

**Marriage, Dispensation and Divorce during the years of Henry VIII’s “Great Matter”:
A local case study**

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INTRODUCTION

The legal changes which underpinned Henry VIII’s various marriages, and in particular the dizzying speed with which certain types of marriage were prohibited, and others permitted, in order to validate the union with the wife of the moment, have been the subject of extensive discussion¹ as well as featuring in novels, plays and films.² What is less well known is whether these changes had any impact on the general populace. Given the assumption that annulments on the basis of the marriage being within the prohibited degrees were rare,³ the topic has attracted little consideration. In this article we will show, through a particularly rich case study, just how profound the impact of these legal changes could be.

This remarkable case study arises out of the three marriages of Edward Griffith of the Penrhyn estate in north-west Wales, which took place in the years leading up to and just after the split with Rome. These marriages point to a significant connection between this local case study and Henry VIII’s matrimonial travails in the very same years. As will be shown in the first section, two of Edward’s marriages were later repudiated, reinstated, and then in one case, repudiated again. In order to bring out the complex issues that the case raised, in the second section we will analyse the canon law on annulments at the time of the Reformation and the changing rules on the issue of marriages within the prohibited degrees in particular.

The authors gratefully acknowledge the kind permission and courtesy of the Trustees of the Powis Castle Estate and the National Library of Wales for making certain witness depositions available to us which are cited in the article. We also gratefully acknowledge the kind permission and courtesy of the Bangor University Archives and Special Collections for making certain documents available to us which are cited in the article. References to PFA mean Penrhyn Further Additional held at the Bangor University Archives. Spellings have been modernised and names standardised for ease of reading.

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¹ See eg M Harding, ‘The Curious Incident of the Marriage Act (no 2) 1537 and the Irish Statute Book’ (2012) 32 *Legal Studies* 78.

² Ranging from the sublime - eg H Mantel, *Wolf Hall* (Fourth Estate 2009) – to the ridiculous – eg *Carry on Henry* (1971).

³ M Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (CUP, 1987) and *Carnal Knowledge: Regulating Sex in England, 1470-1600* (CUP 2017); R Houlbrooke, *Church Courts and the People During the English Reformation* (OUP, 1979).

The Welsh cultural context, however, may provide an alternative explanation for some of Edward's actions, as the third section will show. Under native Welsh law divorce was permitted without reference to the ecclesiastical provisions relating to annulment and separation, and parties remarried without consent.⁴ In the context of his marriage to Agnes, Edward's actions were similar, and it will be suggested that it may be that in Wales, at least, the native Welsh laws relating to marriage might have been a "workaround" to the rigidity of the Canon Law in the sense that it may be that Edward simply ignored Ecclesiastical law as a legal order, thereby demonstrating a pragmatic use of law.⁵

The final section deals with the consequences of the uncertainty as to which of Edward's marriages were valid. The resulting litigation⁶ – which is the only reason that we know about Edward's marriages – was complicated still further by the fact that it straddled the reigns of a number of different monarchs who would have had their own very personal reasons for wishing to regard certain of Henry's marriages as valid and others not. Drawing on new evidence which has been unearthed in the National Archives and the Bangor University Archives concerning marriage litigation, it provides a particularly rich example of the multi-jurisdictional nature of litigation over marriage in the mid-Tudor period.

The many marriages of Edward Griffith

Born in 1511, Edward was one of the sons of Sir William III of Penrhyn. In around 1525 or 1526⁷ he married Jane of Cochwillan (a farm on the Penrhyn estate). After her death aged just 13, Edward entered into his second marriage with Jane's sister Agnes⁸ (their father being William ap William of Cochwillan).⁹ This marriage probably took place in around 1527. Within a short time, Agnes returned to live with her father at Cochwillan and Edward entered into a third marriage with Jane Puleston in around 1529. However, after a little while he began living with Agnes again. He then returned to Jane Puleston once more and they had three

⁴ Therefore, under Welsh customary law, marriage was more of a contract rather than a status. See TG Watkin, *The Legal History of Wales* (University of Wales Press, 2nd edn 2012) 54-55: 'Marriage according to the native customs was a secular arrangement rather than a spiritual one and therefore, as in Roman law, it was dissoluble. This was very much at odds with the teachings of the Christian Church...'

⁵ See H Pryce, *Native Law and the Church in Medieval Wales* (OUP, 1993) 90.

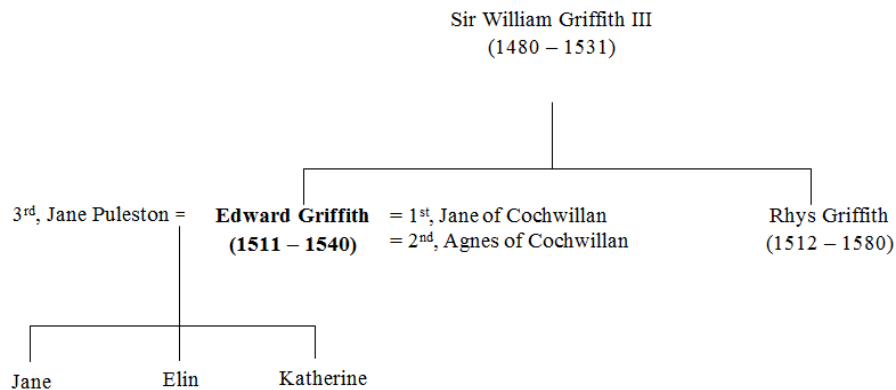
⁶ See G Owen and P Foden, *At Variance, The Penrhyn Entail* Vol. XIV (Welsh Legal History Society, 2019), for a detailed analysis of the litigation associated with the Penrhyn entail.

⁷ Given that the minimum age of marriage was 12 for a girl, and 14 for a boy, it is unlikely that the marriage took place before 1525: while children could be betrothed at the age of 7 and either ratify or repudiate the marriage when they came of age, such early marriages were nonetheless rare: see M Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (CUP, 1987). Interestingly, these ages correspond with the minimum ages in respect of marriages for boys and girls according to Welsh customary law and also Roman law; see Watkin (n 4) 56.

⁸ The authors do not have any evidence about the form of these marriages to Agnes and Jane. Presumably, they took place in a church because, as we shall see in the next section, a dispensation was sought. This implies compliance and moral belonging to the normative order of Ecclesiastical Law. However, as we shall see in the third section some of Edward's other actions do not appear to comply with the normative order of Ecclesiastical Law.

⁹ 'ap' means 'son of' in Welsh.

daughters: Jane, Elin and Katherine. As far as is known, Edward did not have any children by his marriage to Agnes. These relationships are set out in the family tree below.



The reason that we know about Edward’s multiple marriages is because litigation broke out in relation to the inheritance of the Penrhyn estate following his death in 1540. The three daughters of his marriage to Jane Puleston claimed the Penrhyn inheritance, but his brother Rhys Griffith claimed that this inheritance should have passed to him instead. Rhys contended that Sir William III had made settlements settling his lands in tail male so that on Edward’s death, the inheritance would pass to Rhys under the entail.¹⁰ Edward’s daughters also claimed to inherit under the entail as they argued that Sir William III had settled his lands not in tail male but in favour of heirs general, which allowed them to inherit and not their uncle, Rhys Griffith. The problem was that there was uncertainty about the precise terms of the entail. Rhys also alleged that Edward’s daughters were illegitimate, on the basis that Edward’s marriage to Jane Puleston had been unlawful. If Edward’s daughters had been illegitimate, then according to the inheritance laws of the period they would not have derived title to the Penrhyn inheritance and Rhys Griffith would have been the correct heir.¹¹ This litigation was to straddle the reigns of Henry VIII (1509-1547), Edward VI (1547-1553); Mary I (alone-1553-1554); Philip and Mary (1554-1558); and Elizabeth I (1558-1603), all of whom would have had different

¹⁰ “The inheritable fee (ie *the fee simple*) was the greatest estate in land out of which all other estates ere carved, (eg *the life estate* and *fee tail*). For very wealthy families such as the Griffith family of Penrhyn, there was an imperative to keep land in one line of descent. This was achieved through the device of the entail or fee tail by which land became settled on certain descendants and their lineal heirs. A fee tail was carved out of the fee simple, and as such was a lesser estate in land. A grant to the issue of a person’s body was known as *a tail general*, (this was the position of Edward’s widow and daughters). The fee tail could just be in favour of a person’s male line, and such heirs were called *heirs in tail male* (this was the position of Edward’s brother, Rhys). There was uncertainty as to whether the entail had been written in *tail general* or in *tail male*. The problem was that key documents had gone missing. If the entail was in *tail general*, the beneficiaries would have been derived by reference to the common law canons of descent. As Edward did not have any sons or grandsons, on this basis, his three daughters (if legitimate) would have inherited in preference to Edward’s brother, Rhys. However, if the entail had been written in *tail male*, then Rhys would have inherited and not Edward’s daughters. See Owen and Foden (n 6).

¹¹ There were other arguments between Rhys and Edward’s daughters concerning the inheritance of Penrhyn estate which are analysed in more depth in Owen and Foden (n 6).

perceptions of the validity of Jane's marriage and the claims of Edward's previous wife, Agnes.¹²

The key source on which this article is based is a series of depositions taken in a Chancery case in 1556. None of the Bangor diocesan records nor the records for the Court of Arches survive for the period under discussion.¹³ Nearly all of our information concerning Edward's matrimonial history comes from these depositions, so they are a lucky survival.¹⁴ They include the approximate dates and durations of Edward's marriages, evidence of the non-consummation of his first marriage, the grant of a dispensation for his second marriage, the alleged annulment of that marriage, his return to his second wife, and his final separation from her. While these depositions give many and fascinating details, it should of course be borne in mind that they were taken 20-30 years after the events described., and also that the evidence was framed to suit the rules and regulations of the Court of Chancery. Unsurprisingly, then, the witnesses were not entirely consistent in their evidence as to the timing of events, and we have had to make a judgment as to whose claims were most reliable. This has been done both by looking at the internal evidence (where the majority of witnesses suggested the same time frame) and by considering the likelihood of particular events occurring at different times in the light of Edward's other actions and the wider context. Even if the timings are not exact, what is clear is that that Edward's marriages, and the subsequent litigation over the inheritance, were played out against an increasingly uncertain background. In the next section we shall explore how those uncertainties may have affected Edward's actions.

Marriage and the Reformation

While in many respects the effect of the Reformation on the law of marriage was more limited in England than elsewhere in Europe,¹⁵ the law as to who one could marry was in a state of flux as Henry VIII sought to legitimize his own matrimonial choices.¹⁶ Canon law prohibited a marriage between blood relatives to the fourth degree (which included first cousins). It also prohibited marriages with those related by affinity: marriage made husband and wife one flesh, and widows and widowers were prohibited from marrying with the kin of their deceased spouse, or the spouses of deceased kin just as they were prohibited from marrying with their own kin.¹⁷ Henry VIII had obtained a papal dispensation to marry his first wife, Catherine of Aragon, who was the widow of his brother Arthur. Edward similarly obtained a dispensation

¹² The later litigation was between the descendants of Edward's daughters and Rhys Griffith's son.

¹³ This is significant as it was the ecclesiastical courts that had sole jurisdiction over questions as to a marriage's validity: see F Pollock and FW Maitland, *The History of English Law* (CUP 2nd ed 1923) Vol II, 367. The secular courts referred any such questions to the bishop of the diocese and his ruling would be accepted as determinative as to the status of the marriage.

¹⁴ National Library of Wales Powis MSS.

¹⁵ While marriage was no longer a sacrament (EJ Carlson, *Marriage and the English Reformation* (Blackwell 1994) 42) the practical implications of this were limited: it was to be over a hundred years before the first divorce was granted in England.

¹⁶ Harding (n 1).

¹⁷ Houlbrooke (n 3) 74.

for his second marriage to Agnes, the sister of his deceased wife Jane. As witnesses later deposed, application had been made to no less a personage than Cardinal Wolsey. Richard ap Robert confirmed that he had seen the dispensation ‘under the seal of the said Lord Cardinal enclosed in a little box of tin with silk lace’.¹⁸ It permitted Edward to marry Agnes ‘notwithstanding he had before married Jane ferch William¹⁹ sister of the said Agnes which Jane died before she was carnally known by the said Edward.’²⁰

But the validity of such dispensations was being called into question. In 1525, Henry had become infatuated with Anne Boleyn, and in 1527 he began annulment proceedings to try to free himself from his marriage to Catherine. The examination established by Wolsey in May 1527 was a secret one, and even Catherine herself was not told until June.²¹ While rumours began to circulate that the king intended to put away his first wife and remarry, these were firmly denied.²² The decretal commission granted by Pope Clement VII in the summer of 1528 to investigate the validity of the marriage was similarly initially secret, and life at court continued much as usual. By late 1528, however, the fact that the validity of the royal marriage was being questioned was common knowledge.²³

If Edward had married Agnes in 1527, then his repudiation of her would have occurred at just around the time that such questions had become public. Later estimates as to how long they lived together varied between witnesses, but the majority thought it was at least a year and a half, ie in mid-to-late 1528.²⁴ The question then arises: were Edward’s actions influenced by the questions that had been raised as to Henry’s marriage? Given that Catherine had always asserted that her first marriage to Arthur had not been consummated – although Henry later claimed otherwise - their cases would have seemed identical. In the latter depositions William ap William of Cochwillan confirmed that he and others had proved that ‘the said Jane was not carnally known by the said Edward.’ Given that Jane was only 13 when she died, it seems likely that the marriage had never existed in any meaningful sense of the word, and that each had remained with their respective families rather than setting up home together. It is possible that Edward had genuinely come to believe that his second marriage was void and contrary to God’s law, and acted accordingly.

Of course, given that Edward was still only around 17 or 18 at this time, it might be questioned whether he would have known of the doubts circulating at court. He might have had his own, personal reasons for wishing to repudiate Agnes. Yet people from north-west Wales did travel

¹⁸ NLW Powis 11992, depositions, 10-11 April 1556.

¹⁹ ‘ferch’ indicates ‘daughter of’.

²⁰ NLW Powis 11992, depositions, 10-11 April 1556 (William ap William of Cowichlan).

²¹ A Fraser, *The Six Wives of Henry VIII* (Weidenfeld & Nicolson 1992) 138-40; D Starkey, *Six Wives: The Queens of Henry VIII* (Chatto & Windus 2003) 205-6.

²² Fraser (n 21) 141.

²³ Lorenzo Campeggio, the papal legate, had arrived at court in October 1528 to investigate the validity of Henry and Catherine’s marriage: Starkey (n 21) 221.

²⁴ Lowrie Salisburie thought it a little longer, ‘two years or thereabouts’ (9 NLW Powis 1127, depositions on behalf of Rhys Griffith, defendant, 8-10 April 1556). Richard ap Robert suggested that Edward ‘lay with her dwelling in one house by the space of a year and a half’, and Roberte ap Meredith gave a similar period. Only William ap William gave a shorter period, referring to it as being ‘three quarters of a year and more’ and even this is not incompatible with the longer period suggested (NLW Powis 11992, depositions, 10-11 April 1556).

to London on business and for work and any news at court heard by them in London would have been brought home by them. Edward's father, Sir William III, was a baronet, so the family would have moved in the sort of circles where gossip about the court would have been usual. The family may also have had a legal advisor who would have been aware of the issues. And there is good reason to believe that Sir William in particular would have wanted to make as much as possible of the doubts as to the validity of a marriage to the sibling of a deceased spouse, given that he disapproved of Edward's marriage to Agnes. After all, Agnes was merely the daughter of one of Sir William's tenants. There is an unnamed witness deposition in the Court of Requests in a case between Jane Griffith and her three daughters against Rhys which states:

Sir William Griffith knight the father was minded because Edward would not be ruled by him & married contrary to his mind to put the said manors lands & tenements before entailed from ... Edward to Rhys.²⁵

So, Sir William was even seeking to disinherit Edward and make new settlements in favour of his other son, Rhys. Edward was understandably keen to prevent this from occurring. There is further evidence to this effect from another source. Sometime between 1528 and 1530 Edward sailed to south Wales to get his father's deed of entail from the Chancellor of St. David's.²⁶ A witness referred to Edward returning with the entail in the following terms²⁷:

that he this deponent being in service with William ap William was sent for by the said Edward Griffith to say mass before him Edward Griffith was then newly come home from South Wales and kept his chamber being somewhat sickly after his journey.... [U]pon the coming of this deponent into the chamber of the said Edward Griffith he this deponent...saw a box standing in the window.... Edward [said] there is the deed of fee tail that I have been seeking of the lands whereof my father would disinherit me...

Edward heard the entail expounded by Doctor John Lewis, the Treasurer of St. David's and believed that his position as heir in tail male was firm.²⁸ Baulked of this leverage, it is possible that Sir William brought pressure to bear on Edward to accede to his wishes by drawing Edward's attention to events at the royal court and raising doubts about the validity of his own marriage.

Whatever Edward's motivation, it is important to note that in repudiating Agnes he was preempting any actual change in the law. In the light of this, it is particularly interesting to note that he apparently sought – and obtained – legal sanction for his actions. As one witness later deposed, the sentence of divorce between Edward and Agnes was read at his subsequent

²⁵ REQ 2/4/258.

²⁶ William Stradling was Chancellor between c 1511-1539.

²⁷ NLW Powis 1192 depositions, 10-11 April 1556 (deposition by Richard ap Robert, a clerk, aged 58, described as having been in service to William ap William of Cochwillan).

²⁸ Deposition of Richard ap evan ap willms gent sowron 7 May 1541, REQ2/4/258.

wedding.²⁹ Given the involvement of Wolsey in the grant of the original dispensation, it is worth speculating whether he was also involved in the later proceedings. In any case, whoever chose to grant the annulment could hardly have been ignorant of its significance as a precedent for Henry's own marriage.

While it might seem odd that he would be happy to marry on the strength of a second dispensation if he had any qualms about the legitimacy of the first, marriage to a stepmother's niece was hardly attracting the same degree of controversy as marriage to the spouse of a deceased sibling.

Edward certainly made no secret of his marriage to Agnes when he went through this third ceremony. As one witness later deposed, 'he heard say that at the marriage supposed to have been between the said Edward . and Jane Pilston the said Edward put forth his left hand to the trothplighting saying that he had already before given his right hand unto the said Agnes ferch William.'³⁰ This might indicate a degree of reluctance on Edward's part to accede to his father's choice – an interpretation reinforced by Edward's decision to return to Agnes a year and a half later.

If he had been persuaded by his father that his marriage to Agnes was void on the basis that Henry's marriage to Catherine was void, then he might have been all the more receptive to the barest hint that Henry's marriage might be legal after all. In July 1529, the decretal commission had decided that the matter should be heard in Rome.³¹ While the case was being determined, Edward sought the sanction of an ecclesiastical court to return to Agnes. As one witness later deposed, he brought a suit 'to have restitution of the said Agnes his wife'.³² He and William ap William – his former, arguably current, and, as it proved, future father-in-law – went to London to have the matter determined by an ecclesiastical court. Edward swore an oath that 'he never had carnal copulation with Jane Williams the sister of the said Agnes.'³³ It was therefore concluded that Edward 'should receive again the said Agnes to his company as his lawful wife.'³⁴

This time they were together for less than a year.³⁵ Again, it seems highly likely what was happening at court had some impact on Edward's actions. Indeed, two decades later the

²⁹ NLW Powis 11126, depositions on behalf of plaintiffs, William Herbert & Jane his wife, Sir Nicholas Bagnall and Ellyn his wife, William Herbert & Katherine his wife, taken at Bangor, 8-10 April 1556 (Jevan ap Morgan and Robert ap John ap Mered).

³⁰ NLW Powis 1127, deposition by William wyn ap William of Llan Llechid, Caernarfon, on behalf of Rhys Griffith, defendant, 8-10 April 1556

³¹ Fraser (n 21) 164; Starkey (n 21) 247.

³² NLW Powis 11992, depositions, 10-11 April 1556 (Roberte ap Meredith).

³³ Ibid (William ap William).

³⁴ As the sentence of the ecclesiastical court does not survive, we are of necessity relying on the evidence in the depositions in the subsequent Chancery litigation. Given that the later litigation was within the lifetime of several of those involved, there is no reason not to regard their evidence on this point as reliable.

³⁵ Roberte ap Meredith put it at three-quarters of a year, while Richard ap Robert suggested it was just half a year, although Thomas ap Pedaw, meanwhile, thought it was a year and a half (NLW Powis 11992, depositions, 10-11 April 1556).

interrogatories issued to witnesses implied that he was simply following the example of Henry VIII in putting away Agnes for a second time. It was asked whether Edward had

‘reconciled himself to the said Agnes as his lawful wife and with her cohabited until that our late sovereign Lord Henry the eighth did put away his most lawful wife Queen Katharine the Queen Majesty’s mother the said Edward by the example of the said late King encouraged (both the cases being of like quality) did again put away the said Agnes.’³⁶

Assuming that the chronology as we have reassembled it is accurate, Edward would have left Agnes at around the same time that Henry finally parted from Catherine and banished her from the court in 1531.³⁷

There was, however, a twist in the tale. In May 1533, Thomas Cranmer declared that Henry’s marriage to Catherine was void.³⁸ However, the annulment was based on the finding that Catherine had in fact had sexual relations with Arthur, which was not the case for Edward and his first wife. The Succession Act 1534 subsequently confirmed that the marriage was ‘definitively, clearly, and absolutely declared, deemed, and adjudged to be against the laws of Almighty God’, Catherine having been ‘lawful wife’ to Arthur and ‘carnally known’ by him. The dispensation was thus declared to be ‘void and of none effect’.

In order to give additional legitimacy to Henry’s actions the legislation also made fundamental changes to the rules governing who could marry whom, at least as regards relationships arising by affinity.³⁹ On the one hand, it made the rules harsher, declaring all existing marriages within the prohibited degrees to be void, regardless of any dispensation granted, and ruling out the possibility of any such dispensations in the future on the basis that ‘no man, of what estate, degree, or condition soever he be, has power to dispense with God’s laws’. On the other, it restricted the circumstances in which relationships by affinity would arise. Previously a relationship of affinity could be created either by sex or by marriage; after the 1534 Act it could only be created by both in combination, its final article stating that ‘the article in this Act contained concerning prohibitions of marriages within the degrees afore mentioned in this Act, shall always be taken, interpreted, and expounded of such marriages, where marriages were solemnized and carnal knowledge was had.’⁴⁰

As Maebh Harding has noted, the new rules were ‘carefully crafted... to validate Henry’s new marriage and invalidate his previous unsuccessful marriage.’⁴¹ But what was carefully crafted

³⁶ NLW Powis 11126-11127.

³⁷ Henry finally parted from Catherine in July 1531: Fraser (n 21) 178.

³⁸ Cranmer also declared the marriage of Henry and Anne to be valid, the couple having married secretly on 14 November 1532, and publicly in January 1533

³⁹ It reaffirmed the prohibited degrees relating to blood relatives as set out in Leviticus: ‘that is to say, the son to marry the mother,.... the brother the sister, the father his son’s daughter, or his daughter’s daughter, ‘the daughter of his father procreate and born by his stepmother, or the son to marry his aunt, being his father’s or mother’s sister.’

⁴⁰ It also confirmed the relations between whom marriages were prohibited: a man might not marry his stepmother, his uncle’s wife, his son’s wife, his brother’s wife, his wife’s daughter, his wife’s son’s daughter, his wife’s daughter’s daughter, or his wife’s sister.’

⁴¹ Harding (n 1).

for one did not necessarily work for all. Under the terms of the 1534 Act, Edward's marriage to Agnes would in fact have been valid. Even if his dispensation to marry her had been invalidated by the Act, the reworking of the prohibited degrees meant that he would not be barred from marrying her, his first marriage to Jane not having been consummated.

So why, if there was a possibility that his second marriage was valid after all, did Edward not return to Agnes yet again? It may be that all along he had been vacillating between Agnes and Jane and using the law – or questions as to what the law should be – to justify his preference at any given time, and that by this time he had decided in favour of Jane. By this time he might well have had children with Jane and been loth to disrupt their union. Agnes too may have remarried by this time: we know from the family pedigree that at some point she entered into a marriage with one William Eyton of Watastay, Ruabon, although in the absence of either parish registers or other evidence it is not possible to ascertain the precise date. Or she may simply have had enough of Edward's to-ing and fro-ing. Whatever the reason, it suggests that strategic factors, as well as doubts as to the validity of his marriage, played a role in Edward's actions and inactions. But the doubts cast by the 1534 Act on the legitimacy of his actions, his third marriage,⁴² and his children set the scene for the litigation over the inheritance that was to follow.

In any case, perhaps the canon law was perhaps not his sole frame of reference. As the next section will show, native Welsh laws provided an alternative set of justifications for some of his actions. The suggestion is premised on national identity on the basis that Edward, as a Welshman, may have identified more with the norms of the native Welsh law, even though he needed to comply with the processes of the English law.

Divorce and the Native Welsh Laws

There is no contemporaneous written evidence as to the content of the native laws of Wales and as to how they may have operated in practice. As Davies has said:

It is wholly appropriate therefore that specialists on the Law of Wales stress that the law-books cannot in their entirety be considered to furnish evidence of the nature of society in the age of Hywel. Nevertheless, they acknowledge that sections of them do contain material that is very ancient.”⁴³

These laws are commonly referred to as the Laws of Hywel Dda (Cyfraith Hywel), allegedly written down following a meeting which took place in 945 AD in Whitland in Carmarthenshire. However, as Watkin has pointed out, it is more likely that this meeting was held merely to try

⁴² More positively, even though the dispensation that he had obtained to marry Jane Puleston would also have been invalidated by the 1534 Act, under its terms while a marriage with a niece was prohibited, as was marriage with a stepmother, marriage with a stepmother's niece was not, and the invalidity of this second dispensation would not have mattered. The only issue was whether he was validly married to Agnes.

⁴³ J Davies, *A History of Wales* (Penguin Books 2007) 86-87.

to bring about some unity as at no time in its history did Wales become a unified nation.⁴⁴ It was not until the later medieval period that we have evidence that the native laws were written down, so that could hardly be a contemporaneous account:

There is no written evidence of the native laws in the pre-Roman period, nor during the Roman occupation, nor in the Dark Ages following the Roman occupation Wales. The extant written laws were compiled in the twelfth and thirteenth centuries...Forty medieval manuscripts survive. Some are written in Latin but the majority are in Welsh.⁴⁵

In 1841, Aneurin Owen redacted these various manuscripts into three groups which he called: the Venedotian Code (also known as the Book of Iorwerth), the Dimetian Code and the Gwentian Code.⁴⁶ Turning to the Book of Iorweth as a source for the native Welsh laws concerning marriage and separation, set out below is Aneurin Owen's redaction of the relevant manuscripts in the medieval Welsh followed by a modern English translation:⁴⁷

XVII. O myn [y] gur grueyc arall guedy ed escaro ar [wreic] kandaf ryt vyt ekentaf

XVIII. Oderuyt egur escar [ae wreic] amenu ohono vr arall abod en ediuar gan egur cantaf reescarassey aygreyc a [e] godyuues ohonau hy ar neylltroet ene gueli ar llall eythir egueli egur cantaf adele cafael egureic.

17. If the husband take another wife, after he shall have parted from the first wife, the first is free.

18. If a man part from his wife, and she be minded to take another husband, and the first husband should repent having parted from his wife, and overtake her with one foot in the bed and the other outside the bed, the prior husband is to have the woman.

This is conveniently summarised by Pryce as follows:⁴⁸

Once separated, the spouses were clearly free to marry again, although this freedom was qualified with respect to the wife in the Iorwerth Redaction: this permits a husband with second thoughts to reclaim a wife from whom he has parted, even if he finds her having gone as far as placing one foot in bed with a new partner!

On the basis of what we know, Edward's return to Agnes is consistent with him reclaiming her in accordance with this principle of Welsh law, although the fact that he married in the church and sought dispensations suggests that that Welsh law was not the dominant regulatory system

⁴⁴ Watkin (n 4) 45.

⁴⁵ G Owen, 'Another Lawyer Looks at Welsh Land Law' in N Cox and TG Watkin (eds) *Canmlwyddiant Cyfraith a Chymreictod*, Vol XI (Welsh Legal History Society, 2013) 184-185. For an explanation as to how the Welsh law books were compiled, see GA Elias and ME Owen, 'Lawmen and Lawbooks' in Cox and Watkin (eds), 106-150.

⁴⁶ A Owen, *Ancient Laws and Institutes of Wales* (The Commissioners of Public Records, 1841).

⁴⁷ Ibid, 84-87, paragraphs 17 and 18. See also D Jenkins, *Hywel Dda, The Law* (Llandysul, 1986) 47.

⁴⁸ H Pryce, *Native Law and the Church in Medieval Wales* (OUP, 1993) 90. Cf RH Helmholz, *Roman Canon Law in Reformation England* (CUP, 1990) 73-74.

to which he adhered. These native Welsh laws are in sharp contrast with Canon Law principles in respect of separation, divorce and re-marriage.⁴⁹ Indeed, Pryce has concluded that:

The impact of canon law on the Welsh lawbooks' representation of divorce customs in the later twelfth and thirteenth centuries appears, then, to have been nil.⁵⁰

Further, and in the context of marriages according to Welsh custom Watkin has said:⁵¹

Being a secular arrangement, marriage was dependent upon the consent of the immediate parties *cenedl* [kindred]...The contract was entered into verbally in the presence of witnesses...No ceremony was required...

Again, RR Davies has commented when analysing separation and divorce in the context of the native Welsh marriage laws:

Furthermore they were not necessarily terminated for canonical reasons and the partners certainly then regarded themselves as free to enter into new marriage contracts. Several facts suggest that divorces were not very difficult to come by and that they were regarded as the termination of a contract, not the annulment of a sacrament.⁵²

It should be acknowledged that some individuals in England displayed similar characteristics in that they remarried unlawfully without consent contrary to principles of Canon Law during this period.⁵³ However, it *may* have been the case in Wales, as opposed to England, that the native Welsh laws might have provided parties with some internal moral justification for working around the rigours of the Canon Law. There are good reasons to believe that this practice was specific to Wales and that Edward's Welsh identity was a significant influence on his actions.

First, it was not as easy for parties in England to point to customary law which allowed parties to remarry following divorce in quite the same way as in Wales. Ellis has pointed out that:

The early English Laws contain little on the subject of separation or divorce. The Laws of Ethelred (A.D. 978-1016), under the influence of the Church, absolutely forbade divorce.

⁴⁹ Ibid, see also 82-83; 89-94, and in particular 91-92 where Pryce states: 'But the grounds for the parting of two living partners went considerably beyond what was canonically permissible, and nowhere do the native law-texts insist that *ysgar* [the Welsh word for parting] required ecclesiastical approval. Indeed the Welsh tractate on women contains no hint that marriage was a matter pertaining to ecclesiastical law and jurisdiction.'

⁵⁰ H Pryce, 'Welsh custom and canon law, 1150-1250' in K Pennington (ed) *Proceedings of the Tenth International Congress of Medieval Canon Law* (Monumenta Iuris Canonici Series C; Subsidia, 11; Biblioteca Apostolica Vaticana, 2001 edn) 789-790.

⁵¹ Watkin (n 4) 55.

⁵² RR Davies, 'The Status of Women and the Practice of Marriage in late medieval Wales' in D Jenkins and ME Owen (eds) *The Welsh Law of Women* (University of Wales Press, 1980) 112-113. For an account of the native Welsh laws on divorce, see TP Ellis, *Welsh Tribal Law and Custom in the Middle Ages* (Clarendon Press, 1926) 414-424.

⁵³ See eg B Capp, 'Bigamous marriage in early modern England' (2009) 52(3) *The Historical Journal* 537.

The very prohibition points to the existence of divorce in custom, and in the earlier laws the right of separation at will is assumed...

In comparing with the English Law we have to bear in mind that the English Laws are not a codification: they are merely amendments of existing custom, which custom is not declared; and consequently references to unamended custom are absent.⁵⁴

Secondly, while the Griffith family of Penrhyn was undoubtedly an aristocratic family, certain of the family's settlement patterns show a tendency to mimic the inheritance provisions of the native Welsh laws, and the will of Edward Griffith dated 11 March 1540 is a case in point.⁵⁵ This is part of a much broader debate concerning the Anglicisation of the Welsh gentry.⁵⁶ Further, a substantial proportion of the Penrhyn estate came into being as a result of principles of native Welsh Land Law.⁵⁷ The Griffith family of Penrhyn was more Welsh (at least when it suited them!) than has perhaps been thought, and there is clear evidence linking them with the native Welsh laws.⁵⁸

The third reason also shows Edward Griffith's Welsh credentials. This will be dealt with in slightly more detail as this is new evidence which has been unearthed by the authors, and this particular reason is linked to the Church courts. The role of the Church courts in connection with the issues being analysed in this article will be explained in the next section below when considering the multi-jurisdictional nature of this marriage litigation. However, it is noted at this stage because what follows shows a power struggle between Edward Griffith and the Bulkeley family of Anglesey concerning control of the Bangor consistory court. It is relevant to the issue of Edward's Welshness in view of Bulekeley's reference to Edward in rather disparaging terms as a Welshman. By way of background, Williams has stated that:

Perhaps there was nothing which so irritated laymen as having to submit to the jurisdiction of the church courts. Fees were high, procedure was slow and corrupt, frivolous charges and chicanery were common...

This lay at the root of the trouble in the diocese of St. Asaph and also at Bangor, where there was an intense struggle for control of consistory courts between Sir Richard Bulkeley and his allies on the one hand and Edward Griffith of Penrhyn and Dr. William Glyn on the other. This became so violent as to cause a riot in Bangor Cathedral during the holding of a consistory court. When things had reached such a pitch it was obviously very difficult to maintain much respect for ecclesiastical courts or to justify their existence.⁵⁹

⁵⁴ Ellis (n 52) 421.

⁵⁵ For a more detailed analysis of this issue see G Owen and D Cahill, 'A Blend of English and Welsh Law in Late Medieval and Tudor Wales' (2017) 58 *The Irish Jurist* 153, 168-172.

⁵⁶ *Ibid*, 156.

⁵⁷ *Ibid*, 160-162. See also G Owen and D Cahill, 'The Acts of Union 1536-43—Not Quite the End of the Road for Welsh Law' *Proceedings of The Harvard Celtic Colloquium* [In press].

⁵⁸ *Ibid*.

⁵⁹ G Williams, *The Welsh Church from Conquest to Reformation* (University of Wales Press, 1962) 553-554. Williams states: 'This quarrel had become tangled with disputes arising out of the introduction of the royal supremacy. I hope to discuss it in later work' (554, fn 4). The authors have referred to Williams's later work, *Renewal and Reformation Wales c. 1415-1642* (OUP, 1987) and have noted a further reference to this dispute at

There can be no doubt that the position was serious. In a letter dated 25 February 1537 from Sir Richard Bulkeley (the Bulkeley family was an aristocratic family with large landholdings in Anglesey) to Cromwell, the King's secretary, he prophesied the Civil War, which was to come a century later:⁶⁰

Please it to you, that Doctor Glyn and Edward Griffith and their mortal adherents have published themselves and as such as be toward them that there is no remedy but that mortal war is like to be in England, which words and comfort have caused many light heads to pike many quarrels and caused much mischief to be done in these quarters since their coming home.

Crucially, in a letter from Bulkeley to Viscount Beauchamp dated 8 May 1537, Bulkeley hints at racial motivation for the feud between him and Edward Griffith and Dr. Glyn:⁶¹

... I am and all only for serving the king and your lordship truly, and all through the means of one Doctor Glyn which is now at London and Edward Griffith & their adherents and partakers, *for the very truth is they would have no English man to bear no rule amongst them.*[emphasis added]

For all these reasons it is suggested that the appeal of native Welsh law relating to marriage as a means of rationalising Edward's behaviour in respect of his marriages to Agnes and Jane Puleston cannot be discounted.

Whatever the reasons for Edward's actions, it left a number of tricky issues to be disentangled.

The litigation

Edward seems to have been embroiled in further litigation with William ap William of Cochwillan, his one-time father-in-law.⁶² A bond dated 30 January 1536⁶³ stated that they would abide by the award of William Vaughan of Talygarth and Thomas Habluyt, arbitrators in a dispute between them 'touching sums of money...'⁶⁴ As part of this Edward agreed to pay 40 marks to Agnes.

Except that the said Edward Griffith for especial considerations us the said arbitrators moving, shall content and pay or cause to be paid to the said William ap William to the use

282. However, the discussion is not extensive, so the authors have consulted the State Papers cited by Williams and provide a more detailed account in the text.

⁶⁰ SP 1/1116 folio 118.

⁶¹ SP 1/120 folio 4.

⁶² William ap William had taken Edward to the court of the Council in the Marches of Wales in 1534, and according to Edward, 'having no great ground or reasonable cause so to do, but only by his crafty means to impoverish me with expenses & charges concerning my oftentimes appearance there'. Edward petitioned the King's secretary, Thomas Cromwell, to have the case brought out of the Council in the Marches and to be heard by Cromwell-Document Ref: SP 1/87 f. 134 Folio Numbers: ff. 134 Date: 31 Dec 1534. See also, Source Archive: The National Archives of the UK Gale Document Number: MC4301581618, *State Papers Online*, Gale, Cengage Learning.

⁶³ PFA/1/591.

⁶⁴ PFA/1/592.

of Agnes his daughter towards her preferment in marriage or otherwise to her use the sum of forty marks sterling, whereof twenty marks to be paid to the said William ap William or to his assigns upon Monday in the Whitsun week next coming in the parish church of Saint Mary of the Hill in the City of Chester at the high altar of the same church between one and three of the clock after noon of the same day, and the other twenty marks, rest of the said sum of forty marks to be in like wise paid to the said William ap William or to his assign in the feast of the nativity of Saint John Baptist then next after at the said altar between the hours of one and three of the clock after noon of that day.

This shows that in 1536 the marriage between Edward and Agnes was regarded as over on both sides with a tacit acknowledgement that Agnes should be free to marry again. While the agreement did leave open the possibility that the 40 marks might be payable otherwise than for Agnes' preferment in marriage, the explicit recognition of this possibility strongly indicates that the parties did not regard her as being married to Edward.

This did not prevent William ap William from suing for Agnes' dower⁶⁵ after Edward's death. Under the common law of England and Wales it was not possible for a widow to inherit under the common law canons of descent, but she did have an entitlement to a life interest in one third of her late husband's freehold property. Our knowledge of this step comes from his deposition to the Court of Wards,⁶⁶ dated 7 May 1541.⁶⁷ He deposes to the fact that Jane Puleston's father, John Puleston, had put a stay on his action in the Court of Arches by way of the common law writ of *supersedeas*.⁶⁸ Whether or not he believed that Agnes had been lawfully married to Edward⁶⁹ this seems to have been the end of his attempt to obtain her dower.

A decade and a half then elapsed before the litigation between Edward's daughters by Jane Puleston and his brother Rhys were to come before the courts.⁷⁰ On 12 March 1556 a commission was awarded for the examination of witnesses by both parties. Previous

⁶⁵ Owen and Foden (n 6) 34.

⁶⁶ The jurisdiction of this court was invoked in view of the fact that Edward's three daughters were minors.

⁶⁷ This is preserved in TNA REQ2/4/258 but has clearly been misfiled in the records of the Court of Requests. This is on the basis that the Commission to swear evidence for trial quite clearly states that the matter was to proceed in the Court of Wards, and this Commission is erroneously filed in bundle TNA REQ 2/6/210. A contemporary calendar of commissions, depositions and examinations filed in the Court of Wards, lists only one cause in the 33rd year of Henry VIII: *Puleston versus Griffith. All the pleadings and depositions are in a leather satchel in one of the presses amongst evidences at Westminster*. This eccentric location may account for the misfiling of these records.

⁶⁸ The authors have caused a search to be made for this writ of *superseedas* to try and gain further information, but there is no complete series in Chancery records: C 264 are so-called 'Stool bundles' which may include writs of *supersedeas* whose effect was like a recognizance, but there is a gap between 27 Henry VIII and I Edward VI.

⁶⁹ The passage of further legislation would not seem to have aided his case. There had been two pieces of legislation following the First Succession Act in 1533. The first few months of 1536 saw the annulment of Henry's marriage to Anne, her execution, and Henry's swift remarriage to Jane Seymour. The Second Succession Act reinforced the invalidity of the former marriage to Anne by declaring that the prohibited degrees of relationship could, after all, be created by sexual relations, with or without marriage. In 1540 the Third Succession Act was passed to emphasise that the marriage to a cousin (or the wife of a cousin or, crucially, a wife's cousin – Catharine Howard, Henry's fifth wife, being Anne Boleyn's cousin) was valid.

⁷⁰ There were in fact three phases to this litigation, namely 1540-1544; 1555-1556, and 1559-1565.

commissioners had taken witness depositions on 8 and 10 April 1556⁷¹ but the court may have been disappointed at the responses received from the earlier witnesses, and so the court used its authority to question a smaller group of witnesses on the issue of Edward's marriage to Agnes.⁷² Publication was granted to both parties on 30 April 1556.⁷³ However on 28 January 1557 the Chancery process came to an end, at least for the time being, as the court could not determine the validity of the marriage as is explained in the following extract:⁷⁴

Whereas the said Sir Rice Griffithe defendant in his rejoinder hath alleged and said that the said Jane Katherine and Helen who make claim and title to the lands in variance were not legitimate nor lawfully begotten, And for that this court cannot conveniently proceed to any certain order or decree unto such time as the legitimation or bastardy of the said Jane Katherine and Helen be tried and judged by the spiritual laws, where the same is tried, and not elsewhere. It is therefore ordered that the matter of illegitimation so by the said Sir Rhys Griffith alleged shall be first discussed and tried by spiritual laws. And thereupon further order is to be taken as cause shall require, and that in the meantime the possession of the lands at variance shall continue according to an order thereof made in this court of Chancery the 25th of June past until further order shall be taken therein by this court of Chancery.

It is possible that Rhys had been covertly collecting testimony for parallel use in the Court of Arches or the Bangor Consistory Court (the 1557 order does not say to which ecclesiastical court the case was referred): one of his commissioners was a cleric, and in at least one deposition the Latin word 'concorditer' is used (usually rendered in English as 'agreeably') which would be more appropriate in depositions in an ecclesiastical court. There then followed an appeal to the Pope by Agnes, although it was probably instigated by Rhys, and this is considered next.

During the reign of the Catholic monarchs, Philip and Mary, it was once again possible for an appeal to be made to the Pope. A citation dated 11 October 1558 from William Roberts,⁷⁵ set out his authority as 'Archdeacon of Merioneth in the Diocese of Bangor, Legate of the holiest Father in Christ, our Father and our Lord Paul the Fourth, Pope by the Providence of God.'

⁷¹ For examples of the earlier depositions concerning the issue relating to Edward's marriage to Agnes: see, deposition of Ellis Morris of Clennenny [NLW Powis 11126]; deposition of William ap William of Cochwillan (Agnes's father); Lowrie Salisburie alias Williams (Agnes's mother); William ap Kenrick; William Wyn ap William; Griffith Lloyd ap William; Lewis ap Meredith; and Richard ap Robert [all of these depositions in NLW Powis 11127]. All witnesses make similar assertions with some confusions about the year of the marriage-25, 26 or 27 years before. A few witnesses say they were present.

⁷² TNA C 33/13, folio 213r.

⁷³ TNA C 33/14, folio 223. Also in parallel, the plaintiffs were suing a writ of *scire facias* (a writ requiring reasons to be given why a judgment should not be enforced) against Rhys, "or else the demurrer of the plaintiff to be entered without further delay" [Order Book C 33/15 folios 42-43].]. This may have been concerning his allegations about the legitimacy of Edward and Jane's marriage.

⁷⁴ C 33/15 folio 158d.

⁷⁵ See A Wood, *Fasti Oxonienses on the Annals of the University of Oxford* (London, 1815) 55. Roberts had a qualification in Civil Law, had oversight of an Inn of Chancery and this citation also makes reference to his relations with the Bulkeleys and the Glyn's to whom reference has been made in this article. It might be thought that this appeal might have been part of a conniving scheme by Rhys but William Roberts appears to have been a genuinely learned ecclesiastical scholar.

Referring to ‘commissioning letters of His Holiness lately directed to us’, he required Jane Puleston to appear ‘to answer certain articles upon the truth of matrimony contracted between a certain Edward Griffith and Agnes *ferch* Willm... on behalf of the same Agnes.’⁷⁶ It would have suited Rhys for the Pope to have found that Edward’s marriage to Jane Puleston had been invalid. On that basis, the three daughters would have been illegitimate and unable to inherit.

During the reign of Queen Mary, Rhys might have felt emboldened to play to the fore the Canon Law argument analysed previously in this article to cast doubt on the validity of Edward’s marriage to Jane Puleston. Mary, after all, was the daughter of Catherine of Aragon, and therefore keen to emphasise the validity of her mother’s marriage to Henry, and therefore on the lawfulness of a marriage within the prohibited degrees following papal dispensation.⁷⁷ As noted above, the interrogatories administered during the first Chancery suit had made much of the parallel between the cases.⁷⁸

This appeal might suggest that if the ecclesiastical court to which the matter had been referred out of Chancery had decided that Edward’s daughters were legitimate, or had failed to reach a verdict, Rhys wanted to make a challenge. The hearing was scheduled in Bangor Cathedral at 9am on 28 November 1558. Eleven days before it was due to take place, the Catholic Queen died on 17 November 1558. While her death would not have put an immediate end to this appeal – the royal supremacy was not restored until the following spring – we have no evidence concerning whether the appeal was pursued or not. On balance, it seems unlikely: arguing in favour of the lawfulness of the marriage of Henry’s marriage to Catherine of Aragon might have been deemed inadvisable under the reign of Anne Boleyn’s daughter.

As for the litigation concerning the Penrhyn entail, the three phases of the litigation ended with the parties being ordered to honour the terms of a Doom and Award of 1542.⁷⁹ This was just a pragmatic way forward whereby certain parts of the Penrhyn estate were divided up between Rhys and the daughters; it did not actually reveal anything about the status of Edward’s marriages.

CONCLUSION

This case study of the marriages of Edward Griffith, and their aftermath, underlines the importance of setting legal actions in their wider social, cultural and political context. Viewed in isolation, Edward appears at best indecisive and at worst a complete cad. Set in the context of the ongoing debate as to the validity of different types of marriages within the prohibited degrees, an alternative explanation – that he felt bound by the arguments put forward by his monarch – emerges. Viewed against the backdrop of Edward’s Welsh identity, we can see how a different set of cultural considerations may potentially have influenced his actions. And

⁷⁶ Penrhyn MS 64.

⁷⁷ While the Succession Act 1543 had restored both Mary and Elizabeth to the line of succession, both had remained illegitimate under its provisions.

⁷⁸ See text at n **.

⁷⁹ PFA/1/575, Bangor University Archives. Date of Decree, 30 January 1565. For a brief overview of the litigation, see Owen and Foden (n 6) 20-26.

putting the subsequent litigation in the context of the likelihood of the monarchs who succeeded Henry having different views on the validity of his various marriages shows how disputes might be shaped by the context of their own time.

Given the consensus that annulments on the basis of either consanguinity or affinity were rare in Reformation England,⁸⁰ was Edward's case simply exceptional in terms of events and fortuitous in terms of its timing? Here it should be borne in mind that all of the evidence as to the granting of the dispensations, the annulment of the marriage to Agnes, the successful suit for restitution of conjugal rights, and the subsequent litigation in the church courts as to the validity of either his second or third marriage, derives from sources external to the church courts. Perhaps, then, further research into disputes over inheritance and dower will reveal challenges to other marriages of which other evidence has not survived. Most importantly of all, Edward's case is a reminder of the importance of looking beyond the great political events of the day and the intricacies of legislation in order to consider the impact of law on individual lives.

⁸⁰ Ingram (n 3); Houlbrooke (n 3).