

# Anglo-Irish and Gaelic marriage laws and traditions in late medieval Ireland

Gillian Kenny

*Lannet, Corcreaghy, Carrickmacross, Co. Monaghan, Eire, Ireland*

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## Abstract

This paper is intended to draw attention to the very different rights and restrictions accorded to Anglo-Irish and Gaelic women in late medieval Ireland. These differing traditions concerning marriage and women's rights within it led to conflicting marital experiences for Anglo-Irish and Gaelic women during this period. Fundamentally the Anglo-Irish idea of marriage was opposed to the Gaelic one which led to clashes especially where intermarriage between the two cultures took place.

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## Introduction

The Gaelic and Anglo-Irish cultures of medieval Ireland embraced two very different and conflicting modes of marriage. Marriage in both of these cultures was the normal state of existence for most adult women; however, there were profound differences in how women from Gaelic Ireland and Anglo-Ireland conducted their lives as married women. The differences between the churches *inter Hibernicos* and *inter Anglicos*<sup>1</sup> as well as the pervasive influence of the Gaelic secular code concerning marriage made for various conflicting marital experiences for Gaelic and Anglo-Irish women. The rights of the wife at marriage, her behaviour and freedoms

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*E-mail address:* [gilliankenny5@hotmail.com](mailto:gilliankenny5@hotmail.com)

<sup>1</sup> The ethnic divisions are outlined in John Watt, 'Ecclesia inter Anglicos et inter Hibernicos: confrontation and coexistence in the medieval diocese and province of Armagh', in: *The English in medieval Ireland*, ed. James Lydon (Dublin, 1984), 46–64.

within marriage and the right of a wife to leave a marriage varied enormously between the Gaelic and Anglo-Irish worlds. There was also a divide within society between marriage patterns and traditions in urban as opposed to rural areas. In line with findings from Europe it is likely that urban women in Ireland experienced more freedom from parental and seigneurial supervision over their courtship and marriages than their rural counterparts.<sup>2</sup>

### Anglo-Irish wives: rights and activities within marriage

Within Anglo-Irish society the first step for the families of couples who were to be married was often the drawing-up of a marriage contract. In these documents, reciprocal arrangements were made, usually by the respective fathers of the bride and groom, for such necessities as dowry and marriage grants. They were also often conditional on certain agreements between the parties being adhered to. For example in the marriage contract made in 1374 between John FitzMaurice, the lord of Kerry, and the earl of Ormond, John undertook to observe all the conventions and conditions, which were attendant on his marriage to Joan, the daughter of the Earl of Ormond. John went so far as to take an oath on the Gospels to honour his side of the agreement that if he contravened any of the requirements then the Archbishops of Dublin, Cashel and Tuam were to excommunicate him and lay all his lands under interdict.<sup>3</sup> Major financial deals were made amongst great families to facilitate marriage alliances that were used for political ends, like the following settlement made between the earl of Ulster and John FitzThomas, earl of Kildare that put a seal on an end to hostilities between them.

The two earls of Ulster and of Kildare became reconciled by the Earl of Kildare awarding 3000 marks to the Earl of Ulster, and for a thousand marks to give him the lordship of Sligo and all his plate for another thousand, and his son Thomas to get married to his daughter for the third thousand.<sup>4</sup>

When such a bargain was broken, the consequences could be violent. For instance, in the mid-fifteenth century the breaking of an Ormond-Desmond marriage contract by the Butlers of Ormond led to hostilities between the two families. When John Talbot II, the earl of Shrewsbury, married Elizabeth Butler in an effort to bring to an end the Ormond-Talbot feud in 1444, the earl of Desmond raided into Ormond's lordship upon hearing of the marriage.<sup>5</sup>

In the Anglo-Irish tradition a woman who was to be married brought her dowry with her to the marriage (as well as any property she may have inherited or acquired) and when she married that property passed completely into the hands of her husband who then became her sole guardian.<sup>6</sup> Her husband controlled all her property and movables but could not alienate them without her permission.<sup>7</sup> The dowry could consist of various items, depending on the socio-economic

<sup>2</sup> Peter Fleming, *Family and household in medieval England* (Basingstoke, 2001), 24.

<sup>3</sup> *Calendar of Ormond deeds*, ed. E. Curtis, 6 vols (Dublin, 1932–1943), vol. 2, no. 189.

<sup>4</sup> H.T. Knox, 'Occupation of Connaught by the Anglo-Normans after A.D. 1237, part V', *Journal of the Royal Society of Antiquaries of Ireland*, 33 (1903), 293 note 3.

<sup>5</sup> Elizabeth Butler was already betrothed by an indenture made in 1429 to the eldest son of the earl of Desmond, a fact that was ignored by Ormond. The casting aside of this prior agreement led to a serious deterioration in relations between the two earls, see David Beresford, 'The Butlers in England and Ireland 1405–1515', unpublished Ph.D. thesis, Trinity College Dublin, 1999, 85–88.

<sup>6</sup> Katharine Simms, 'Women in Gaelic society during the Age of Transition', in: *Women in early modern Ireland*, ed. Margaret MacCurtain and Mary O'Dowd (Edinburgh, 1991), 14–15.

<sup>7</sup> Fleming, *Family and household*, 38.

status of the woman, and could include money. In 1376, for example, in an agreement made between Richard Forestall and Thomas FitzJohn it was arranged that Thomas should marry Alice, the daughter of Richard, and that Richard owed to Thomas for the marriage portion, twelve marks of silver, which were payable over a number of years.<sup>8</sup> Some details concerning monetary dowry arrangements can also be found in wills where the dying person is anxious to make provisions for relatives. The will of Robert de Moenes, a citizen of Dublin in 1326, showed how anxious he was to provide a suitable dowry for his unmarried daughter Alice. According to the terms of his will she was to receive £10 from him and also £3 from her brother. She was also to receive all of her mother's dresses and a silk sash as well as a curtilage in the city, all of which it was hoped would make her a more attractive marriage prospect.<sup>9</sup> Where possible, however, dowries appear to have been overwhelmingly land-based. For example, when Annabel, the daughter of Henry Butler of Cork married David de Barry in the mid-thirteenth century her dowry consisted of the castle of Timoleague with the half-cantred of Obatheme and the half cantred of Rosyletir.<sup>10</sup>

Regarding the marriage ceremony itself, according to the church's teaching on the proper rites of marriage, after the families concerned had made the financial arrangements the betrothal took place and was often expressed before witnesses. Then the banns were read in the parish church and if there were no objections the couple were married at the church door by an exchange of consent. Not all people followed this public route, however and many married clandestinely, a practice which the church accepted as valid. However, it was recognised that a public marriage was an important way to be sure of witnesses to the ceremony, who were crucial if any questions were later raised over the validity of the marriage. A church ceremony was also a vital public way of affirming a connection between families and also as a means of transmitting wealth from one generation to another. Therefore, the wealthier the families, the more important a public marriage ceremony was.<sup>11</sup> A public marriage made the abandonment of wives harder to accomplish and it clarified arrangements like dowry, dowers and jointures, which were to the benefit of the women involved.

Once married, the woman's right to acquire or even manage land under the common law was severely limited.<sup>12</sup> Only legitimate heirs born after the marriage could inherit under the common law and a man could not marry again while his first wife lived. If a wife survived her husband she was entitled to her dower which was generally set at one-third of her husband's estate or, if there were no children, a half. Anglo-Irish wives could also receive jointures with which to sustain them after their husbands' deaths. Until 1634 a married woman in Ireland was able to claim both dower and jointure but after that date, she had to choose one or the other.<sup>13</sup> Before this legislation was enacted, however, widowed women took advantage of the grants made to them of both jointure and dower.

<sup>8</sup> *Ormond deeds*, vol. 2, no. 212.

<sup>9</sup> J. Gilbert Smyly, 'Old Latin deeds in the library of Trinity College II', *Hermathena*, 67 (1946), no. 26.

<sup>10</sup> Diarmuid O'Murchada, *Family names of County Cork* (Cork, 1985), 32.

<sup>11</sup> Georges Duby (translated by Barbara Bray), *The knight, the lady and the priest: the making of modern marriage in medieval France* (London, 1984), 30.

<sup>12</sup> The dowry remained, however, the wife's property during this time. For much of the following on grant limitations see Robert C. Palmer, 'Contexts of marriage in medieval England: evidence from the king's court circa 1300', *Speculum*, 59 (1984), 46–65.

<sup>13</sup> Harold O'Sullivan, 'Women in County Louth in the seventeenth century', *Journal of the County Louth Archaeological Society*, 23 (1995), 346.

## Urban wives

The married women of urban Anglo-Ireland could find their marital state different from that of their rural counterparts. Many young women who emigrated from the countryside worked in towns (probably as domestic servants) and experienced greater freedom in choosing a husband. Townswomen were a vital part of urban trading life and across Europe the wives of craftsmen and artisans often worked alongside their husbands and may have continued in their trades as widows.<sup>14</sup> It is possible that, with a greater contribution made to the family economy, the wife of an urban artisan may have had more say in the running of the family business than the wives of her social and economic superiors.<sup>15</sup> She also generated money through her own activities, for example, brewing, spinning etc. These activities increased the value of the wife in the urban working unit and possibly increased her influence within the family unit.<sup>16</sup>

In the towns, if a woman married a man who was a member of a guild, she then often received some guild privileges. Wives of guild masters could become guild 'sisters', who could enjoy many of the benefits of membership but were always members of the second rank. They often paid lower admission fees, were banned from wearing guild livery and could only participate in selected social and religious occasions.<sup>17</sup> In Dublin, women were eligible to become citizens and if a woman who was a citizen married a man who was not admitted as a citizen, he could gain that right through marriage to her.<sup>18</sup> During the period 1468–1512 in Dublin, covered by the extant Franchise Rolls, only two women became free through marriage to freemen, while sixty-two men became free through marriage to freewomen.<sup>19</sup> Marriage could therefore act as valuable entry point to citizenship for the men of Dublin.

Married women of Dublin, in particular, also appeared to have possessed more freedom to dispose of their goods through the making of wills than was ordinarily legally allowed. One indication of how prevalent will-making was by married women in Dublin came in 1347, when the citizens of Dublin complained to the king that 'contrary to the usage of the city' married women had been making bequests and wills of 'their husbands' goods without licence' and that those husbands who tried to prevent this were excommunicated by ecclesiastics. The king ordered this practice to stop.<sup>20</sup>

## Marital breakdown in Anglo-Irish society

When a marital relationship broke down between an Anglo-Irish couple a separation was sometimes applied for through the church courts. There were many reasons given for why

<sup>14</sup> Shulamith Shahar, 'Townswomen', in: *The fourth estate: a history of women in the middle ages* (London and New York, 1983), 190.

<sup>15</sup> P.J.P. Goldberg, 'For better, for worse: marriage and economic opportunity for women in town and country', in: *Woman is a worthy wight: women in English society c. 1200–1500*, ed. P.J.P. Goldberg (Stroud, 1992), 108–25.

<sup>16</sup> Claudia Opitz, 'Life in the late middle ages', in: *A history of women in the west II: silences of the middle ages*, ed. Christiane Klapisch-Zuber (London, 1995), 283.

<sup>17</sup> Maryanne Kowaleski and Judith M. Bennett, 'Crafts, guilds and women in the middle ages: fifty years after Marian K. Dale', in: *Sisters and workers in the middle ages*, ed. J.M. Bennett, E.A. Clark, J.F. O'Barr, B.A. Vilen and S. Westphal-Wihl (Chicago and London, 1989), 3.

<sup>18</sup> Jessica McMorrow, 'Women in medieval Dublin: an introduction', in: *Medieval Dublin II*, ed. Seán Duffy (Dublin, 2000), 206.

<sup>19</sup> *The Dublin city franchise roll 1468–1512*, ed. Colm Lennon and James Murray (Dublin, 1998), xxiv.

<sup>20</sup> J.T. Gilbert, *Ancient records of Dublin I* (Dublin, 1889), 145.

women, in particular, wished to end their marriages but one reason was that of being forced into marriage.<sup>21</sup> For example, a case concerning the allegation of a forced marriage taken by Christina Bernard in 1518 produced witnesses, including the bride's mother, who described the journey of Christina Bernard from her house to the place of ceremony. Two men, one of whom appears to have been a male relative, led her to the marriage ceremony where she was described as weeping and tearing her clothes.<sup>22</sup>

Whether or not many women were actually forced into marriages or whether it was a convenient reason to give to the church courts is open to conjecture. However, the church was not unaware that the excuse of marriage forced by violent threat could be used fraudulently by individuals. A fourteenth century case also displays the effects that telling lies in such cases could have on the protagonists. A man named Nicholas de Inteburge of Tipperary, having been quarrelling with his wife, wrongfully accused her of fornication with his cousin and obtained a divorce. He later began to be afraid at the many early deaths of witnesses in the case as well as instances of bad luck that he put down to his own deceit in his divorce hearing. He returned to the archbishop's court to obtain permission to leave his second wife in order to return to his first wife.<sup>23</sup>

By no means were all separations applied for using the reason of violence as grounds for separation. The insular nature of Irish society ensured that many cases were brought by people seeking separations from their spouses on the grounds of consanguinity and affinity, an area of canon law that people appeared to be confused about. These constituted a large part of the reason many couples sought dispensations to remain in marriages as well as separations within Anglo-Irish society. It is also possible that people were aware of the prohibitions but chose to ignore them until it suited their purpose to declare them, if they wanted to end the marriage, for example.

Certainly affinity could be used as an excuse to escape from an unhappy marriage. For instance, a petition sent by Katherine Fleming to the Irish parliament in 1460 regarding her husband's continuing control over her inherited lands included the fact that she was separated from her husband, James Bathe, because of their affinity. This affinity existed because James told her after they had been married for two years, that he had engaged in sexual relations with her cousin. James claimed that he could not continue with the marriage in 'good conscience' and advised her to report his actions to the church. This she duly did but later found that her husband's 'good conscience' did not preclude him from refusing to return all of her goods, chattels and profits relating to her lands as the ecclesiastical court had commanded. Thus she was forced to send a petition to parliament.<sup>24</sup> James Bathe's actions here, in belatedly remembering an affair and using it to force a separation whilst retaining his wife's possessions, was a blatant manipulation of canon law prohibitions against affinity. The process of dissolving a marriage through the church courts was a long one and probably quite difficult for those involved, as Katherine Fleming seems to have realised. It was also costly and, in all probability, many people in unhappy marriages simply stayed put or ended them without recourse to church courts.

<sup>21</sup> Katharine Simms, 'Women in Norman Ireland', in: *Women in Irish society: the historical dimension*, ed. Margaret MacCurtain and Donncha Ó Corráin (Baldoye, 1979), 16.

<sup>22</sup> L.P. Murray, 'Continuation of Archbishop Cromer's register', *Journal of the County Louth Archaeological Society*, 8 (1934), no. 93.

<sup>23</sup> Dianne Hall, *Women and the church in medieval Ireland c. 1140–1540* (Dublin, 2003), 32.

<sup>24</sup> *Statute rolls of the parliament of Ireland of Henry VI*, ed. H.F. Berry (Dublin, 1910), 699–701.

## Gaelic wives: rights and activities within marriage

Although much of the legal information concerning the rights of Gaelic wives is taken from eighth-century law tracts, many of the principles discussed in those tracts seem to have remained ‘surprisingly constant’ up to the later middle ages.<sup>25</sup> Throughout the middle ages in Ireland, the Gaelic Irish persisted in keeping many of their civil laws and traditions regarding marriage separate from the church’s teaching on the subject.<sup>26</sup> For instance, Irish couples were not commonly united by the sacrament of marriage as Gaelic law regulated their relationship. Gaelic law allowed divorce at will followed by remarriage and took no account of canonical prohibitions against consanguinity or affinity. For example, in 1339 Turlough O’Connor, king of Connacht, repudiated his wife in order to marry his own aunt.<sup>27</sup> Such practices conflicted with those promoted by the church in Anglo-Irish areas subject to the common law.

Marital irregularities within Gaelic Irish society persisted throughout the later middle ages although they became subject to occasional ecclesiastical penalties. The practice of trial marriages also seems to have been popular in Gaelic areas, especially amongst the upper classes, so cohabitation before marriage must have enjoyed a recognised standing in the community to be so acceptable at the highest levels of society. Amongst the Gaelic Irish illegitimacy was not necessarily regarded as an obstacle towards succession. Due to this it was not uncommon for a man to have more than one concubine, as well as his legitimate wife, which could lead to dozens of offspring. For example, Turlough *an fhiona* O’Donnell lord of Tirconnel, who died in 1423, had eighteen sons by ten different women and fifty-nine grandsons in the male line. Mulmora O’Reilly the lord of East Breifne who died in 1566 had at least fifty-eight grandsons.<sup>28</sup>

In Gaelic areas the bargaining over marriage was similar in some ways to the Anglo-Irish system, in that both families were expected to contribute to the match. Marriages of the more formal type were probably arranged by the families of the bride and groom and the betrothal was a contract sustained by the sureties of both families.<sup>29</sup> It was the custom for a husband to pay a bride-price, known as the *coibche* to the bride’s family upon marriage. The bride was entitled to a portion of that *coibche* and if the marriage broke up due to a fault on the husband’s part then the *coibche* was retained by the wife’s father but if the fault lay with the bride then the *coibche* was to be returned to the husband.<sup>30</sup> This bride-price may have gradually lessened in importance in legitimate marriages as the dowry appears to have risen in importance within such relationships during the later middle ages. The meaning of the gift gradually changed and it began to signify property contributed by the father of the bride, thus becoming neutral marriage goods.<sup>31</sup> This change seems to have been primarily due to ecclesiastical pressure to enforce the dowry, as its payment was demanded by the canon law.<sup>32</sup> The *coibche*

<sup>25</sup> Simms, ‘Women in Norman Ireland’, 14.

<sup>26</sup> *Ibid.*, 15.

<sup>27</sup> Katharine Simms, ‘The legal position of Irishwomen in the later middle ages’ *Irish Jurist*, new series, 10 (1975), 97–8.

<sup>28</sup> All the above information regarding the various chieftains’ offspring came from Kenneth Nicholls, *Gaelic and gaelicised Ireland in the middle ages* (Dublin, 1972), 11.

<sup>29</sup> Fergus Kelly, *A guide to early Irish law* (Dublin, 1988), 71.

<sup>30</sup> Kelly, *A guide to early Irish law*, 72.

<sup>31</sup> Simms, ‘Legal position of Irishwomen’, 110.

<sup>32</sup> Kenneth Nicholls, ‘Irishwomen and property in the sixteenth century’, in: *Women in early modern Ireland*, ed. MacCurtain and O’Dowd (Edinburgh, 1991), 20.

payment continued into the sixteenth century as a vital part of the concubinage contract, however. The *spréidh* (stock) which the woman had been accustomed to receive from her own family on setting up home duly seems to have been converted into a dowry paid to the husband (by the woman or her family). Because of the Gaelic Irish system of fosterage sometimes the bride's marriage-portion could be provided by her foster family.<sup>33</sup> However, the husband still remained liable for its repayment in case of divorce and it would also be repaid if he died.<sup>34</sup>

Dowries in Gaelic Ireland are not very well documented before the sixteenth century but, in general, they probably consisted of movables, normally cattle but sometimes soldiers.<sup>35</sup> The Annals of Loch Cé, for example, refer to the marriage of Aedh O Conor and the daughter of Dubhghall MacSomhairle upon which the young wife brought as her dowry one hundred and sixty galloglass.<sup>36</sup> When a Gaelic Irish wife married guardianship of her was transferred to her husband but he was not her sole guardian and the wealth she brought into the marriage did not pass into his hands. This conflicts directly with the marriage practice pursued in Anglo-Irish areas. In Gaelic Ireland marriage did not sever the tie between a woman and her own family and so her kin never relinquished all their rights and interest over her.<sup>37</sup> This link may have aided the woman if she had to deal with an unpleasant husband or marital situation, but it could also limit her as she could sometimes find her actions controlled by her native kin, because of the mesh of obligations between them that a marriage did not completely sever.<sup>38</sup>

The lives of lower class women amongst the Gaelic Irish concerning their marriage practices are difficult to ascertain. However, certain marital practices concerning payments made to one's overlord have been noted amongst the Gaelic Irish. In Gaelic Ulster *erenaghs* (stewards of church lands) had to pay their diocesan bishop a *luach ímpi*, 'the price of request or supplication', when their daughters married.<sup>39</sup> There is also a reference to a vaguely defined right over the women of Connacht that was claimed for the chief MacDermot of Moylurg.<sup>40</sup> These indicate that within Gaelic Irish society certain lords claimed rights over the marriages of their tenants' daughters and received payment in return.

Within a marriage contract the status of each partner also depended on the amount of property he or she brought into the marriage. The law tracts advocated that marital relationships be made up of men and women of equal status so that the wife would then enjoy the same contractual capacity as her husband.<sup>41</sup> By the later middle ages many married couples are likely to have consisted of a man and woman of equal status meaning that both were of equal property

<sup>33</sup> The type of fosterage is referred to as 'milk nurse fostering' and seems to have occurred in cases of fostering when the child was taken at a very early age into a family and raised by that foster family to whom it gave its primary emotional loyalty, see Fiona FitzSimons, 'Fosterage and gossip in late medieval Ireland: some new evidence', in: *Gaelic Ireland c. 1250–1650*, ed. Patrick J. Duffy, David Edwards and Elizabeth FitzPatrick (Dublin, 2001), 142.

<sup>34</sup> Nicholls, *Gaelic and gaelicised Ireland*, 76.

<sup>35</sup> Simms, 'Legal position', 110.

<sup>36</sup> *The annals of Loch Cé*, 2 vols, ed. W.M. Hennessy (London, 1871), vol. 1, 1258.

<sup>37</sup> R. Thurneysen, N. Power, M. Dillon, K. Mulchrone, D.A. Binchy, A. Knoch and J. Ryan, *Studies in early Irish law* (Dublin, 1936), 180–181. This included a right to a proportion of her goods at death and also of the wergild if a stranger had killed her. They were also partly liable for any wrongdoing she may commit. The mother-kin also had certain limited rights in regard to her children.

<sup>38</sup> Simms, 'Legal position', 110.

<sup>39</sup> Canice Mooney, *The church in Gaelic Ireland in the 13<sup>th</sup> to 15<sup>th</sup> centuries* (Dublin, 1969), 16.

<sup>40</sup> Nessa Ní Shéaghdha, 'The rights of Mac Diarmada', *Celtica*, 6 (1963), 156–72.

<sup>41</sup> Bert Jaski, *Early Irish kingship and succession* (Dublin, 2000), 144.



and family.<sup>42</sup> A Gaelic Irish wife had the freedom to administer the goods she brought with her to the marriage as well as any marriage-portion settled on her by her husband. She was to be consulted in every case involving their joint land and property, and had veto rights just as her husband had those same right to any contract she made on her own. If her husband made a bad decision concerning joint property then his wife had the right to rescind it.<sup>43</sup> Regarding property, which the wife may have held separately she was allowed to sell or let it independently.<sup>44</sup> The married woman was regarded, under Gaelic law, as having wide powers of independent contract, almost as wide as her those of her husband.

If a woman brought to her marriage property which she had inherited, there were limitations to her enjoyment of it, however. A female heir referred to as a *banchomarbae* could inherit a lifetime interest in her father's land assuming she had no brothers. However, upon her death, the property was not inherited by her husband or sons, but reverted to her own kin, unless she was married to a foreigner who held no land in which case she could pass on a limited amount of her family land to her own heir.<sup>45</sup> This was opposite to the status and rights of female heirs under the common law who could freely transmit their inheritance to their heirs. It also meant that in Gaelic society there was no prospect of acquiring lands or title by marrying a female heir, which again was in opposition to the Anglo-Irish system regarding female heirs.<sup>46</sup>

The wife of a Gaelic chieftain by virtue of her marriage seems also to have been entitled to some share of the chief's authority over his territories. This may have led to some wives wielding an extraordinary amount of political power within Gaelic Ireland. There are various examples of Gaelic Irish wives of chieftains who sometimes became very involved in the political concerns of their husband's families. One such woman was Dervorgilla, the daughter of Manus O'Connor and wife of O'Donnell, who in 1315 joined her husband in making war on Rory O'Connor in Carbury. She is recorded as leading galloglass in an attack on a church. The following year Rory O'Connor made peace with O'Donnell and yielded the lordship of Carbury to him. However, Dervorgilla refused to acknowledge the peace her husband had made and hired another band of galloglass to which she offered a reward for killing Rory. The galloglass did their job and Rory was killed in direct contravention of the wishes of her husband. Dervorgilla's actions indicate a woman with freedom of action and without fear of her husband's reaction.<sup>47</sup> Such activities on the part of Gaelic Irishwomen may have been dependant on the size and type of their dowry. A woman who brought troops or ships with her to her marriage may have wielded far more political influence than one who did not.<sup>48</sup>

## Patronage

An area where the rights of Gaelic wives were also very different to those of Anglo-Irish wives was in the area of patronage. Anglo-Irish wives acted as patrons with their husbands and their

<sup>42</sup> Katherine Mary O'Meara, 'Under the heel of church and state? Women in late medieval Ireland', unpublished M.Phil. thesis, Trinity College Dublin, 1996, 42.

<sup>43</sup> Thurnesyen et al., *Studies*, 228.

<sup>44</sup> Thurnesyen et al., *Studies*, 227.

<sup>45</sup> Kelly, *Early Irish law*, 104.

<sup>46</sup> Jaski, *Early Irish kingship*, 144–5.

<sup>47</sup> *The annals of Connacht*, ed. A.M. Freeman (Dublin, 1944), 1315.20, 1316.2.

<sup>48</sup> Margaret MacCurtain and Mary O'Dowd, 'An agenda for women's history in Ireland 1500–1900', *Irish Historical Studies*, 28 (1992), 6.



joint acts of patronage were invariably directed towards the church. Gaelic wives could also be active patrons of religious establishments but they were also particularly active in the independent distribution of secular patronage, particularly that concerning bardic poetry. The relative freedom of wealthy Gaelic wives in dealing with their own assets seems to have enabled them to act as patrons in their own right. The nature and extent of this patronage was, of course, dependant on their social status and wealth, but there was a tradition of patronage by wealthy wives of poets. The Gaelic Irish wives who encouraged and supported poets left behind them a legacy of poems, which praised these powerful and wealthy wives in life and eulogised them after death.<sup>49</sup> These women upheld a tradition of the Gaelic world that was often carried on by their daughters. A poem written around 1425 to celebrate the marriage of Aedh O'Neill, head of the Clandeboy O'Neills, with Fionnghuala, the daughter of Calvach O'Connor Faly and his wife Margaret O'Carroll, makes reference to Margaret, Fionnghuala's famously generous mother. The poet also indicates the status and power of Fionnghuala as well as her wealth.

...Fionnghuala's splendour is so great that no woman  
can be set above her

From her girlhood - high praise! - her mother's nature shows  
in her; ere she came to a husband she was pregnant with  
generosity.<sup>50</sup>

Gaelic wives were encouraged in their patronage of poets, because it served a very important function in their society. Bardic poetry served as propaganda for the chief and his family and it was an important duty of the wife to see to it that the right type of poetry was written about her husband's family. The great fear was that poets would be displeased and a disaffected poet satirising those who had offended him could ruin a family's reputation. A chieftain's wife was expected to avoid such scandal.

## Intermarriage

Members of Gaelic and Anglo-Irish societies enjoyed concubinous or casual sexual relations. For example, William III de Vescy who was legitimately married to Isabella de Periton also kept, as his concubine, Derbforgaill, daughter of Domnall Rua MacCarthy king of Desmond. His son by this relationship was William de Vescy 'of Kildare'.<sup>51</sup> This is only one of several recorded examples of Anglo-Irish lords engaging in practices that were officially frowned upon in their own society but secretly embraced by many members of the aristocracy who engaged with the Gaelic world and its practices and traditions on many levels, not least of which was the sexual one. However when people from the two traditions married legal conflicts could emerge, particularly concerning the rights of Gaelic wives of Anglo-Irishmen. Under the law of the colony, common law was not extended to the Irish and this could cause problems for a Gaelic wife if she ever wished to claim her dower from her Anglo-Irish husband's estate, for example, as legally she was not entitled to such benefits.

<sup>49</sup> Roisin McCauley, 'Female patrons of bardic poetry', unpublished M.Phil. thesis, Trinity College Dublin, 2000, 20, 24.

<sup>50</sup> *Aithdioghluim Dána*, ed. Lambert McKenna, 2 vols (Irish Texts Society, Dublin, 1939), vol. 1, 70–71, vol. 2, 44.

<sup>51</sup> Keith J. Stringer, 'Nobility and identity in medieval Britain and Ireland: the de Vescy family, c. 1120–1314', in: *Britain and Ireland 900–1300*, ed. Brendan Smith (Cambridge, 1999), 211.

This deficit in law was highlighted by the Irish in their unsuccessful requests for extensions of English law made in 1277 and again in 1317.<sup>52</sup> Gaelic Irish law did not provide for a dower or jointure arrangements after the death of a husband and as widows, women in Gaelic Ireland were legally subject once again to the authority of either their fathers or their adult sons and their role appears to have been far more limited than it was as wives. Yet as the widows of Anglo-Irishmen Gaelic women found themselves without the rights which should have accrued to them under that system of law according to which their husbands held property. To avoid this occurrence Irish wives had to apply for a grant of English law to safeguard both their own and their children's rights.

Anglo-Irishwomen who married Gaelic Irish men probably did accede to their full rights under Gaelic law, however — a fact that must have added to the simmering resentment. For example, in 1269 the earl of Ulster insisted that Aedh Bui O'Neill grant his Anglo-Irish wife Eleanor (a cousin of the earl) the full rights of an Irish married woman. This was in response to the fact that Aedh had previously neglected her and the earl forced him to accord to Eleanor all the rights that she was entitled to according to the 'custom' of his land.<sup>53</sup> The colonists expected that the women of their culture who intermarried with the Gaelic Irish would be eligible to be treated under law as a Gaelic Irish woman would be. That this extension of law was not reciprocated in kind understandably caused tensions.

In the pockets of colonised areas in Ireland, away from the influence of Dublin and the surrounding areas, the Gaelicisation of English families through intermarriage with Irishwomen could have very serious political consequences.<sup>54</sup> The children of such unions were comfortable in both worlds and their mother's Gaelic influence was no doubt influential as well as that of her family. Many of the descendants of the settlers belonged by birth to the Gaelic Irish traditions as well as to the Anglo-Irish.<sup>55</sup> The 'degeneracy' of those Anglo-Irish, who were becoming more like the Gaelic Irish, began to worsen towards the end of the thirteenth century especially and was legislated against. The parliament of 1297 forbade the English to wear their hair in a *cúlán* (the hairstyle indicative of Gaelic Irishmen) for example, which indicates increasing assimilation of Irish modes of dress and behaviour amongst the settlers. The government also began to try to restrict the colonists' choice of marriage partner through, for example, prohibitions that forbade marriage between the colonists and any enemy of the king, whether they were Gaelic or Anglo-Irish.<sup>56</sup>

These worries continued and statutes of the Kilkenny parliament of 1366 indicate that, by that stage, 'degeneracy' was viewed as almost being out of control.<sup>57</sup> Successive statutes imposed a ban on marriage or any relationship (i.e. concubinage) between Gaelic and Anglo-Irish.<sup>58</sup> Throughout the history of the colony in Ireland (except perhaps in its very early stages),

<sup>52</sup> A.J. Otway-Ruthven, 'Select documents VI: the request of the Irish for English law 1277–80', *Irish Historical Studies*, 6 (1949), 261–270; J.R.S. Phillips, 'The Irish remonstrance of 1317: an international perspective', *Irish Historical Studies*, 27 (1990–91), 112–29.

<sup>53</sup> *Report on the manuscripts of lord de L'Isle and Dudley I* (Historical Manuscripts Commission, London, 1925), 32 as quoted in Simms, 'Women in Norman Ireland', 17–8.

<sup>54</sup> Gaelicisation was also evident in Dublin from early on after the Anglo-Norman colonisation, an early civic ordinance of Dublin ordered the fining of women if they wore kerchiefs dyed in saffron, in the style of Gaelic Irishwomen, see McMorrow, 'Women in medieval Dublin', 205 note 1.

<sup>55</sup> Nicholls, *Gaelic and gaelicised Ireland*, 17.

<sup>56</sup> *Statutes, ordinances and acts of parliament of Ireland King John to Henry V*, ed. H.F. Berry (Dublin, 1907), 386–7.

<sup>57</sup> James F. Lydon, 'Nation and race in medieval Ireland', in: *Concepts of national identity in the middle ages*, ed. Simon Forde, Lesley Johnson and Alan V. Murray (Leeds, 1995), 103–5.

<sup>58</sup> Berry, *Statutes...Ireland John–Henry V*, 432–3.

intermarriage with Irishwomen and the adoption of Irish customs met with disapproval and attempts to outlaw it by the administration in Dublin. The prevalence of intermarriage between the Gaelic Irish and Anglo-Irish or English was always seen as a weakness in the stability of the colony and was repeatedly prohibited by the government and equally repeatedly ignored.<sup>59</sup> The problem of degeneracy was only one aspect of the government's worries. The marriage of Elizabeth Calf or le Veele, heiress of the barony of Norragh and widow of Sir John Staunton, to Art MacMurrough in 1390 also highlights another concern of the government, that is the possibility of intermarriage leading to Gaelic Irish control of Anglo-Irish lands.<sup>60</sup> Elizabeth Calf's marriage to MacMurrough brought important land in Kildare to the Irish chief, a fact which caused concern within government both inside and outside Ireland. In January 1391 Elizabeth's lands in Norragh, Calveston, Skerries, Blackrath and other places in Kildare were declared forfeit to the Crown because of her 'adherence' to MacMurrough. After a visit from the king, in 1395 Art agreed to accept eighty marks a year from the Crown and his wife's barony to become a liege man of the king.<sup>61</sup>

For those families who could not afford to disregard the wishes of the government, they often argued for the need to intermarry in order to preserve or impose peace between the Gaelic and Anglo-Irish. For example in 1426 an application was made to the papal court for a licence to marry Roger MacMahon and Alice White. The Pope was advised to issue a licence because of three stated reasons, the most important of which was that their union would ensure that peace would reign between the English and Irish of their area.<sup>62</sup>

For many Anglo-Irish families, living near areas of predominantly Gaelic ethos and influence, intermarriages were a crucial means of acceptance and a means of building up alliances that could be achieved in no other way. The dictates of the government on the matter were thus ignored by Gaelic and Anglo-Irish alike throughout the later middle ages, as the government had no effective means of enforcing their strictures against this matter. Amongst the Gaelic Irish the links between their culture and that of the 'foreigners' was accepted. A seventeenth-century bardic poem celebrates the influence of female Gaelic ancestors on the great families of Anglo-Ireland.

On the female side from our race comes Thomas Earl of Ormond...  
from our stock also sprang the race of the bold Fitzgeralds descended  
from our womenfolk.<sup>63</sup>

Every strata of Gaelic Irish and Anglo-Irish society was familiar with intermarriage. From the highest levels of society, where intermarriage was often a way of securing a family's position and lands in the face of local Gaelic opposition, to lower down the scale where the stakes were not as high, people from the two cultures met and married. The cross-fertilisation of cultural attitudes and traditions as well as the implications for the legal status of the women involved in these

<sup>59</sup> Mary O'Dowd, 'Women and the law in early modern Ireland', in: *Women in renaissance and early modern Europe*, ed. Christine Meek (Dublin, 2000), 100–1.

<sup>60</sup> Kenneth Nicholls, 'The Kavanaghs 1400–1700', *Irish Genealogist*, 5 (1977), 435–6.

<sup>61</sup> Walter FitzGerald, 'Norraghmore and the barons of Norragh', *Journal of the Kerry Archaeological and Historical Society*, 7 (1912–14), 248–53.

<sup>62</sup> *Register of John Swayne archbishop of Armagh and primate of all Ireland 1418–1439*, ed. D.A. Chart (Belfast, 1939), 45–6.

<sup>63</sup> *Iomarbhágh na bhFileadh: the contention of the bards*, ed. Lambert McKenna, 2 vols (Irish Texts Society, London, 1920), vol. 2, 246–7.

marriages are of interest. It is possible that, depending on where and to whom she was married, a wife would follow the customs of the tradition she had married into. For the noblewoman, as well as being better provided for financially, she may also have been required to follow the traditions of the culture in which her marriage had placed her. Gaelic wives of Anglo-Irishmen can be found applying for grants of English law so they would be eligible for benefits such as jointures and dowers, when their husbands died. For example, grants of English law to Irishwomen such as Mariota, the wife of Ralph Burges and Artesia, who may have been the daughter of Primate Mac Maolisa and who was married to Peter de Repentenny in 1285, safeguarded their rights in an Anglo-Irish world.<sup>64</sup> In 1289 Primate Mac Maoiliosa also petitioned for a grant of English law to be given to Ismaya, the wife of Bertram de Repennteney, in order that she might have her dower after her husband's death. He explained that she was Irish and the custom in Ireland was that Irishwomen did not have that right.<sup>65</sup> She was the daughter of O'Rahilly.<sup>66</sup>

The question as to whether or not most Gaelic women who married Anglo-Irish men were formally admitted to the common law, thereby becoming beneficiaries of the rights due to them according to that system of law, remains unanswered. However, some Gaelic women who intermarried undoubtedly did receive the benefits due to them from the common law. A case from the early fourteenth century inadvertently indicated that Gaelic Irishwomen who intermarried with settlers (high-ranking ones at least) did benefit from English law. The case in question concerned a dispute over the rent of a carucate of land rented by Maurice Carew in Cork. The history of the land was outlined and it was claimed that this carucate had once belonged as dower to an ancestor of Maurice, Ragnailt MacCarthy who was the widow of Richard de Carew. She was a daughter of the then King of Desmond Diarmait Cille Badùna MacCarthy (d. 1185).<sup>67</sup> Therefore, at an early stage in the history of the Lordship, certain Gaelic women had received the benefits of the common law, a fact that was remembered and may have rankled with the Gaelic Irish elite who also wanted such benefits. Marriage may have been a contributing factor in 'degeneracy' but such influences run both ways and it could be argued that intermarriage could also lead to increasing Anglicisation of Gaelic women especially when it came to an awareness of church law and teaching on marriage and their legal entitlements under the common law as opposed to Gaelic law.<sup>68</sup>

However, not all marriages were between Gaelic women and Anglo-Irish or English men as Gaelic Irish men also married Anglo-Irish women. For example, a series of deeds from the early fifteenth century relates to grants of lands made by William O'Dowyr and his wife Isabella, the daughter and heiress of David Wodstok. In such a situation a Gaelic man's right to administer his wife's land could be brought into question simply because he was Gaelic and the onus was likely to have been on him to have himself admitted to English law and thus safeguard his rights in relation to his wife and their property. The questions regarding the depth and types of changes which Anglo-Irish women may have had to adapt to as the wife of a Gaelic Irishman are speculative and may not have affected Isabella O'Dowyr excessively, as she was living in an area subject to the earls of Ormond and not in a wholly Gaelic area.<sup>69</sup> The need for

<sup>64</sup> 'Harris' *collectanea de rebus Hibernicis*, ed. Charles McNeill, in: *Analecta Hibernica*, 6 (1934), 318.

<sup>65</sup> Diarmuid MacIomhair, 'Primate MacMaoiliosa and County Louth', *Seanchas Ardmhacha*, 6 (1971), 90.

<sup>66</sup> Brendan Smith, *Conquest and colonisation in medieval Ireland* (Cambridge, 1999), 82.

<sup>67</sup> Sean Duffy, 'The problem of degeneracy', in: *Law and disorder in thirteenth century Ireland: the parliament of 1297*, ed. James Lydon (Dublin, 1997), 93.

<sup>68</sup> *Ibid.*, 88–9.

<sup>69</sup> *Ormond deeds*, vol. 2, no. 371.

Gaelic Irishmen married to Anglo-Irish women to have themselves admitted to English law can be seen in a case dating from 1384. In that year allegations over his background and descent led a jury to conclude that Adam Nores was not of the Irish nation but ‘of descent of the mere English’ and was, therefore, entitled to hold land in right of his wife.<sup>70</sup>

### Clerical Concubines in Gaelic Ireland

The practice of concubinage by both Gaelic and Anglo-Irish has already been mentioned as a practice engaged in by certainly the higher members of the opposing societies. However it is in the attitudes of these societies to clerical concubinage that conflict arises. The pre-Norman church in Ireland had long been inured to a tradition of married priests and monks and this did not substantially change throughout the period examined here. Such women were classed as priests’ concubines by the authorities and there is some evidence to suggest that in Gaelic Irish society a formal contract of concubinage existed between the clergy and their women. In practice, clerical concubines in Gaelic Ireland seem to have been treated differently from lay concubines and were, in fact, treated just as wives were.<sup>71</sup> It may even be that clerical concubines, unlike lay concubines, went through some form of clandestine marriage ceremony.

The concubines of important churchmen were accorded a certain level of respect. The deaths of distinguished priests’ concubines are recorded in the annals just as the deaths of notable noblewomen were. In 1347 the death of Finnghuala, the daughter of Eogan Mac Fingin and wife of Fergal Muimnech O’Duibgennain, archdeacon of Kilronan, was marked in the annals.<sup>72</sup> Sometimes, the status of such clerical wives could be similar to or even equal that of their husbands. The wives of Thomas MacCormaic O’Donnell and Conor MacCormaic O’Donnell, the bishops of Raphoe (1319–37 and 1367–97) were the daughters respectively of MacSweeney and O’Boyle who were two of the greatest lords in the diocese.<sup>73</sup> In general, however, the status of most of the concubines of the clergy in medieval Ireland was irregular. Their families may not have considered marriage to a priest advantageous and they may not have paid over a dowry with the marriage of the women. Similarly, the women’s families may not have always have received a *coibche* from their husbands. However, it may be that, as compensation for their irregular status, these women received a financial endowment from their clerical husbands, rather than bringing one to the marriage.<sup>74</sup>

Bishops and archbishops preached against the practice of priestly marriage but it continued in Gaelic Ireland. The problem of clerical sexual relationships was widespread in the Gaelic world but it was also evident in Anglo-Irish society where such women were not, however, treated as wives. Brother Peter White, the abbot of St. Mary’s in Navan, was accused of a number of crimes during the visitation of John Bole, the Archbishop of Armagh in 1461. These included dilapidating the goods of the monastery, of granting two acres of corn to John Boys of Navan as well as crops to his daughters, Joneta and Margaret. The reason for this reckless behaviour comes later in the document when he was accused of fornication with Margaret Boys.<sup>75</sup>

<sup>70</sup> Dowdall deeds, ed. Charles McNeill and A.J. Otway-Ruthven (Dublin, 1960), no. 290.

<sup>71</sup> Lay concubines were of lower status but did occupy a protected place in the households of the men they were engaged in a relationship with, see Katherine Simms, ‘Legal position of Irishwomen’, 101.

<sup>72</sup> *The annals of Connacht*, 1318.5, 1347.10.

<sup>73</sup> Nicholls, *Gaelic and gaelicised Ireland*, 96.

<sup>74</sup> Nicholls, ‘Irishwomen and Property’, 21.

<sup>75</sup> Anthony Lynch, ‘A calendar of the reassembled register of John Bole archbishop of Armagh 1457–71’, *Seanchas Ardmhacha*, 15 (1992), 138–9.

The moral failures of men like the abbot were one aspect of the church's argument that they abandon the women who shared their lives. Another pressing issue, as displayed by the abbot, was of the use of church goods in supporting these women and, in some cases, their children also. The practice of clerical concubinage was more widespread in the Gaelic world than amongst the Anglo-Irish and further illustrates the conflicting modes of marriage and relationships affecting women from both sides of the divide.

### Marital breakdown in Gaelic Ireland

Gaelic Irish law provided for divorce at will, a fact that could often leave wives and children abandoned but which, increasingly, they turned to church courts to remedy. Again, in this instance, the divergence between the two cultures is striking. In Anglo-Irish areas, proceedings for the annulment of marriages might be made as often by the husband as by the wife. Or the church authorities might intervene to separate married couples where bigamy or consanguinity was discovered after a marriage ceremony had taken place. By contrast, among the native Irish, separation regularly occurred without recourse to church courts and the wife could leave, taking her property with her. In Anglo-Irish areas and across western Europe in general, people did not always adhere to the teachings of the church regarding sexuality and marriage and clandestine marriages or relationships not sanctioned by any kind of bond were not uncommon outside Gaelic Ireland.<sup>76</sup> Nevertheless, the church's hold on marriage was always far stronger in Anglo-Irish controlled areas, than in Gaelic ones but it did exert increasing influence on Gaelic areas as the middle ages wore on and Gaelic Irish wives began to use church courts to redress marital wrongs such as being repudiated by their husbands.

Abandonment could have severe economic effects on both women and their children and so Gaelic women sometimes used the court system of Anglo-Irish areas in order to reinforce their marriage bonds, despite the fact that they had been repudiated according to Gaelic secular custom. Gaelic Irish women, many of them badly disadvantaged by the ease of divorce available under their own legal system, realised that they could utilise the church's law on marriage to great effect and to their own benefit and that of their children. The casual repudiation of wives and the procurements of separations through allegations of pre-contract left many Gaelic women bereft of their dowries, which their husbands refused to return to them. It began to be advisable for women to obtain sureties for the return of their dowries in case there was future need to recover them.<sup>77</sup> However, this was not always possible and, if the woman or her kin could not retrieve the dowry, her use of the church courts could be an effective way of forcing her husband to pay her off by returning her dowry or take her back as his wife.

Two cases that came before the court of the archbishop of Armagh in 1427 indicate the type of complaints made by wives and the actions that church courts took to redress their grievances. In May 1427 the vicar of Stabanan parish was ordered to relax the excommunication imposed on Richard Kenan of that parish when he had left his wife, Margaret Ohanraghey. This was because Richard had been brought before the archbishop and had promised that he would in future treat his wife with marital affection. Later that same year, in September, similar admonishments to an erring husband had no effect. It was reported that Manus Ymorchach McDompnalán had been ordered to return to his wife, Katerina, whom he had deserted in favour of another woman.

<sup>76</sup> Art Cosgrove, 'Marriage in medieval Ireland', in: *Marriage in Ireland*, ed. Art Cosgrove (Dublin, 1985), 30.

<sup>77</sup> Nicholls, 'Irishwomen and property', 22.



Manus does not appear to have returned and his wife may have been in financial trouble as it was reported that Manus had ‘wasted’ certain items belonging to himself and his wife.<sup>78</sup> Such prosecutions are likely to have been exceptional amongst the Gaelic Irish as marital breakdown was probably resolved privately between the individuals concerned without any recourse to church courts.

## Conclusions

This paper is intended, in brief, to outline some of the different and separate marriage traditions, which could be found in Ireland in the later middle ages. These practices co-existed, sometimes uneasily, for conflict between these different ways of marriage could sometimes occur, particularly when native married settler and a legal and cultural clash came into force. The differences between these two modes of marriage were great but these differences were increasingly bridged due to action taken on behalf of women. For example, as the middle ages wore on Gaelic women became more accustomed to the grant of a dowry as the *coibche* grant made to them died out. Also more Gaelic wives can be found taking their grievances to ecclesiastical court, a form of redress, which was becoming increasingly popular. The effects of intermarriage and the transmission of the lax Gaelic attitudes to marriage and separation to their Anglo-Irish neighbours also worried the authorities that continually complained of the degeneracy of the Anglo-Irish. Despite these developments, marriage within Gaelic Ireland remained substantially different than that within Anglo Ireland until the end of the middle ages.

The married women of both these societies coped and dealt with their differing freedoms and restrictions allowed them by their legal systems. These systems conflicted with each other in various ways and for the women themselves, the quality of their lives as married women had as much to do with their socio-economic status within their own societies as whether they adhered to Gaelic or to common law. However there were marked differences in the rights and restrictions accorded to them under the different legal and social systems. For example, Anglo-Irish wives (and their property) were legally subject to their husbands. This does not seem to have been wholly the case in Gaelic Ireland where wives could enter into contracts of their own volition and kept control of their own lands and goods after marriage. With these riches they often acted independently as important and influential patrons of the arts and also, in some cases, actively participated in the military and political life of their community. However they could not themselves become chieftains or hold power in such a formal and official fashion. Gaelic wives were still subject in some ways to the influence of their kin which could be disadvantageous. Similarly after her marriage ended whether through death or separation the Gaelic Irishwoman was once again subject entirely to the will of her own family whereas an Anglo-Irish woman found her rights more fully protected as a single woman or as a widow.

Because of the ongoing practice of intermarriage between Gaelic and Anglo-Irish in Ireland wives acted as conduits whereby traditions and habits concerning legitimate and illegitimate marital and sexual relations cross-fertilised. This was a development taken very seriously by church and state which sought to outlaw it but to no avail and as the middle ages gave way to the modern era the conflicting modes of marriage still existed in Ireland. There was to be no compromise between the two cultures until, eventually, Gaelic marriage practice as part

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<sup>78</sup> *The Register of John Swayne*, 55, 71.



of Gaelic culture in general was eclipsed and overthrown in the violent transformations of Irish culture and society which occurred during the sixteenth and seventeenth centuries.

**Gillian Kenny** completed her doctoral thesis at Trinity College Dublin in 2004 where she then taught. She is currently working on adapting her thesis into a book to be published by Four Courts Press in 2006.