

created this child in the heart of a woman save'—(such and such man, by his name)—in my heart". The wording of the mother's oath makes it clear why she was allowed only one attempt at affiliation: if this oath were twice sworn, against different men, it must necessarily be false on at least one of the two occasions—and we have other evidence that Welsh law was sensitive to the enormity of mutually inconsistent oaths.<sup>105</sup>

When the mother has sworn to the child's paternity, "it is proper for the father to do one of two things: either to take the child legally or to deny him legally", and at this point the text passes at once to the procedure for denial, by the father's swearing "to God first and to that altar and to the good relics that are on it and to the man who separated him from the creation of father and mother, that he never created that child in the heart of a woman and that there is no drop of his blood in him but from Adam".<sup>106</sup> We are not told of any formality appropriate to acceptance by the father; but "if there is no father" (presumably because he is dead, though his banishment would also give occasion for the substitute procedure), the child could be received by the *pencenedl*<sup>107</sup> as one of seven "of the best men of the kindred", by "taking the child's hands between his own hands and giving him a kiss, for a kiss is sign of kinship, and then putting the child's right hand in the hand of the oldest of the other men, who should give him a kiss" and so pass him on to each of the others. If there was no *pencenedl* twenty-one of the best men of the kindred (fifty, according to the men of Powys) were needed, and the procedure was initiated by "the man who is in the place of the lord" by putting the child's hand into that of the oldest of the kinsmen. Though it was no doubt in the lord's interest that a child should be affiliated, his representative would not give the sign of kinship.<sup>108</sup>

From the triad in *Llyfr y Damweiniau* it seems that in the classical law formal affiliation was possible only in this church ceremony, but a triad in the *Cyfnerth* text records a more archaic procedure with more sinister language. The second and third limbs of the triad deal with acceptance by the *pencenedl* or the fifty kinsmen; the first limb provides for affiliation by a pregnant woman of bush and brake. She is to call her parish priest to her and swear to him, "Let me bear a snake from this pregnancy if any father created it in a mother but the man to whom I bring it."<sup>109</sup>

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<sup>105</sup> DwCol §129.

<sup>106</sup> Ior §100/5, 6.

<sup>107</sup> What the office of *pencenedl* implied is not known with certainty: see the Glossary.

<sup>108</sup> Ior §103/1-4.

<sup>109</sup> WML 129.6-16.