Marriage in Early Ireland

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There was a controversy amongst early Irish lawyers (about AD 700) as to whether monogamy or polygamy was the more proper and one clerical lawyer solved the problem by reference to the Old Testament: if the chosen of God (here he may be referring to the chosen people as a whole or merely to the Patriarchs, and the glossators of the text refer explicitly to Solomon, David and Jacob) lived in polygamy 'it is not more difficult to condemn it than to praise it'.[1]

In the longest established of the western churches outside the Roman Empire and in a society in which christian Latin culture flourished in a remarkable way,[2] the norms of christian marriage were not, paradoxically, accepted in society generally (we shall see later that there were exceptions) throughout the middle ages. It is not unusual, of course, that the norms should not be observed they were, after all, a counsel of perfection and elsewhere in christian Europe the laity were far from obeying the church's rules~[3]—but it is surely interesting that the christian Irish lawyers, most of whom were clerics, should appear to consider marriage within a theoretical framework different from that of the contemporary church and should frame their practical rulings accordingly. However, one should not lay too much stress on the differences between marriage in early Irish and in early continental societies: the similarities are, in practice, much more significant than the differences, and if Ireland was remarkable it was in the persistence of early medieval patterns of marital behaviour into the later middle ages and beyond.

The principal sources for the history of marriage in early Ireland are the law tracts in Irish and Latin, all the most important of which were probably written up within half a century of AD 700.[4] In some respects, the materials are rich—in many

1. D. A. Binchy (ed), *Corpus iuris hibernici* (6 vols, Dublin 1978), vi 2301; cf. iv 1483 [hereafter CIH]; D.A. Binchy (ed. & tr.) 'Bretha crólige', *Ériu* 12 (1938) 177: 44–45, 73–74.

2. Heinz Löwe (ed), *Die Iren und Europa im früheren Mittelalter* (2 vols, Stuttgart 1982), and Próinsias Ní Chatháin & Michael Richter (ed), *Irland und Europa die Kirche im Frahmittelalter/ Ireland and Europe: the early church* (Stuttgart 1984) provide the most recent opinion on this and many related topics.

3. Georges Duby, *Medieval marriage: two models from twelfth century France,* Johns Hopkins Symposia in Comparative History 11 (Baltimore MY 1978); George Duby, *Le chevalier, la femme, et le prêtre: le mariage dans la France féodale* (Paris 1981); Jack Goody, *The development of the family and marriage in Europe* (Cambridge 1983). For the Welsh evidence see Dafydd Jenkins & Morfydd E. Owen (ed), *The Welsh law of women: studies presented to Professor D. A. Binchy* (Cardiff 1980).

4. The bulk of the legal material dealing with marriage and women is collected in D.A. Binchy

instances they provide us with an account of what was done rather than what ought to be done—but they are difficult to interpret. In other respects, they are very limited, for we have no marriage charters and no records of marital cases before the Anglo-Norman period. Records of church legislation about marriage dry up in the eighth century and do not begin again until the twelfth (when the great reform, or rather revolution, in church and society was undertaken). Much of what is said here must, therefore, be tentative.

Lawyers writing in Irish divide first and principal marriages into three categories:

(1) *lánamnas comthinchuir,* 'marriage of common contribution', marriage in which, apparently, both parties contribute equally to the common pool of marital property;

(2) *lánamnas for ferthinchur*, 'marriage on man-contribution', an arrangement by which the bulk of the marriage goods are contributed by the man; and

(3) *lánamnas for bantinchur*, 'marriage on woman contribution', marriage to which the woman brings the preponderance of the property.

All three main types of marriage are considered by the lawyers as special contractual relationships between the spouses in regard to property, which are similar in some important respects to that of a lord and his vassal, a father and his daughter, a student and his teacher, an abbot and his lay-tenant—other pairs that hold property in common and, on occasion at least, run a common household. What each of the pair may have given the other, consumed, or spent in good faith cannot give rise to a legal action; what has been taken without permission must be replaced if a complaint is made about it; and legal penalties are involved only when the complaint (and the appropriate legal procedure which must follow it) is ignored or when property is removed by theft or by violence.

The threefold categorisation, which refers to main marriages only, is not quite satisfactory because it runs together institutions which were really separate, but it does bring out that about AD 700, when the principal tract on marriage was written. *Lánamnas comthinchuir*, which the tract places first and treats in greatest detail, was regarded as the most important or perhaps the normal type of principal marriage

amongst commoners of property (and aristocrats) and had been for some considerable time.[5]

It was a dignified state for the wife in question: if it was a marriage 'with land and stock and household equipment and if the wife was of the same class and status as her husband, she was known as a *bé cuitchernsa*, literally 'a woman of joint dominion, a woman of equal lordship'—a term which seems to be rendered *domina* in the canon law tracts. Neither of the spouses could make a valid contract at law without the consent of the other. The lawyers list exceptions to this rule but, apart from the specification that these must be dealings which advance their common economy, they are mere run-of the-mill matters in the ordinary business of farming—agreements for co-operative ploughing with kinsmen, hiring land (presumably for grazing), getting together the food and drink to meet the duty of entertaining one's lord or to celebrate church feasts, acquiring necessary tools or equipment and the like—and one would expect either spouse to make such arrangements without necessarily consulting the other.

Not so the more important contracts, such as those which involve the alienation of property. In Irish law there is really no conjugal fund or common property in marriage: each partner retains ultimate private ownership of what he/she brought into the marriage, though it may be pooled for the purpose of running a common household. (And each may have personal property besides.) This is particularly stressed in the general provision that every dealing in property must be carried out conscientiously and without neglect of the interests of the other partner. One particular rule stated that both partners must acknowledge that any object acquired is not common property but the private possession of the partner whose property was alienated to acquire it. Anything essential to the common economy of the spouses may not be sold without consultation and common agreement and, more generally, each partner may dissolve the disadvantageous contracts entered into by the other. The partners have greater freedom in the disposition of their personal private property: they may, independently of each other, sell or lend it up to the amount of their honour-price—and here the wife is less free than the husband for the honour-price of the wife is usually half that of her husband.

The same preoccupations with property recur in the pro visions regarding divorce. The Irish lawyers (and most of them were clerics) do not moralise about it but rather set to the task of working out an equitable division of the assets between the partners. Since each partner receives back what he/she has contributed in the first instance, the rules concerning division apply only to profits earned and acquisitions made while the marriage contract was in force. In this connection the lawyers hit upon the handy notion of a threefold division between *tír, urgnam, cethra* 'and, labour and capital (livestock)' and, in the first instance, divided the profits equally between the spouses

5. D. Ó Corráin, 'Irish law and canon law', Ní Chatháin & Richter, *Irland und Europa*, 157–66: 163.

in the proportion to which each of them may have supplied these factors of production. The thirds assigned to land and capital are distributed regardless of the conduct of the spouses; but in the case of a divorce in which one partner is innocent and the other guilty, the labour third falls to the innocent party. In this sense, labour may mean either the direct labour of the spouse or the provision of hired labour by meeting the expenses of wages and maintenance of servants out of his/her own resources.[6] These principles are, of course, applied to the division of the principal form of mobile wealth usually possessed by the couple—cattle and other livestock. And they are applied with certain modifications to other assets.

In the division of consumables—dairy products, cured meats, corn and textiles—an additional principle is applied by the lawyers: added value. Here the best example, perhaps, is that of textiles. The woman takes half of all clothing and woven cloth, a third of wool ready and combed for spinning, a sixth of fleeces and sheaves of flax. Textile production is labour intensive and the value of the product is the result of the work done rather than the original worth of the raw materials. The woman's share on divorce reflects this. Indeed, a commentator on the tract states that land is not taken into account in the case of flax and woad because these take up so little ground and because they require so much labour and are so valuable.[7]

The division of dairy products (no doubt salted butter and cheese) is quite complicated the labour third is divided in two portions and the woman (who, of course, has run the dairy) takes one; of the remainder (i.e. one-sixth of the whole) diminishing fractions go to the spouse who supplied the dairy vessels (a matter of considerable importance, for dairy vessels were expensive artifacts produced by highly skilled craftsmen), the husband, and the spouse who provided the dairy workers.[8] Similar principles govern the division of corn in store and cured meat. The legal tracts incidentally provide first class evidence of the importance of the woman's role (as manager and worker) in the rural economy—in dairying, in the production of woollen and linen garments, in caring for farmyard animals (especially the fattening of stall-fed beasts for the table) and in organising the ploughing and reaping of corn (and, no doubt, the feeding of the labourers).

Lánamnas for ferthinchur 'marriage on the man's contribution', represents a different kind of property and contractual arrangement and, in some significant ways, is a different kind of marriage partnership, particularly since in Irish law much of the standing of the partners depended on their property relationship. Here the man provides the bulk of the conjugal property—land, housing and stock—and the woman provides little or nothing. In this instance, if the wife is a lawfully betrothed wife but not a *cétmuinter* (first or principal wife), contracts made by the husband are valid, whether or not his wife knows or consents, but he may not alienate food or clothing,

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6. SEIL 28–29, 31–32 = CIH ii 507–08.
7. SEIL 36-38 = CIH ii 510.
8. SEIL 31–32 = CIH ii 508.

cows or sheep without her consent. What is in question here is the necessities of life and the means of their continued production, and to this degree the interests of this kind of wife are protected. If, however, she is a lawful *cétmuinter* and a woman of equal standing and birth, she may impugn all her husband's foolish contracts and have them dissolved on her behalf by her sureties (for which see below).

On the occasion of divorce, such a woman is considerably worse off than the previous kind of wife. Since she provided neither land nor stock, she must take a much diminished share of the assets acquired whilst the marriage lasted: she takes half of her own handiwork and one-sixth of the dairy produce in store. If she has been a hard worker *(márdéntaid)*, she takes one-ninth of the cattle dropped whilst the marriage contract was in force and one-ninth of the corn and cured meat in store. These portions belong to the 'labour third' of the assets and the implication is that if she were the guilty party, she received very little indeed on parting. Since, apart from this labour third, she is practically without means, the lawyers specify that she is to receive a sack of corn each month from the date of parting to the next Mayday—the time when new contracts, including marriage contracts, were made and the assumption is that she should re-marry as soon as possible.[9]

Lánamnas for bantinchur 'marriage on the woman's contribution', represents the third type of property arrangement in marriage. In this case, the woman inherits an estate in default of sons and marries a man of little or no property. Here there is role reversal: 'in this case the man goes in the track of the woman and the woman in the track of the man'. If the man is what the lawyers call 'a man of service, a head of counsel who checks the home-folk with advice as influential as that of his wife'—a man, therefore, who plays an active role in the management of his wife's estate—he obtains some recompense on the occasion of a divorce: he receives a ninth of the handiwork and of the corn and cured meat in store and one-eighteenth of the dairy produce. Again, if either of the partners is guilty, the innocent one takes the 'labour' portion. If it is a first or principal marriage, all the profits which are not to be assigned to land or capital fall to the innocent party. Apart from that, what each brought to the marriage, each takes away. If the woman owns all the property, the standing of the husband in society is estimated in terms of his wife's status *(enech* 'honour'), unless he is more venerable, better bred or more honourable than she'.[10]

The three categories of marriage described so far are based on property; there were others (as we shall see) but it may be useful to consider these in more detail.

The marriage of the woman of property to a man of less, or in extreme cases, no property is what occurs in a patrilineal society such as that of the early Irish—a society in which estates, offices and ritual roles pass from male to male, ideally from

9. SEIL 45–49, 54–56 = CIH ii 512, 514–15.
10. SEIL 57-62 = CIH ii 515–16. On *enech,* see D. A. Binchy (ed) *Críth gablach,* Mediaeval and Modern Irish Series 11 (Dublin 1941) 84–86.

father to son—when a man has no surviving sons to inherit his property. This happens in about one in five of all cases (the percentage may be somewhat lower in polygynous societies, at least among the nobility who had more access to women) and was not, therefore, a rare occurrence.[11] The daughter (or daughters, and in this instance the estate was divided between them)[12] was called a *banchomarba* 'an heiress'; she inherited a life-interest in her father's estate, she had to get guarantors that she would not alienate it wrongfully and, on her death, it reverted to her father's nearest male relatives (to males within her *gelfhine* or, in default of these, to males within her *derbfhine*). She could not transmit any rights to the estate to her children. A compromise was however possible: she could marry one of the ultimate heirs and preserve an interest for her children, and this appears to be the ancient solution to the problem. This entailed parallel cousin marriage, that she should marry her first cousin or, perhaps less frequently, her second cousin—but such endogamous marriages were forbidden by church law and denounced as incestuous.

The Irish lawyers searched the scriptures and found their answer in the Old Testament. Jewish law, as preserved in Leviticus, forbade marriage with the following relatives: sister, mother, mother's sister, father's sister, son's daughter and daughter's daughter. This leaves the way open for parallel cousin marriage but they went further and cited cases from Old Testament history which proved that the law of God allowed such marriages. In particular, they cited the case of the daughters of Salphaad. Their father died without sons and they demanded an inheritance of land amongst their kin, but the elders objected on the grounds that they would marry outsiders and alienate family land. They approached Moses who consulted God who, in turn, judged their claim to be valid provided they married men of their own tribe. The record of their marriages preserved in the same book of the Old Testament shows that they married the sons of their father's brothers. Here was explicit biblical justification of parallel cousin marriage and divine sanction for marriages contracted with close relatives for reasons of property. The lawyers found further support in the story of Tobias (who married his father's brother's daughter) for the legal opinion that 'all the property of a man who has no son should be given after his death to the husband of his daughter if he is of the same kindred'.[13] *Lánamnas for bantinchur* is not, then,

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11. Jack Goody, *Production and reproduction: a comparative study of the domestic domain,* Cambridge Studies in Social Anthropology 17 (Cambridge, 1976), 86–98, 133–34; cf. SEIL 183–84, 226–27 (where, however, the suggestion that institution of female heirship served over time to raise the standing of women generally must be treated with caution in view of the statistical frequency of this phenomenon in most patrilineal societies).

12. *Hib* 32:19.

13. For the principal texts bearing on this problem see SEIL 129–79; *Celtica* 6 (1963) 234–35; *Hib* 32:9; the legal maxim based on Tobias is taken from the unpublished recension of *Hib* referred to by Wasserschleben, op. cit.171, note (cc); L. Bieler (ed), *The Irish penitentials,* Scriptores Latini Hiberniae 5 (Dublin 1963) 196. The relevant biblical passages are: Nm 27:1–11, 36:5–12, 26:28–34; Jgs 1:12–15; Jos 15:16–19; Tb 6:10, 8:24. See also D. Ó Corráin, 'Irish law and canon law', 157–61. It is interesting to note that the early fifth-century(?) *Lex Dei* (which adduces several bibli-

simply an Indo-European custom which finds its closest comparison in the Greek *epiklēros* and the Indian *putrīka* 'appointed daughter' (as some would argue), but a strategy of heirship in which the needs of the kindred and the demands of the church are neatly balanced. It is important to note, too, that this kind of marriage is not necessarily a first or principal marriage: it can be a secondary union, and is perhaps a pointer to the possible independent behaviour—for pleasure or procreation—of propertied women in early Ireland.

   It is likely, of course, that men marrying heiresses amongst their own kindred possessed some property; but, where there was competition for land amongst males inheriting a family estate (and such competition involved status as well as property),[14] it is reasonable to assume that the usufruct and prospect of possession (at least as far as his heirs were concerned) acquired by a member of the family who married an inheriting kinswoman were taken into account in the division of the paternal estate, and his share diminished accordingly. This would have given rise to a situation where men were heavily dependent on their heiress-wives, but the same circumstances could come about otherwise. A woman could acquire land *ar dúthracht*, by outright gift of her father of land which was his personal (as distinct from) family possession, and women could also possess land which is called *orba cruib 7 shliasta* 'land of hand and thigh'. It is possible (though quite uncertain) that two kinds of land are in question here: land acquired by the woman's own labour and land got as a marriage portion or for some other sexual service, but the precise meaning of the term is not clear from the contexts.[15] Further, it is evident from the canon law that, in certain circumstances, a father could be obliged to give his daughter an estate in land amongst her brothers—at least where there was parallel cousin marriage.[16] And it is perhaps worth remembering that, while Irish society was strongly patrilineal in ideology, such social ideologies are usually modified by individual needs and pressures.

   The general opinion is that *lánamnas comthinchuir* was the normal kind of marriage between persons of property in the seventh and eighth centuries. But how old was that institution? Caesar's brief account of marriage amongst the Gauls appears to refer to two important characteristics which are present in the Irish type: men match the herds which their wives bring as dowries by contributing an equal amount from their own property, and an account is kept of the profits of these conjoint resources (suggesting that each reserved ultimate ownership of what was contributed to the

cal texts later cited to much effect by Irish lawyers), draws on the same text of Numbers in comparing Hebrew and Roman rules of succession: M. Hyamson (ed. & tr.), *Mosaicarum et Romanarum legum collatio* (London 1913) 132–48.

   14. Binchy, *Críth gablach,* lines 143–49; SEIL 155; T.M. Charles-Edwards, 'Kinship, status and the origin of the hide' in *Past & Present* 56 (1972) 3–33, esp. 20.

   15. SEIL137–40, 174–75; Royal Irish Academy, *Dictionary of the Irish language* (Dublin 1983) svv. crob, sliasait.

   16. *Hib* 32:17 (citing appositely Jgs 1:14–15).

marital fund).[17] If this type of marriage is a common Celtic institution, we may have here a hint as to the meaning of *comthinchor* 'common contribution' that the wife brought a dowry *(dos)* in herds and that the husband matched that dowry with a payment to his wife of an equal amount from his own resources *(donatio ex marito)*.[18] One need not, of course, assume that such dowries were always in cattle: we have seen that women could acquire real estate and other kinds of property and the glossators, whatever the value of their opinions on this point, note that land could form part of their marital contribution The equality of husband and wife is matched elsewhere and scholars have argued that the Indo-European peoples had always known a variety of marriage which left the wife her husband's equal partner—and one could compare the Roman marriage without *manus* and the Germanic marriage in which the husband did not acquire his wife's *mundium*.[19]

Whatever about its more remote origins, *lánamnas comthinchuir* owes much to late Roman law as interpreted by pope Leo the Great (†461) and the canonists who followed him. The lawyers specify that the spouses shall be of equal class and equal legal standing in marriage *(mad comsaír comtéchta a cuma lánamnusa)*,[20] and, as we have already seen, the marriage is one which involves a dowry *(dos)* on the part of the woman and a *donatio propter nuptias* on the part of the man. Such are the conditions set out in the letter of 459 of Leo the Great to Rusticus, bishop of Narbonne: the spouses must be free-born equals, the woman must have a dowry, and the marriage must be celebrated publicly *(Nuptiarum autem foedera inter ingenuos sunt legitima et inter aequales … nisi forte illa mulier, et ingenua facta, et dotata legitime, et publicis nuptiis honestata uideatur)*.[21]

The legal background to Leo's pronouncement is somewhat complicated. Two complementary prestations were in use amongst the Romans—a payment by the man and a payment by the wife. The man's payment was known as *donatio ante* (or *propter) nuptias* and, though unregulated in Roman law until the third century of the christian era, it appears to be ancient. In the fifth century, if not earlier, this contribution on the part of the husband was by custom the exact equivalent of the woman's dowry *(dos)*. In Roman society the dowry was what distinguished legitimate marriage from concubinage, though legally a dowry was not a necessary condition of legitimacy. However, in a constitution of 458, the emperor Majorian broke with tra-

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17. Caesar, *De bello gallico,* vi 19.1–2.

18. Paul Collinet, 'Droit celtique et droit romain' in *Rev Celtique* 17 (1896) 321–36.

19. 'Matrimonium', Pauly-Wiissowa, *Realencyclopadie der classischen Altertumswissenschaft* (Stuttgart-Munich, 1894—) 2260-62; Diane Owen Hughes, 'From brideprice to dowry in Mediterrnean Europe', *J Family Hist* 3 (1978) 262–96 esp. 268–69.

20. CIH ii 505 = SEIL 18. The glossators explain these terms as 'comaith a cineal, cen ceillsine .i. is cutruma is dligthech in lanamain-se im genus' (CIH ii 506). Much the same terminology is used of the principal wife in *lánamnas mná for ferthinchur: mad bé cétmunterasa téchta comaith 7 comceníuil* 'if she is a legal principal wife equally "good" and of equal birth' (CIH ii 512 = SEIL 46).

21. PL 54, 1204–05.

dition and insisted that a dowry was necessary in order to contract a valid marriage (a law abrogated by Leo and Severus in 463). The letter of Leo the Great reflects this short-lived state of affairs but it passed rapidly into the canonical tradition. It appears in the collection of Dionysius Exiguus towards the end of the fifth century, in the Hispana in the seventh, and it is cited very fully in the *Hibernensis.*[22] Leo's reference to free-born equals, terms well rendered by the Irish lawyers, has to do with a rule of Roman law: slaves could not contract a valid marriage but lived in a *de facto* relationship called *contubernium,* and the church (as does Leo) followed the practices of secular law as late as the fifth century, though in this instance the pope goes to some lengths to justify his opinions by reference to scripture (Gn 31:10; Gal 4:30).[23]

Apocryphal writings of the seventh century, attributed to Jerome and Augustine, also stress the necessity of a dowry and of public celebration of the nuptials, and some of these texts appear in the Irish collection of canons.[24] The principal specifications of Roman law and canon law are present in *lánamnas comthinchuir* (we shall see that the institution called *urnaidm* met the condition that the marriage be publicly entered into). We must conclude that this kind of marriage, far from being traditional, is a highly innovative product of clerical legal thinking and if, as Thurneysen and Binchy have argued,[25] it was the most frequent—even the normal—type of marriage in the seventh and eighth centuries, we must consider the christian church to have been far more successful in shaping Irish social institutions than we have hitherto thought.

We can trace church influence on *lánamnas for ferthinchur*, which Binchy believes to be 'the oldest form of regular marriage'. Here the wife with fullest rights at law is the first (or principal) legal wife who is equally 'good' and of equal birth *(bé cétmunterasa téchta, comaith 7 comceníuil)*, the very same conditions as those laid down in the letter of Leo the Great.[26]

The legal act by which the most formal type of marriage is established is called *urnaidm,* a term derived from the verb *ar-naisc* 'to bind, pledge, engage'. Cohabitation apart, no other legal act was necessary to establish the marriage though wedding feasts did take place, as we learn from the saga literature. *Urnaidm* was a formal con-

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22. André Lemaire, 'Origine de la règle "Nullum sine dote fiat con jugium"', *Mélanges Paul Fournier* (Paris 1929) 415–24; Hughes, 'From brideprice to dowry', 265; *Hib* 46:19 (wrongly entitled 'Sinodus Narbonensis'). The significant portion of Leo's letter also appears in the Poeniteniale Martenianum: F. W. Wasserschleben, *Bußordnungen der abendländischen Kirche* (Halle1851, repr. Graz 1958) 290.

23. Jean Gaudemet, *L'église dans l'empire romain (IVᵉ–Vᵉ siècles),* Histoire du droit et des institutions de l'église en occident 3 (Paris 1958) 529–30.

24. *Hib* 46:2-3: 'Qualis esse debet uxor, quae habenda est secundum legem, id est, si virgo casta, desponsata in virginitate, si dotata legitime et a parentibus tradita. … Ita secundum legem et evangelium publicis nuptiis honeste in conjugium legitime sumenda . …'; cf. Wasserschleben, *Bußordnungen,* 290.

25. SEIL 20, 125, 210.

26. SEIL 210, 224; SEIL 46=CIH ii 512.

tract: the husband-to-be could act for himself but the woman was represented by her father or, if her father was dead, by the head of her kindred, and the conditions of the marriage covenant were witnessed and their performance guaranteed by various kinds of sureties. These sureties provided a very important protection to the woman in marriage for they could act as her agents in suing out her legal rights; it was they, for example, who dissolved the husband's 'foolish' contracts in *lánamnas for ferthin-chur*.[27] However, it was possible to conclude marriages in a much less formal way: 'recognition' *(aititiu)* of the relationship by the woman's family was quite sufficient to establish a valid marriage.

The contract was further formalized by property exchanges between the man, the woman's family, and the woman. These prestations, which are a normal part of the marriage contract in many early societies, are somewhat complicated because they change over time. The payment made by the man is called *coibche*, a term which first meant 'contract', then 'marriage contract', and finally the prestation by which the marriage contract was put into effect.[28] An early maxim from the gnomic literature states that each father receives his daughter's *coibche* on the occasion of her first marriage—*cach athair a chét-choibche*[29]—and that he receives a decling share in the case of any subsequent marriages. If her father was dead, the head of her immediate family acted instead: he took half her first *coibche* and, like her father, a declining portion of any subsequent payments. The general principle is that the head of her immediate family is always entitled to a share in a woman's marriage payment. This looks as if the father took all of a woman's *coibche* in the case of her first marriage (and this may have been the early custom), but another early text states that when a woman is given a *coibche* secretly in order to defraud her father the sanction is that the whole payment becomes his—a view which suggests that from an early period an increasing portion of the payment fell to the woman herself.

Evidently, she could receive the whole of the *coibche* as a direct payment to herself as early as the seventh and eighth centuries, a development analogous to what happened in the case of similar payments in the Germanic lands. The term, therefore, ranges over time from bridewealth to *donatio propter nuptias*.[30] The amount of the payment is nowhere defined in the classical law tracts, but the commentators state that it was equal to half the honour-price of the woman's father or one-third that of her grandfather; this provision makes good sense, for the honour-price of a daughter

27. SEIL 46=CIH ii 512; CIH i 47, v 1848, SEIL 109–12.

28. Royal Irish Academy, *Dictionary,* 128; R. Thurneysen, 'Die Bürgschaft im irischen Recht', *Abh Preuss Akad Wiss,* Phil Hist Kl. Jhrg 1928 (Berlin 1928) 13; CIH v 2047; SEIL 114–19.

29. Stokes & Meyer (ed), *Archiv fur celtische Lexikagraphie* iii (Halle a.S. 1907) 226; CIH i 294, ii 503.

30. CIH i 222–23, v 1866–67; SEIL 115–17; Hughes, 'Brideprice to dowry', 266–71; cf. J. Goody & S. J. Tambiah, *Bridewealth and dowry,* Cambridge Papers in Social Anthropology 7 (Cambridge 1973) 1–58 (where such payments to women are termed 'indirect dowry' as distinct from 'bridewealth').

was half that of her father and the payment, like that of the ninth-century Saxons, was the equivalent of the legal status of the woman. This may be what the lawyers have in mind when they refer to 'the legal *coibche* paid for a first wife of equal family'.[31]

Another term for the payment of the man is *tindscra,* a term which also undergoes important changes of meaning. In the very early period, it may have meant a payment made to the woman's community when she married outside it, but by the time of the classical law tracts it had come to be used interchangeably with *coibche.* The term occurs notably in an Old-Irish legend of a marriage arrangement between the Irish and some Hebrew maidens which purports to explain why 'the men always "buy" the women in Ireland for in the rest of the world the couples "buy" one another'. The text must therefore refer to the very early period when the bridegroom's payment was the principal marital prestation,[32] but the term eventually came to mean the payment made to the woman and, finally. dowry.

In *lánamnas comthinchuir* it is clear from the law tracts that *coibche* was paid by the man, but it is equally clear that the woman (or rather her family) matched this payment with a dowry of equal value. There seems to be no specific term for this dowry payment other than *leith-tinchor, leith-tionól,* terms which simply mean 'the (equal) contribution of one side'. This may indicate that it was not an institution inherited from remote antiquity. Dowry has important implications for marital arrangements in general. As is the case in *lánamnas comthinchuir,* there tends to be a premium on the equality of contribution between the spouses, special attention is paid to the status of the group the woman marries into and, in the case of polygyny, wives (and very often their offspring) are ranked as primary, secondary or con-cubines in accordance with their assets or the lack of them.[33]

As we have seen, non-dowry marriage was also common in Ireland in the seventh and eighth centuries, but it would seem that it was used to acquire secondary wives, wives of low status and concubines. Amongst the bad contracts in Irish law is 'an excessive *coibche* to a whore . . . a man who gives a large *coibche* to a lewd woman *(baitsech)* whose absolute property he guarantees it to be', and the *baitsech is* defined as 'any woman who engages in illicit intercourse or any woman who aban-dons her marriage without just cause'. Amongst the invalid contracts for which

31. CIH i 46 = v 1847; on the honour price of the daughter, see Binchy, *Críth gablach,* lines 124–27; for the Saxon parallel, see Hughes, 'Bridewealth to dowry', 267.

32. SEIL 119–21; for the aetiological legend, see Vernam Hull, 'The Milesian invasion of Ireland', *Z Celt Philol* 19 (1933) 155–60 (one wonders whether this is a learned comment on Latin *coemptio* as compared with Irish *tindscra* rather than an anthropological observation of other peoples, particularly since the Irish were well aware of Hebrew usage). In a Latin synopsis of the 'Expulsion of the Déissi' (Dublin, Trinity College, MS 1298 (olim H.2.7) 78) the *tindscra* which Óengus paid the Déissi for marriage with their kinswoman (the plain of Femen) is rendered *dos* in Latin—a usage common in Hiberno-Latin texts (see L. Bieler, *Irish penitentials,* 56 (Synodus I Patricii, §22), 90 (Penit. Vinniani, §44), 116 (Penit. Cummeani, ii 29), and this became the usual (but not universal) meaning in the West (Lemaire, 'Origine de la règle', 418–24).

33. Goody & Tambiah, *Bridewealth and dowry,* 18–39.

pledge and surety are of no avail is that of 'land granted as *coibche* to a woman who does not carry out her marital obligations'. According to *Cáin lánamna,* when a man gives a *coibche* (even of his own private possessions) to another woman, whilst he is already married to a first wife who carries out her marital obligations, that *coibche* is forfeit and becomes the property of the first wife—very probably a clerical attempt to control polygyny.[34] It is evident that some of these women were concubines induced to cohabit with the man by being paid to do so, and this kind of concubinary arrangement continued into the later middle ages.[35]

Various sexual unions—permanent, semi-permanent or transitory—are given a legal status in Irish law and the lawyers attempt to classify the relationships in different ways. One text divides women into five classes—three legitimate and two decidedly not so. The legitimate group consists of a first wife with sons, a first wife without sons and 'a woman who is recognised and betrothed by her family': the duties and liabilities of all three in respect of their natal kin and their husband's family are clearly fixed by law, and the more formal the marriage the closer they are bound to their husband's kin. The other group consists of the 'woman who is recognised but who is not betrothed nor ordered (into the relationship by her kin)' and the 'woman who has been abducted in defiance of her father or family': these women are much less closely bound to their 'husbands' and, in the case of the latter, her natal family takes all her assets and her partner bears all her liabilities.[36] Elsewhere, the lawyers list the woman who is induced into a sexual relationship by the man and the woman who is visited regularly by the man but who is without common household or property provision. Amongst the lowest of sexual unions, occupying a position just above rape and copulation with an unconscious woman, is the marriage of wandering mercenaries.[37] It is possible that we have here an echo of Roman law—early imperial law (a rule apparently abrogated by Septimus Severus) forbade soldiers to marry and soldiering rendered a previous marriage invalid.

Far stricter rules of marriage applied to the mandarin class—the clerics, judges, poets and other learned persons of high status in early Irish society—and to church tenants, who had a para-clerical status. The canon lawyers applied the levitical rule that the mandarin class should marry only virgins and should strictly avoid the

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34. CIH i 221, 233, 25, ii 513 = v 1809 = SEIL 49.

35. Katharine Simms, 'The legal position of Irishwomen in the later middle ages' , *Ir Jurist* 10 (1975) 96–111; cf. 'Item ordine est et estabile que nul alliance par marriage compaternitie nurtur de enfantz concubinance ou de caif (*vl.* caise) ne de altre manere soit fait …, James Hardiman (ed), 'A statute … enacted in a parliament … in Kilkenny', in *Tracts relating to Ireland* ii (Dublin 1843) 8. Swayne's Register (cited, Simms, loc. cit. 101) actually reads *cayf alias choghie* which are dialectal variants of *coitbhe* (I owe this information to Mr K. W. Nicholls). It would seem that all instances of 'caif' derive from *coibche.*

36. R. Thurneysen, 'Irisches Recht', *Abh Preuss Akad Wiss,* Jhg 1931 (Berlin 1931) 27–28.

37. SEIL 16.

widow, the divorcée and the whore. They were allowed one wife only and they could not remarry if that wife died. In regard to the poet an early law tract states: 'The *ollam* proclaims him on the grounds of his compositions, his guiltlessness and his purity, i.e. purity of learning, purity of speech … and purity of body, that he have but one wife, for one perishes from illicit cohabitation, aside from one chaste woman on lawful nights'. The times at which sexual intercourse with his wife is forbidden the mandarin are specified in the canonistic collections: continence was obligatory during Lent, Advent and the forty days after Pentecost, on Wednesdays, Fridays, Saturdays and Sundays and on major festivals. Conjugal continence was also obligatory during pregnancy, that is, from the time the child first moves in the womb until birth; and after birth a lengthy purification period, based on, but not exactly reproducing, the prescriptions of the Old Testament (Lv 12:14), is to be observed—thirty-six days in the case of a male child, forty-six in the case of a female.[38] Some of these restrictions on conjugal sexuality are adumbrated by Augustine and Ambrosiaster but they were greatly expanded by the authors of the penitentials. It is clear that an attempt was made to extend some of these stricter rules to the laity at large—*flatha, filidh, feine fobenaither fria coiblighe giabhair* 'lords, poets, commoners are impaired by illicit cohabitation'[39]—but evidently without much success.

In general, the rules applied to the laity (or at least the customs of the laity as reported by the lawyers) were much laxer, and here divorce and remarriage were allowed. Divorce by mutual consent was always available as a remedy for an unsatisfactory marriage. Besides, the grounds for unilateral divorce (with or without penalties being incurred by the guilty party) are specified in very considerable detail. A woman could divorce her husband for many reasons: sterility, impotence, being a churchman (whether in holy orders or not), blabbing about the marriage bed, calumniation, wife-beating, repudiation (including taking a secondary wife), homosexuality, failure of maintenance. A man could divorce his wife for abortion, infanticide, flagrant infidelity, infertility, and bad management. Insanity, chronic illness, a wound that was incurable in the opinion of a judge, leech or lord, retirement into a monastery or going abroad on pilgrimage were adequate grounds for terminating a marriage.[40]

Against the background of Late Antiquity and the conflicting rules of Roman and barbaric law extending to a much later period, and given the uncertainties of the councils of the fourth and fifth centuries, the Irish rules concerning divorce are not at all unusual. Late Roman law regarded marriage as being capable of dissolution by

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38. On the purity of the poet, see CIH vi 2337, iii 960, ii 559, cf. ii 550, iii 1114, vi 2224; *Hib* 46:11, Bieler, *Irish penitentials,* 223, 265. Donnchadh Ó Corráin, Liam Breatnach and Aidan Breen, 'The laws of the Irish', *Peritia* 3 (1984) 382–438.

39. CIH ii 725-26, iii 1113; cf. iv 1467, 1480.

40. CIH i 4–5 = v 1823–24 = v 1883; i 47-48 = v 1848; i 48; CIH vi 2198 = R. Thurneysen, 'Die falschen Urteilsspruche Caratnia's', *Z Celt Philol* 15 (1925) 302–76: 356. For commentary on these texts, see SEIL 235–68.

consent *(ex consensu)* or unilaterally *(repudium).* In the latter case, sickness, insanity, sterility, impotence, and adultery of the wife were all adequate grounds. Captivity and enslavement allowed the free partner to remarry: in Irish law, removal *(inscuchad)* ended cohabitation and broke the bond. It is interesting to note that the letter of divorce *(libellus repudii)* became the most common divorce form under Theodosius II and Valerian III in the first half of the fifth century; the Irish canon lawyers cite the Mosaic law in this respect in some detail (Dt 24:1-4), and may well be doing so to justify an institution they were familiar with from late Roman law and custom.[41]

It is worth remembering that the last great work of the principal patristic theoretician of christian marriage, Augustine (I refer to *De nuptiis et concupiscentia),* was published only eleven years before the first date in Irish church history—AD 431—when Palladius was sent to an Ireland already christian in part (if not sufficiently self-confident to be heretical as well). It seems highly likely that much of the Roman legal framework in matters relating to marriage was brought into Ireland by missionaries who could not have been familiar with Augustinian thought on marriage, and they may also have brought with them the prudent tolerance in regard to divorce and remarriage which one observes in the decisions of the synods of the fifth century.[42] On the other hand, the Irish *literati* of the seventh century—and perhaps much earlier—were extremely well informed in regard to patristics and when they came to illustrate their rules of marriage they were able to draw on a rich library of the church fathers, stretching from Hermas through Augustine, Jerome, Leo the Great and Caesarius of Arles to Isidore of Seville.[43] These texts provide the rigorist theory—the counsels of perfection—but the practice was more latitudinarian, as it was everywhere.

In continental Europe from the early sixth century marriage became more and more a matter for the church and its legislation, legislation which manifested a strong internal dynamic and a marked tendency towards radical innovation in regard to kindred, marriage tabus, concubinage, divorce, adoption and inheritance as well as in the more strictly theological field.[44] Between the end of the ninth century and the first half of the eleventh the church established its exclusive competence in regard to the whole of marriage law—the legal conditions of the contract, the duties of the spouses and the indissoluble nature of the marriage bond—and its legislation was collected and refined by the canon lawyers of the eleventh and twelfth centuries.[45] When the

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41. Pauly-Wissowa, *Realencyclopädie,* 2272–81; *Hib* 46:8–10.

42. Gaudemet, *L'église,* 544.

43. *Hib* 45–46.

44. Goody, *Development of marriage and the family in Europe,* 34–102. The view that the Irish laws 'provide the most detailed evidence we have of family law in pre-Christian Europe' (41) is not sustainable.

45. Jean Gaudemet, 'Le mariage dans l'Europe occidentale au moyen âge' in *XVe congres international des sciences historiques: rapports* iii (Bucharest 1980) 79–84.

twelfth-century reformers encountered Irish marital customs they found them out-landish, barbaric and utterly corrupt. In fact, they were neither the relics of pagan barbarism nor proof of Irish degeneracy: they were very old-fashioned, and were to appear even more so –as the Irish clung to them until the end of the middle ages.

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