

## A tripartite classification of marriages in Medieval Europe

Hanne-Mette Alsos Raae

National University of Ireland, Galway

In the time of Augustus, Roman marriage became subject to legal definition. As marriage was traditionally held to be a private arrangement, the Romans were hesitant to allow the authorities into such a private matter. Thus, there are some oddities in the Roman marriage laws. Modestinus defined marriage as ‘[...] the joining of a man and a woman and their union for life by divine and human law.’<sup>1</sup> The classic jurists read this definition as that the couple intended to live together on a lasting basis, thus making intent the key to the validity of a marriage.

There were two main types of marriage in the Roman society, *cum manu* (‘with hand’) and *sine manu* (‘without hand’). In the former type, the husband would have full control over his wife and her actions, while in the latter she would be more connected to her paternal family. There was also a third type that could be described as a type of marriage; *raptus*. Even though *raptus* means ‘rape’, it could be a forcible abduction or forcible sexual relations, but it could also be marriage by elopement.<sup>2</sup>

The most formal Roman marriage, the *cum manu*-marriage, consisted of two parts; betrothal and the marriage ceremony. The betrothal was an agreement between two heads of household, concerning the arrangements of dowry (*dos*) and wedding gift (*donatio propter nuptias*<sup>3</sup>) as the economic basis of a marriage. It was a binding agreement concluded by a ritual kiss. If the marriage had not been executed by the end of a two-year period, the agreement would be terminated. It could also be terminated during the two-year period by mutual consent by the bride, the groom and the two heads of household.

The marriage ceremony itself was often conducted soon after the betrothal. The consent of the bride, the groom and their parents was required for this to be a legally valid contract.

The laws pressed that a marriage was a free contract, which meant that consent under duress

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<sup>1</sup> James Brundage, *Law, Sex, and the Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) p. 33.

<sup>2</sup> *ibid.* p. 47-8.

<sup>3</sup> The gift from the husband to his wife before the marriage was originally called *donatio ante nuptias*, while the *donatio propter nuptias* was a gift from the husband to his wife after they were married. (Philip L. Reynolds (ed.), *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400-1600* (Cambridge: Cambridge University Press, 2007) p. 32) I have chosen to use the term *donatio propter nuptias* as that is the term used in all of my sources except for Philip L. Reynolds in his *To have and to hold*. The difference of the two terms is not of great relevance to this paper.

disqualified the marriage. The traditional ceremonies connected with the marriage were not necessary for the legality, nor was consummation of the marriage. The important elements were marital affection and matrimonial honour, meaning that as soon as the marital affection was non-existent, the marriage was dissolved.<sup>4</sup>

From the end of the fourth century, Germanic tribes settled in the Roman territory. Even though neither the Germans nor the Romans wanted to see the Roman systems disappear, the invaders gradually changed the Roman administrative and legal system with their own, but without imposing their own system on the Romans. Having both of the legal systems living side by side, the two systems inevitably influenced and modified each other.

There were two basic principles in the Germanic laws; the collective responsibility of the kin for its members, and reciprocal revenge.<sup>5</sup> These principles had already started to weaken before the invasion, and a new system grew out of it. The kin group lost many of its earlier functions, and a compensation system developed, expressed by *wergeld*,<sup>6</sup> which differed according to social status and gender.

The Germanic kin group was a rather complicated group. A man's family consisted of himself, his wife, underage sons and unmarried daughters, as well as slaves and other legally dependants. A man's kin group on the other hand, consisted of his family and a group of individuals related to him within a certain degree. Because of this, close relatives by blood or marriage might still not be members of the same kin group, and only unmarried siblings with the same biological parents would have the same kin group. A married woman had an even more complex position in the kin group. When she married, the legal control over her, her *mundium*, was handed over from her father to her husband, and her new kin group then was composed of her former kin group as well as her husband and their descendants, but not his ascendants.

The Germanic marriage, like the Roman, consisted of two parts; the betrothal and the delivery of the bride. There was a slight difference in the betrothal, as the Germanic betrothal

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<sup>4</sup> Brundage (1987), pp. 32-36.

<sup>5</sup> *ibid.* p. 125; Katherine F. Drew, 'The Law of the Family in the Germanic Barbarian Kingdoms: A Synthesis', *Studies in Medieval Culture*, XI (1978) p. 17.

<sup>6</sup> *Wergeld* was a price set upon a person's life on the basis of rank and status, and was paid in part or wholly as a compensation depending on the crime committed against a person or a kin group. Cf. Old Irish *éraig*, 'body-fine', a fixed penalty for homicide, and *lóg n-enech*, 'honour-price', both of which are paid in part or wholly depending on the crime committed against a person or a kin group; cf. Welsh *wynebwerth*, 'honour-price', *sarhaed*, lit. 'insult', a compensation payable to a victim, which varies depending on the status of the victim, and *galanas*, lit. 'slaughter', the compensation for homicide.

was an agreement between the groom and the legal guardian, normally the father, of the bride, whereas the Roman betrothal was between the two heads of household. The agreement contained the details of the payment<sup>7</sup> the groom was to pay to the father of the bride, and the father would agree to pass over the bride and her *mundium* to the groom at the time of the wedding. The father of the bride would also agree to present the bride with a gift on the day of the wedding. This was of great importance as the husband had control over his wife's property during the marriage.<sup>8</sup> She would also receive a morning gift on the morning following the wedding night, presumably a payment for her virginity. Throughout the period of the betrothal, the bride would continue to live with her family, and she was not allowed to be betrothed to another man during this period.

During the marriage ceremony, the bride was delivered from the legal guardian to the groom in exchange for a symbol of the payment he had made for his bride. When she had been given to the groom, he held her *mundium* and was responsible for her and any children to come from the union. Although the exchange of the bride's *mundium* was a large part of the wedding ceremony, there was also a possibility of arranging a wedding without the transference of the *mundium*, thus also without the payment of the bride price.<sup>9</sup> In this type of marriage, the wife's *mundium*, as well as that of her children, would still lie with her father (or other legal guardian) while she lived with and was a part of the household of her husband.<sup>10</sup>

There were three types of marriage in the Germanic legal system; *kaufehe* (marriage by purchase), *friedelehe* (marriage by mutual consent) and *raubehe* (marriage by capture).<sup>11</sup>

*Kaufehe* was the proper marriage with betrothal and property exchange, and it was the type of marriage encouraged by the laws. This type of marriage was a process of three stages; first, there was an agreement (*muntervertrag*<sup>12</sup>) on the bride price and the gifts in return.

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<sup>7</sup> As Katherine F. Drew points out, this payment may not have been the equivalent of dowry, even though it is sometimes referred to as *dos* or a gift, it is simply a payment for the bride and her *mundium*, hence the term bride-purchase. (cf. O.I. *tinnscre* and *tochra*, both containing the root *cren-* 'to buy'.)

<sup>8</sup> 'If any woman, Burgundian or Roman, gives herself voluntarily in marriage to a husband, we order that the husband have the property of that woman; just as he has the power over her, so also over her property and all her possessions.' (*The Burgundian Code: Book of Constitutions or Law of Gundobad*, Katherine Fischer Drew (trans.) (Philadelphia: University of Philadelphia Press, 1972) p. 85.)

<sup>9</sup> see *friedelehe* below.

<sup>10</sup> Drew, pp. 18-19. cf. the Roman *sine manu*-marriage.

<sup>11</sup> Brundage (1987) pp.127-129; Bart Jaski, 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages', (Dublin: Four Courts Press, 1996) p. 21.

<sup>12</sup> cf. *desponsatio* in Roman law.

Second, there was the public transfer (*anvertrauung*) of the bride to the groom's family. Third, the wedding ritual (*trauung*), where the bride's clan circled around her to witness the transfer and to show their consent of the marriage. At that point, the bride's ties to her own family was severed and she became a part of her husband's family. The public ceremony was a display of the consent from both families, and signified that the bride's *mundium* was transferred to her husband.<sup>13</sup>

*Friedelehe*<sup>14</sup> was a looser type of marriage with no betrothal or property exchange. Because of that, the wife's *mundium* was still with her legal guardian, even though she lived with her husband. This type of marriage may have been a development from *raubehe*. It could be considered as marriage by elopement with the woman's consent but without her family's consent, but it could also be an arranged marriage where the groom intended to buy his wife's *mundium* at a later stage, after the delivery of the bride.<sup>15</sup>

*Raubehe* was the type of marriage the laws mostly discouraged. It is often referred to as marriage by abduction or rape. This was most commonly done without the consent of neither the woman nor her family. After the abduction, this union could lead to a forced marriage, as a sexual relationship often constituted a marriage,<sup>16</sup> to which the family gave their consent afterwards, since without the consent of the family, the union was illegal. On the other hand this could also be a way for a man, without sufficient property to be regarded worthy for marriage by a woman's father, to be able to marry his wife of choice, and then have the father's consent after the sexual relationship had been established.<sup>17</sup>

The elements that constituted a legal marriage for the Germanic tribes was the intention of living together on a lasting basis, the consummation of the marriage and, as the result of that consummation, children were also expected to come out of the union. Because of the need of reproduction, the first year of the marriage was considered a trial period. If no child

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<sup>13</sup> Jaski, p.21; Drew, p. 18; Brundage (1987) p. 128.

<sup>14</sup> From *fridila* 'friend/beloved'.

<sup>15</sup> Drew, p. 19.

<sup>16</sup> In contrast to Roman marriage, it was the consummation that was essential for the marriage, not the affection.

<sup>17</sup> Jaski, p. 21; Brundage (1987) p. 129.

had been conceived by the end of that year, the marriage could be concluded.<sup>18</sup> If the wife had become pregnant during the same time period, the marriage was legally a permanent marriage, and it was much more difficult to terminate the marriage.

The most extensive law tract on marriage and divorce in Ireland was *Cáin Lánamna*,<sup>19</sup> ‘the law on couples’, written circa AD 700. It mentions the 10 different types of sexual unions in early Irish law, most of which can also be seen as marriages,<sup>20</sup> and explains the details regarding nine of them. Although there are a number of unions, they can be divided into three main groups; marriage by betrothal (*airnaidm*), marriage by acceptance or acknowledgement (*aititiu*), and marriage by abduction (*foxal*).<sup>21</sup>

The marriages by betrothal (*airnaidm*) are considered the three principal types of marriage; *lánamnas comthinchuir* (‘the union of joint property’), *lánamnas mná for ferthinchur* (‘the union of a woman on man-contribution’) and *lánamnas fir for bantinchur* (‘the union of a man on woman-contribution’). These marriages were brought about by a procedure called *airnaidm*, ‘binding’,<sup>22</sup> which according to Donnchadh Ó Corráin is likely to mean ‘to bind publicly.’<sup>23</sup> This was a formal contract which concluded with the exchange of property. In the same way as the Germanic groom gave a payment to the bride’s father, the Irish groom also had to purchase his bride from her father by giving a *coibche*<sup>24</sup> to the bride’s

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<sup>18</sup> cf. Rudolf Thurneysen, ‘Heirat’, in Binchy, D. (ed.) *Studies in Early Irish Law* (Dublin: Hodges Figgis & Co., 1936) pp. 126-7, on marriage customs in Westmeath as late as 1682: ‘In their marriages, especially in those counties where cattle abound, the parents and friends of each met on a side of a hill [...] about midway in between both dwellings; if agreement ensue, they drink the agreement bottle [...] for payment of the portion, which generally is a determinate number of cows [...]; nevertheless caution is taken from the bridegroom on the day of delivery for restitution of the cattle, in case the bride die childless within a certain day limited by agreement, and in this case every man’s own beast is restored.’

<sup>19</sup> *Lánamain/-muin* from *lán* ‘full’ + *emain/emuin* ‘twin/pair’, meaning ‘full pair’. (Rudolf Thurneysen, ‘*Cáin Lánamna*’, in Binchy, D. (ed.) *Studies in Early Irish Law* (Dublin: Royal Irish Academy, 1936) p. 4.)

<sup>20</sup> A sexual union was, as in Germanic law, what constituted marriage.

<sup>21</sup> Jaski, p. 20. The text is also dealing with a couple of unlawful unions.

<sup>22</sup> Verbal noun of *ar-naisc*, ‘to bind’.

<sup>23</sup> Donnchadh Ó Corráin, ‘Women and the law in early Ireland’, in M. O’Dowd and S. Wichert (eds.) *Chattel, servant or citizen: women’s status in church, state and society, Historical Studies, 19* (Belfast, 1995) p. 47.

<sup>24</sup> *Coibche* originally meant ‘contract’, but developed into the meaning ‘marriage contract’ and later the ‘consideration of the marriage contract’, cf. Roman *donatio propter nuptias*. Ó Corráin (1995) pp. 47-8; *com* + *fiach* ‘mutual debt/equivalent liability to payment’. *The Welsh Law of Women* (Cardiff: University of Wales Press, 1980) p. 11.

father,<sup>25</sup> from which the bride would receive a portion. However, if she attempted to conceal from her kin that she had accepted a *coibche*, she would lose her share.<sup>26</sup>

*Lánamnas comthinchuir* was regarded the normal type of marriage at the end of the seventh century.<sup>27</sup> In this type of union it was expected that both parties would bring equal amounts of marriage goods into the marriage, which would be held in common during the marriage, although each party ultimately held the ownership of what they brought into the marriage.<sup>28</sup> Neither party could make valid contracts without the consent of the other, except for contracts beneficial to them both and to their household, but they could both disturb the contract of the other if it was an unfavourable contract for the household.<sup>29</sup>

*Lánamnas mná for ferthinchur* is an older form of marriage, and Ó Corráin believes this to be the usual type of marriage in the ‘[...] older, more patriarchal stage of society.’<sup>30</sup> The husband was responsible for bringing in the larger part of property and assets into the marriage, while the wife brought in a smaller part of marriage goods, or in some cases, nothing. In this marriage, if the woman was a lawfully betrothed wife, but not a *cétmuintir*,<sup>31</sup> the husband could make legally valid contracts without the consent of his wife, except for the sale of clothing, food, cattle and sheep, as this was the woman’s domain.<sup>32</sup> If she was a *cétmuintir* of equal standing and of equal birth (*comaith 7 comc[h]eniui*<sup>33</sup>), she would be able to complain about her husband’s bad contracts and her sureties from the marriage contract were able to annul them for her. Even though the woman had contributed little or nothing to the marriage goods, she had specific legal rights over them, which allowed her some stability and security of her own interests.

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<sup>25</sup> *Cach athair a chétcoibche* ‘to every father his [daughter’s] first brideprice’. *Ancient Laws of Ireland* iii 314.5.

<sup>26</sup> If the father of the bride was dead, her kin would receive half of the *coibche* in her first marriage, 1/3 of the *coibche* in her second marriage and 1/4 of the *coibche* if it was her third marriage (*AL* iv 62.9-11.), implying that the woman received a part of her *coibche*.

<sup>27</sup> Donnchadh Ó Corráin, ‘Women in Early Irish Society’, in Mac Curtain, M. and Ó Corráin, D. (eds.) *Women in Irish Society: the Historical Dimension* (Dublin & Westport CN, 1978) p. 2.

<sup>28</sup> They could both have personal property besides the joint household, as they may both buy, sell or lend their personal property up to their own honour-price, without the permission of the other.

<sup>29</sup> *Cáin Lánamna* §5.

<sup>30</sup> Ó Corráin (1978) p. 3.

<sup>31</sup> ‘first/principal spouse’.

<sup>32</sup> *Cáin Lánamna* §21.

<sup>33</sup> *ibid.* §22.

The third of the *airnaidm*-marriages was *lánamnas fir for bantinchur*. As the woman is the main contributor in the marriage ‘[...] in this case the man goes in the place of the woman, and the woman in the place of the man.’<sup>34</sup> Normally the wife’s honour-price would be half that of her husbands, but in this case, as the husband had taken the role of the wife, he had half the honour-price of his wife.<sup>35</sup>

A woman would only inherit property in default of sons, and she would be a *banchomarbae*, ‘heiress’. She was only entitled to life-interest in the property, and she needed to get guarantors that she would not alienate the property while it was in her possession. Because of this, her sons would not have any claims for property rights after her death unless she married a man within her own kin group who would be in line to inherit the property.<sup>36</sup> This way the property would not end up as the property of a different kin group. As the husband in this union was legally dependent on his wife, and was not the land owner, he was incapable of making valid contracts without his wife’s consent, although, like the wife in the union on a man’s contribution, he was able to impugn her unprofitable contracts.

In the two *aititiu*-marriages; *lánamnas airite for urail* (‘union of acceptance or inducement’) and *lánamnas fir thathigthe cen urgnam, cen urail, cen tarcud, cen tinól* (‘union of a frequenting man without work, without inducement, without performance, without contribution’) the union is accepted by both the woman and her kin. In *lánamnas airite for urail* the woman openly goes away with the man to live with him, but she is not given by her kin, while in *lánamnas fir thathigthe cen urgnam, cen urail, cen tarcud, cen tinól* she is openly visited at home by the man, with her kin’s consent. These unions are less formal than the *airnaidm*-marriages, but they are still recognised by the woman’s family.

The most important difference between the *airnaidm*-marriages and the *aititiu*-marriages is that in the former type of marriage she is a lawfully betrothed wife, and her family has

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<sup>34</sup> *ibid.* §29.

<sup>35</sup> *Ar cacht recht la Féniu acht oentriar, is lethlog a enech dia mnai : fer son cen se[i]lb cen t(h)othcus lasmbi bancomarba, a inhuib a mna direnar side; 7 fer inetet toin a mna tar crich, direnar a inhuib a mna; 7 cu glas, direnar side a inch(a)uib a mna .... It [t]ualaing na teora mna so imoicheda cor a cele, connatat meise recce na crecce sech a mna acht ni forcongrat.* ‘For as regards every condition [of a man] in Irish law, half his honour-price is [assigned] to his wife, except for three men alone, namely, a man without land, without property, who has a female heir [to wife] - he is paid honour-price according to the honour of his wife; and a man who follows his wife from across the border (i.e. a member of another *tuath*) - he is paid honour-price according to the honour of his wife; and a *cú glass* (‘grey wolf,’ i.e. an outlawed stranger?) - he is paid honour-price according to the honour of his wife.... These three women are capable of impugning the contracts of their spouses, so that the latter are not competent to sell or buy without their wives, but only what these authorise.’ Daniel A. Binchy, ‘The Legal Capacity of Women in regard to Contracts’, (Dublin: Royal Irish Academy, 1936) p. 215; Ó Corráin (1995) p. 50; *Ancient Laws of Ireland* v. 516 3. f.

<sup>36</sup> Ó Corráin (1978) p. 3; Donnchadh Ó Corráin, ‘Irish Law and Canon Law’, in P. Ní Chatháin and M. Richter (eds.) *Irland und Europa: Die Kirche im Frühmittelalter* (Stuttgart, 1984) p. 159; Fergus Kelly, (DIAS, 1988) p. 76. This would normally be her first- or second cousin.

received *coibche* from the groom, while in the latter neither the *coibche*-payment nor betrothal would take place. However, both forms of marriage have been acknowledged by the wife's family. Just like in the *friedelehe* of the Germanics and the *sine manu*-marriage of the Romans, she would remain a part of her paternal family after the union had begun.<sup>37</sup>

The last of the legitimate unions are the *foxal*-unions. They can be closely compared to the Germanic *raubehe* in the sense that they were initiated without the kin's consent. Besides the intermediate *lánamnas amsa for faeniul* ('union of wandering mercenaries'), which is only briefly mentioned in §4 of *Cáin Lánamna* and has no further explanation,<sup>38</sup> two of the remaining unions can be treated as marriage, namely, *lánamnas foxail* ('union of abduction') and *lánamnas tothla/lánamnas táide* ('union of deception'/'union of secrecy'). The final two unions can in no sense be described as marriages as they are *lánamnas éicne (no sléithe)* ('union of rape (or stealing)') and *lánamnas genaige* ('union of mockery').

In *lánamnas foxail* the woman allows herself to be abducted, in the same way as sometimes was the case in both *raubehe* and *raptus*. *Lánamnas tothla/lánamnas táide* was a different version of *lánamnas foxail*, but in this union she is secretly visited at home without the knowledge of her kin.<sup>39</sup> Although *lánamnas éicne (no sléithe)* cannot be considered a marriage, and is among the illegitimate unions, it can most definitely be described as a sexual union. It is described as 'rape or intercourse with a woman found asleep or drunk.'<sup>40</sup> This is closely related to the most common meaning of both the Roman *raptus* and the Germanic *raubehe*.

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<sup>37</sup> According to the *Díre*-tract (ed. Thurneysen, *Irishes Recht*, pp. 1-60.) there were five types of wives, from the lawfully betrothed *cétmuintir* to the *ben bis for foxul* 'the abducted wife'. The more formal the union is, the more she belongs to her husband's family, and the less formal the union is, the more she belongs to her father's family. Kelly, p. 78; *The Welsh Law of Women*, pp. 11-13; Nancy Power, 'Classes of Women Described in the *Senchas Már*', in Daniel A. Binchy, (ed.) *Studies in Early Irish Law* (Dublin: Hodges Figgis & Co., 1936) pp. 81-2.

<sup>38</sup> This union may be influenced by the Roman law stating that soldiers, while they were in service, were not allowed to marry, this leaving concubinage as the only choice for those who wanted a stable union.

<sup>39</sup> In his article 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages', Bart Jaski defines *lánamnas tothla/lánamnas táide* among the illegitimate unions. I have chosen to place it among the unions of abduction as it is done with the woman's consent, and because both *lánamnas foxail* and *lánamnas tothla/lánamnas táide* have been treated as one in *Cáin Lánamna* (§34). In *The Welsh Law of Women* (p. 38), T. M. Charles-Edwards compares it to the Welsh *beichogi twyll gwraig lwyn a pherth* (see below), which is a union with the woman's consent.

<sup>40</sup> *The Welsh Law of Women*, p. 38.



The Welsh law contains a collection of *enneads*.<sup>41</sup> One of these *enneads* is *Nau Kynywedi Teithiauc*,<sup>42</sup> which can easily be compared to the paragraph in *Cáin Lánamna* which contains the list of the ten sexual unions of early Irish law. *Nau Kynywedi Teithiauc* is also comparable to *Cáin Lánamna* in the way that all the types of sexual unions have been treated in the same list, and while most of the unions constitute marriages, some of them are illegitimate unions, and the unions are listed in a sequence of declining legal status, from the most honourable to the least honourable. However, while *Cáin Lánamna* is a law text of 36 paragraphs which treats every union in detail,<sup>43</sup> *Nau Kynywedi Teithiauc* is merely a list with the names of the unions, with no explanation, thus leaving room for much speculation as to what these unions actually were.

*Priodas* is the first marriage of the list. Although *priodas* in Modern Welsh is the term for a standard marriage, this meaning seems to be a later development of the word. It is not stated anywhere what *priodas* means, only the consequence of being *priod*.<sup>44</sup> However it is suggested that a *gwraig priod*, ‘married woman’, was a woman given in marriage by her kindred, thus being a lawfully betrothed wife.<sup>45</sup> As this marriage is the first marriage on the list, and thus the most honourable, this marriage is likely to be the equivalent of the Irish *lánamnas comthinchuir*, the Germanic *kaufehe* and the Roman *cum manu*.

The second marriage on the list, *agwedi*, also seems to be that of a woman given by her kindred. The term *agwedi* seems to have two meanings; first, it was the share of the marital property the woman was entitled to in some cases of the termination of a marriage, and second, it was the term for a marriage inferior of that of *priodas*.<sup>46</sup> It is obvious from the law

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<sup>41</sup> In Old Irish legal material there are both collections of ‘threes’, the *Triads*, and ‘sevens’, the *Heptads*. These lists with a specific number of items, were a mnemonic device, which is an archaic remnant from the period of oral transmission.

<sup>42</sup> This seems to mean ‘nine ways that a man and a woman were sexually united in the eyes of the law’. For the etymology of the term see *The Welsh Law of Women*, p. 27.

<sup>43</sup> except for *lánamnas amsa for faeniul*.

<sup>44</sup> Ior. §53/4: ‘No woman is entitled to buy or sell unless she is *priod*; if, however, she is *priod*, she is entitled to buy and sell.’ *The Welsh Law of Women*, p. 28, pp. 174-7.

<sup>45</sup> *ibid.* p. 28.

<sup>46</sup> *ibid.* pp. 187-8.

on *agwedi* in the first sense of the word,<sup>47</sup> that a marital union was not regarded a full marriage unless it had existed for seven years, and thus it has been argued that the *agwedi*-marriage matured into being a *priodas*-marriage after the passing of those seven years.<sup>48</sup> T. M. Charles-Edwards believes that one of the main differences between the *agwedi*-marriage and *priodas* is the amount of moveable goods the wife brought with her into the marriage, thus making it slightly inferior to *priodas*, and can be compared to the Irish *lánamnas mná for ferthinchur*.

*Caradas*, the third union on the list, is neither a union by gift nor a union by abduction. It can very well be compared to the Irish *lánamnas fir thathigthe cen urgnam, cen urail, cen tar cud, cen tinól*, in which the man openly visits the woman at her home, with the consent and acknowledgement of her kin. Clearly the woman is not given by her kin, as she lives with her family while being visited, and thus it is likely that both she and her kin gave their consent to the union.

The fourth union on the list is the hardest one to identify with certainty. It is called *deu lysuab*, which means ‘two stepsons’, but in the context may be translated as ‘two stepchildren.’<sup>49</sup> Although this translation still causes some problems, there might be a possible solution in *Culhwch ac Olwen*.

Cilydd’s first wife, Golueddydd, bears him a son, Culhwch, and then dies. After seven years have gone by Cilydd marries the wife of King Doged, having defeated her husband in a battle and having killed him. Doged and his wife had a daughter, and her mother proposed that Culhwch should marry her daughter.<sup>50</sup>

Hence, Culhwch is the stepson of the former wife of Doged, and the daughter of Doged is the stepdaughter of Cilydd. Thus, if they marry, it would be the union of two stepchildren.

Although this may seem like a possibility, Charles-Edwards points out that this is just a speculative solution, and the meaning of the union of *deu lysuab* may have been lost in time.

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<sup>47</sup> The Welsh law of the 13th century expected that a woman given in marriage would bring moveable goods with her into the union. For the first seven years the husband was not allowed to consume or alienate any part of his wife’s contribution, and if they separated during this period, if either the wife rightfully left her husband or the husband wrongfully left his wife, she was entitled to bring her *agwedi* with her. After seven years had passed, as the marriage would then be considered a fully lawful marriage, no matter how disreputable the origins were, she would be entitled to half the marriage wealth if they separated, and her *agwedi* would no longer be payable. *The Welsh Law of Women*, p. 16; pp. 28-9.

<sup>48</sup> *ibid.* p. 214.

<sup>49</sup> *ibid.* pp. 30-1.

<sup>50</sup> *ibid.* p. 31.

The next two unions on the list are *llathlud*-unions. In the Latin versions of the law text *llathlud* has been translated as *rapina*, ‘rape.’ This could be both a correct and an inaccurate translation, as it depends on the consent of the woman. Without the consent of the woman, *llathlud* could also be called *trais*, ‘rape’, while with her consent there are more possibilities. It would either be more closely compared to the *caradas*-union, in that the union may take place inside the home of the woman, or, if the union would take place outdoors, it would remind more of a union further down on the list, the *beichogi twyll gwreic lwyn a pherth*. *Llathlud* could also mean ‘elopement.’ These are all valid translations of the word, and is therefore very closely linked to the Irish *lánamnas foxail*, the Germanic *raubehe* and the Roman *raptus*, all of which have the same connotations as *llathlud*. As for the difference between the two *llathlud*-unions, it seems to be that *llathlud goleu* was an open and public *llathlud*, which implies that the woman’s kin would silently consent to the union even though she was not lawfully given away by them,<sup>51</sup> while *llathlud twyll* was a secret *llathlud*. The distinction can also be made between ‘to take *llathlud*’ or ‘to go *llathlud*’, and thus emphasising the consent of the woman.

*Beichogi twyll gwreic lwyn a pherth*, ‘the secret pregnancy of a woman of bush and brake’, causes another problem. By definition it is a secret union to which the woman herself consents, but that her kin would not had knowledge of before the pregnancy. If the union had remained undiscovered there would not have been any consequences, but when it was discovered, the consequences would be that the man of the union would have to pay *amobr*, ‘the fee payable to the woman’s lord in respect of sexual relationships’,<sup>52</sup> and the illegitimate child originating from the union would be the father’s responsibility.

The eighth union, *kynnywedi ar liw ac ar oleu*, is a union of very low status. The meaning of this union is difficult to establish. As Charles-Edwards points out, ‘[...] if the woman had not left home it should be *caradas*; if she has, it is *llathlud golau*. And if *llathlud twyll* ranks below *llathlud golau*, why should *cynnyweddi ar liw ac ar olau* rank below *beichiogi twyll*

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<sup>51</sup> Ior §50/5; Cyfn §73/13a, 13b, state that if the woman who goes in *llathlud* is a virgin, her kin and her lord/father are allowed to bring her back against her will, but they cannot force her back against her will if she is not a virgin. Thus, if she is a virgin and her family does not try to bring her back, they are giving their consent by not exercising their right to bring her back. However, if a woman had lost her virginity during the elopement, she would only have to elope a second time to be irreclaimable, as this rule would be inapplicable if she had been with a man only once. (*The Welsh Law of Women*, p. 72.)

<sup>52</sup> *The Welsh Law of Women*, p. 190.

*gwraig lwyn a pherth?*<sup>53</sup> To make sense of the low status of the union it seems likely that it is an open and public abduction of the woman without the woman's consent.

The last union is expected to be something close to rape, or at least a union to which the woman does not consent, as it is at the very bottom of the list. However, *twyll morwyn* has the meaning 'deception of a virgin.' Since this union is expected to be a question of not having the woman's consent, there should not have been a difference if the woman is a virgin or not, but as the rape of a virgin constitutes more compensation than the rape of a woman, it seems likely that it is treated like a union instead of as an offence. A possible reason to why it is called 'deception' rather than 'rape of a virgin' might be because 'deception' is a much broader term, hence it covers situations which do not include violence, such as if the man gets the virgin drunk and takes advantage of her.<sup>54</sup>

The threefold division of marriages in all the aforementioned societies, between formal, informal and abduction-marriages, is evident from the law texts. Although this could be a general fashion of the Middle Ages, it seems plausible that it is a common feature from their Indo-European roots. However, to be certain of this, there are other features which need to be examined at a later stage.

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<sup>53</sup> *ibid.* p. 34.

<sup>54</sup> cf. the Irish union *lánamnas éicne no sléithe*, and the early Indian law that distinguishes between forcible rape and seduction by stealth of a woman who is asleep or intoxicated. (Fergus Kelly (DIAS, 1988) p. 134, footnote 72.) The Irish term *sléith* means '[...] non-consensual sexual intercourse with a woman who is sleeping, in a drunken stupor or comatose for whatever reason.' (A. Bourke, S. Kilfeather, M. Luddy, M. Mac Curtain, G. Meaney, M. Ní Dhonnchadha, M. O'Dowd and C. Wills (eds.) *The Field Day anthology of Irish writing, iv*, (Cork: Cork University Press, 2002) p. 29.)

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