

CONCUBINAGE AND POLYGYNY IN THE MIDDLE AGES: LET'S TALK ABOUT SEX.

In a previous paper called 'A tripartite classification of marriages in Medieval Europe', I came to the conclusion that in the Medieval Irish, Welsh, Germanic and Roman legal systems, there seems to have been a clear similarity in the marriage laws, in that there are three main types of marriages; formal, informal and abduction-marriages, as well as a sub-classification of illegal marriages. The main characteristics of these marriages depend on whether or not there has been a betrothal, and whether or not the kin has accepted the marriages. The woman's consent is the main difference between an abduction-marriage, where the woman would allow herself to be abducted, and the illegal marriage, where the woman is taken without her consent.

The Roman legal system allowed for three types of marriage; the *cum manu*-marriage, where the woman was formally betrothed to the man and became a part of her husband's family once they were married, the *sine manu*-marriage, where the woman was not betrothed, but still legally married, and in which she would have stronger ties to her paternal family than in the former, and the third being *raptus*, which could both be a legal marriage in which the woman allows herself to be abducted, or an illegal marriage caused by a forcible abduction or forcible sexual relations.

Likewise, there were also three types of marriage in the Germanic legal system; *kaufehe* (marriage by purchase), *friedelehe* (marriage by mutual consent) and *raubehe* (marriage by capture). These three can be compared to the three types of Roman marriage, also in the sense that *raubehe* could be considered both a legal as well as an illegal marriage.

The Irish laws on marriage comes from a tract on divorce; *Cáin Lánamna*, which mentions the 10 types of sexual unions in early Irish law, and explains the details regarding 9 of the unions. These 9 unions can be divided into three main categories of marriage; marriage by betrothal, marriage by acceptance or acknowledgment and marriage by abduction. There

were three types of marriages by betrothal. The main difference between these was the amount of property brought into the marriage by the partners. Both of the marriages by acceptance or acknowledgement had been accepted by both the woman and her kin group, and the difference between them depends on whether the union takes place in the woman's paternal home or if she openly goes away with the man with her kin's blessing. The last of the legitimate unions are the two marriages by abduction. They can be closely compared to the two unions of acceptance, except that they were initiated without the kin's consent. Either the woman allows herself to be abducted, or she is secretly visited at home by the man. The last two unions on the list can in no way be considered marriages, as they are the 'union of rape' and the 'union of mockery.'

A collection of *enneads* has been found in some of the Welsh legal manuscripts. One of these *enneads* is called *Nau Kynywedi Teithiauc*, and can easily be compared to *Cáin Lánamna*, in that all the sexual unions have been listed in a sequence of declining legal status. However, *Nau Kynywedi Teithiauc* is merely a list with the names of the unions, with no explanation of what these unions actually were. Despite the lack of explanation, it is still possible to make an educated guess of what they entailed, and thus fit them into the tripartite classification of formal, informal and abduction marriages, or marriage by betrothal, acceptance or abduction.

The many types of marriages were further complicated by the fact that that many of the medieval societies were polygynous, and allowed a man to have both one or more wives as well as one or more concubines concurrently. Concubinage was widespread and accepted in the Roman Empire, and it was viewed as an alternative to marriage for the people who otherwise were not allowed to, or could not afford to marry their person of choice.

Concubinage was also common among the Christians during the second and third centuries as

it was a part of Christianity's heritage from its Jewish past, and by the early third century the Church had begun to assimilate concubinage to marriage by accepting those unions which were not valid by civil law. During the fourth and fifth centuries the Roman laws started changing, and it became legally impossible for a man to keep both a wife and a concubine simultaneously.¹ The Church Fathers of the same period aired their thoughts on concubinage, although they had two contradictory views on the subject. They viewed concubinage as an alternative to marriage, and thought that Christians ought to acknowledge concubinage as an alternative form of marriage for the people prohibited to marry because of their social class, but on the other hand they saw concubinage as morally wrong as it involved continuing sexual relationships that were not sanctified by nuptials.² Although concubinage was forbidden, it was still so common that Caesarius of Arles and Pope Leo I agreed "...it would be impractical to excommunicate everyone..."³ who practised it. Therefore, concubinage had to be tolerated, and the Church put its effort to prevent men from having more than one concubine simultaneously. Originally, neither the concubine nor her children had any inheritance rights in the Roman law, but as Christian parents were required to provide for their children, the civil law began to bestow limited inheritance rights from the fourth century. During Justinian's reign, concubines continued to receive more rights and higher status, and concubinage was virtually paired with marriage, with only marginally different rights from that of a legal wife and her children.⁴

In the Germanic society polygyny was, as mentioned above, common among the classes that could afford to keep multiple wives. A man was allowed to keep numerous lawfully

¹ Brundage, James, *Law, Sex, and the Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) p. 87. In 326 Constantine forbade married men to take concubines, the 4th Council of Toledo reinforced the prohibition with spiritual penalties. (ibid. p. 99.)

² ibid. p. 98.

³ ibid. p. 102.

⁴ ibid. p. 118.

wedded wives, but by the end of the sixth century, polygyny had become uncommon, and concubines were kept as an alternative, both before and during the marriage.⁵ Only the Lombard laws specify that a man might have more than one marriage partner at a time, but it was more common for a man to have one legally valid marriage, but also enter additional unions which were not fully legitimate marriages, in which the children were recognised.⁶ The distinction between marriage and concubinage was for both practical and legal purposes unclear, but it is likely that concubinage was a relationship a man maintained with a woman of inferior status. *Friedelehe*, although not the equivalent, was for legal purposes rather similar to concubinage. However, the concubinage was a long-term relationship between a man and a woman of unequal status, and the children of a concubine had no inheritance rights.⁷

At the time the Welsh law texts were written, a man was only accepted to be married to one woman at a time, which simplifies the laws on Welsh marriage.⁸ As the surviving Welsh law texts were written in a Christian era, this is not surprising. The Church only acknowledged the properly wedded wives, the *gwraig briod*.⁹ However, it is clear from the laws that a man sometimes took a mistress, *cywyres*, and his wife could injure or even kill her without blame, as long as she did it with her two hands. A wife was allowed to leave her husband if he took another wife, take all that she was entitled to,¹⁰ and her husband could not stop her. Even after the marriage had been dissolved, a Welsh woman could be entitled to her

⁵ Jaski, Bart, 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages' (Dublin: Four Courts Press, 1996) pp. 34-5.

⁶ Drew, Katherine F., *Studies in Medieval Culture*, XI (1978) p. 20.

⁷ Brundage, James, *Law, Sex, and the Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) pp. 129-130.

⁸ *The Welsh Law of Women* (Cardiff: University of Wales Press, 1980) p. 15.

⁹ *ibid.* p. 17.

¹⁰ Before the period of seven years, the wife was entitled to take her *agwedi* if her husband wrongfully left her, or if she rightfully left him. After the period of seven years, she was entitled to half of the marriage wealth, and thus the *agwedi* was no longer payable. (*ibid.* p. 16.)

wynebwerth if her former husband had allowed another woman to sleep in the bed-sheets that they had shared in their marriage.¹¹

The case was not so simple in the early Irish society. Polygyny was widespread, and a man could have a number of wives in different types of marriages, and the children of the different unions would have the same inheritance rights. Although polygyny was common, it was still a subject for controversy and debate. The eighth century law tract *Bretha Crólige* stated that "[e]veryone is paid honour-price for his union according to the custom of the island of Ireland, whether it be manifold or single. For there is a dispute in Irish law as to which is more proper, whether to have many sexual unions or a single one: for the chosen [people] of God lived in plurality of unions, so that it is not easier to condemn it than to praise it."¹² Though polygyny flourished, there was a distinction in the status of the wife depending on the type of marriage she had formed with the man. The *Díre*-tract distinguishes between five categories of wives.

"...(a) a *cétmuintir*, or chief wife; (b) a *cétmuintir* who has not borne sons; (c) *ben aiteten aranaisc fine* (a woman who is recognised and who has been betrothed by her kindred); (d) *ben aiteten nad-aurnascar nad-forngarar* (a woman who is recognised but who has not been betrothed or ordered [to enter the union]); (e) *ben bis for foxul dar apud n-athus no fine* (a woman who has been abducted in defiance of her father or her kindred)."¹³ *Cáin Lánamna*, on the other hand, distinguishes between the *cétmuintir*, the betrothed wife who is not a

¹¹ *ibid.* p. 51, cf. Ior §44. 'The bed-clothes which are over them shall belong to the woman. The clothes which are under them belong to the man until he marry. And when he marries, let him release the clothes to the woman. And if another woman sleeps upon the clothes, let him pay her face-value to her.'

¹² Jaski, Bart, 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages' (Dublin: Four Courts Press, 1996) p. 35.

¹³ Power, Nancy, (Dublin: Hodges Figgis & Co., 1936) p. 81; *The Welsh Law of Women* (Cardiff: University of Wales Press, 1980) p. 12. Both times *ben aiteten* occurs in the text it has been glossed *adaltrach urnadma*, 'betrothed adulteress'. (*The Welsh Law of Women* (Cardiff: University of Wales Press, 1980) p. 12)

cétmuinte (*mad ben urnadma nab(e) cetmunnter*¹⁴), and the *adaltrach*¹⁵ ('concubine/second wife'), all of which can be compared to the acknowledged wives of the *Díre*-tract.

The main difference between the *Díre*-tract and *Cáin Lánamna* is the description in *Cáin Lánamna* of the *bé cuitchernsa*, 'a wife of equal rank', who is free and of equal status as her husband and contributes equally to the marriage fund. The *bé cuitchernsa* is also allowed to enter contracts independently of her husband, as long as they are good contracts.

The distinction between a *cétmuinte* and a *ben urnadma*, 'betrothed wife', was of descent, much like the differences between legally wedded wives and concubines of Roman and Germanic law, but instead of being a concubine, the *ben urnadma* refers to a secondary wife. A passage in the Ancient Laws of Ireland refers to "...adaltracha after their betrothal or acknowledgement by their kindred with respects to their husbands,"¹⁶ which suggests that an *adaltrach* was not just an acknowledged wife (i.e. *ben aiteten*), but she was also a betrothed wife (i.e. *ben urnadma*). Thus it seems like *ben aiteten*, *ben urnadma* and *adaltrach* all refer to the same category of wife, which must have been taken "over the head"¹⁷ of the *cétmuinte*, and as she had been given *coibche* she must be a betrothed wife.¹⁸ "If he gives a 'coibche'- marriage present to a woman, though of his own seds, that present is forfeited to the first wife, if she has fully performed her duties during the connexion. Every adulteress is fineable who goes in the place of a first wife ; she has to pay the honour-price of the first wife."¹⁹ Since this passage is taken from the second formal marriage, the *lánamnas mná for ferthinchur*, and the *adaltrach* is given *coibche*, it is clear that a man could have more than one wife from the

¹⁴ App. 1, §21.

¹⁵ lit. 'adulteress', showing the influence of the Church

¹⁶ *The Welsh Law of Women* (Cardiff: University of Wales Press, 1980) p. 14; *AL* v. 480. *Adaltracha íarna n-urnaidm nó aidite dia finib fria firu.*

¹⁷ *for cend cetmuinire.* App. 1, §23.

¹⁸ *The Welsh Law of Women* (Cardiff: University of Wales Press, 1980) p. 14.

¹⁹ App. 1, §23.

airnaidm-marriages. Thus the wives of an *airnaidm*-marriage, a *bé cuitchernsa*, a *cétmuinte*, a *ben aiteten* or an *adaltrach*, would all fit into the first three categories on the *Díre*-tract. The wife in the *aititiu*-union of *lánamnas ben for airtin n-urala* seems to have had an intermediate position between a formal marriage and an informal marriage, and is thus comparable to the *ben aiteten aranaiscc fine* in the third category, which was glossed *adaltrach urnadma* (betrothed concubine), although she had not been betrothed. The wife of the other *aititiu*-marriage, the *lánamnas tothla/táide*, would only be in the fourth category, as she was acknowledged but not a betrothed wife, however, she was still named *adaltrach*. Needless to say, the woman of a *foxal*-marriage was a wife of the fifth category.

1. *cétmuinte* with sons.
2. *cétmuinte* without sons.
3. the acknowledged woman betrothed by her family
4. the acknowledged woman who has not been betrothed, who has not been sanctioned.
5. the woman who has been abducted in defiance of her father or her kindred.²⁰

As is the case in both *Cáin Lánamna* and *Nau Kynywedi Teithiauc*, the *Díre*-tract deals with the acknowledged wives from the most formal wife to the least formal wife. The text also covers the question of who is entitled to her body-fine (*éraig*), who will inherit her property (*díbad*) and who is liable to pay for her offences (*cin*).

1. two-thirds of *éraig*,²¹ *díbad*²² and *cin*²³ fall on her sons, one-third on her family.

²⁰ Jaski, Bart, 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages' (Dublin: Four Courts Press, 1996) p. 37; Power, Nancy, (Dublin: Hodges Figgis & Co., 1936) p. 81.

²¹ 'body-fine'.

²² 'inheritable assets'/'property of a deceased person'.

²³ 'offence'.

2. one-half of *éraic*, *dibad* and *cin* falls on her husband, one-half on her family.
3. one-half of *éraic*, *dibad* and *cin* falls on her sons, one-half on her family.
4. two-thirds of *éraic*, *dibad* and *cin* fall on her family, one-third on her ‘belly-kin’ (*bronnfine*).
5. all of the *éraic* and *dibad* fall on her family, all of her *cin* and children from the relationship to the abductor.²⁴

From this text there is a noticeable distinction between the *cétmuintir* with sons and the *cétmuintir* without sons, that clearly shows that even a wife of the highest status was inferior to her equal unless she produced children. After she had borne a son, the ties to her kin group were looser, and her sons would take over a large part of her responsibility, and therefore also receive a part of her *éraic* for offences against her, and her *dibad* upon her death.

The term *adaltrach* shows the influence of the Church on the early Irish law, as it is a derivative of the Latin *adultrix*, ‘adulteress’, and shows the contempt of the Church towards polygyny. According to Bart Jaski, the Church may have encouraged a proper betrothal of the concubine as a compromise so that the husband would be forced to take responsibility for his concubine and her children. If the concubine was a lawfully betrothed wife, her children would be legitimate, and in this way the Church would have prevented a large group of illegitimate children. Moreover, the formal betrothal of the concubine also led to a higher legal status, through her legitimate sons who would bear her responsibility.²⁵ An *adaltrach* without sons would still be of low status, and would be closer to a legal status of a daughter than of a wife, as most of her responsibility laid with her father, and in the eyes of the law she

²⁴ Jaski, Bart, ‘Marriage Laws in Ireland and on the Continent in the Early Middle Ages’ (Dublin: Four Courts Press, 1996) p. 37; Power, Nancy, (Dublin: Hodges Figgis & Co., 1936) p. 81.

²⁵ *ibid.* p. 38. The lawyers suggest that it was lawful for a man to take a second wife if his first wife was unable to bear children, thus pressing the importance of children.

would still be *báeth*.²⁶ As the aforementioned paragraph 23 of the *Cáin Lánamna* suggests, the *cétmuintir* was entitled to the *coibche* her husband gave to a new wife, the *adaltrach*.

Furthermore, a gloss to *Heptad* 6 allowed the *cétmuintir* to inflict any non-fatal injury on her husband's second wife for a period of three days, while the *adaltrach* was only allowed to scratch, pull hair, speak abusively or inflict minor injuries in retaliation.²⁷ The commentary to *Heptad* 6 continues to describe the *cétmuintir crólige*, a *cétmuintir* injured to the degree that she was "dead in the law of cohabitation".²⁸ She could be sent back to her parents if she did not recover within a certain period of time. If she could not be sent back, her husband would have to care for her, and in case he took another wife as a *cétmuintir* ('*cétmuintir* on the neck of another'), he would have to compensate her. However, it was not normal for a second wife, an *adaltrach*, to have the status of a *cétmuintir* unless the husband was divorced from the first *cétmuintir*. The difference in status between a *cétmuintir* and an *adaltrach* is evident in the difference of compensation in case of rape and sick-maintenance. "Full *éraig* is paid for a virgin, for a young nun who does not reject her veil and for a *cétmuintir*, half *éraig* for secondary wives — all this without the co-operation of the woman — together with the full honour-price of the man of highest rank who has authority over her of those to whom she specially belongs."²⁹ Although the children of both the *cétmuintir* as well as the children of an *adaltrach* were recognised and had inheritance rights, the son of a *cétmuintir* was preferred above the son of an *adaltrach* when it came to succession, unless the latter was clearly more competent. In general, even though the *adaltrach* enjoyed a higher legal status and had more rights than the concubine of the Continent, her position in society is comparable

²⁶ 'legally incompetent'/'senseless'. See introduction above.

²⁷ Kelly, F. (DIAS, 1988) pp. 134-5; Jaski, Bart, 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages' (Dublin: Four Courts Press, 1996) p. 40.

²⁸ Jaski, Bart, 'Marriage Laws in Ireland and on the Continent in the Early Middle Ages' (Dublin: Four Courts Press, 1996) p. 39.

²⁹ *The Field Day anthology of Irish writing*, iv, (Cork: Cork University Press, 2002) p. 29; App. 1, §35.

to the continental concubine, in that both their relationships resemble that of a proper marriage. The main difference between concubinage in Ireland and the Continent is that the concubinage in Ireland would in most cases lead to polygyny.