

NEVER THE TWAIN SHALL PART: A
COMPARISON AND ANALYSIS OF IRISH AND
ENGLISH MARRIAGE LAWS FOLLOWING THE
ENGLISH CONQUEST OF IRELAND.

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CHAPTER I

A HISTORIOGRAPHY OF THE TUDOR CONQUEST OF IRELAND

The expansion of English rule into Ireland during the reign of the Tudors has generated a tremendous amount of historical writing. Within this subject, several schools of thought have emerged. One has examined the English invasion in light of the Tudors themselves. These historians have discussed the way the invasion affected the English political situation and the effect of the wars on England's economic circumstances. The second group has examined the same invasion from the standpoint of the Irish, noting the destruction wrought and the complete shift in culture and governmental structure which occurred. Thirdly, some historians have examined the cultural exchanges of both peoples, noting the effects on language and the perceptions of the Irish throughout this period. This final group has examined specific aspects of the question, such as the incidents surrounding certain counties, the effects on the religious orders, and the experiences of the conquerors.

This chapter will present a detailed examination of each of the above interpretations, discussing both their strong points and shortcomings.

This will establish some of the prevailing trends in the historiography of the Tudors in Ireland.

Finally, the chapter will conclude with a discussion of the application of these interpretations to the topic of the thesis: marriage laws in Ireland and England.

This chapter will present a detailed examination of each of the above interpretations, discussing both their strong points and shortcomings. The works covered within this chapter represent the continuing nature of this scholarship, as they span a variety of publishing dates, from the early 1900's to the 2000's. This discussion will establish some of the prevailing trends in the historiography of the Tudors in Ireland. Finally, the chapter will conclude with a discussion of the application of these interpretations to the topic of the thesis: marriage laws in Ireland and England.

The first group of historians supported the English attempts to colonize Ireland. Cyril Falls, Nicholas Canny, and Grenfell Morton portrayed the Irish as being a threat to the security of England and further justified the colonization by glorifying it as the crowning achievement of Elizabeth's reign.¹ Among the reasons given by those who supported the English was the belief that that the Irish were inferior to the English in almost every way.² Though Irish culture had a few good qualities, these were not enough to redeem it in the eyes of these authors. In addition to glorifying Elizabeth, Nicholas Canny denigrated the military abilities of two of the most famous, or infamous, men of the period, Shane O'Neill and Hugh O'Donnell. The consensus held

¹ Cyril Falls, *Elizabeth's Irish Wars*. (New York: Barnes and Noble, 1950); Nicholas P. Canny, *Elizabethan Conquest of Ireland: A Pattern Established, 1565-76* (Galway: Harvester 1976); Grenfell Morton, *Elizabethan Ireland* (Belfast: Queen's University, 1971).

² Falls; Canny, 1-28; Morton, 3-13.

that, though these men were considered by some to be military geniuses, in actuality the English generals, and not the Irish rebels, deserved that title.³

Several themes emerged justifying the English presence in Ireland. First, there was the argument that the English colonization of Ireland was necessary due to the attitudes of the Irish themselves. Morton and Canny described Gaelic society as being backward and in need of reformation. They maintained that the Irish lords were tyrants who oppressed the peasantry and extracted exorbitant protection rates from anyone who crossed through their lands. Also, they hindered the growth of the towns, by taking part of the proceeds from the goods that passed through the towns.⁴ Morton also claimed that in addition to the rents, the lords were supported in other ways by the peasantry.⁵ One of the examples given by Morton was the requirement that the peasants maintain the lord's retinue as well as the lord. In order to perform this obligation, the peasantry paid various taxes that would be used to supply the lord's army and those who travelled with the soldiers.⁶ These financial obligations were seen as both unfair and tyrannical by Morton.

This oppression by the Irish lords, Morton claimed, rendered the Irish peasantry one of the most desperate groups of people on the earth at this time, because they had no higher authority to appeal to should their lord take undue advantage of them. Thus, many Irish welcomed the new English system of landlords and rents, because it saved them from the arbitrary nature of their

³ Canny, 30-44.

⁴ Morton, 3-13; Canny, 1-28.

⁵ Morton, 10.

⁶ Morton, 10.

own people. Furthermore, with the introduction of the rule of the Queen, they now had someone higher than their lord to whom they could make appeals.⁷

Morton next maintained that the corruption of Irish society not only necessitated its reform at the hands of the English, it also implied the means that would be used. The English plantation system, whereby English lords and colonists would replace local Irish lords and their native tenants, was required because the troublesome Irish lords refused to cooperate with the English. Morton explained that this refusal to cooperate necessitated a forceful policy in order to tame the dangerous frontier. Morton was referring to several notable Irish lords, chiefly the O'Mores, the O'Dempseys, and the O'Connors, who were creating trouble for the English, in spite of the English habit of paying them a form of medieval protection money. In addition to these families, particular individuals also gave the English fits. Morton also mentioned a man named Brian O'Connor, who had abducted the Lord Deputy in 1528.⁸

Cyril Falls and William Palmer, historians who also supported English colonization, have examined the importance of Ireland to England's national security. These historians shared the concerns of the Englishmen about whom they wrote, believing that if Ireland had allied itself with Spain, or any one of England's numerous other enemies, England and her queen Elizabeth would surely have faced destruction. Thus, Ireland had to be pacified via any means necessary, in order to secure the safety of England.⁹ This possible security threat was not an idle one.

⁷ Morton, 3-13; Canny, 1-28.

⁸ Morton, 3-13.

⁹ Falls, 153-168, 292-304; William Palmer, *The Problem of Ireland in Tudor Foreign Policy, 1485-1603* (Woodbridge, Suffolk: Boydell Press, 1994), 139-143.

According to William Palmer, Irish rebels have maintained a tradition of seeking outside aid in their wars with England.¹⁰ Furthermore, their relations with the neighboring countries, particularly France, influenced Irish policy under all of the Tudors. Palmer again described how the four stages of the Tudors' foreign policy fluctuated, due to either good or bad relations with England's Catholic neighbors. When France was preoccupied with affairs in Italy, for example, Henry VIII left Ireland alone. Conversely, when France threatened to invade England, via Ireland, the English monarchy stepped up its security measures and renewed its efforts to subdue the island.¹¹

Morton particularly emphasized the role that Irish rebellion played in Elizabethan foreign policy. He has argued that under Queen Elizabeth, the reconquest of Ireland became of utmost importance, because of the upsurge in Irish resistance as evidenced by the rebellion of Shane O'Neill. Previous Tudor rulers, Queen Mary I and Edward IV, had established a precedent whereby Irish resistance would lead to a harsher policy on the part of the English. Such a policy was enacted following O'Neill's rebellion, which led to the destruction of the O'Neill's authority, and the establishment of the first Elizabethan plantations in Ireland.¹²

Finally, according to those historians who supported the English, the complete conquest of Ireland was necessitated by the continuing rebellions. Though Shane O'Neill was the most famous of the Irish rebels, he was certainly not the last. Morton explained that Shane's rebellion had shown the Dublin administration that pacifying Ireland would require a tremendous amount of effort on the part of the colonizing English. This fact was brought home

¹⁰ Palmer, 140.

¹¹ Palmer, 139-143.

¹² Morton, 23, 33.

time and again throughout the many rebellions which followed Elizabeth's attempts to re-take Ireland. Chief among the rebellions, after that of Shane O'Neill, was the rebellion led by the Earl of Desmond. It began as the result of a conflict between the two Anglo-Irish lords, the Desmonds and the Ormonds. Their war soon involved all of Ireland, and drew in the English soldiers as well, as one side supported the English and the other supported the Gaelic Irish. Though the rebellion was both costly and time consuming, the English eventually prevailed. The massacre at Smerwick effectively ended the rebellion. Morton placed most of the blame for the massacre on the English administration, its lack of resources, and the general fear that the Irish and their allies would succeed in bringing harm to England. He also claimed that, though the episode itself was cruel and unnecessary, the final cause was Elizabeth's stinginess in supplying her ministers, rather than the overall policy which had prevailed up to this time.¹³

Yet another group of historians, favoring neither the English nor the Irish, have discussed the impressions that the colonized people made on their colonizers. For example, the authors Brendan Bradshaw, Andrew Hadfield and Wiley Maley have edited a work, *Representing Ireland: Literature and the Origins of Conflict 1534-1660*, which discussed the formation of Irish stereotypes as evidenced within the literature of the period. One of the essays by John Gillingham traced the origins of the anti-Irish stereotype to the twelfth century author Gerald de Barri, who described the Irish as barbarians who needed to be reformed. De Barri believed that the Irish were pagans, and further argued that they were both ideologically and racially inferior to the English. De Barri also espoused the view that the Irish were permanently developmentally delayed, and would likely not attain the status of their English neighbors. Thus,

¹³ Morton, 49-59.

the majority of the Irish were to be exterminated, with the survivors existing as a subservient, possibly subhuman, class of laborers.¹⁴

Gillingham thought that the English settlers in Ireland at the time of the writing, and those who would come after, read de Barri's work and as a result came to have a sense of themselves as superior English, while agreeing with de Barri's assessment of the native population. They came to see the Irish as pagan, inferior barbarians who would never achieve the civil, cultural, and religious, superiority of their English conquerors without the application of force. Furthermore, the notion that the Irish could not be governed until they were first "tamed" suggested not only a perception of the Irish as being not quite human, but also, gave free reign to the colonizer to behave in ways that would not be condoned in the rest of Europe. This idea was advocated by de Barri and later espoused, echoed, and practiced by the Tudor colonizers.¹⁵

Two other historians, Shirley Adawy Peart and David B. Quinn, have also examined the stereotypes concerning the Irish, and both seemed to favor neither the Irish nor the English. These two authors, along with Gillingham, have shown that the stereotypes concerning the Irish were numerous and varied. Though the accusations varied, there were consistent themes which ran throughout the different forms of propaganda which the English generated.¹⁶ Peart concluded from her analysis of these themes that the first perception was that of the Irish as the

¹⁴ John Gillingham, "The English Invasion of Ireland," in *Representing Ireland: Literature and the Origins of Conflict 1534-1660*, ed. Brendon Bradshaw, Andrew Hadfield, and Willy Maley. (Cambridge: Cambridge University Press, 1993), 27.

¹⁵ Gillingham, 27.

¹⁶ Gillingham, 27; Shirley Adawy Peart, *English Images of the Irish, 1570-1620* (Lewiston, New York: 2002); David B. Quinn, *The Elizabethans and the Irish* (Ithaca, New York: Cornell University Press, 1966).

disordered body.¹⁷ The English believed that the body was the location for passions, while the head was the location of reason. Furthermore, the state was also considered to be the body, in a metaphorical sense, ruled over by the head, or monarch. In yet another way, the wife, and women in general, were believed to have the same emotions as the metaphorical body, and therefore they needed to be ruled over by a rational head, their husband. Thus, the Irish were compared to a disordered body, because they refuse to be ruled by the head, the monarch of England.¹⁸

Besides being described as unruly bodies, filthy, lazy, and immoral, the Irish were also seen to have similar characteristics as women and children, who were in turn compared to unruly bodies. Like women and children, the Irish required a firm hand to keep them in order. The land was also personified; it was often described as a bride that needed a husband.¹⁹ Finally, the Irish were seen as monsters, or animals, in particular they were seen as the many headed Hydra, or a stubborn colt.²⁰ In each of these views, the emphasis was on the fact that the Irish were the heathen 'other', not quite human, perhaps possibly animal, and certainly not capable of the rational thoughts of the English.

David Quinn, another historian who examined stereotypes, discussed the stereotypes that portrayed the Irish as being dirty savages with loose morals. Many of the contemporary English authors portrayed the Irish first of all as being unclean. Of particular concern to these authors

¹⁷ Peart, 43-54.

¹⁸ Peart, 43-54.

¹⁹ Peart, 143-160.

²⁰ Peart, 220-239.

was the unsanitary nature of the Irish cooking habits, which included straining milk with straw, and boiling meat not in a pot but rather in the skin of the animal from which the meat had come. In addition to their unique eating habits, the Irish received criticism for their choice of foods. They ate curdled milk, an abundance of vegetables, almost no bread, and they were moderate in their consumption of meats. They used oats for their grain, as opposed to the traditional wheat and rye used in England.²¹ Quinn explained that the English also declared that the Irish were lazy, due to their habit of raising cattle, and immoral.²²

Quinn further maintained that the English found ample evidence of this immorality when they examined Gaelic marriage practices.²³ Under Gaelic law, a married couple could go through a probationary period that lasted a year and a day. At any time within the specified probationary period, either party could choose to dissolve the marriage, for any reason and the other party would be obliged to comply. In addition, the husband would commonly give his wife a portion of the fee that he paid to the judges for the annulment of the marriage.²⁴ To the religious and patriarchal English, such a custom must surely have seemed barbarous indeed. Ironically, the only area of Irish culture and cuisine that appealed to the English was, perhaps predictably, the Irish whiskey. Indeed, the English authors were full of praise for the *uisce beathadh*, though even with the praise came criticism.

²¹Quinn, 62-66.

²²Quinn, 76.

²³Quinn, 80-81.

²⁴Quinn, 81.

Quinn believed that the stereotype of the drunken Irish came from these writings, which attested that the Irish men, women and children, all drank an excess of whiskey. Besides their culinary habits and their morality, the Irish standard of cleanliness received criticism from the English, who accused the Irish of having lice and of general uncleanness.²⁵ However, not all stereotypes of the Irish were negative. They were seen to have a very high tolerance for pain, and to be very loyal to their friends, though a terror to their enemies. In short, they could be the best people on earth or the worst.²⁶

Quinn has also focused on other contemporary English reactions to the Irish, which attacked them on the grounds of their religion. Many English writers from the sixteenth century accused the Irish of being pagans because they were Catholics, or, conversely, because they did not seem to be as concerned with God and the possibility of an afterlife as their English critics. Yet another perception continuing in the same vein was that the Irish were barbarians, as evidenced by the mutilation that was carried out against the bodies of fallen English soldiers. The English accused the Irish of being nomads, tyrannical landlords who oppressed the poor, and, perhaps worst of all, in the eyes of the English, wasteful with the land, choosing to leave the bulk of it uncultivated and unsuitable due to the proliferation of forests and bogs. The English used these perceptions to justify their colonization of the island and subjugation of its inhabitants.²⁷

Though the bulk of historians who wrote in English focused on the English side of the question, at least two have written about the Irish side: Alice Stopford Green and Mary O'Dowd. The two

²⁵ Quinn, 67-69.

²⁶ Quinn, 89-90.

²⁷ Quinn, 80-87; Morton, 3-13.

historians argued two key points: Irish culture was decimated by the English, and Irish religion, i.e. Catholicism, was likewise under threat from the Tudors.

Alice Green, noticeably sympathetic toward the Irish, maintained that the Irish culture was attacked by the English. She claimed that the Irish people had a great civilization prior to the coming of the British. Green supported this claim by showing that they had a place among the other nations of the world, and referencing the numerous commentaries that described Ireland as being a prosperous and rich country. The Irish were known throughout the world for their harbors as well as their extensive trade. Their towns were prosperous and modern, home to merchants, apprentices and educated individuals. They conducted numerous fairs and imported vast amounts of goods from everywhere in the world, simultaneously exporting their own produce. In short, Green asserted, Ireland prior to the Tudors was an international player, involved in commerce and trade.²⁸

The Irish people also lived very well. The great lords and ladies were known for their fine clothes, and even the rural people appeared to have dressed comfortably. The Irish cloaks, so scorned by the English, were, prior to the coming of the Tudors, quite popular throughout Europe.²⁹

²⁸ Alice Stopford Green, *The Making of Ireland and Its Undoing, 1200-1600* (London: Macmillan, 1908), 1-44.

²⁹ Green, 44-72.

Irish culture was also justified. They had a love of learning and an appreciation for poetry and history, which ensured that individuals who were knowledgeable or skilled in those areas had a high place in Irish society. Their country people were also looked after, under egalitarian laws that ensured that everyone had a voice. Country schools existed, as well as urban, which provided a universal system of education. Women, too, were educated and many of them came to be known for their knowledge.³⁰

The Irish studied Latin and English, and there was a blending of the two cultures, English and Irish, into a group that came to be known as the Anglo-Irish. In keeping with their love of learning, Green maintained, that the Irish even attempted to establish a national university, though this was never accomplished.³¹ Thus, Green concluded, Ireland prior to the Tudors, epitomized success: the country was wealthy, the people were educated, and the culture was thriving.³² All of this would change, according to Green, following the arrival of the English.

Not content with subduing the Irish people through force alone, the English also turned their attention to the Irish educational system, Green asserted. She maintained that the difficulty faced by modern scholars in understanding the extent of the Irish educational system rests at the feet of the English, because they destroyed the Irish schools and a great part of the manuscripts. She noted that those Irish who insisted upon getting an education had to attend

³⁰ Green, 235-265.

³¹ Green, 235-265.

³² Green, 463.

universities outside the country, as the English would not permit the Irish to have a university. Thus, the Irish were deprived of their educational system, their culture, and their livelihood.³³

Green also addressed the origins of many of the myths which grew up around the Irish and their culture. She believed that the myths began at the same time as the conquest, and that they originated as a means for the colonizers to justify their actions. If the Irish were seen as savages, inhuman, lazy, and the multitude of other charges that were leveled against them, then the English had every right to take their land, so the argument ran.³⁴

Thus, Green's work was dedicated to a vindication of the Irish experience. She painted them as an enlightened, almost egalitarian utopia, wherein everyone, even women and peasants, two of the groups typically derided by most societies, were sheltered and helped. Therefore, Green saw the English establishment of a colony within Ireland as particularly tragic, as she believed that the English had robbed the Irish of their heritage. In order to establish this, she focused on the destruction brought by the English, particularly the effect of the colonization on the Irish culture, and the myths perpetuated by the English about the Irish. Green concluded her analysis as she had begun, by insisting that the saintly Irish were victimized by the demonic English,

Even most Irish centered historians have not shared Green's rosy view of the Gaelic Irish society.

Mary O'Dowd, an example of this group, has argued that Ireland was largely a primitive,

³³ Green, 439-490.

³⁴ Green, 459-495.

agricultural society, ruled over by local landlords who could be oppressive. Furthermore, its economy was growing, but it was often hampered by its own people, the O'Malley pirates, for example. Also, O'Dowd pointed out, far from being a united island destroyed by the English onslaught, many of the local Irish chiefs were willing to work with the English newcomers to advance their own positions, irrespective of the overall fate of their country. Thus, Green's rosy, idealistic picture has been balanced by one which allowed for a more practical understanding of the available sources—which, admittedly, remained scarce.³⁵

In addition to these clear-cut debates, authored by historians who were loyal to one country or the other, numerous works have been published which deal with the nuances of the relations between the Tudors and the Irish. *The Age of Atrocity*, a collection of essays, was particularly noteworthy for its discussion of violence throughout the fifteenth and sixteenth centuries, known as the "Age of Atrocity," a time when much of the violence, though considered extraordinary by today's standards, was commonplace for that era.³⁶ The compilers of the volume also stressed the fact that even in the sixteenth century people had notions of extreme violence, and carefully outlined criteria that allowed for a categorization and a determination of attacks that were provoked and those that were not.³⁷

³⁵ Mary O'Dowd, "Gaelic Economy and Society," in *Natives and Newcomers: Essays on the Making of Irish Colonial Society, 1534-1641*, ed. Ciaran Brady and Raymond Gillespie (Bungay, Suffolk: The Chaucer Press, 1986), 120-148.

³⁶ Clodagh Tait, David Edwards, and Padraig Lenihan, "Early Modern Ireland: A History of Violence," in *Age of Atrocity: Violence and Political Conflict in Early Modern Ireland*, ed. David Edwards, Padraig Lenihan and Clodagh Tait (Dublin: Four Courts Press, 2007), 9-34.

³⁷Tait, 9-34.

Other works in the volume discussed the various uses of violence and the ways in which religious violence was used as propaganda by both sides.³⁸ Numerous other works have also examined the issues in localized form. The themes were many and varied, ranging from Brendon Bradshaw's study of the reaction to the destruction of the religious orders, to Christopher Maginn's analysis of the transformation of the formerly Gaelic town of Leicester, to John D. Crawford's research on the Anglicization of Irish government.³⁹ Research conducted along the same lines included Pauline Henley's analysis of Edmund Spenser and his effect on Irish policy, Edward Martin Hinton's biography of numerous English authors of the period which sought to provide background sketches into the lives of the people responsible for creating some of the most enduring stereotypes of the Irish, and Ciaran Brady's discussion of the fate of the Irish reform movement.⁴⁰

In addition to the above works, many authors have concerned themselves with Irish women's issues during this period and beyond. Specifically, they have examined, the Irish views of their own women and the contrasting experiences of Gaelic Irish and Anglo-Irish women. By and

³⁸ David Edwards, Padraig Lenihan and Clodagh Tait, ed. *Age of Atrocity: Violence and Political Conflict in Early Modern Ireland* (Dublin: Four Courts Press, 2007).

³⁹ Brendon Bradshaw, *The Dissolution of the Religious Orders In Ireland Under Henry VIII* (Cambridge: Cambridge University Press, 1974); Christopher Maginn, 'Civilizing' *Gaelic Leinster: The Extension of Tudor Rule in the O'Byrne and O'Toole Lordships* (Dublin: Four Courts Press, 1994); Jon G. Crawford, *Anglicizing the Government of Ireland: The Irish Privy Council and the Expansion of Tudor Rule, 155-1578* (Dublin: Irish Academic Press, 1993).

⁴⁰ Pauline Henley, *Spenser in Ireland* (Cork, Ireland: Cork University Press, 1928); Edward Martin Hinton, *Ireland Through Tudor Eyes* (Philadelphia: University of Pennsylvania Press, 1935); Ciaran Brady, *The Chief Governors: The Rise and Fall of Reform Government in Tudor Ireland, 1536-1588* (Cambridge: Cambridge University Press, 1994).

large, these works drew the same conclusions concerning Gaelic culture as the above noted authors who found fault with the system.

A general analysis of Gaelic Irish women's issues was the primary focus of these historians. A prime example of such a work was Lisa Bitel's *Land of Women*.⁴¹ This study examined the Irish view of women as exemplified through the *literati*, the men who wrote the laws and literary works of Ireland, during the years AD 700 through 1170. Though women were marginalized legally, economically, and socially, Bitel maintained they found ways around this marginalization and created meaningful lives for themselves, often with the aid of the very people who traditionally exploited them, their men. These men were the authors of the documents which helped to place the numerous restrictions on women. Oftentimes, the *literati* were the only literate individuals in their communities. Though clerics or laity, the *literati* agreed in their assessment of women.

Bitel explained that, in making their assessment, these men pondered numerous questions, chief among them the issue of the nature of women. Who, or sometimes what, was she? Scholars in early Ireland debated every aspect of a woman's being, from her nature to her place in society. They argued over whether a woman was a human, animal, an ambassador from an otherworldly plain, or a mix of all three. The general consensus was that women were indeed humans, but that they contained personality traits that were similar to animals, as seen in the belief that women went into heat and were especially prone to violence following childbirth,

⁴¹ Lisa Bitel. *Land of Women: Tales of Sex and Gender in Early Ireland* (London: Cornell University Press, 1996).

and the belief that women possessed behavioral characteristics similar to beings from the other realm, as evidenced by their uncontrollable sexuality. Furthermore, the early Irish *literati* used these beliefs to justify the suppression of women, arguing that they failed to transform into men during puberty and were therefore less than the ideal and thus did not deserve as many rights. Bitel also discussed the reasons behind men's curiosity about women. The two groups were required to live together, so it was necessary for each to know something about the other.⁴²

Though the *literati* and, one could assume, male society at large, viewed women with a mixture of curiosity and confusion, they were not as openly hostile to the females among them as one might suppose would be the case, Bitel stressed. For example, women were given freedom in choosing their marriage partners. Though the parents usually arranged the marriages, the children could, and often did, take the matter into their own hands. If they created legal unions, all was well, if they simply eloped, they usually ended up dead, or so said the *literati*. In addition to this freedom, many women also enjoyed great freedom after they were married. Women could also receive greater freedoms by joining a religious order. Furthermore, they could attain respect, albeit a kind more akin to fear than admiration, by maintaining friendships with other women, becoming warriors, or engaging in sorcery.⁴³ Throughout the work, Bitel strove to establish the resiliency of women. Even when faced with legalized oppression, Bitel maintained, they found meaningful ways of expressing themselves and contributing to society.

⁴² Bitel. *Land of Women*, 18-39.

⁴³ Bitel.

Historians have also examined the differing experiences of Gaelic Irish and Anglo-Irish women during this period. Gillian Kenny claimed that, throughout the Tudor era, women's experiences in Ireland depended upon two things: their location and their marriage status. Thus, their experiences were defined by whether they dwelt in the Gaelic or the Anglo portion of the country, and whether they were married, single, or widowed.⁴⁴

Single Irish women were best served if they lived in the Anglo-Irish areas of the country, because these areas were under the influence of the English common law and its accompanying traditions. Under this system, single women were afforded certain rights. Kenny explained that these women, who were known as *femmes soles*, could participate in the craft guilds, become citizens of a town, and produce and sell their own goods. They could also serve as laborers to support themselves. Furthermore, single women who inherited property had a say in the disposal of that property, and they used this ability to garner influence. Such examples were rare, however. Kenny noted that many Anglo-Irish noblewomen were not so fortunate, as they were frequently married off before they could inherit. Another problem concerned the inheritance practices of the Anglo-Irish. If a man had multiple children, his property would be divided between them upon his death, which would reduce the amount of land available to an heiress, and thus reduce her influence.⁴⁵

Within the Gaelic sections of the country, single women did not fare so well as their Anglo-Irish sisters, as Kenny illustrated. Women in Gaelic Ireland were considered the dependents of their

⁴⁴ Gillian Kenny, *Anglo-Irish and Gaelic Women in Ireland c. 1170-1540* (Dublin: Four Courts Press, 2007).

⁴⁵ Kenny, *Anglo-Irish and Gaelic Women*, 15-34.

kin until they married; no legal or cultural provisions existed for the concept of an independent unmarried woman. Thus, any women who remained unmarried, either by choice or because she was considered unmarriageable due to a disability, would remain within her kin group and continue to be subordinate to them.⁴⁶

The experiences of married and widowed women likewise differed in relation to the system under which they lived. If a Gaelic woman was a first wife with property equal to her husband then she had numerous rights, which included a right to veto her husband's decisions, manage her own property, and further her influence. She could also divorce her husband for a number of reasons, including abuse. Conversely, the rights of the Anglo-Irish married woman were sharply curtailed. Though she was entitled to an inheritance upon her husband's death, known as the dower, and a portion of their joint lands, the jointure, she had almost no say over the maintenance or use of her goods or dowry, which came under the control of her husband upon the marriage. Furthermore, the Anglo-Irish woman was forced to resort to church courts if she wished to get her marriage annulled. Though there were rules to protect both her and her property, they were not as lenient as those which existed for the Gaelic Irish. Thus, the Gaelic Irish wives had considerable more authority than their Anglo-Irish sisters, though Kenny provided examples of powerful Anglo-Irish wives as well. However, in a curious shift, Anglo-Irish widows received the same rights as their married Gaelic Irish sisters: they received an inheritance and could now control their property. They also managed the affairs of their late husbands and often acted as executors of the wills. Gaelic Irish widows did not have such rights, and instead were reduced to the dependency of their former unmarried years. Finally,

⁴⁶ Kenny, 34-38.

intermarriages resulted in conflicts and a blending of cultures as the two vastly different systems clashed and merged. Many Anglo-Normans married prominent Irish Gaelic families and adopted their culture, leading to conflicts in later generations.⁴⁷

Overall, the historiography on the Tudor invasion of Ireland has been varied and broad. Historians have examined the conquest primarily from the point of view of the British but also sometimes from that of the Irish; they have discussed the various motives behind the conquest, often disagreeing on the causes, and they have analyzed the relative success (or failure) of the Tudor expeditions. Other historians have examined the motivations behind the conquest, which ranged from land hunger to a desire to reform Ireland and remake the “wild” inhabitants into model British citizens. Finally, the nature of conquest has been examined, as well as the ambiguities which surround the period. More focused monographs have also contributed to the general understanding, as they provide detailed glimpses which help to flesh out the more general picture.

However, there is still room for historical study. One of the works which discuss the Tudor conquest from the point of view of the Irish, Anna Stopford Green’s monograph, is outdated and heavily biased. In addition, the second book to examine Gaelic society, Mary O’Dowd’s work, does so in light of the existing stereotypes and seems to verify some of them, as well as relying on quite limited source materials. An objective analysis of Irish society prior to and after Tudor involvement would be necessary to correct the deficiency, as in the first book the English are portrayed as destroyers not only of society but of the “true” religion as well. Thus any fresh

⁴⁷ Kenny, *Anglo-Irish and Gaelic Women*, 52-153.

attempt would therefore need to be free of religious bias. In addition, the only works to deal with stereotypes, John Gillingham's essay, Shirley Adawy Peart's monograph, and David B. Quinn's book, focus on the English perceptions of the Irish, and thus there is need for an analysis of the possible stereotypes which existed for the English on the part of their Irish subjects. An examination of the Irish views of the English would balance out the interest in stereotypes as well as providing fascinating research.

This present work will continue where Bitel and Kenny's work left off, examining the question of Gaelic Irish women's issues, specifically the question of marriage rights. Though Bitel maintained that the Irish *literati* devalued their women, this thesis will show that the authors of the Brehon laws placed a great deal of value on, and trust in, their women. Though the thesis does show the egalitarian side of the Irish laws, it also addresses some legal ambiguities that give credence to the criticisms posed by O'Dowd and others. Finally, this thesis continues in the comparative vein established by Kenny, differing in that the present work examines the laws of Ireland and England, rather than focusing on the women themselves.

CHAPTER II

IRISH MARRIAGE LAWS, THE IRISH POSITION ON DIVORCE, AND THE IRISH VIEW OF WOMEN.

The Tudor conquest of Ireland, completed in the reign of Elizabeth I, was a period fraught with conflict and cruelties on both sides. As the English armies advanced, English governors and lords replaced local lords and governors. Clan lands were rented out to their former occupants in exchange for a fee paid to the new English lords. English law and customs supplanted and replaced Irish institutions, and the Irish religion, Catholicism, began to be replaced by the English Protestantism that characterized the later Tudor era. Though many historians have argued that the English conquest of Ireland had a beneficent affect on the Gaelic Irish, this would not prove true in the case of Irish married women.

There were two simple reasons for this. First, the Gaelic system allowed married women rights which were not granted to their English and Anglo-Irish counterparts. Secondly, the English common law took a different stance on divorce and marriage, as well as the status of married women. The first reason will be examined in this chapter. Chapter Three outlines English marriage practices and the English views on women, while Chapter Four discusses the means by which the English brought their laws into Ireland. Chapter Five discusses the comparisons between these two systems.

The first point concerned the Gaelic system, specifically its law codes. The Gaelic system, though sometimes confusing and archaic to modern eyes, had its nuggets of modernity as well. These could be found chiefly in the laws relating to women, and, more specifically, married women. Chief among these laws was the *Cáin Lánamna*, or law of the couple in English.⁴⁸ Written originally between the years 650 and 850 AD (scholars were uncertain of the precise date) the law elaborated the specific relationships which could exist between men and women.⁴⁹ Though written in the early part of the Middle Ages, the regulations outlined in the *Cain Lamna* continued to be applied throughout the Middle Ages and beyond.⁵⁰ In its thirty-six sections, it outlined ten specific relationships, and provided a detailed discussion of those relationships, including a concrete definition of the relationship, and an examination of the duties for which each partner was responsible.⁵¹ In addition, it discussed the settling of goods should the couple part ways, thus pointing to the fluidity of divorce in Gaelic portions of Early Modern Ireland.⁵²

The first section provided a guide for the property that would be exempt from any suit that one spouse brought against the other. The law stipulated that any goods or property belonging to one spouse but used by the other during the marriage would be exempt from a suit, so long as both parties were in agreement concerning the use of the item in question. However, in cases

⁴⁸ Donnchadh Ó Corráin, "Marriage in Early Ireland," in *Marriage in Ireland*, ed. A. Cosgrove (Dublin: Ireland, 1985). http://www.ucc.ie/celt/marriage_ei.html#38. (accessed 16 February 2010).

⁴⁹ Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#38. (accessed 16 February 2010).

⁵⁰ Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#38. (accessed 16 February 2010).

⁵¹ Donnchadh Ó Corráin, ed and trans, *Cáin Lánamna*, <http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January 2010).

⁵² Ó Corráin, *Cáin Lánamna*. <http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January 2010).

where there was disagreement, a suit was a viable option. Furthermore, liens, loans, and various other legal obligations were not covered under the protection referenced above.⁵³

Thus, according to the first section, the only property that could be recovered in a suit was that property that was obtained through a loan, or property that had been taken by one spouse from the other without the owner's consent. This law applied equally to both men and women and it established the property rights of married women during this time. In addition, this statute helps to illustrate the fact that the Gaelic lawyers clearly believed that women were capable of managing property, and thus the lawyers sought to protect their rights in this regard. This section also established a woman's legal right to bring suit against a man.

The second section described the eight possible unions that were allowed under the Gaelic system. These unions ranged from the feudal, involving a lord and his vassals, to the familial, which included the legal relationships between parents and children, whether birth children or foster children, brothers and sisters, and, finally, spouses.⁵⁴ Thus, the previous section, which dealt with the division of property, would be applicable to each of these eight unions. In addition to showing the equality of marriage which existed in Gaelic Ireland, this section also illustrated the legal protection offered for other subordinate groups, specifically, daughters, sons, pupils, and tenants. Each of these groups received a guarantee that their property rights would be protected when they entered into a contract with a superior party. Thus, though the

⁵³ Ó Corráin, *Cáin Lánamna, Section One*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January, 2010).

⁵⁴ Ó Corráin, *Cáin Lánamna, Section Two*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January, 2010).

law recognized their legal inferiority, it compensated somewhat for this by providing them with steadfast property rights.

The third section returned to the question of property and goods which would be liable to seizure in the case of a lawsuit. Again, both parties' rights received protection. Goods would be exempt if they were gifts from one spouse to another. Further mention is made of goods used by one spouse but belonging to another, as discussed in section one. These are referenced again and thus their protected status is doubly assured. Furthermore, gifts from one party to the other were protected, as were items which one person used that belonged to the other, provided these items were not obtained through force, or craftiness. If items were taken without permission, they were to be returned if the person from whom they were stolen insisted upon the restoration of the goods. Furthermore, if the wronged party was forced to bring about legal action via a ritual fast, that person was also entitled to payment in the form of a fine levied against the one who had taken the goods, as well as the restoration of the original property.⁵⁵ The extra punishment seems to be added because the thief not only refused to return the property, but also ignored any non-legal means which the wronged individual undertook to achieve restitution. Thus, this section adds further validation to the claim that women retained property rights following marriage. Thefts were punished, whether the husband or the wife was the perpetrator, and there were safeguards in place to ensure the return of property and goods to the rightful owner.

⁵⁵ Ó Corráin , *Cáin Lánamna, Section Three*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January, 2010).

The fourth section examined the various relationships between men and women which existed under the Gaelic system. The issue here was the number of legal pairs which could exist under the Irish legal system. The number, in this case, was ten. The permissible unions were organized based upon which person contributed to the marriage, and they ranged from the egalitarian, the union based upon joint contribution, to the odd, the union of the insane.⁵⁶ Each of these unions had rules and obligations, as well as specific instructions concerning the dividing of property, which were enumerated in greater detail in the remaining sections.

The fifth section described the first union, that of common contribution. According to this section, that union was said to exist when both the man and the wife contributed equally to the marriage. Both parties owned property, and thus each relied not only on their individual property, but also on the property of the other. This section held particular interest, because of its discussion on the authority which existed within the marriage. Unlike other marriage laws of the time, specifically those which existed in England, the *Cain Lánamna* provided the wife with an incredible measure of authority. For example, the law required joint agreement before most contracts were considered valid. Thus, in a time when most European women surrendered their right to make decisions upon marriage, Gaelic women retained this right. Consensus was not required for some decisions, such as hiring a ploughman or other contracts involving the maintenance of the property. In addition, contracts relating to the preparation of food for various events, and contracts relating to fees for the use of animals were not required to be agreed upon by both spouses. Doubtless, the lawyers assumed that these types of contracts involved mundane situations, and thus allowed each party to use their own good judgment in

⁵⁶Ó Corráin, *Cain Lánamna, Section Four*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January, 2010).

these areas. Thus, women within this first union were given the power to make their own contracts, independently of their husbands, and to effect their desires via agreeing or disagreeing with the contracts made by their husbands.⁵⁷

Yet another interesting law found within this section was the requirements concerning acquisition of goods via the selling of property. Under this rule, the owner of the property sold to acquire the item received ownership of the item. Thus, if a husband sold a piece of his wife's land to purchase a cow, then both he and she understood that the cow became the property of the wife. This was quite a modern concept, especially for the seventh to eighth centuries! Thus, in addition to its liberality concerning women's roles in the decisions of her husband, the document also showed the autonomy given to women in that it allowed them to issue contracts in certain instances without the approval of their husbands, and to acquire ownership over goods through the alienation of their property.⁵⁸

Scholars consider this first union to have been the most common in Ireland. This assessment comes from a description of Gallic marriage customs authored by Julius Caesar. Caesar described a marriage that involved a type of joint contribution, wherein the man contributed the same amount of goods toward the marriage as the wife brought into the marriage. In addition, the Gauls kept records detailing the goods that went into the joint fund. This second characteristic indicated that the Gauls permitted each partner to retain ownership of their

⁵⁷ Ó Corráin, *Cain Lánamna Section Five*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January 2010).

⁵⁸ Ó Corráin, *Cain Lánamna Section Five*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January 2010).

property even after it was incorporated into joint usage. Finally, these two tenets of Gallic marriage bore striking similarities to the marriage practices found in early Ireland.⁵⁹

This equivalency between Gallic and Gaelic customs allows for a better understanding of the Gaelic phrase which can be translated as “mutual contribution.” If the Gallic marriages served as a prototype for the Gaelic unions, then it follows that the Gallic definition of mutual contribution would apply to the Gaelic system as well. Thus, under the Irish system, mutual contribution involved the husband and wife contributing equal shares of goods, land, or animals to the joint marriage fund.⁶⁰

The questions of property ownership and control in ancient Ireland were especially relevant to the above union, as there was an assumption that women could not only control property, but that they could possess it as well, though this was not the original intent of the Early Irish lawmakers.⁶¹ The authors of the laws originally intended for Ireland to be a patrilineal society, wherein the property and other goods passed from father to son.⁶² However, women could inherit property if a father had no sons to whom he could leave the land.⁶³ Furthermore, a woman could also receive land as a gift from her father, though in this case the land would have

⁵⁹ Donnchadh Ó Corráin, “Marriage in Early Ireland,” http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

⁶⁰ Donnchadh Ó Corráin, “Marriage in Early Ireland,” http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

⁶¹ Lisa M. Bitel, *Land of Women: Tales of Sex and Gender from Early Ireland* (Ithaca: Cornell University Press, 1996), 114.

⁶² Donnchadh Ó Corráin, “Marriage in Early Ireland,” http://www.ucc.ie/celt/marriage_ei.html#40 Accessed on 18 February 2010).

⁶³ Donnchadh Ó Corráin, “Marriage in Early Ireland,” http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

to come from the father's own property as opposed to the joint property of the family.⁶⁴ In addition, a woman could receive property as part of a marriage agreement, or as payment for sexual services. She could also receive it in exchange for labor services. Religious law allowed women to inherit property, even going so far as to require fathers to provide their female offspring with a portion of the inheritance.⁶⁵ Finally, a woman could have property that was known in English as "land of hand and thigh."⁶⁶ This term referred to land inherited from the mother's side, wherein the mother received it for two reasons, either as a reward for labor or as a reward for sexual services. Legally, daughters could not inherit this type of land if there were male heirs competing for it.⁶⁷ Thus, in spite of the preferences of the Gaelic lawyers, women could possess property, and they could use this property to their advantage, particularly in securing an equitable marriage.⁶⁸

Section Six returned to the issue of property ownership and specifically the issue of selling goods or property that belonged to one of the parties. The law required mutual agreement if selling the item would bring hardship upon the household, because, as the union was a joint partnership, providing both members a voice, it would be unfair for one person to potentially destroy the household without giving the other spouse a chance to bely the destruction by vetoing a decision. Conversely, it eliminated the possibility of blame, as the requirement of

⁶⁴ Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010); Bitel, *Land of Women*, 114.

⁶⁵ Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

⁶⁶ Lisa M. Bitel, *Land of Women*, 114.

⁶⁷ Lisa M. Bitel, *Land of Women*, 114.

⁶⁸ Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

mutual consent would expunge either party from guilt should the decision prove to be disadvantageous.⁶⁹ This requirement exemplified the egalitarian notions of the lawyers, as they not only allowed the woman to advise her husband, they insisted upon the practice. Furthermore, they placed as much value on the opinions of the woman as they placed on the man's beliefs. Section Seven concerned children, and, therefore, has been omitted from the present discussion.⁷⁰

Section Eight provided more information on the making of contracts. This law required honesty in the drawing up of each contract. Furthermore, Section Seven gave husbands and wives the authority to annul each other's contracts, if these contracts were lacking in some way. This rule was particularly telling, because it emphasized the authority held by the wife in the union of common contribution. She had the power to veto her husband's bad decisions, an authority that many women today probably wished they possessed. However, there were limitations to this power. Neither party was permitted to annul the contracts of the other, if these documents were drawn up properly, if they concerned the issues mentioned above wherein joint consent was not required for the creation of a contract, and if the partnership had existed harmoniously up to the creation of the contract in question.⁷¹ Therefore, the Gaelic lawyers believed that women were capable of making sound judgments, or they would not have given them the freedom to determine the soundness, or lack thereof, of their husband's contracts.

Furthermore, this provision also implies that Gaelic society was willing to grant authority to

⁶⁹ Ó Corráin, *Cáin Lánamna, Section Six*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January 2010).

⁷⁰ Ó Corráin, *Cáin Lánamna, Section Seven*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January 2010).

⁷¹ Ó Corráin, *Cáin Lánamna, Section Eight*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January 2010).

these women. A woman who could go over her husband's head by forfeiting a contract he had made was clearly not considered to be in a subordinate position to her husband.

Sections Nine through Twenty discussed divorce, and the division of property. Section Nine stipulated that, in the case of a divorce that was mutually consented to, the property would be divided along established lines.⁷² This section established that divorce, if not common in Gaelic society, was at least accepted. Furthermore, the reference to a divorce obtained through mutual consent implied that at times the consent was unilateral, yet the divorce was permitted. This would also indicate that the Irish lawyers were comfortable with women initiating the divorce proceedings, and furthermore that women could initiate these proceedings without the consent of their husband. Thus, Irish Gaelic women had a tremendous amount of autonomy under the Irish legal system.

Section Ten concerned itself with the distribution of the goods following the dissolution of a marriage. It stated that the goods were to be divided into thirds, and it assured that both parties will receive a fair share of the goods.⁷³ The first article in the section protected whichever party owned the property, be it the man or the woman, as the law required that they receive a third of the funds garnered from their property, unless the funds involved referred to cloth and other goods produced by the woman.⁷⁴ In this case, the woman would get half of the goods

⁷² Ó Corráin, *Cáin Lánamna Section Nine*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 25 January 2010).

⁷³ Ó Corráin, *Cáin Lánamna, Section Ten*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 26 January 2010).

⁷⁴ Ó Corráin, Footnote Twenty-seven, *Cáin Lánamna, Section Ten*
<http://www.ucc.ie/celt/published/T102030/note003.html>. (accessed January 26 2010).

produced from these materials, regardless of the original ownership of the materials used.⁷⁵ In addition to land being divided, domestic animals were also split among the divorcing couples. This division was also into thirds, and the cattle were split between the owner of the cattle and the spouse who tended the cattle. Finally, the various divisions entailed were based upon a system of entitlement, which maintained that both spouses should receive a certain portion of the goods to be divided. The entitlement was based upon the amount of property and goods each brought to the marriage, as well as the amount of labor each performed while the marriage existed.⁷⁶ Thus, the division of property was based upon on notions of entitlement through ownership of property, goods, or labor, rather than on the basis of gender. The lawyers, and consequently the society, seemed to have placed a greater emphasis on an individual's ability to contribute, either to the family or to society, than on the gender of the individual in question.

Section Eleven and Twelve provided further rules for distributing the funds accrued from the cattle.⁷⁷ The third assigned for labor was itself divided, with a section going to the husband, a section going to the wife, and a section going to whoever hired the individuals who tended the cattle.⁷⁸ Thus, both the husband and the wife received a portion of the funds, as did the people responsible for hiring the laborers. Though the text indicated that the workers themselves received the goods, a footnote within the text explained that the term was referring to the

⁷⁵ Ó Corráin, Footnote Twenty-seven, *Cáin Lánamna, Section Ten*
<http://www.ucc.ie/celt/published/T102030/note003.html> (accessed January 26 2010).

⁷⁶ Ó Corráin, Footnote Twenty-seven, *Cáin Lánamna, Section Ten*
<http://www.ucc.ie/celt/published/T102030/note003.html> (accessed January 26 2010).

⁷⁷ Ó Corráin, *Cáin Lánamna, Section Eleven*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 26 January 2010).

⁷⁸ Ó Corráin, *Cáin Lánamna, Section Eleven*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 26 January 2010).

person who engaged the laborers.⁷⁹ This person was one spouse or the other, and thus either the husband or the wife received that portion of the goods, following the divorce.⁸⁰ Again, the emphasis was placed on the contribution that was made, as opposed to the gender. The first two divisions were arbitrary, a third to the man and a third to the woman, but the remaining division depended upon who hired whom. An ability to hire workers would be an indication of high status, and this being a criterion for division supported the status over gender conclusion.

Section Twelve provided even greater instruction for the division of goods, this time specifically dairy produce. The division this time was into three groups of twelve thirty-sixths each. The first group went to the person who owned the land, the second to the person who owned the animals and the third to the person who hired the labor, as in the previous section. The labor portion was further divided, with six thirty-sixths going to the wife, as she would have been responsible for hiring the workers, three thirty-sixths went to the individual who provided the dairy vessels, two thirty-sixths went to the individual who hired the workers for the dairy, and the remaining one thirty-sixth went to the husband.⁸¹ Both the ability to manage workers and the ability to provide expensive goods were honored in this section, which attested to the importance of such abilities within Gaelic culture. Thus, the lawyers determined to honor these abilities by granting another portion of the goods to that individual.

⁷⁹ Ó Corráin, *Footnote to Section Eleven*
<http://www.ucc.ie/celt/published/T102030/note004.html>

⁸⁰ Donnchadh Ó Corráin, "Marriage in Early Ireland,"
http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

⁸¹ Ó Corráin, *Cáin Lánamna, Section Twelve*.
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 26 January 2010); Ó Corráin, *Footnote to Section Twelve*
<http://www.ucc.ie/celt/published/T102030/note005.html> (accessed 26 January 2010).

Section Thirteen was a short section, providing compensation if the divorce proceedings became unpleasant due to the behavior of one of the individuals. If this occurred, the well-behaved spouse would receive the portion that normally went to the individual who hired the workers. This substitution had no effect on the remaining two divisions based upon ownership of property and animals.⁸² Clearly, divorces during this time could get nasty, and thus this rule was in place to penalize those parties who made the proceedings more difficult than was necessary. Another explanation was that it was used as a means of rewarding the party who behaved correctly. It could be seen as a compensation for the conduct of the other person.

Section Fourteen concerned the division of consumable goods allotted to the person who provided the labor. As in the earlier sections, the divisions were into thirds: a third went to the owner of the animals, a third to the owner of the land, and a third to the one who hired the individuals who tended the animals. These thirds were further divided into thirds, with the wife receiving a third of the labor portion's third, which was one ninth. In this case the goods being divided were corn and cured meat, so the wife received a ninth of those goods. In addition, she could also receive a double portion of the ninth, two ninths, if the pigs drank milk, as she would then have to hire someone to milk the cattle as well as tend to the pigs. However, if the workers only labored in the spring, as opposed to working throughout the year, the wife only received two thirds of the ninth portion, or two twenty-sevenths of the goods allotted for that

⁸²Ó Corráin, *Cáin Lánamna, Section Thirteen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 26 January 2010).

purpose.⁸³ Thus, this section further exemplified the Irish lawyers' high opinion of women. A portion of those goods went to the individual who provided the labor, a second portion went to the person who owned the animals, and the final amount was given to the person who owned the land on which the animals lived. In this instance, the wife procured the labor, so she received the portion allotted to that individual. The section explained that the wife was responsible for hiring the labor, though whether this was a general truth, or true only in the care of a certain type of animal, in this case pigs, wasn't clear from the text. Regardless, the wife received the portion of goods that went to the individual who secured the labor. Her portion would be less if the laborers were only needed in the spring, as opposed to being needed throughout the year, as the amount of work would be reduced, and therefore the responsibility for hiring would be lessened. Thus, the Gaelic lawyers placed a greater emphasis on one's ability to manage laborers than on one's gender, as evidenced by the above division.

Section Fifteen discussed the division of textiles and related goods. This section dealt specifically with the woman, and her portion of these items. The divisions ranged from the large, half of the clothing and loose material, to the small, a sixth of any animal hides.⁸⁴ These divisions would not be enough to sustain a woman if she were the sole person responsible for providing the clothing, which indicates four possible conclusions. The first explanation would be that the work of producing textiles was not left up to one woman, but rather to several, perhaps servants or other women in her family. It could also be possible that the lawyers assumed that the woman would have the means to procure the remainder of what she needed, either

⁸³ Ó Corráin, *Cáin Lánamna Section Fourteen* (accessed January 28 2010).

⁸⁴ Ó Corráin, *Cáin Lánamna Section Fifteen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

because she had the herds to supply the wool, plants to supply the flax, and the means to acquire the woad. It could also be that the measurements differed, and therefore these divisions would have actually been sufficient. Finally, it is possible that this section indicated a lack of understanding on the lawyers' part, and a certain lack of sympathy not found throughout the remainder of the law. Ultimately, however, a definite conclusion concerning this section is impossible to reach.

Section Sixteen returned yet again to the question of mutual property rights in the event of a divorce. In this case, the issue under consideration was property used by both spouses but owned by only one. In this case, the property could not be claimed in a suit, if the user obtained the owner's consent prior to using the item in question.⁸⁵ This section, along with the others which deal with property, serve as evidence for the existence of the existence of property rights among Gaelic Irish women during this time, and continuing into the period of the advancement of the English common law. This particular section defended individual property from being claimed by the spouse who did not own it, even though he, or she, may have used it in a partnership with the spouse who owned the property. Note the caveat, if the user obtained the consent of the owner.⁸⁶ A previous section in the law code indicated that property obtained under duress was to be returned to its original owner and the appropriate penalty paid.⁸⁷

⁸⁵ Ó Corráin, *Cáin Lánamna Section Sixteen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

⁸⁶ Ó Corráin, *Cáin Lánamna Section Sixteen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

⁸⁷ Ó Corráin , *Cáin Lánamna, Section Three*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19th January, 2010).

Sections Seventeen through Nineteen provided further details concerning property and outstanding loans following the termination of the marriage contract. Section Seventeen examined the issue of stolen goods, reiterating the precepts found in an earlier discussion.⁸⁸ Furthermore, the compensation could take the form of a replacement of the item with a duplicate, or a monetary compensation paid when the couple divorced.⁸⁹ Section Eighteen continued in a similar vein, examining the issue of property or goods taken without the consent of the owner. In this case, the item was replaced, usually in the form of a doubling, so that the thief would give the original owner a double portion of whatever he or she had originally stolen. In addition, the thief would also pay interest accrued from using the property in question.⁹⁰ Perhaps this issue of one spouse taking the goods of another was a particular problem in Gaelic Ireland, as these rules were repeated throughout the Couples' Law. In addition, the penalties for this crime were harsh, which would indicate a serious attempt at deterring the practice.

Section Nineteen shifted the focus back to the issue of contracts, and established the ability of women to enter into various types of contracts. The section explained that any contract carried with it no legal liability, so long as both parties acted honestly. Both spouses could use their own property as a surety, or a monetary amount up to their established honor price.⁹¹

Therefore, women could enter into contracts without the consent of their husbands, and these

⁸⁸ Ó Corráin, *Cáin Lánamna Section Seventeen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010). ; Ó Corráin , *Cáin Lánamna, Section Three*

<http://www.ucc.ie/celt/published/T102030/index.html>. (accessed 19th January, 2010).

⁸⁹ Ó Corráin, *Cáin Lánamna Section Seventeen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

⁹⁰ Ó Corráin, *Cáin Lánamna Section Eighteen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

⁹¹ Ó Corráin, *Cáin Lánamna Section Nineteen*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

contracts could include financial dealings, which would indicate that women had at least a basic level of financial competence, even if they required a man to represent them in the actual proceedings.⁹² In addition, this section also indicates that Irish lawyers acknowledged a woman's ability to understand financial matters, and to participate in them, even if the participation was limited. Thus, the authors of the Couple's Law were not threatened by the notion of a financially perceptive woman, but instead protected such a person and allowed her to exercise her competence in that area.

Section Twenty concluded the discussion of the various issues relating to couples who entered into a contract of mutual contribution. The section closed with a brief discussion of hospitality, and the requirements of each party in fulfilling this obligation. Both husband and wife were responsible for providing for their own extended families and friends, as well as to their individual lords and the members of the churches to which they belonged.⁹³ This concluding section served as evidence that Gaelic women had autonomy under this system. They were able to retain their property rights following marriage, they received an equal portion of their goods following a divorce, they received restitution if their property was stolen, they were able to enter into contracts independent of their husbands, and, finally, their social obligations did not extend beyond their own circle of acquaintances, family, and beneficiaries.⁹⁴ Therefore, Gaelic Irish women who entered into unions of mutual contribution had an enormous amount of social freedom granted to them by their laws.

⁹² Lisa M. Bitel. *Land of Women: Tales of Sex and Gender from Early Ireland* (Ithaca: Cornell University Press, 1996), 114.

⁹³ Ó Corráin, *Cáin Lánamna Section Twenty*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

⁹⁴ Ó Corráin, *Cáin Lánamna Sections One Through Twenty*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

Section Twenty-One began the discussion on the second possible union permitted under Gaelic law: the union of a man and a woman wherein the woman relied solely on the man's income to support herself. In other words, she did not bring any goods to the union. Such a woman could fall into two categories, either the *cétmuintir* or the *adulterach*.⁹⁵ The *cétmuintir* was the first, or primary, wife, while the *adulterach* was the second wife, though she was expected to enter into a marriage contract. The rules concerning contracts made under this second system varied from those made under the first. In the case of contracting, the husband's word alone was enough to draw up the contract, except in matters that would directly impact his wife or her obligations, in which case her consent was required in order for the contract to be valid.⁹⁶ This provision would be especially necessary in a case where the woman was completely dependent upon her husband for support, which would impact her ability to fulfill her duties as wife. In addition, such contracts could also affect the woman's livelihood, and the lawyers seemed to recognize this, and to compensate for that fact by giving her a voice in those affairs.

Section Twenty-Two examined the role of the *cétmuintir* in a union based upon the man's contribution. The law began by defining the woman who was eligible for this privilege: someone who possessed both good character and good bloodlines. The section went on to describe the powers given to such a woman—chiefly the power to override her husband's

⁹⁵ Ó Corráin, *Cáin Lánamna Section Twenty-One*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 28 2010).

⁹⁶ Ó Corráin, *Cáin Lánamna Section Twenty-One*.
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 29 2010).

contracts.⁹⁷ Thus, women married within the first two types of unions, a union of mutual contribution and a union wherein the wife relied upon the man's contribution, were able to annul their husbands' bad contracts. Though the woman discussed in Section Twenty-Two was a *cétmuinter* she still was dependent upon her husband for support. Therefore, if he made bad decisions that resulted in a negative financial impact, the wife would not have any property of her own to sustain her. This, in all likelihood, was the reason behind the constructing of this law.

Section Twenty-Three contained another clause designed to protect the *cétmuinter* involved in a union based upon the man's contribution. This section protected her from being usurped by another woman. Though the law allowed the husband to take another wife, he was expected to pay his first wife a compensation in the form of a fine which equaled the amount he paid for his second wife, providing that his first wife was fulfilling her duties as his wife. In addition, the second woman was also liable to a penalty. If she usurped the authority of the first wife, the second wife had to pay the first a monetary compensation, known as the honor-price, which was the set amount paid to an individual, or their family, following a crime committed against that individual. Thus, the Gaelic laws equated the usurping of authority from the first wife as a crime.⁹⁸ Section Twenty-Three provided evidence that the Gaelic lawgivers were concerned about the fate of women involved in unions based solely on a man's contribution and made laws which would protect these women from being at a disadvantage. Furthermore, this section emphasized the importance of class to the Irish lawyers, as the second wife was punished for

⁹⁷ Ó Corráin, *Cáin Lánamna Section Twenty-Two*.

<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 29 2010).

⁹⁸ Ó Corráin, *Cáin Lánamna Section Twenty-Three*

<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 29 2010).

bringing dishonor to the first. Therefore, though both parties were obviously women, the Irish lawyers were more concerned with protecting the rights of the woman of higher status.

Section Twenty-Four and Twenty-Five discussed issues relating to hospitality and the requirements made upon the couple. Section Twenty-Four was brief, and described the hospitality requirements for a woman who was engaged in this second union. In this type of union, the woman was responsible for exactly half of the number of people to whom her husband owed hospitality.⁹⁹ Again, the Gaelic lawyers seemed to be especially sensitive to the woman's dependent position in this type of union. She would not have had the same amount of resources as those available to her husband, and therefore her hospitality requirements were less.

Section Twenty-Five discussed the refusal of hospitality, the conditions under which such refusal was permitted, and the effect of such refusal. Both individuals within this union had a legal number of persons to whom they were to show hospitality. However, the husband and wife were not required to show hospitality to any person once the legal number had received hospitality. Furthermore, refusal to grant hospitality to persons who exceeded the legal number would not damage a person's honor.¹⁰⁰ This rule would protect the person extending the hospitality from being taken advantage of by overzealous guests, and it provided the giver of hospitality with a legal precedent for refusing to admit any person beyond the legal limit of

⁹⁹ Ó Corráin, *Cáin Lánamna Section Twenty-Four*
<http://www.ucc.ie/celt/published/T102030/index.html>. (accessed on January 29 2010).

¹⁰⁰ Ó Corráin, *Cáin Lánamna Section Twenty-Five*
<http://www.ucc.ie/celt/published/T102030/index.html>. (accessed on January 29 2010).

guests. Since this rule was placed within the section concerning unions based upon the man's contribution, it certainly applied to unions of this case, but whether it could be applied to the other unions was unclear. Again, this section provides evidence for the Irish lawyers' concern for women, however allayed by concerns with social class as they were, in that it shows their respect for a woman of limited means. Someone relying wholly on another's economic contribution would not be able to accommodate an extensive number of guests, and the Irish lawyers seem to have understood this and taken it into consideration when they established this law.

Section Twenty-Six discussed the issue of divorce and the division of property following the split. The law began by discussing the conduct of both spouses during the parting. Assuming they parted on equitable terms, then, the property and goods used by each spouse that had belonged to the other spouse were exempt from any legal action, assuming that the user obtained permission. The section went on to discuss replacement of goods that were not obtained with the consent of their owner. The requirements for restitution followed a pattern similar to those seen in the earlier sections, with the subsequent requirements for replacement, though in this instance the portion to be replaced equals the amount stolen, rather than being doubled as was the case in a previous section, though the interest was still charged.¹⁰¹ Furthermore, in the case of stolen goods, the law reiterated the demand for restitution, along

¹⁰¹ Ó Corráin, *Cáin Lánamna Section Three, Section Eighteen, Section Twenty-Six* <http://www.ucc.ie/celt/published/T102030/index.html>. (accessed on January 29 2010).

with the payment of the fine.¹⁰² This section further illustrated the importance placed upon property, as well as the necessity for obtaining permission before use of another's goods.

Section Twenty-Seven continued the discussion of the division of property and goods following a divorce. The percentages were similar to the divisions made in the first union, with the wife taking half of the textiles. The exception was the wife's portion of the dairy goods. In this union she received one sixth of the goods produced in the dairy. The other divisions remained the same as those within the first union.¹⁰³ Again, references to servants and vessels referred to the people who provided the laborers and the vessels for the cattle.¹⁰⁴ This information came from an earlier footnote in the text, which explained the peculiar discrepancy.¹⁰⁵ Thus as with the previous union, whichever spouse managed the laborers received an addition compensation. The section concluded on an interesting note. Wherein most cases, the use of the word laborers referred to the person who hired them, in this final division, the wife herself receives a compensation in the form of ninths, on the provision that the woman worked hard throughout the marriage.¹⁰⁶ In this instance at least, the assumption was that the wife would be awarded goods based upon her abilities as a laborer. This further illustrates the emphasis on abilities, as opposed to gender, seen throughout the Couple's Law.

¹⁰² Ó Corráin, *Cáin Lánamna Section Twenty-Six*
<http://www.ucc.ie/celt/published/T102030/index.html>. (accessed on January 29 2010).

¹⁰³ Ó Corráin, *Cáin Lánamna, Section Twenty-Seven*.
<http://www.ucc.ie/celt/published/T102030/index.html>. (accessed January 29 2010).

¹⁰⁴ Ó Corráin, *Cáin Lánamna, Section Twenty-Seven*
<http://www.ucc.ie/celt/published/T102030/index.html>. (accessed January 29 2010).

¹⁰⁵ Ó Corráin, Footnote to *Section Eleven*
<http://www.ucc.ie/celt/published/T102030/note004.html>. (accessed on 26 January 2010).

¹⁰⁶ Ó Corráin, Footnote to *Section Eleven*
<http://www.ucc.ie/celt/published/T102030/note004.html>. (accessed on 26 January 2010).

Section Twenty-Eight concluded the discussion on unions based upon a man's contribution.¹⁰⁷

In a medieval Gaelic form of alimony, this section required the husband to supply his wife with a sack of corn, paid each month until May of the next year.¹⁰⁸ The footnote for this section explained the reasoning behind the termination on the month of May, it was the traditional season for drawing up contracts.¹⁰⁹ Thus, the Gaelic law ensured that a woman who had been dependent upon a man for her livelihood would not be left destitute following the divorce. Instead, she would continue to receive help from the time of the divorce until the traditional time of making contracts when, it was probably assumed, she would have found a new husband.

Though the bulk of the Couple's Law was concerned with issues relating to women, sections Twenty-Nine through Thirty-Two were an exception to that rule, in that they focused on the question of a man who was supported by a woman. Section Twenty-Nine discussed the union of a man on a woman's contribution and specifically the divisions of the property should this union fail. The law divided the goods according to a man's position within the household. If his duties were manual in nature, the husband's portion consisted of a ninth of the corn, one eighteenth of the milk and one ninth of any textile goods produced during the marriage. If, however, his status was equal to his wife's, and he acted primarily as her adviser, he received the above

¹⁰⁷ Ó Corráin, *Cáin Lánamna*, *Section Twenty-Eight* <http://www.ucc.ie/celt/published/T102030/index.html>. (accessed on January 29 2010).

¹⁰⁸ Ó Corráin, *Cáin Lánamna*, *Section Twenty-Eight* <http://www.ucc.ie/celt/published/T102030/index.html>. (accessed on January 29 2010).

¹⁰⁹ Ó Corráin, *Cáin Lánamna*, *Section Twenty-Eight* <http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 29 2010).

divisions, with an additional one ninth of the meat obtained during the marriage.¹¹⁰ Thus the goods given to the husband were directly proportional to his duties and his position within the household. Therefore, the lawyers emphasized status and labor over gender. The husband did not receive these goods because he was a man; rather he received them because he held a particular social status and was a good worker.

Section Thirty discussed the rules for dividing the goods if the couple had not parted under amiable circumstances. In this instance, the portion of goods that would have gone to the individual who provided the labor, instead went to the individual who behaved in a proper fashion. The penalties were even harsher for a couple who had equal status. The person who fulfilled his or her duties during the marriage received the entirety of the goods, except for the portions allotted to the owner of the animals and the owner of the property. Finally, following the dissolution of the marriage, both partners received their property or goods again, thus further proving the Irish lawyers' concern for property rights as opposed to rights defined by gender. Furthermore, the restitution was given to the partner who behaved, regardless of gender.

Section Thirty-One concluded the discussion of the union of a man on a woman's contribution, by laying out the conditions that a man must have met in order to be considered the husband on a woman's contribution. In most cases the husband was expected to pay the honor-price for his wife, unless he met the above mentioned conditions relating to his property, virtue, and

¹¹⁰Ó Corráin, *Cáin Lánamna*, *Section Twenty-Nine*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 30 2010).

class, in which case he was exempt, as he was considered to be of a higher class than his wife.¹¹¹ Again, this section emphasized the importance of social class, as the husband could only be exempt from the fine if his status was higher than his wife's social standing.

Section Thirty-Two discussed the next possible union, and perhaps the most puzzling to modern readers, as the union seems to refer to a type of prostitution.¹¹² The husband visits the woman, but neither of them contributed economically to the union, and neither was dependent upon the other for economic support. Beyond the mutual companionship it is not clear what benefits the partners received from this union. In any case, the law went on to describe the ways in which the goods were divided following the dissolution of this union. The husband took one fifth of the textiles, assuming these goods belonged to the woman. This amount was the same as that given to the man for an offense committed against his wife.¹¹³ The Gaelic lawyers used this measurement of one-fifth as the compensation due a man for offenses against his wife and as the portion of goods that the man received who visited a woman without providing anything materially to the union. Perhaps the lawyers saw this particular dissolution as some type of offense against the man, as he now lost the companionship of the woman, and therefore they felt that he deserved to be compensated in some way, and as a result they simply used the standard measurement for compensation, one fifth.

¹¹¹ Ó Corráin, *Cáin Lánamna*, *Section Thirty-One*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 31 2010).

¹¹² Ó Corráin, *Cáin Lánamna*, *Section Thirty-Two*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 31 2010).

¹¹³ Ó Corráin, *Cáin Lánamna*, *Section Thirty-Two*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 31 2010).

Section Thirty-Three discussed another possible union, known as the union of inducement. In this case, following the dissolution of the union, the textiles were divided into fourths, with the man taking one fourth and the remaining three fourths remaining with the woman. If either party owned land or animals, they were divided up according to the amount owned by each.¹¹⁴ The divisions, as well as the requirements for each partner, became simpler as the unions became less complex. This relationship, like the one discussed in Section Thirty-Two, seems to be very similar to prostitution, as in both cases neither the woman nor the man seem to gain any type of material compensation from the union. This could reflect the Irish lawyers' acceptance of prostitution, as well as the realization that simpler relationships did not require the amount of rules needed by more complex relationships, because neither partner would be attempting to create any type of mutual union. The relationship was based on goals other than creating a stable socio-economic unit and therefore required less regulation.

Sections Thirty-Four and Thirty-Five discussed unions that would be frowned upon or condemned by most modern readers. These were the union of criminal seduction and the union of rape. In the case of criminal seduction, the law invalidated any property grant from the woman to the man, and further required that the man make restitution.¹¹⁵ This repayment could take various forms, depending on the conditions surrounding the land. If the woman owned the property, the man was required to pay half of the fine. If the property belonged to another individual, the man was required to pay the full amount of the fine. This law indicates the authors' attempts to protect women from men who would seduce them simply in order to

¹¹⁴ Ó Corráin, *Cáin Lánamna, Section Thirty-Three*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 31 2010).

¹¹⁵ Ó Corráin, *Cáin Lánamna, Section Thirty-Two*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed January 31 2010).

gain their property. By imposing this fine, the law was doubtless intended as a detriment to anyone contemplating this action.

Section Thirty-Five discussed the union by rape, and the penalty for committing it. Fines were imposed with varying amounts depending on the status of the woman violated. The rapist had to pay the whole *éraic* if the rape victim was a virgin, a nun, or a primary wife, and half *éraic* if the victim was a wife of lower status.¹¹⁶ In addition to the *éraic*, the law also required the man who committed the rape to pay an additional fee, the honor price of the man who had authority over the victim. Barring any immediate male relatives, the law demanded that the rapist also include the honor price of the woman's family.¹¹⁷ Thus, though such a union was allowed in the legal sense, the Gaelic lawyers clearly frowned upon it, and intended the stiff penalty fines to serve as a deterrent. Thereby, they sought to protect their women from violent crimes.

The final section of the Couple's Law discussed the last possible union, that of people who were considered insane.¹¹⁸ The law seemed to offer some protection to the members of such unions as well as their possible offspring. Irish lawyers relieved these mentally unstable individuals of the burden of negotiating the marriage fees. Furthermore, the individuals responsible for arranging the marriage, as well as any who acted as witnesses, were responsible for tending to the children, as if they were the biological offspring of the persons charged with their keep.

¹¹⁶ Ó Corráin, *Cáin Lánamna Section Thirty-Five*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 30 2010).

¹¹⁷ Ó Corráin, *Cáin Lánamna Section Thirty-Five*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 30 2010).

¹¹⁸ Ó Corráin, *Cáin Lánamna Section Thirty-Six*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 30 2010).

Furthermore, the law required that any goods the couple, or their children, acquired be split between the king, the church, and the ones responsible for tending the children.¹¹⁹ This would indicate at least an attempt on the Gaelic lawyers' part to look after not only the interests of women, but also the interests of people with disabilities, and perhaps even particularly the interests of disabled women. Furthermore, the lawyers also recognized that the individuals brought together, i.e. the insane man and woman, were not responsible for their actions, and would not be suitable parents for any potential offspring. Also, it is fascinating to note that the lawyers stipulate that the individuals responsible for getting the couple together in the first place would be responsible for any children, as if they were the physical parents of those children.

The Couple's Law was not the only law dealing with marriage in Ancient Ireland. Whereas the Couple's Law described the divisions of property and behavior of a couple following a divorce, other laws elaborated the reasons for which a couple could end the marriage. There were fourteen permissible causes of divorce under the Gaelic system, divided by gender. A woman could divorce her husband for numerous reasons, including abuse, abandonment, homosexuality, or entrance into the religious life. Likewise, a man could divorce a woman for numerous reasons, including: marital unfaithfulness, poor housekeeping, or an inability to bear children. Interestingly, the woman's list of grievances was longer than the man's, and contained several modern-sounding notions, particularly the provision prohibiting physical abuse. In addition to these gendered causes, there were also general reasons given for terminating a marriage including various conditions that would hamper one's abilities to function in a normal

¹¹⁹ Ó Corráin, *Cáin Lánamna Section Thirty-Six*
<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on January 30 2010).

environment. These causes ranged from mental instability to a prolonged absence on a journey undertaken for religious reasons.¹²⁰ A cursory reading of the above lists appears to give credence to the notion that the Gaelic system was outdated and excessively harsh. However, many of these conditions, including mental instability or a change to one's lifestyle, such as an extended journey would require, would have a negative impact on the individuals' ability to perform their duties as a member of the family. Thus, these rules allowed individuals who would face ruin of some form or other to escape an otherwise disastrous situation.

In addition to laws regulating divorce, divisions of property, and property rights, Gaelic lawyers also discussed the dowry and the bride price, and their discussions further illustrate the egalitarian status which women of means possessed in Ireland prior to the full implementation of the English Common Law. Under the Gaelic system, it was possible for a woman to receive the full bride-price paid by her husband. Though her honor-price was half of the amount of her nearest male relative, which indicated a diminished social status, the monetary payment was made directly to the woman, as opposed to other similar payments made for wrongs committed against women, wherein the sources did not indicate whether the funds went to the woman or the nearest male relative.¹²¹

The relationship between class and requirements as opposed to gender is further brought home by a consideration of a different marriage law, used for a very specific class of individuals: the

¹²⁰ Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40. (accessed on 18 February 2010).

¹²¹ Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40. (accessed on 18 February 2010).

mandarins. The principles found in this law serve to further illustrate the importance of social class over gender in relation to various rights and privileges under the Gaelic system. The couple's law with its liberties, prohibitions, and guarantees, was only applicable to two segments of the population, the peasantry and the aristocracy.¹²²

The mandarin class was the other class common in Irish society from the Middle Ages up through the Tudor era, and included various learned individuals, both secular and religious. This group had a different legal code by which they abided, and they faced far greater limitations on their marital options. These limitations included such requirements as marriage to a virgin, for life. Furthermore, they were forbidden to marry again following the death of their first wife. In addition, there were also limits placed upon their conduct with their wives. They could not have intercourse with their wives during certain religious holidays, or if the woman was pregnant. These rules were not enforced for the laity, though evidence suggests that there was an attempt made to impart these same precepts to the general population, but that such attempts failed and were therefore abandoned.¹²³ Thus, as with the Couple's Law, the Canon Law also reflected the importance of social status, and focused on the rights and responsibilities as relating to one's class, rather than one's gender.

Extralegal documents from the period under consideration also mentioned women. The various Annals compiled around the same time as the Couple's Law also referenced women. This

¹²². Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40. (accessed on 18 February 2010).

¹²³ Donnchadh Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#40 (accessed on 18 February 2010).

reference also showed the ambiguous nature of the Gaelic attitude toward women. The Annals of Ulster referenced women a total of ninety-three times. The women mentioned ranged from saints and abbesses, to queens and noble ladies, to seemingly common women about which nothing more was known than their name, date of death, and nearest male relative.¹²⁴ The Annals are a record of events which occurred in Ireland throughout its history, and the presence of women within these records suggests their importance to the authors of the document. The mere fact that these women were appearing at all, in documents which were dominated by references to men, seems to suggest at least a partial acknowledgement on the part of the writers of the contributions played by Gaelic Irish women. In addition, the references suggest that the writers recognized women's abilities to exercise leadership roles, as many of the authors praise various women for their nobility and bravery.

In addition to the Annals of Ulster, which stretched from the late fifth century through the early twelfth century, there were other Annals which mentioned women, in particular the sixth volume of the Annals of the Four Masters.¹²⁵ Though these women were not divided into categories as were the women in the Annals of Ulster, their presence is still significant. Indeed,

¹²⁴ Pádraig Bambury and Stephen Beechinor, ed. and comp *Annals of Ulster*, U439.2, U 452.1', U 916.9, U 979.1, U1016.2, U1047.4, U1072.3, U1112.4, U732.7, U748.6, U768.5, U791.5, U801.6, U802.7, U861.2, U890.5, U923.7, U931.4, U1171.6, U1176.2, U1188.7, U918.5, U1093.5, U732.13, U743.1, U758.3, U771.8, U773.6, U778.8, U780.10, U785.5, U797.4, U639.2, U695.6, U863.4, U1009.8, U1035.2, U1076.7, U1077.7, U1078.4, U1080.4, U1118.5, U1119.3, U1122.4, U1127.7, U1176.3, U1177.4, U1187.2, U1110.8, U1157.4, U 1171.5, U1179.1

<http://www.ucc.ie/celt/published/T100001A/index.html> (accessed on 25 January 2010).

¹²⁵ Karen O'Brien and Orla McDonald, *Annals of the Four Masters, Volume Six*, M1507.2, M1508.22, M1523.4, M1524.6, M1524.14, M1524.15, Volume Six, M1530.3, M1530.14, M1532.6, M1535.3, M1542.26, M1544.6, M1508.28, M1516.10, 1528.3, M1529.10, M1534.8, M1536.12, M1540.13, M1542.26, M1583.21, M1587.2, and M1588.14. <http://www.ucc.ie/celt/published/T100005F/index.html> (accessed on 25 January 2010).

women can be found on almost every page of the Annals, though, as with those from Ulster, little is known about them but their name and date of death. As with the Ulster records, their mere presence suggests that the authors believed them worthy of mention, if not detail. Thus, the Irish continued to retain their belief in the importance of women, as shown from their appearance in these Annals.

Thus, the notion of strong, competent women was a notion fully embraced by the Gaelic society and protected by its laws. Further evidence of this can be found by examining the additional duties of these Irish women, particularly those who were married, and by noting an additional monetary compensation received by them. Furthermore, the Irish wife was able to wield authority outside the simple making or breaking of contracts. Indeed, such a wife frequently was required to manage her husband's legal and financial affairs, as well as her own, when her husband was absent. In addition, such a woman also wielded tremendous political influence. She was consulted about strategies during wars, she was required to participate in negotiations for hostages, and she was permitted to determine the succession to the chieftainship within the individual clans. These numerous responsibilities indicate not only the tremendous amount of authority possessed by these women, but also the acceptance, indeed the requirement, of such authority. These women were not only accepted at the war councils, for example, but were required to attend, and to lend their voices in the decision-making process. In addition to these important requirements, Irish married women also received additional monetary compensations besides the bride-price, which indicates the level of respect awarded to them. This compensation took the form of various dues paid to the wife by the tenants of her

husband.¹²⁶ These dues were probably intended as compensation to the wife for the managerial duties she undertook. Thus, Irish women were awarded numerous rights, and expected to take on numerous responsibilities. These were protected by the laws, and exemplified the social equality and respect for women found throughout the Gaelic system.

From this detailed examination of the Couple's Law and other documents, several facts became apparent. First, the Gaelic lawyers based their codes of conduct on a detailed system centered around an individuals' place within society, as opposed to their gender. Evidence for this can be found in the laws which offered men and women of equal status an equal authority to make contracts. It can also be found for example in the laws which allowed a woman who was dependent upon a man for support to veto his decisions, as those decisions would clearly impact her ability to live. Furthermore, hospitality, usually seen as a woman's role, was instead divided equally between the man and the woman, with each being responsible for a certain number of guests. Finally, the law showed a care and concern for the least-defended members of its society by placing a harsh penalty on rape, though again the penalty was determined by social class. Another example of this care and concern can be seen in the law governing the union of insane persons, where the burden of care for the possible offspring was placed with the individuals responsible for uniting the parents. Though the behavior was not condemned, the possible consequences were foreseen and thus the law was put in place.

¹²⁶ "The Historical Image," in *Marriage in Ireland*, ed. Art Cosgrove (Dublin: College Press, 1986), 51-66, qtd in *Ariadne's Thread: Writing Women Into Irish History*, ed. Margaret MacCurtain (Galway, Ireland : Arlen House, 2008), 152.

Thus, Irish Gaelic women were valued not because of their gender, but because of the amount of property they owned or used, their particular social class, or the amount of labor they were able to perform. Thus, these women were able to achieve worth, prestige, and identity based upon individual characteristics rather than an oblique notion of gender. Within a marriage, the treatment they could expect depended upon the amount of property they brought to the marriage, whether they were a first or a second wife, and the nature of the union into which they entered. They were not inherently considered to be inferior than their husbands simply because they were women. Indeed, the laws regulating a husband surviving on an heiress' fortune show this quite well, because they stipulate egalitarian divisions *unless* the husband happens to possess better personal qualities than his wife. This stipulation implies that lawyers felt that, in most instances, men and women were equal, and when they were not, the inequality usually manifested itself in a behavioral way. Also, within a marriage, a woman could be expected to be rewarded for her labor; she received a greater portion of the goods in correlation to the amount she had worked, which indicates several facts about the Irish lawyers' attitudes towards women. First, it shows that they believed women were capable of labor, and oftentimes quite difficult labor at that; indeed, the harder the labor, the greater reward was often the system. Furthermore, the lawyers believed that the reward system should be based upon the ability to labor, and not based upon the gender of the laborer.

Second, perhaps in spite of themselves, the Gaelic lawyers defended the property rights of married women, thereby establishing their legality. Though the lawyers would have preferred a society wherein property was passed down from one male relative to the next, they had to contend with the reality, wherein families gave women property, sometimes in spite of the laws.

Thus, they seem determined to protect the property rights of women, at least once they had the property. In addition, this protection extended to goods other than land, as evidenced by the numerous laws dealing with the theft of goods and the proper means for returning them. Next, Irish Gaelic lawyers seemed to believe that women were capable of making decisions and exercising authority. Though they were not allowed to represent themselves as a man would, they were allowed, with the help of their male relatives, to exercise control of their husband's affairs, particularly in the area of decision-making. The two most common unions allowed the female partner to veto her husband's decisions, using the male members of her family in order to accomplish this. Furthermore, women were allowed to make certain contracts, without their husband's consent, just as the men could draw up some types of contracts without their wife's consent. Thus, the lawyers allowed wives a great deal of autonomy, which suggests that they believed women had the capability to handle this type of responsibility. Furthermore, the lawyers seemed to have a genuine concern for the well-being of these wives, and they seem to have recognized the potential for their exploitation, and thus sought ways to mitigate or eliminate that possibility altogether. The reasons for divorce are a prime example of this. In the case of a woman divorcing her husband, both physical abuse and gossip on the part of the husband are listed as reasons for which a woman could obtain a divorce. This is especially remarkable in light of two considerations: first, the original laws were written in the eighth or ninth centuries. Second, though they were old, they continued to be used until Ireland was fully conquered by England. Thus, the Irish had absorbed a long tradition of valuing their women, and believing in their equality with men, at least on a social scale. This is further witnessed in the Annals, with their varied references to women from all social statuses, who are mentioned either because of their class or because of their relative significance to a historical event.

CHAPTER III

ENGLISH MARRIAGE LAWS, ENGLISH MARRIAGE CUSTOMS, DIVORCE IN ENGLAND AND THE ENGLISH VIEW OF WOMEN.

The English law, which would be brought into Ireland following the conquest of that country, was almost the complete opposite of the Gaelic system it would replace. Indeed, the English colonists viewed the Irish system with contempt, and following the conquest, succeeded in reforming the existing marriage laws to eliminate those aspects of the Irish laws they found most displeasing. These aspects included the liberal position on divorce and the legal precedent for polygamy. These reforms became a type of social control, similar to the religious reforms which were also enacted during latter reigns.¹²⁷ As stated earlier, the English system was in exact opposition to the Gaelic marriage laws, as it aligned itself more closely with the religious ideologies of the day. Indeed, both the religious and the social reforms enacted by the English profoundly altered Irish Gaelic society.¹²⁸ Though some of these changes were good, many of the reforms had a negative impact upon Gaelic Irish women. The extent of this impact will be addressed in the conclusion of the thesis.

¹²⁷ Margaret MacCurtain, *Tudor and Stuart Ireland* (Dublin: Gill and MacMillan, 1972, reprinted 1979.) 117.

¹²⁸ MacCurtain, 117.

In order to understand the differences between the two systems, one must have first examined the institution of, and traditions surrounding, marriage in early modern England. Marriage in England during this time was quite complicated, far more so than marriages of today, and the rules and rituals surrounding it, as well as the responsibilities involved, were numerous and extensive. Contrary to today's society, marriage in early modern England involved the considerations of many individuals, in addition to the couple being married.

Indeed, the interested parties could range from influential friends of the couple, who could permit or forbid the marriage via various means, including withdrawing support from the couple should they act contrary to the advice of these individuals, to the couple's potential neighbors, who could choose or refuse to accept the new couple into their community. The refusal took the form of a humiliating spectacle designed to persuade the couple to leave the community. In addition to this unpleasant possibility, couples also faced another threat from their neighbors: denunciation to the authorities.¹²⁹

However, neighbors and friends were not the only groups interested in the potential joining of a man and woman. The church and even the state took a vested interest in the process. The church's concern stemmed from both traditional and practical reasons. As it had retained its ability to maintain legally recognized marriage courts, it insisted upon the continuance of that practice. In addition, the church also began to require the potential couple to employ a priest to perform the ceremony.

¹²⁹Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 51.

The state's concern was of a more philosophical nature. Many authors writing in the 1600's, and searching for a model upon which to establish the divine right of kings, turned to the family as a basis for this claim. If the husband had the divine right to control his family, so the argument ran, then the king had the divine right to control the country, as the state was merely a larger, and in a sense more metaphorical, version of the family. In addition, the state also had practical reasons for investing in marriage. If it needed money, it could use the various paperwork involved with marriages, specifically the licenses, certificates, and the required stamps, as well as the marriage itself, to raise revenues through the form of different taxes.

In addition to officials at the national level, concerned with theories and taxes, individuals at the local level of state government also took an interest in marriage.¹³⁰ Local level government officials were concerned with preventing illegitimate births, which would increase the need for poor relief. In addition, these officials wanted to prevent the breakup of families due to abandonment, which would likewise drain resources. Thus, the state used stable marriages as a form of religious, philosophical, and social control as well as a means of obtaining revenues. When the English came into Ireland, they brought these concerns about marriage with them, and thus sought to change the Irish system to reflect their own ideals.

In addition to the persons involved in a marriage, the potential couple also had to contend with the confusion surrounding the legality of the marriage itself.¹³¹ For example, numerous customs existed which would enable the potential spouses to be considered married in the eyes of their neighbors,

¹³⁰ Stone, 52.

¹³¹ Stone, 52.

friends and family. These criteria ranged from the sharing of a surname to referring to each other as husband and wife. Thus, the early modern community seemed to accept individuals who acted as if they were married, whether or not the union had been sanctioned in a church by a priest.¹³²

However, the same could not be said for either the church, or the common law courts of the day. These institutions had their own standards that had to be met in order for the marriage to be considered legal. In addition to differing from traditional practice, English common and canon law also differed from each other, making the situation even more complicated.¹³³ Canon law, for example, evolved from a relatively simple system to a complex set of rules and requirements that was, for the most part, largely misunderstood by nearly everyone involved.¹³⁴ The process originated in 1215, at the Fourth Lateran Council, with Pope Innocent II, who crafted the main requirement of a canon marriage: the consent of the two parties. This consent, and not the use of a priest, rendered a marriage legally binding.

However, during the Middle Ages, the system began to expand into the rigorous set of rules seen in the 1600's. These rules baffled most individuals involved, which is understandable when one examines the requirements. By the 1600's, church law differentiated between two specific contracts: the contract based upon the present tense, and the contract based upon the future tense. In a contract based upon the present tense, the parties involved would say, "I do" when asked if they were willing to take the other as their spouse. In the contract based upon the future tense, the answer was, "I will."

¹³² Stone, 51, 52.

¹³³ Stone, 52.

¹³⁴ Stone, 52-53.

As if this was not confusing enough, a further stipulation stated that the first contract, the contract spoken in the present tense, was legally valid at all times, whereas the second contract was only valid if the couple consummated the marriage. Furthermore, there was a third type of contract allowed under canon law, a contract of condition, wherein the two parties would agree to wed only if certain conditions, such as the payment of money, or the approval of the family, took place. If the agreed upon condition did not occur, the contract was considered invalid and the marriage did not take place. Thus, only one type of contract was wholly binding, the contract enacted in the present tense, as both the future tense contract and the conditional contract could be dissolved. In addition, the present tense contract also invalidated any subsequent marriages, even if a priest conducted the ceremony within a church.¹³⁵ Clearly, the present tense contract, preformed before witnesses, was the smart way to get married in early modern England.

Though that was the case for England during the Middle Ages, elsewhere, the canon lawyers were finding it difficult to impose that system. Besides its confusing nature, it was also competing with the casual system discussed above, wherein acceptance by neighbors and behaving as a family were the only criteria required. The elite of society tended to use the more formal canon method, involving a public wedding with all the various ceremonies involved with it, whereas the lower classes preferred the more casual method. Thus the church found itself in a unique position: it supported the power structure by validating their marriage practices, while also supporting the lower classes and their traditions.¹³⁶

¹³⁵ Stone, 52-53.

¹³⁶ Stone, 53.

The church's endorsement of the contract system proved problematic for numerous reasons. The first reason was impracticality, in that these contract marriages expected the potential couple, whose minds were probably elsewhere, to recall the precise tense of the verbs they used to speak their wedding vows. Secondly, these marriages would have allowed the couples to flout the traditional authority of their parents and others who traditionally guarded the couples' interests. Finally, it made the use of a priest unnecessary and the establishment of marriage as a sacrament almost impossible, thereby invalidating one of the church's own goals. Nevertheless, in spite of the contradictions, the church continued to support these unions.¹³⁷

The church's ambiguity toward marriage can also be seen in Ireland, specifically in the church's acceptance of the Brehon Laws. Though the documents were written in the eighth century, they reflected earlier customs and were still in use during the Tudor period. Though they contained liberal divorce policies and allowed for polygamy, both of which would have been opposed on religious grounds by the Catholic Church, the religious leaders seemed content for the laity to continue to use these old laws.¹³⁸

¹³⁷ Stone, 53-54.

¹³⁸ Ó Corráin, "Marriage in Early Ireland," in *Marriage in Ireland*, ed. A. Cosgrove (Dublin: Ireland, 1985). http://www.ucc.ie/celt/marriage_ei.html#38 (accessed 16 February 2010).

In spite of the church's support, the prevalence of contract marriages, at least among the wealthy, began to fade away.¹³⁹ As was mentioned earlier, contract marriages allowed the couple to ignore the wishes of their family, the church, and their societal betters. As both the church and the family were considered corner-stones of society, such blatant flouting of their authority could have serious repercussions for society at large, and thus the contract marriages began to fade in popularity. Because of this fading, the government could continue to use marriage as a determiner of property rights, and a metaphoric support its own power, and the church could use marriage as a means of religious and moral control.¹⁴⁰

Therefore, the romantic fiction of two lovers defying their families in order to wed, would have seemed ridiculous, even obscene, to everyone involved with the process, except perhaps the lovers, and would have become very unlikely as the period continued.¹⁴¹ As a result of these developments, individuals with the means to do so continued to oversee their children's marriages, ignoring the legality of the contract marriage option. As contract marriages declined, so too did court cases dealing with their enforcement. Finally, the canon lawyers themselves began to refuse acceptance of contract marriages, particularly if these marriages were being used in divorce litigations.¹⁴²

¹³⁹ Stone, 54.

¹⁴⁰ Stone, 54.

¹⁴¹ Stone, 54.

¹⁴² Stone, 54.

Thus, though the contract form of marriage still existed, it had become an altogether different creature by the later Middle Ages, and certainly by the early modern period. By this time, it was now used to establish the engagement of the couple and a public ceremony performed in a church by a priest actually created the marriage. However, in spite of this trend, confusion still remained until the Council of Trent in 1563, when the Catholic Church established once and for all the importance, indeed the necessity, of a wedding officiated by a priest, witnessed by at least two individuals, and held within the church. This was the only proper way for religious minded individuals to be considered legally and religiously married.¹⁴³

Though the above requirements held true for much of Europe from the Late Middle Ages onwards, England continued to allow the practice of contract marriages, in spite of the obvious difficulties. From the 1600's to the late 1700's, the English government made no attempt at legal marriage reform, and actually surrendered the small amount of authority over marriages that they had possessed. One possible explanation behind this anomaly was England's unique legal system, divided as it was between three competing branches of government. Yet another reason was the complete absence of a fully formed system of internal government, which led to an overall instability within the English state. In addition, the issue of filling the inherited governmental positions and the continuing evolution of primogeniture based inheritance patterns, particularly among the elite, further complicated matters.¹⁴⁴

¹⁴³ Stone, 54-55.

¹⁴⁴ Stone, 56.

In addition to the above reasons, other causes of the irregularity included the peculiar relationship between Protestantism and the Catholic Church's views on marriage. In spite of the differences in theology, the establishment of Anglicanism as the state religion in England, and the refusal to permit a study of Catholic law, no effort was made to reform the Catholic marriage laws along more Protestant lines. Indeed, the only change was the elimination of marriage as a sacrament, though it was considered indivisible based upon the spiritual nature of the commitment. In other words, the marriage was still considered to be performed in the eyes of God, but being married would no longer ensure that a person would be welcomed into the pearly gates.¹⁴⁵

Yet another reason was the curious relationship that existed between canon and common law. Though canon law allowed for both contract based marriages and those done by a priest, in a church, with witnesses, the common law did not recognize this first option. Rather, they took active steps to discourage the use of contract marriages. One such step included the refusal to consider a couple legally married unless they had participated in a ceremony conducted within a church. All other marriages were considered invalid, and were subject to various sanctions.¹⁴⁶

One of these sanctions, undertaken by lawyers versed in the common law, involved a refusal to bestow the traditional rights of property on any husband who had not participated in the prescribed form of marriage. This loss of property rights could have dangerous implications for all involved. Without these rights, a man could not claim or use the property of his wife, their future children would be left without an inheritance, and the wife would be left destitute following the death of the husband, as she would

¹⁴⁵ Stone, 56.

¹⁴⁶ Stone, 56.

have no legal right to any portion of her husband's property. Thus, though canon law allowed for contract marriages, common law prohibited it by making such a marriage an impractical option, particularly for members of the upper classes.¹⁴⁷

Indeed, marriage among the elite of early modern England followed a very rigid form. The process began in this way: the parents chose the prospective partner for their child and both sets of future in-laws then negotiated the various monetary requirements. Following this, the potential couple accepted the match, though this acceptance sometimes necessitated a bit of arm-twisting by the adults involved in the arrangement. Following this, the next step in an early modern English marriage was the obtaining of a marriage licence that would allow the couple to do away with the reading of the banns. The final step was the actual ceremony, which involved not only the church wedding, performed by a priest, but also the accompanying celebration, which culminated in the assembled guests witnessing the bride and groom climbing into bed. After the conclusion of the ceremony and subsequent events, the new bride and groom were allowed to consummate the marriage in private.¹⁴⁸

However, for the lower classes in English society, marriage preparations took on quite a different tone. The potential couple courted and gave each other presents, much like in a modern courtship. The wedding could take the form of either a contract marriage or a marriage in a church. Occasionally, the couple would exchange the vows in private, only marrying themselves before God. This final option, in spite of its romantic overtones, was considered illegal, and most who used it were young people attempting to avoid an arranged marriage. Though this option was illegal, it was considered valid by the

¹⁴⁷ Stone, 56.

¹⁴⁸ Stone, 57.

church courts, and therefore, for the lower classes at least, clandestine, contract, or canon marriages were all available to potential couples in England.¹⁴⁹

These two systems were vastly different from the marriage rituals in Ireland. The issue of contract versus canon marriage did not exist in that country, as the canon lawyers accepted the traditional laws, and there was no statute of common law to oppose the religious lawyers.¹⁵⁰ Further, though the same financial wrangling occurred in Ireland as it did in England, the woman directly received the funds that her husband paid to marry her. Also, the use of property rights as a means of marriage control did not arise, because the woman did not surrender her rights upon marriage.¹⁵¹ Finally, the concern over English widows made destitute due to illegal marriages was also not an issue, as the widow would have returned to the care of her family following the death of her husband.¹⁵²

Following the marriage, whichever form it took, the couple settled down to enjoy their life together. Both had responsibilities to each other, and were expected to fulfill certain gender roles. Early modern English society placed a particular emphasis on the family. The common view of the family during this period was that it was an institution meant to contribute to society and the public good, rather than exist independently of these considerations. In addition, the experiences of individual families had a profound effect on the experiences of the state, as the two were inextricably linked. This understanding

¹⁴⁹ Stone, 57.

¹⁵⁰ Donnchadh Ó Corráin agrees with the acceptance of traditions by canon lawyers. Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#38 (accessed 16 February 2010).

¹⁵¹ Ó Corráin, "Marriage in Early Ireland," http://www.ucc.ie/celt/marriage_ei.html#38 (accessed 16 February 2010).

¹⁵² Gillian Kenny, *Anglo-Irish and Gaelic Women in Ireland c. 1170-1540* (Dublin: Four Courts Press, 2007), 153-159.

was based upon several factors, chief of which was the religious views of the day. The religious teachings supported this notion by embracing a thorough view of the fifth commandment, which exhorted its readers to honor their parents.¹⁵³ The religious authors of the day expanded this commandment to include anyone in authority, especially the king. Ministers of the early modern period apparently shared their modern counterparts' fondness for elaboration. In addition to their expansion of the fifth commandment, these authors also expanded the *Prayer Book* into numerous longer versions, consisting of catechisms and homilies which supported the association between families and the state.¹⁵⁴

Besides this concept of family as influencing state, the other common conception of the family originated from the comparison between the relationship of family and state, and the relationship of God and humanity. This relationship helped to emphasize the twin notions of unlimited power and undeserved grace, which were then employed by those seeking to justify both the authority of the king and the authority of the patriarch. The authority of the patriarch stemmed from a desire to find a solution to a problem: God no longer directly spoke with humans, and therefore a representative had to be found. The most likely candidate, the minds of medieval authors, was the husband/father. Therefore, the family and its decisions impacted the state, and the father represented God on earth. Because of these assumptions, the family and its members were expected to conduct themselves in a suitable manner. Thus, an ideal early modern English family was a disciplined, ordered unit, with each member behaving according to a strict set of expectations.

¹⁵³Exodus 20:12, KJV Bible.

<http://www.biblegateway.com/passage/?search=Exodus%2020&version=KJV> (accessed 15 April 2010).

¹⁵⁴ Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Basil Blackwell, 1988), 36.

Though the father was allotted complete obedience by his family, he was also expected to meet certain obligations, which would warrant the obedience of his family. First and foremost, he was responsible for ensuring the happiness of his family, which was accomplished through carefully choosing his future partner. In addition, the husband was also expected to ensure that his family was happy by raising the children in a careful manner, and wisely selecting and managing the servants. Each of these precepts helped to reinforce a key notion: the husband was head of his family, just as the king was head of the country, and therefore all ultimate responsibility rested with him.¹⁵⁵

Yet another duty of the husband was to provide happiness to his wife, which would in turn provide happiness to the family. A tremendous amount of importance was placed upon this relationship because of its potential to help or harm the family. Furthermore, some early modern manual writers recognized the importance of the sexual union in increasing the bonds between a couple. This bond was so important that some of these authors would accept a divorce due to the husband's inability to perform his marital duties, though divorce because of infertility on the wife's part was still frowned upon.¹⁵⁶

The husband's next responsibility was to provide for the spiritual and physical well-being of those within his household. Thus, he was expected to guide the family in daily devotionals and also ensure that his family regularly attended the public worship on Sundays. The husband was also expected to be a temperate individual and ensure that his family received physical food, clothing, and shelter. Finally, he

¹⁵⁵ Amussen, 39.

¹⁵⁶ Amussen, 39.

and his wife were also responsible for ensuring that the home was well-managed and that the environment was nurturing and harmonious.

Thus, the end result was a family which was knit together with threads of love: love of one family member for another, and love of the entire family for God. While the analogy of family to state was common, so to was the reverse, state to family comparisons. Therefore, as the ideal state was ruled by a gentle patriarch, as opposed to an absolutist tyrant, so to the family was ruled by its patriarch, who wielded his vast authority as a benign leader, not a cruel tyrant.¹⁵⁷

Though the husband had numerous responsibilities, he was not without help. In keeping with the analogy between family and state, the wife was to serve as an assistant to her husband. Though this would imply an equal standing within the family, such was not the case. Rather, the ambiguous position of wives gave the early modern writers many headaches, as they tried to reconcile the relationship of husband and wife with that of parent and child, or master to servant. In the latter two examples, both the children and the servants were considered to be subordinate to their parents or masters. The subordinate group was expected to honor, respect, obey, and provide for the ruling group. In exchange, the parents and masters were to see that their children and servants received an education, learned a trade, and learned to be respectful of their betters and each other. In both relationships, the roles and responsibilities were clearly delineated, and each group clearly understood the things expected of it.¹⁵⁸

¹⁵⁷ Amussen, 39.

¹⁵⁸ Amussen, 40.

However, the relationship between a wife and her husband was not this simple. The primary reason for this was the confusion surrounding the wife's status in relation to her husband. The wife was expected to assist her husband, by overseeing the affairs of the household and contributing economically to the household, particularly by behaving in a thrifty manner. Indeed, she bore along with her husband the responsibility for ensuring that the family was economically prosperous. Finally, she shared the responsibility of educating and caring for the children and the servants.¹⁵⁹

However, the woman's responsibilities, though many, did nothing to improve her status when compared to her husband. Indeed, subjection and reverence to, and love of, her husband were considered to be as much a part of the wife's duties as was the imperative that she be thrifty in her use of money. Both were critical in establishing a well-ordered family. Though her subjection was vital, many writers of the period were quite critical of a woman's willingness to submit to her husband.¹⁶⁰ Indeed, William Gouge and Thomas Gataker not only believed that women usually failed to submit to their husbands, but they also believed that the failure of women to submit fully to their husbands would spell disaster for the entire family.¹⁶¹

The justification for the complete subjection of the wives was based upon her inferiority.¹⁶² The woman was unable to rise to the same level as the man, therefore, he had to rule over her. Furthermore, because the woman was inferior to the man, her subjection to him was actually beneficial to her, so the

¹⁵⁹ Amussen, 40-41.

¹⁶⁰ Amussen, 42.

¹⁶¹ William Gouge, *Of Domesticall Duties: Eight Treatises* 3rd edn, (London: 1634): 24, qtd in Amussen, 42; Thomas Gataker, *Marriage Duties Briefly Couched together* (London: 1620, 10) Qtd in Amussen, 42.

¹⁶² Amussen, 46.

argument ran, because his complete authority simplified her life. In addition, a woman's individual characteristics did not relieve her of the duty to submit. Even if she possessed riches and wits, she was still considered inferior, simply because she was a woman. In addition, this inferiority was assumed to be natural, just as the husband's complete authority over his wife was assumed to be natural.¹⁶³ This theory was used to explain not only women's subjugation, but the responsibilities and duties given to each partner.¹⁶⁴ Finally, women's inferiority extended to her legal status. Women's position had not changed drastically following the Reformation. Even after the reforms, women in England could not even claim a legal right to their own personal clothing. A husband could be punished for his wife's misdeeds, and the wife became a legal nonentity.¹⁶⁵ In addition, as noted in an earlier discussion, women lost control of their property following their marriage, if the marriage was preformed according to common law.¹⁶⁶

However, there was one ray of hope in all the darkness: socially, at least, women appeared to have gained some small concessions.¹⁶⁷ These were the respect of their husbands and an easing of their workloads. However, these concessions were discussed in works written by sources deemed uncertain by historians: one was authored by a German gentleman visiting England and the other was written in 1699, and therefore, their observances may not have been reflective of English society.¹⁶⁸

¹⁶³ Amussen, 46, 44.

¹⁶⁴ Amussen, 44.

¹⁶⁵ Amussen, 49-50.

¹⁶⁶ Stone, *Road to Divorce*, 56.

¹⁶⁷ Amussen, 50.

¹⁶⁸ Amussen, 44-450.

Thus, though each person had various duties and obligations, the individual relationships could be quite varied. However, this difference frequently resulted in confusion. The concept of unifying authority that underlay the representation of the family was abolished if the relationship of the husband to the wife differed from the relationship of the parents and the children. The state represented the family—but did the king represent a master, and the people his servants, a father, and the people his children, or a husband, and the people his wife? Thus, the analogy broke down at its most fundamental level.¹⁶⁹

In addition to causing problems for those wishing to draw analogies, the ambiguous nature of the relationship between husband and wife also caused problems for the husbands and wives themselves, as well as for those interested in helping them, the authors of the early modern family manuals and commentators. Furthermore, though the relationship between a husband and his wife, who was an adult like himself, obviously differed from the relationship of a servant and his or her master. Nevertheless, complications still arose because as the head of the household the father expected to receive obedience from all members of his household, including his wife. Though the manuals emphasized the importance of love, they also stressed that complete obedience from all members of the family was necessary if the family was to be a thriving and healthy unit.¹⁷⁰

Women's complete subjection and perceived inferiority to her husband, posed a particularly troubling issue for authors of the advice manuals. How was a husband to treat his wife, particularly in the area of correction? Many of the authors of household manuals for the early modern period in England had issues with this concept of spousal authority. On the one hand, the husband was head of the wife, and

¹⁶⁹ Amussen, 39.

¹⁷⁰ Amussen, 38-39.

she was to be subject unto him. Theoretically, this would mean that the husband had complete control over all aspects of his wife. However, many of the authors urged discretion, and insisted that the husbands were to love their wives, and treat them as decreed in the Bible.

However, controversy still remained, particularly concerning the areas of physical abuse and the wife's responsibilities.¹⁷¹ For instance, many commentators urged their readers to be lenient in light of the fact that even extraordinarily good women had their faults, and thus ordinary women would likewise be flawed.¹⁷² Most commentators urged loving treatment, and some even insisted that wife beating should not be done at all, or else as a last resort. For the most part, their ambiguity, and overt refusal to totally commit themselves to a condemnation of the practice, meant that women were at least vulnerable to this type of abuse, whether or not it occurred to any regularity.¹⁷³

The English view of women stood in stark contrast to the Irish opinion of women. As discussed in the second chapter, Irish married women enjoyed numerous freedoms and responsibilities, among them the legally sanctioned retention of their property rights, and a voice in the decisions made by their husbands. In addition, the Irish lawyers emphasized class over gender, and did not seem to consider a woman inferior to a man simply because she was a woman. Rather, the concept of superiority and inferiority was based upon property and one's place within society.¹⁷⁴

¹⁷¹ Amussen, 42.

¹⁷² William Whately, *A Bride-bush; or A Direction for Married Persons Plainley describing the duties common to both, and peculiar to each of them* (London: 1623): 106-7. Qted in Amussen, 42-43.

¹⁷³ Amussen, 43.

¹⁷⁴ Donnchadh Ó Corráin, ed and trans, *Cáin Lánamna*, <http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January 2010).

Finally, though many marriages in early modern England were doubtless happy, stable, and thriving, there were also doubtless many which were not, and in most cases the only solution to an unbearable situation was to do simply that: bear it. Divorce went against English church law, and therefore, for individuals who found themselves in broken marriages, faced with an unfaithful or abusive spouse, or a spouse who had abandoned the family, the only option available was a type of legal separation. Such a separation provided a temporary solution at a heavy penalty: separated individuals could not marry again legally, and who chose broke the law were fined, or, after 1604, charged with the felony crime of bigamy.

Furthermore, though there was a standard legal procedure within the courts to separate couples, most individuals did not take advantage of it. One explanation for this could be that many couples had separated already, and thus the system would simply put a rubber stamp on a decision previously undertaken. Furthermore, doubtless most couples were reluctant to separate, either legally or informally, as they would be unable to remarry, and thus their family would be irrevocably shattered. Thus, many couples in early modern England simply had to live in unsatisfying marriages that went against the ideal espoused by the society, or receive separations that were only a temporary solution.¹⁷⁵

However, a small number of people were able to get a legal termination of their marriage that would allow them to re-marry. Though this was not a divorce in the typical sense, it did dissolve the marriage and allowed both husband and wife to seek new partners. Under English law, such a divorce was

¹⁷⁵ Amussen, 57.

termed an annulment.¹⁷⁶ Such a step was drastic and a last resort for unhappy individuals. However, some individuals living in the early modern period were just miserable enough to seek the freedom offered to them under canon law.

The first step in attaining an annulment involved establishing that the marriage had been invalid in the first place. In England, as in elsewhere in Europe, divorce was a matter for the Catholic Church, and thus the canon lawyers examined the cases and set the precedent.¹⁷⁷ In the case of invalid marriages, canon lawyers declared a marriage to be invalid if it met one of three criteria: either the marriage was invalid due to the impotency of the husband, the existence of another contract, or the nature of the marriage itself. This final criterion had three criteria of its own: the nature of the marriage would be called into question if it was determined to be a consanguineal or affinal union, or if it was obtained through coercion.¹⁷⁸ These three main causes, and three minor causes were the only grounds for divorce allowed under the English system.

A husband's inability to perform his marital duties was the first of the three grounds for divorce.¹⁷⁹

Though canon lawyers insisted that agreement, not sex, made a marriage, they did not use this belief to force couples to remain together, if one partner was incapable of satisfying the sexual needs of the

¹⁷⁶ R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), 74.

¹⁷⁷ Helmholz, 75.

¹⁷⁸ Helmholz, 75-94.

¹⁷⁹ Helmholz, 87.

other.¹⁸⁰ These lawyers proposed numerous conditions for the problem, ranging from congenital emotional coldness to congenital absence of the proper organs.¹⁸¹

Whatever the cause, if a woman could prove that her husband was impotent, she could obtain a divorce—and therein lay the difficulty. Couples had several options open to them in order to verify the validity of the claims, but none of their choices were simple or pleasant. The first option was a trial period lasting three years. Perhaps the lawyers thought the problem might resolve itself, or the couple would be able to live together platonically and still remain happy. The second option involved the husband and wife swearing oaths, to be confirmed by outside sources, that they were incapable of creating an intimate relationship. Thirdly, a special group of women could examine the wife to determine whether she was still a virgin. A fourth option was to have the man examined by qualified men to determine that he was, in fact, impotent.¹⁸²

Thus, in order to secure a divorce based upon impotence, the couple was required to submit themselves to numerous hardships, undoubtedly the most trying of which was the very personal and probably rather embarrassing physical examinations. The fourth option, that of examining the man, was suggested based upon the requirements for the woman, and seems to indicate that some in the church were making an attempt to give women some equality. However, if some in the church sought a measure of equality, their ultimate goal was to limit the availability of divorce, even divorce for an understandable cause, such as impotence.¹⁸³ Two English dioceses seemed determined to make the

¹⁸⁰ Helmholz, 87.

¹⁸¹ Helmholz, 88.

¹⁸² Helmholz, 88

¹⁸³ Helmholz, 75, 90.

process even more difficult and awkward—they used a team of seven women to examine the man to determine whether or not he was impotent.¹⁸⁴ Clearly, at least in England, canon lawyers frowned upon even divorce for impotence.¹⁸⁵

The second cause for divorce was the existence of a previous marriage.¹⁸⁶ Though this occurrence was often used to enforce current marriages, the litigation still came before the canon lawyers who dealt with divorce, and the situation was sometimes used as a grounds for divorce. The scenario would play out thus: a man, or a woman, would bring his or her spouse before the courts and demand that they enforce the marriage. At the same time, another man, or another woman, would also be at the courts, claiming that the spouse in question was really married to them, and not to the new person seeking the enforcement. In this instance, it was necessary to establish exactly what was said during the marriage ceremonies.¹⁸⁷ If the first marriage was preformed with both parties making their vows in the present tense, it was considered to be unbreakable and would be enforced.¹⁸⁸ However, if the union was made with both parties speaking in the future tense, then that first union would be dissolved unless it was followed by consummation, in which case it would be upheld over the second union.¹⁸⁹

If the situation was being used to acquire a divorce, the scenario varied slightly from the original model.¹⁹⁰ In the second case, the claimant would use the possibility of the other spouse's previous marriage as grounds for divorce. In some cases, the spouse seeking the divorce alleged his or her own

¹⁸⁴ Helmholz, 88-90.

¹⁸⁵ Helmholz also came to the same conclusion, Helmholz, 90.

¹⁸⁶ Helmholz, 76.

¹⁸⁷ Helmholz, 76.

¹⁸⁸ Helmholz, 26.

¹⁸⁹ Helmholz, 26.

¹⁹⁰ Helmholz, 77.

former marriage, but usually it was the former marriage of the other spouse which was in question. This was the only difference; the proceedings and outcome were the same as in the case of those seeking the enforcement of the second marriage.¹⁹¹

The third criterion for divorce concerned the nature of the marriage itself, and could be broken down into three subheadings: the marriage was consanguineous, the marriage was affinal, or the marriage was coerced. A consanguineous marriage involved the marriage of two individuals who were also blood relations. The Catholic Church, and, later, the Protestant lawyers, defined an incestuous relationship as sexual relations between people who were related to the fourth degree. In other words, if one's great grandfather was also the great grandfather of one's spouse, the church considered the marriage incestuous, and open to annulment. Indeed, a papal dispensation was required from the Pope to permit such marriages, when their consanguineal nature was known before the marriage occurred.¹⁹²

A couple could also seek to end their marriage if it was discovered that the union was an affinal relationship. The concept of affinity was a bit more elusive, at least to the modern reader. The medieval religious clerics believed that the sexual act created one being out of the two involved. Furthermore, this sexual union created a bond between the two, making them kin. Thus, just as a marriage between two people who were related by blood to the fourth degree was prohibited, so the relationship between a man and the cousins of the woman with whom he had intercourse was similarly prohibited.¹⁹³

¹⁹¹ Helmholz, 77.

¹⁹² Helmholz, 78.

¹⁹³ Helmholz, 78.

As with claims of impotence, burden of proof was also required for claims of consanguinity and affinity. Thus, in order to procure a divorce during this time, the individual who wished to leave the marriage would first have to prove that his or her spouse was either too closely related for them to be married, or that he or she had previously had sexual relations with a member of the spouse's family. This could be difficult to prove, as witnesses were required to attest to the validity of the accusations. Incomplete records complicated the process, as did the absence of accurate information concerning relationships among family members. Due to this, divorces were rare in medieval and early modern England.¹⁹⁴

Coercion was the final cause for divorce under the English system. As with the other four allowances, this final reason was often difficult to prove. In order to receive a divorce based upon coercion, the defendant had to establish that the nature of the threat was great enough to cause a normal individual to consent to the demands, even though the individual might not be in favor of the match. This ambiguous wording led to numerous problems, because a threat to one person may not be a threat to another. For example, one woman was granted a divorce because both she and her father were threatened with death, yet another woman who was threatened with drowning by her father should she not consent, was not granted a divorce, on the grounds that there were individuals present who could have prevented the drowning. Whether they would have actually done so or not was apparently irrelevant.¹⁹⁵

¹⁹⁴ Helmholz, 81.

¹⁹⁵ Helmholz, 91-92.

A divorce was granted to a woman because her father threatened to completely disown her, while another woman was not granted a divorce, even though she would lose part of her inheritance. Finally, a woman who was beaten prior to the wedding was granted a divorce, while a woman whose family brought sticks to the ceremony was not granted a divorce.¹⁹⁶

Clearly, there were no concrete rules for determining the amount of coercion necessary to acquire a divorce, and the cases were judged individually. In addition to these difficulties, the behavior of the couple following the marriage could also influence the decision. Thus, even if the marriage was contracted with force, if the couple seemed to be living peacefully, without any continued violence, divorce on the grounds of coercion was not an option.¹⁹⁷

Thus, divorces, when they occurred, were limited to couples who could prove that their relationship was either consanguineous or affinal. If they were able to prove either of these things, they were granted a divorce. However, the burden of proof was great, and often too difficult for many to undertake successfully. Thus many English women either endured their unhappy marriages, or sought a separation, whether formal or informal. Such a separation would provide at least a measure of relief from their unfortunate circumstances.

The final, and perhaps most obvious, degree of difference between the English and Irish marriage systems centered around their differing views on divorce. The Irish system allowed for fourteen

¹⁹⁶ Helmholz, 92-93.

¹⁹⁷ Helmholz, 91.

different reasons for which a couple could dissolve the union, one of which was physical abuse of the wife. In addition, the Irish lawyers also allowed for divorce based upon impotence, as did the English, but that is the only similarity.¹⁹⁸ Indeed, the Irish attitude toward divorce and remarriage differed substantially from that found among the English lawyers. Due to the proliferation of causes, divorce seemed to have been commonly accepted in early modern Ireland as a normal part of the life of the people. In addition, there were no stipulations concerning remarriage, rather polygamy was permitted as well, which further indicated the Irish lawyers' acceptance of the dissolution of unions.¹⁹⁹ Finally, due to the requirements placed upon English people who sought divorces, it seems as if both parties had to be willing to initiate the process. This was not the case in Ireland, where one, or both, spouses could dissolve the union.²⁰⁰

¹⁹⁸ Donnchadh Ó Corráin, "Marriage in Early Ireland," In A. Cosgrove, ed. *Marriage in Ireland*. (Dublin: Ireland, 1985). http://www.ucc.ie/celt/marriage_ei.html#38 (accessed 16 February 2010.)

¹⁹⁹ For laws relating to polygamy, see Donnchadh Ó Corráin, ed and trans. *Cáin Lánamna* <http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January 2010.)

²⁰⁰ For dissolution of unions, see Donnchadh Ó Corráin, ed and trans, *Cáin Lánamna* <http://www.ucc.ie/celt/published/T102030/index.html> (accessed 19 January 2010.)

CHAPTER IV

THE ENGLISH CONQUEST OF IRELAND UNDER THE TUDORSE

Though the Gaelic legal system had its advantages, and was not as archaic as some historians previously thought, it was eventually replaced by the English common law. Following a series of rebellions, wars, treaties, and compromises, England came to control the tiny island just off its western coast.²⁰¹ Indeed, Ireland became the first in a long succession of colonies held by Great Britain, and therefore was the first to experience all that the word “colony” entailed.²⁰² One of these experiences involved the expansion of English common law throughout the whole of the island.²⁰³

Prior to the coming of James Stuart, successor to Elizabeth I, English common law had been enforced only sporadically, chiefly in those areas controlled by the Anglo-Irish.²⁰⁴ By the conclusion of Elizabeth I’s reign, authority emanated from Dublin, located at the heart of the Pale, and in spite of numerous setbacks and various rebellions, English common law had been extended throughout the country via the plantation system²⁰⁵

²⁰¹ Margaret MacCurtain, *Tudor and Stuart Ireland* (Dublin: Gill and McMillan, 1972, reprinted 1979.)

²⁰² MacCurtain, 188-191.

²⁰³ MacCurtain, 188-191.

²⁰⁴ MacCurtain, 188-191.

²⁰⁵ MacCurtain, 191.

King Henry VIII began his reform attempts in Ireland by attempting to persuade the prominent chieftains to submit to English rule, via a system known as submission and regranting. Under this system, the Gaelic chiefs would agree to recognize the supremacy of the English monarch, as the paramount authority throughout Ireland. In addition, they would pledge to learn and speak only English, to obey the king's commands, and to behave as a typical English feudal lord, with all the accompanying requirements and responsibilities.²⁰⁶

In exchange for this submission, the Gaelic lords would receive their lands, which were being held by the English pending their agreement. Following this acknowledgement, the lord would be reduced to the status of vassal to the English monarch. His position, therefore, would resemble that of the English nobility who held their lands from the king. In exchange for their loyalty, the monarch provided them with protection and certain assurances, such as equality before the law, appeal to the king's justice, and access to a normalized system of courts and judges.²⁰⁷ These principles were part of an attempt to mold the Gaelic Irish lords into copies of their English and Anglo-Irish counterparts, and also to spread the common law throughout the country.²⁰⁸

²⁰⁶“Submission of Two Ulster Chiefs: August 6 and October 1 1545,” quoted in C. Maxwell, ed. *The Foundations of Modern Ireland: Select Extracts from Sources Illustrating English Rule and Social and Economic Conditions in Ireland in the Sixteenth and Early Seventeenth Century*, part 1, *The Civil Policy of Henry VIII and the Reformation* (1921), 35-37. Quoted in Newton Key and Robert Bucholz, ed. *Sources and Debates in English History 1485-1714* (Oxford: Blackwell Publishing, 2004), 42.

²⁰⁷ MacCurtain, 45-46.

²⁰⁸ MacCurtain, 45.

Unfortunately, this policy created more problems than it did solutions. Due to vague wording, both the Irish and the English took advantage of legal loopholes, and numerous small wars broke out, particularly concerning succession and the ownership of land.²⁰⁹ Attempts to expand English influence by force only provoked greater hostility, and thus a new solution had to be found.²¹⁰ The English found such a solution in the plantation system. Combining elements of the surrender and regrant policy, with its strong feudal implications, with an influx of English settlers, the government sought to expand its influence in Ireland through a more peaceful, and more organized, means.²¹¹ Deputy Sir Thomas Radcliffe began the policy in 1557. The system which came to be known as the plantation system involved a survey of the land in order to divide it into parcels, which would then be given out to settlers. Tenures would be drawn up, and various parliamentary acts were passed which would aid in the entire process.²¹² These settlers could be either English colonists or Irish lords, an apparent nod to the failed submission and regrant policies. Regardless of their origins, both groups operated under an identical set of restrictions, similar to those found within the English feudal system.

The plantation system carried with it many requirements which the landowner was expected to fulfill. These included the determination of a yearly rent based upon the number of acres held, the maintenance of a standing army answerable to the lord and the provision of labor days to the constable of the town wherein the landowner resided. In addition to these requirements,

²⁰⁹ MacCurtain, 45-54.

²¹⁰ MacCurtain, 54-56.

²¹¹ MacCurtain, 56-58.

²¹² MacCurtain, 56.

the English tenants and the Gaelic lords were expected to present themselves before the sheriff, along with the men who would serve under them, for inspection.²¹³

In order to foster the spread of English influence, additional regulations were placed upon the Gaelic Irish lords who held their lands as fiefs from the monarch. A Gaelic lord under this system was required to abandon all aspects of his traditional nature in favor of the English culture to which his lord belonged. Thus, he was expected to leave his Irish clothing for English, use the English language instead of Irish, and instruct his children to do the same. In addition to these requirements, the Gaelic lord also had to enforce the English common law, instead of the native Irish Brehon law. Indeed, recourse to the Irish laws was forbidden under this new system. Furthermore, any individual who entered into marriage or fosterage contracts with those Irish who resisted the English faced a financial penalty.²¹⁴

The policy had every reason to succeed and it would eventually triumph over the obstacles encountered by the next three monarchs who implemented it. The reigns of Edward IV and Mary I were chiefly devoted to religious reforms, both at home and abroad. Edward VI's ministers continued implementing plantations, but their primary efforts were concentrated on reforming the church and bringing it into conformity with the English model. However, Irish bishops were more preoccupied with pleasing the monarch than with reforming their own congregations, and thus little progress was made in this area. Mary Tudor restored Catholicism to its former prominence in Ireland, and established two plantations at Leix and Offlay. Though

²¹³ MacCurtain, 57.

²¹⁴ MacCurtain, 58.

remembered in England as “bloody Mary” for her persecution of non-Catholic dissenters, the Queen did not carry this same treatment into Ireland.²¹⁵

Elizabeth I became queen of England when she was twenty-five. Throughout her reign, she attempted to extend English control throughout all of Ireland, by extending the plantation system and modifying the religious situation. Elizabeth’s religious reforms imposed strict regulations accompanied by harsh penalties for failure to abide by these restrictions. The church was fully Anglicized, and many elements of Catholicism were eliminated. The *Book of Common Prayer* was now required to be used by all people throughout England and Ireland, religious and layperson alike. These religious reforms became the foundation of the penal code so often associated with English colonial policy.²¹⁶

In addition to her religious reforms, Elizabeth also sought to extend political control over Ireland. In order to accomplish this, Elizabeth appointed various qualified men for service in Ireland. These individuals included the Earl of Sussex, who was promoted to Lord Lieutenant; Henry Sidney, who served as Lord Deputy; Sir John Perrot, who would become one of Elizabeth’s best generals; Sir Peter Carew; and Sir George Carew. However, Elizabeth did not only send military men into Ireland. She also sent many highly educated men as well. Furthermore, many of the colonizers in Ireland, including Sir Thomas Smith, Sir Humphrey Gilbert, Sir Richard Grenville, and Sir Walter Raleigh, helped to fuel a growing curiosity about another colonial

²¹⁵ MacCurtain, 62-66.

²¹⁶ MacCurtain, 66-70.

prospect, North America.²¹⁷ Thus, Elizabeth sent her best and brightest into Ireland in the hopes of securing that country's conformity with England and its monarch.

Though many of Elizabeth's ministers proved influential and effective, the Earl of Sussex offered her the most help. He, like the queen, sought to bring Ireland under English control. His suggestions included numerous reforms which would help to remake the Irish plantations along the English model. These reforms began at the state level, by the creation of presidencies located in Munster and Connacht, and extended to the local level through the appointment of sheriffs and coroners who would serve throughout the newly created shires. Furthermore, Sussex created numerous legal reforms, including the creation of the Court of Castle Chamber, and various smaller courts throughout Munster and Connacht, as well as the establishment of the Courts of the Presidencies of Munster and Connacht.²¹⁸ Thus, the groundwork was laid for the extension of English common law throughout the whole of Ireland.

However, the British would have to overcome numerous problems before they could fully implement their policy of plantation and extend English common law throughout Ireland. The first problem concerned the English themselves. They insisted upon converting the Irish into an image of themselves: Protestant, English-speaking, urban dwellers. In order to accomplish this, they insisted upon remaking every aspect of the Irish people, from their language to their

²¹⁷ MacCurtain, 70-71.

²¹⁸ MacCurtain, 71.

religion and culture. In addition, the harshness of the British toward the Irish also created problems.²¹⁹

Secondly, there were internal problems within the British government, such as difficulties in administration, poor handling of finance, destabilization of the local government, and rapidly shifting policies as the governors tried to compensate for their own lack of resources.²²⁰

Furthermore, the various plans that were suggested were not given time enough to succeed or fail, and, finally, the Tudors were unwilling to accept the long-term nature of the Irish conquest. Thus, the Tudor government often pursued contradictory policies, operated on limited funds, and refused to devote itself completely to its stated goal: the subjection of Ireland.²²¹

Besides general bureaucratic troubles, specific problems relating to the Tudor administration hampered English efforts at expansion. A particular problem was the inconsistent nature of many of the Tudor policies, specifically in the areas of land reform. The English would support one Irish claimant and deny another, seemingly without any solid reason. This inconsistent policy led to the uprisings in Munster and Ulster.²²² The unscrupulousness of land hunters added to the difficulty facing the administration. These land hunters would come into a province, Connacht for example, find a piece of property to their liking, declare it an undiscovered crown land, and claim it for themselves. This further alienated the local Gaelic

²¹⁹ Nicholas Canny, *Making Ireland British 1580-1650* (Oxford: Oxford University Press, 2001), 577.

²²⁰ Steven Ellis, *Ireland In the Age of the Tudors, 1446-1603: English Expansion and the End of Gaelic Rule* (London: Longman, 1998), 354.

²²¹ Ellis, *Ireland In the Age of the Tudors*, 354.

²²² Colm Lennon, *Sixteenth Century Ireland: The Incomplete Conquest* (New York: Saint Martin's Press, 1995), 236.

lords, who were only too happy to ally themselves with the Spanish Armada when that fleet crashed on Ireland's shores in 1588.²²³

Though problems within the government plagued the English throughout their time in Ireland, the years 1547-1560 were especially difficult for the English in Ireland. This period, the midpoint of the Tudor dynasty, was characterized in Ireland by an ideological shift. The population was seen as being barbarous and completely resistant to the civilizing attempts of the English. Furthermore, the English lords in Ireland were perceived of as being corrupt and uncooperative, thus making the problem even more complicated. Finally, the English government refused to acknowledge the real cause of the problem, scarcity of resources. Instead, they blamed the Irish and the Anglo-Irish inhabitants.²²⁴

This led to a shift in policy which only created more problems. The English administration believed that newcomers fresh from England, coming into the colony, could succeed where the Anglo-Irish lords had failed, and additional resources flowed into the island. Instead of remedying the situation, however, this only exacerbated the problem. Many of the men who came to Ireland were far from impartial; they wanted to acquire wealth, and quickly.²²⁵

This resulted in the English government first attempting to use the local Gaelic lords to help them succeed in commanding the island. Thus, the policy of submission and regranting was

²²³ Lennon, 263.

²²⁴ Ellis, *Ireland In the Age of the Tudors*, 355.

²²⁵ Ellis, *Ireland In the Age of the Tudors*, 355.

implemented in hopes that it would win the Gaelic chiefs' favor by allowing them to exert greater control over their own spheres of authority. Unfortunately for the English, this policy backfired somewhat, in that it gave numerous Irish aristocrats tremendous power which they then used against their English overlords.²²⁶

This led to the second area of trouble for the British: the Irish themselves. Their refusal to cooperate with British policy, and to insist upon their own sovereignty, created a climate of harshness and repression which fostered bitterness on both sides and led to conflicts which would continue for years. Also, Ireland at the time was rent by internal divisions, chiefly among two prominent Anglo-Irish families, the Desmonds and the Ormonds, who were involved in a longstanding feud. Thus, the additional resources, instead of helping the country, were instead used to prolong the fighting. Therefore, in order to ensure their supremacy, the English were forced to maintain troops on the island, which only exacerbated the problem.²²⁷

Though many Irish aristocrats exploited the advantage given to them by the extension of English Common Law, no group proved to be more apt in this execution than the Kildares. They were uncooperative and troublesome, refusing to work with the English, but when they were removed, a power vacuum was created, which allowed the local Gaelic chiefs and former

²²⁶ Ellis, *Ireland In the Age of the Tudors*, 354-355.

²²⁷ Steven Ellis, "Tudor State Formation and the Shaping of the British Isles," in *Conquest and Union: Fashioning a British State, 1485-1725* ed. Steven G. Ellis and Sarah Berber (New York: Longman, 1995), 60- 62.

supporters of Kildare's rivals, to come in and further disrupt an already troublesome situation.²²⁸

However, it was not just the Irish and administrative difficulties which plagued the British.

Other English subjects also created problems, in particular the so-called Old English.²²⁹ Though they were loyal to the English government, they insisted on retaining their Catholicism, which caused problems, as their loyalties were divided between the Protestant English and the Catholic Irish. Though they claimed to support England over the Irish rebels, their religious affiliation made them just as suspect in the eyes of the New English as were the native Irish.²³⁰

Yet another problem plaguing the Tudors was the difficulty of religious reform. The Reformation never took hold in Ireland. Instead, it was the Counter-Reformation, headed by the Catholic Church, which succeeded, and the nation began to see itself as a nation of Catholic Irish, in strong opposition to its Protestant English neighbors. The clearest example of this was the representation of Hugh O'Neill's rebellion, when, in spite of the lack of response from the pope, the rebellion was beginning to coalesce into a crusade to free Irish Catholics completely from the rule of English protestants.²³¹

²²⁸ Lennon, 86-112.

²²⁹ Lennon, 207.

²³⁰ Lennon, 207.

²³¹ Lennon, 324.

The final issue confronting the English was the various rebellions which occurred during Elizabeth's reign, chiefly those of Shane and Hugh O'Neill. Hugh O'Neill posed the greatest threat to English sovereignty in Ireland, as he made the first attempt to drive the English from the country. Ultimately, however, his defeat hastened the spread of English common law and helped to bring about the full conquest of Ireland under James Stewart.

Shane O'Neill's rebellion began in response to a power vacuum following the death of Con O'Neill in 1559. Rather than recognizing Shane's authority, Elizabeth instead issued a proclamation against O'Neill, which indicated her unwillingness to deal with the troublesome Irishman. However, Sussex convinced her to treat with the Irishman, and she began a policy of allying herself with Irish clans loyal to O'Neill. These clans included the MacDonnells of the Glen and Kintyre, and the O'Donnells. At Elizabeth's request, Shane came to court in London to bargain with the Queen. O'Neill would submit to Elizabeth's terms, providing that she agreed to pay for the visit, permit the Earl of Kildare to appear in court alongside him, and respect O'Neill's position as chief of the O'Neills while he was in London.²³²

However, Elizabeth and her minister desired far different terms. They were determined to see O'Neill's authority crushed, and to use his former allies as a means of accomplishing this goal. Elizabeth and her ministers would continue their alliance with O'Neill's allies in order to use the influence of these other clans to break O'Neill's hold on his clan lands.²³³

²³² MacCurtain, 71.

²³³ MacCurtain, 72.

In spite of the odds against him, O'Neill succeeded in his dealings with the Queen and achieved many of the goals for which he had come to London. Elizabeth's ministers remained concerned, especially as O'Neill continued to amass power, particularly after he defeated another rival for the position of O'Neill. Shane even went so far as to attack the Earl of Sussex, who had been reaching out to Shane's enemies, defeating the Earl in November 1563. As an added bonus, O'Neill possessed Elizabeth's pardon for his actions. In addition to his defeat of Sussex, O'Neill also captured two members of an invasion force from Scotland, claiming that he was acting in defense of the Queen. Thus, for a time, the English ministers had no choice but to sit and wait for an opportunity to attack.²³⁴

Such an opportunity was provided following the appointment of Henry Sidney as lord deputy in 1565. As deputy, one of Sidney's primary goals was to eliminate Shane O'Neill as a threat. Under the advice of Lord Cecil, who complained of O'Neil's growth in territories, Sidney began to prepare for confronting the Irish rebel. He and Cecil were confident of victory, as Cecil had previously succeeded in dissuading the Scots from their allegiance with Shane. Yet, an English victory would not be so simple.²³⁵

O'Neill knew of their plans, and began making preparations of his own. He contacted numerous influential individuals throughout France and Scotland, attempting to create an alliance between Ireland and these other countries. He couched his terms in religious rhetoric, presenting his struggle as a defense of the true religion against the attacks of Protestantism. He suggested

²³⁴ MacCurtain, 73.

²³⁵ MacCurtain, 73.

that France, Scotland, and Ireland ally together against the British in order to preserve the true religion, which was being attacked by Queen Elizabeth I and her Protestant ministers.

Unfortunately, for O'Neill, his political endeavors came to naught, as neither the French or the Scottish agreed to ally with him. Thus, a tense summer passed, wherein both sides prepared for war.²³⁶

Henry Sidney began a march through Ireland, searching for the elusive Shane. Sidney encountered one of O'Neill's followers, Hugh Dubh at Tryconnell, who surrendered Donegal Castle to him. With that exception, however, Sidney not only did not meet Shane O'Neill himself, but furthermore, the Englishman could find no trace of any of the rebel Irish. They seemed to have vanished, leaving behind only abandoned campsites as testimony to their presence. In spite of this puzzling state of affairs, Sydney did succeed in establishing an English garrison and further cementing the loyalty of the O'Donnells to the crown. O'Neill, however, had remained out of Sidney's grasp the entire time.²³⁷

However, O'Neill's triumph was short-lived. His allies had deserted him and O'Donnell was plaguing him. O'Donnell had raided O'Neill's Starbane Castle and launched an attack at Lough Swilly that resulted in the defeat of O'Neill's forces. With this final defeat, O'Neill's demise was at hand. Henry Sidney was now able to flaunt his authority over the Gaelic chieftain in a particularly Irish way, by absconding with about 3,000 head of cattle from Dungannon. As if this

²³⁶ MacCurtain, 73-74.

²³⁷ MacCurtain, 74.

were not bad enough for O'Neill, the remainder of his allies dwelling within Tyrone quickly surrendered to Sydney.

Thus, O'Neill's defeat seemed to be at hand. With no other recourse left open to him, he sought an alliance with Alexander Og MacDonnell, upon the advice of his confidante, Nial Mac Conner. The advice was to prove fatal. Shane O'Neill met with Og MacDonnell, bringing along as insurance his special hostage Somhairle Buidhe MacDonnell and the few men who would still serve him as retainers. However, these individuals would not be enough to save him from his fate. Shane O'Neill was hacked to death during the banquet and his head was sent to Dublin castle, where it would remain, mounted upon a stake, for the next four years. Thus, the first threat to Elizabeth's power in Ireland had been vanquished.²³⁸

Elizabeth's next major problem during her reign was the rivalry that erupted between the House of Ormond and the House of Desmond.²³⁹ The Ormonds, especially the Butler family, and Thomas the tenth Earl of Ormond in particular, had arisen as champions of the Tudors and their interests in Ireland. Thomas was cousin to Elizabeth I, and his blood ties only cemented his loyalty. He was brought to the English court, educated alongside Prince Edward, and was a supporter of Cecil, Sussex, and Leicester. He was also very close to his queenly cousin, and attempted to use everything he possessed in order to aid her. She, in turn, supported him in his claims against the Desmonds. Thus, the Ormonds were a reliable source of aid to Elizabeth, necessary in a time when the Protestant religious was being challenged by the Counter-

²³⁸ MacCurtain, 74.

²³⁹ MacCurtain, 75-83.

Reformation, and all of Ireland seemed to be a rising caldron on the verge of boiling over into rebellion.²⁴⁰

Stirring the pot was the longstanding rivalry between the Ormonds and their sworn enemies, the Desmonds, led by Gerald, the fourteenth earl. Though the two houses were bound by blood, continuous feuding occurred between them. Henry Sidney initially cast his lot with the Desmonds, supporting them against the Ormonds, and received a rebuke from his queen for his efforts. He was commanded instead to support the Ormonds. In response to the continual feuds, Elizabeth had Gerald imprisoned in the tower of London, leaving his cousin, James Fitzmaurice, in charge of his lands in his absence.²⁴¹

Relations between the crown and the House of Ormond became strained following the Carew Incident. The incident concerned the issue of the ownership of the barony of Idrone. Sir Edward Butler claimed the castle, as he was descended from the MacMurrough Kavenaughes. However, Peter Carew likewise claimed the castle, as well as the surrounding territory, based upon the fact that he was descended from Raymond Le Gros of Carew. The situation was resolved in favor of Carew, in December of 1568. This decision had serious repercussions for the other Anglo-Irish and Gaelic Irish lords. They now believed that no Irish lord was safe from the legal manipulation of Elizabethan schemers. Thus, the Anglo-Irish lords began to lose faith in their government. They could almost see their land slipping away beneath their eyes.²⁴²

²⁴⁰ MacCurtain, 75.

²⁴¹ MacCurtain, 75-76.

²⁴² MacCurtain, 75-76.

In response to the general sense of unease, and the timid protests of the 1569 Parliament, Elizabeth passed the Act of Retainer. Though it was intended as a response to the treason of Shane O'Neill, in that it directly involved his territories, that act, and the subsequent splitting of the territories into shires, sent a clear message to the Anglo-Irish lords: rebellion against her majesty, and her plan for the extension of English common law, would not be tolerated.²⁴³

Not too surprisingly, given the situation, a full scale rebellion soon broke out in Ireland.²⁴⁴ Dubbed the Munster War, it was spearheaded by James Fitzmaurice, who was reacting to the threat posed to his family by Sir John Perrot, current president of Munster throughout the war. The incarceration of the Earl of Desmond and his brother was another likely cause of the rebellion. Furthermore, the rebellion was also a response to the concerns of the Anglo-Irish lords over whether or not their property rights would be respected by the English. Sir Fitzmaurice's rebellion soon counted the bulk of the Butler clan among its supporters, with the notable exception of Sir Thomas. He chose to side with the Queen, and as a result was tasked with the responsibility for ending the rebellion—a task which proved too daunting, much to Elizabeth's displeasure and confusion.²⁴⁵

Ultimately, it was Sir John Perrot who ended the war. Following an attack by Fitzmaurice at Kilmallock, one of the properties of the Geraldines, which resulted in the complete destruction

²⁴³ MacCurtain, 76-77.

²⁴⁴ MacCurtain, 77-83.

²⁴⁵ MacCurtain, 77.

of that property, Sir Perrot responded by installing a military garrison within the ruins of the town. Though Fitzmaurice succeeded in destroying the town, he was unable to elude capture by the English forces. Following his capture, Fitzmaurice was required to fully submit to Perrot, by prostration and declarations of repentance. However, the rebellion did succeed on one point: Elizabeth I restored the estates of the Earl of Desmond and Sir John.²⁴⁶ Thus, the rebels ultimately won the victory.

However, the matter was not left to lie, and trouble soon rose again. Motivated by the actions of Perrot, the continuing plantation schemes, and the dissatisfaction of Fitzmaurice, another group of rebels began to form. This group was given further ammunition following the publishing of a papal bull excommunicating the queen. With the decree from the pope in hand, the militant group, dubbing itself the Catholic League, began to merge politics and religion as they sought to wrest control away from the Protestant monarch.²⁴⁷

As with the Munster war, this second rebellion soon evolved beyond the initial men involved. Fitzmaurice sought help from abroad, and succeeded in securing the assistance of Pope Gregory XIII, an Englishman named Stukely, and a fleet of men sent from King Philip II of Spain. Thus supplied, Fitzmaurice returned to Ireland. His involvement in the campaign was short lived, however, as he met his death shortly thereafter at the hands of the Clanconnell Burkes. Temporarily deprived of a leader, the rebel force turned to Fitzmaurice's nearest relation, Gerald, the earl of Desmond. Though Desmond was neither a military man nor a politician, he

²⁴⁶MacCurtain, 77.

²⁴⁷MacCurtain, 77.

found himself in charge of the rebel forces, and subsequently branded an outlaw by Pelham, who was acting as lord deputy during the entire affair.²⁴⁸

Pelham's strategy was brutal but effective. His plan involved placing continual pressure on the Irish rebels, through the destruction of crops, the use of garrisons, and the general harassment of anyone involved in the rebellion. Though Elizabeth frowned upon Pelham's actions, particularly his swift proclamation of Lord Desmond as an outlaw, Pelham was able to convince her of the correctness of his decision, by claiming that his actions were necessary, as the rebels were waging a religious war, supported by the Pope.²⁴⁹

Pelham's assertion that Desmond's rebellion was motivated by religion was founded on dangerous facts. Geraldine was receiving assistance from the Pope, who gave him control over the city of Limerick. In addition to this, the pope also issued religious immunity to all who would take up arms against Elizabeth. Furthermore, Geraldine also received aid from Spain, who provided men and arms to the rebellion. The pope also provided assistance of a more physical nature, and sent men and arms to aid the rebellion as well.²⁵⁰

Besides these external allies, Lord Desmond also rallied the people of Ireland to his cause. These men included Lord Baltinglass and Fiach Mac Hugh O'Bryne of Leinster, as well as men from the area of Glenalure. In addition to these Irishmen, the pope's assurances of aid materialized in

²⁴⁸ MacCurtain, 78.

²⁴⁹ MacCurtain, 79.

²⁵⁰ MacCurtain, 79.

the form of a battalion led by Colonel San Joseph at the behest of the pope. The soldiers landed at Smerwick and soon occupied a local fort known as Dunanoir. Fray Matio de Oviedo, a Spanish priest who travelled with the battalion from the pope, joined them in their endeavor. Though his presence suggested the hand of Spain in the endeavor, in this particular instance, this was not the case, as the Spanish king and the Pope had not cooperated to send this aid to Ireland.²⁵¹

Though initially successful, the victory was short lived. Forces under the Earl of Ormond arrived at Smerwick and began to attack the fort. After a five month long siege, San Joseph surrendered. Following his capitulation, Ormond and his men massacred more than five hundred of San Joseph's men. After this initial defeat, the rebellion began to crumble. Of Desmond's allies, only Fiach Mac Hugh succeeded in receiving decent terms following his surrender. Lord Baltinglass simply left the country and travelled to Spain. Meanwhile, Desmond was rapidly losing his castles as the men inside them capitulated to the English. Before the rebellion was concluded, English forces held Younghal, Carrigofoill, Askeaton and Ballylogh. Also, they succeeded in capturing James, brother to the Earl. He was brought to Cork, where he was summarily executed by hanging. Following his death, his body was quartered and his severed head mounted on a spike located at the city gates.²⁵²

The rebellion continued to deteriorate from this point on. Another Desmond, Sir John, was killed in an ambush by a man named Fleming, a servant who had defected to the English. Following the death of these two Desmonds, Gerald continued in his efforts, corresponding with

²⁵¹ MacCurtain, 79.

²⁵² MacCurtain, 80.

the pope and complaining against Queen Elizabeth, as he continued to place the struggle in a religious light. Eventually, Gerald was killed as well, during a cattle raid. Following his death, the rebellion finally ended.²⁵³

Though the war was over, the problems, unfortunately, continued. Munster had been devastated during the war, and neither side behaved honorably toward the other. In addition to the destruction and death which occurred, the Munster War served to unite both Anglo-Irish and Gaelic Irish against a common enemy: the English and their religious and legal system, which threatened to rob them of their traditional religion and practices.²⁵⁴

Though she had succeeded in vanquishing the rebellions that had arisen against her thus far, her success had come at a price: the gradual diminishing of her relationship with the Anglo-Irish lords, who now were united with the Gaelic Irish against her.²⁵⁵ Into this political morass would come Elizabeth's greatest foe, and the man who threatened to undo her accomplishments in Ireland: Hugh O'Neill.²⁵⁶

O'Neill's rebellion began as a quest for territory and quickly evolved into a quest for mastery of all of Ireland. It would prove the ultimate test of Elizabeth's policy in Ireland. The leader of the rebellion, Hugh O'Neill, was a devious mastermind who proved to be a fitting match for the

²⁵³ MacCurtain, 80.

²⁵⁴ MacCurtain, 80.

²⁵⁵ MacCurtain, 80.

²⁵⁶ MacCurtain, 83.

English men he opposed. Following the death of Con O'Neill, and the rebellion of Shane, Hugh O'Neill, the younger brother to Shane and next in line for the position of O'Neill, travelled to England to learn the ways of that country. O'Neill absorbed his education, and presented himself as an ally of the English during their wars with Munster and Desmond. In addition, O'Neill also supported both the Earl of Essex and Henry Sydney in their endeavors within Ireland.²⁵⁷

Thus, O'Neill kept up a pretense of fully supporting the English, all the while working behind the scenes to achieve his own ends. He began putting his plan into place following the illness of Turlough O'Neill, the only man standing between Hugh and the position of The O'Neill, the name for the head of the O'Neill clan. Though unbeknownst to his English supporters, O'Neill began garnering influence and support from both the Irish and the English by using their mutual distrust of each other to his advantage.

His deception lasted for over a decade, with no one the wiser about O'Neill's secret activities. As part of his campaign to secure the leadership of Clan O'Neill, Hugh requested the lands of Tyrone from the English Queen, who subsequently acquiesced and granted him the territory. Now the Earl of Tyrone, O'Neill succeeded in controlling the other earls in the area. Yet even this did not satisfy him. Though the lords of Ulster submitted to him, O'Neill wanted the title

²⁵⁷ MacCurtain, 83.

that he believed was his right. Unfortunately, for Tyrone, he would be unable to ascend to the office until Turlough was dead.²⁵⁸

While the Earl was busy amassing influence and power in Ulster, and waiting for his cousin to die, Deputy Fitzwilliam had assumed the presidency in Munster. Fitzwilliam firmly believed in the superiority of the English colonists and the full pacification of Ireland. Furthermore, he remained confident that the Irish were finally pacified and there would be no threat of outside intervention in English affairs.²⁵⁹

In addition to Fitzwilliam's lax attitude, the English colonists themselves only served to make a tense situation worse as they treated the country as a means to amass their own wealth, without regard to the laws or the original inhabitants. This was hardly a recipe for contentment and peaceful co-existence, and, soon another rebellion was brewing. The rebellion began after in May of 1593, under the direction of Hugh O'Donnell and Archbishop Magauran. An expedition embarked for Spain, under the direction of Archbishop James O'Healy of Tuam, to seek their aid in the coming conflict. Finally O'Donnell and Maguire of Fermanagh launched an open rebellion. In spite of the growing rebellion, O'Neill remained aloof from the conflicts swelling around him, though he had developed a close friendship with one of the rebels, Hugh O'Donnell. O'Neill had sheltered O'Donnell when the latter fled Dublin Castle.²⁶⁰

²⁵⁸ MacCurtain, 84.

²⁵⁹ MacCurtain, 84.

²⁶⁰ MacCurtain, 84.

For a time, the Earl of Tyrone was the only Irish lord who was not involved in the rebellion. The earls of the north succeeded in recruiting their southern brothers to the cause, specifically Cahil O'Connor and Maurice and Thomas Fitzgerald, relatives of the ill-fated Lords of Desmond. Edmond Eustice also joined the cause. He was an odd choice, in spite of the fact that he was a candidate for the Baltinglass title, as he was exiled during this period. Though the Northern Confederacy now had the southern lords participating in their planned rebellion, they still had not received any help, or even any offers of help, from their former ally, Philip II of Spain. Minor setbacks aside, the Northern Confederacy soon became a source of concern for the English in Ireland, as they now held many cities of strategic importance within the country.²⁶¹

Although O'Neill now had ample evidence of the success of the Northern Confederacy, he still held back, reluctant to join them. He went so far as to submit to the English following the defeat of Bagenal at Clontibret. In an ironic twist, he disavowed any knowledge of the rebels' activities and assured the English that he had not exchanged any communications with England's enemies—though this was far from the reality.²⁶²

O'Neill had been corresponding with Philip II of Spain. Apparently the English officials were not completely fooled by O'Neill's ruse, as they began to fear O'Neill, and came to believe that he was planning on launching a rebellion. Furthermore, they claimed that such a rebellion would

²⁶¹ MacCurtain, 84.

²⁶² MacCurtain, 84-85.

be the most destructive rebellion Elizabeth had ever faced. Their assessment would prove correct.²⁶³

Hugh O'Neill began his rebellion in 1595. His agent in the Spanish court informed him that Philip II was ready to help the rebellion, which was presented as a defense of Catholicism, which was facing attack from the English colonists. Once Spain's offer of help was secured, O'Neill assumed control over the Northern Confederacy. Following the assumption of leadership, O'Neill contacted Spain again, detailing his plans to submit to the English, along with the Earl of Tryconnell. Such submission would not be necessary if the Spanish would aid the Irish rebels in the defense of their religion. With Philip's support secured, the rebellion could continue. The primary issue facing the rebels concerned the possible landing point for the troops Philip II would send—providing the rebels were cooperating with each other. Thus assured, Philip II selected Limerick as a landing point, with Galway as an alternative. Everything seemed ripe for a Spanish invasion.²⁶⁴

However, the Spanish landing never materialized. Several expeditions were sent out, but none ever reached Ireland. In addition to these failures, Spain was facing its own troubles with other European powers, specifically France. In addition, Elizabeth's ships patrolled the channel and succeeded in eliminating many of the expeditions bound for Ireland. Finally, Philip II died before

²⁶³ MacCurtain, 85.

²⁶⁴ MacCurtain, 85.

any definite help could be secured, and he left his son, Philip III, a country devoid of any monetary resources.²⁶⁵

Though the war with France was concluded under the Treaty of Vervins, Spain was soon embroiled in another conflict, this time with England. The two countries had been fighting in the Netherlands, where the Dutch were fighting to free themselves from Spanish control, assisted, ironically enough, by the English. This war preoccupied Philip III, and commanded much of the aid that could have been sent to Ireland. However, at the behest of Mateo de Oviedo, who was serving as the Archbishop of Dublin, Philip III made a concession to the Irish rebels. He sent a ship and soldiers, originally bound for the Netherlands, to the rebels in Ireland. The Spanish fleet arrived, but proved useless against the opposing English forces. Philip III sent the aid believing that, due to Elizabeth's advanced age, she would shift her focus from the Netherlands to Ireland, and thus enable the Spanish to re-take that country.²⁶⁶

Though the English ultimately succeeded in defeating the Irish-Spanish alliance, and securing the country, this outcome was not clear at the beginning of the rebellion. Initially, Elizabeth's attitude helped to hamper English progress. She was unwilling to move against O'Neill, preferring instead to work with him. In addition, she exercised far too much caution in her dealings with the rebels. Finally, the natural delays in communication and the slowness of the

²⁶⁵ MacCurtain, 86.

²⁶⁶ MacCurtain, 85-86.

various bureaucratic procedures necessary for a war slowed the English and bought valuable time for the Irish.²⁶⁷

Furthermore, Hugh O'Neill held numerous abilities and devised many tactics which made him a serious threat to the English. Chief among his assets was O'Neill's knowledge of English military strategy, which he taught to his troops and then employed against the English. Besides his military knowledge, O'Neill was also a great strategist. In order to avoid direct confrontation with the English, O'Neill relied upon guerilla warfare, using such tactics as ambushing enemy soldiers and raiding their supplies, to harass and hamper the English army. In addition to these tactics, he also used the geography of the country to his advantage. Finally, O'Neill relied upon a tremendous amount of troops as he staged his rebellion. Besides the aid he received from Spain, and his own native forces, O'Neill also employed mercenaries, thus adding to the number of men serving him. These tactics gave O'Neill a chance at winning the war.²⁶⁸

Though O'Neill had the advantages of terrain, experienced soldiers, and the promise of foreign aid on his side, the English also had advantages, chief among them their control of the rest of the country. Although the lords dwelling in Munster supported the rebellion, that territory was in English hands and had been since 1600. This allowed the English the added advantage of familiarity, and they were able to employ an effective strategy: follow the river and seize the enemies' castles.²⁶⁹

²⁶⁷ MacCurtain, 86.

²⁶⁸ MacCurtain, 86.

²⁶⁹ MacCurtain, 87.

Furthermore, the English had many intelligent generals who were able to match O'Neill strategically. Chief among these men was General Mountjoy, who served as President of Munster and initiated the third phase of the war. Lord Deputy Mountjoy was arguably the greatest general to serve during this time. He took the traditional methods already employed, wherein the soldiers would take back enemy territory and place a garrison within, and expanded upon them. He expanded the number of garrisons to stretch from Mount Noris to Lecale, covering the border of Ulster. Next, he thoroughly decimated the crops in that region, further hampering the rebels' access to supplies. Mountjoy was relentless in his campaigning, continuing his strategy throughout the winter months, and bringing in extra troops to aid in the fighting. Mountjoy's ruthlessness paid off, and O'Neill surrendered in 1603 to the now-deceased Queen Elizabeth. Though Mountjoy's tenure was brief, his impact was enormous, as he singlehandedly brought about the defeat of O'Neill, and bridged the gap between Henry VIII's ineffective policies and the decisive triumph of Elizabeth.²⁷⁰

In spite of the difficulties she faced, Elizabeth I left her successor, James I, with a fully subdued country. Following the defeat of Hugh O'Neill, the final obstacle between the English and the Irish was obliterated. After O'Neill's defeat, the remaining Irish lords fled the country for Europe, which eliminated the threat of any further rebellion, and enabled James I to continue, and expand the plantation policy began under Elizabeth I.²⁷¹

²⁷⁰ MacCurtain, 87.

²⁷¹ MacCurtain, 114.

England now had control over Ireland, and could continue to expand English common law. They were able to implement their legal, social, and to some extent religious, customs throughout the island. Part of these customs involved the English attitudes and laws concerning marriage. Once established, the English marriage laws brought about the disenfranchisement of Gaelic Irish married women.

CHAPTER V

CONCLUSION: THE THEORETICAL RESULTS OF THE ENGLISH CONQUEST ON THE STATUS OF IRISH WOMEN

After numerous years of hardship and struggle, the English ultimately were victorious in Ireland. Under Elizabeth I, English Common Law spread throughout Ireland, helping to solidify England's claims, and ensuring an easier management of the otherwise troublesome country. Though the common law brought many benefits to Ireland, among them the clearing up of a somewhat confusing system, it also had its drawbacks. Chief among the negative effects of the extension of English common law was its effect on the status of Irish women—in particular those entering into marriage. They lost the centuries-old protections and rights afforded them under the Brehon laws, and became as liable to victimization and exploitation as their sisters residing in England.

Though English common law and Gaelic law parted ways on many issues, for women the most significant area of departure was in the area of marriage and divorce. The two systems held vastly different views on women, and consequently, vastly different expectations of women. Furthermore, the Irish and the English system had different understandings of marriage, and different views on the termination of such marriages, with the Irish allowing for divorce freely, and the English striving to ensure that marriages were never dissolved.

To begin with, the Gaelic laws recognized ten different unions, each of which came with its own responsibilities and requirements.²⁷² The most complex, and egalitarian, of these unions was the union of joint contribution.²⁷³ Under this union, both husband and wife brought property into the marriage, and they used their goods for the mutual benefit of their union. Mutual consent was required to make contracts, except in cases involving property, such as the hiring of laborers to tend the land. This ensured that the wife was consulted on almost all matters; in addition, in those areas where both partners were free to make contracts without the other's consent, the wife had liberty to make business deals without the permission of her husband. The remaining unions diminished in complexity and in the level of rights women enjoyed, though in all cases the women were afforded some measure of protection, even if that only involved the former husband paying a sack of grain to the former wife.²⁷⁴ The Gaelic lawyers clearly recognized the potential for the abuse of women and sought to pass legislation protecting them.

Gaelic law allowed for fourteen different reasons for divorce, broken down by gender. A woman could divorce her husband for several reasons, including physical abuse, impotence, and gossiping about marital relations. A man could divorce his wife for numerous reasons as well, including infanticide and infidelity, or simply because the woman failed to keep a neat house. Apparently, the Irish had standards of cleanliness to which each member of society was

²⁷² Donnchadh Ó Corráin, trans, *Couple's Law*, 2005.

<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on 27 March 2010).

²⁷³ Ó Corráin, *Section One through Twenty-One*.

<http://www.ucc.ie/celt/published/T102030/index.html> (accessed on 27 March 2010).

²⁷⁴ Ó Corráin, *Section Five*, <http://www.ucc.ie/celt/published/T102030/index.html> (accessed on 27 March 2010); Ó Corráin, *Section Eight through Thirty-Six*, in particular *Section Twenty-Eight*, <http://www.ucc.ie/celt/published/T102030/index.html> (accessed on 27 March 2010).

expected to adhere. The laws allowed for remarriage following divorce, and polygamy was likewise allowed, providing the husband compensated his first wife, and the second wife did not overstep her bounds.²⁷⁵

Besides simply allowing for divorce, the Gaelic lawyers also legislated on the division of property following the dissolution of the union. Care was taken to ensure that goods were divided evenly, and that percentages were based upon the behavior of the spouses, the labor each provided, the relative status of each member, and the type of union under which the couple had been joined. The most egalitarian of unions, and thus the one with the most equitable division of goods, was the union of joint contribution, wherein both parties brought property and goods into the marriage. In this case, the division of goods was generally by halves, and sometimes thirds. Yet even the most basic of unions received legislation and an attempt at equitable distribution of goods.²⁷⁶

Finally, the Gaelic lawyers recognized the competency of the women entering into these various contracts. As stated earlier, in all but the most basic of unions, where no property was involved, the wives were allowed to make decisions independently of their husbands. Furthermore, they were also allowed to veto their husbands' decisions, which would help to protect them from any negative consequences should the husband become engaged in a risky business venture. The

²⁷⁵ Donnchadh Ó Corráin, "Marriage in Early Ireland," in *Marriage in Ireland*, ed A. Cosgrove (Dublin: Ireland, 1985). http://www.ucc.ie/celt/marriage_ei.html#38 (accessed 16 February 2010).

²⁷⁶ Donnchadh Ó Corráin, *Couple's Law, Section Nine through Thirty-Three* <http://www.ucc.ie/celt/published/T102030/index.html> (accessed on 27 March 2010).

presence of these allowances suggests that the Gaelic lawyers believed that women were capable of making decisions, and were intelligent enough to act in their own best interests, even if these interests were contrary to the wishes of their husbands.

The English system could not have been more different. The first area of difference concerned the unions themselves. Under the English system, there were only two possible forms of marriage, contract marriage and common law marriage.²⁷⁷ Contract marriage fell out of favor with the common lawyers, who used various legal penalties relating to property rights to enforce their will.²⁷⁸ Thus, following the extension of English common law, canon marriage, with all of its requirements and expectations, became the only legally accepted form of marriage throughout Ireland.

Yet another area of difference was the English view of divorce. The English system did not even admit the possibility of divorce, but rather referred to the decree as an annulment.²⁷⁹ In addition, the criteria for divorce under the English system were limited to three reasons: impotence, the nature of the marriage, or a pre-existing marriage.²⁸⁰ The only solution to an intolerable marriage that was not considered to be dissolvable under these categories was a legal or informal separation.²⁸¹ Though this separation did allow the couple to live apart, neither

²⁷⁷ Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 51-53.

²⁷⁸ Stone, 56.

²⁷⁹ R.H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), 74.

²⁸⁰ Helmholz, 75-94

²⁸¹ Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Basil Blackwell, 1988), 57.

party was allowed to remarry without the threat of financial and legal sanctions, and thus separation was an imperfect solution.²⁸²

In addition, the rights of married women differed substantially between the two systems. English women, and the Anglo-Irish women who resided under English common law, were viewed as being inferior to their husbands.²⁸³ They lost any control over their property when they entered into marriage.²⁸⁴ Also, an English woman, though she might be consulted, did not have any real power to make decisions which ran contrary to her husband's will.²⁸⁵ In England, the husband was the head of the family and exercised complete authority over it.²⁸⁶ This authority extended to the wife, so that, while domestic violence was frowned upon, there were no legal safeguards in place to keep it from occurring.²⁸⁷ An Englishwoman not only lost her property rights upon marriage, she also lost any legal identity.²⁸⁸

Thus, with the coming of the English system to Ireland, life changed dramatically for Irish married women. They were now expected to adhere to a system of beliefs which taught them that they were inferior to their husbands. They were to be consulted upon decisions, but no longer could they act in direct opposition to their husband's wishes to protect themselves. Furthermore, they were deprived of their property rights, and were considered to be legally subordinate to their husbands. This subordination also exposed them to one particular danger

²⁸² Amussen, 57.

²⁸³ Amussen, 46.

²⁸⁴ Stone, *Road to Divorce*, 56.

²⁸⁵ Amussen, 42-50.

²⁸⁶ Amussen, 32-39.

²⁸⁷ Amussen, 42-43.

²⁸⁸ Amussen, 49-50.

from which the Brehon laws had protected them: physical abuse. Though authors in the medieval period discouraged domestic violence, their hesitancy to openly condemn it, and instance that the husband should correct his wife's faults, doubtless left many women susceptible to violence—from which the new system provided no escape. Thus, though the English system brought a measure of order and unity to the country, it also brought about the disenfranchisement of Ireland's most vulnerable group: its women.

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VITA

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Candidate for the Degree of

Master of Arts

Thesis: NEVER THE TWAIN SHALL PART: A COMPARISON AND ANALYSIS
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Pages in Study: 122

Candidate for the Degree of Master of Arts

Major Field: History

Scope and Method of Study: The study examines Ireland during the 1500's, and compares the Irish and English marriage laws.

Findings and Conclusions:

The Irish Brehon laws provided numerous freedoms to women that were not granted under the English laws. The Irish marriage law, known as the Couple's Law in English, allowed for ten different types of unions, each with its own responsibilities and rules. The most egalitarian of these was the union of mutual contribution, wherein the husband and wife brought an equal amount of property into the marriage. Mutual consent was required for certain contracts, while either party could create others. The unions diminished in complexity until they reached the level of legalized prostitution. The law also dealt with seduction and rape, both of which were defined as crimes, and the penalties of these crimes.

In addition, the Irish lawyers also took a liberal position, by today's standards, on divorce. They allowed for fourteen different reasons for divorce, grouped according to gender. For example, a woman could divorce her husband if he abused her, while a man could divorce his wife if she were unfaithful. These liberal laws, as well as the extensive authority given to women under the Couple's Law, evidenced the respect the Irish lawyers had for their women.

Under the English system, only one type of union was allowed, though two forms of marriage, contract and canonical, were allowed. The husband was considered to be the head of his house, with his wife and children owing obedience to him. Divorce was not permitted, though a legal separation could be granted if enough proof was gathered, and the separation was based upon legally accepted grounds.

Thus, following the English conquest of Ireland, and the imposition of English common law, Irish married women lost their cherished rights, and were regulated to the status of a second class citizen.

ADVISER'S APPROVAL: _____