

The sin of crime,

The Mutual Influence of the Early Irish and Anglo-Saxon Penitentials and Secular Laws

Masterscriptie Engelse Taal en Cultuur
Rijksuniversiteit Groningen

Student name:	J. M. Schoonvelde
Student number:	S1376721
Supervisor:	Dr. K.E.E Olsen
Date:	06-07-2012
Word count:	14468

Contents

Introduction	1
Chapter 1: Historical background	3
Chapter 2: Early Irish penitentials and laws	21
Chapter 3: Anglo-Saxon penitentials and laws	33
Conclusion	40
Bibliography	41

Introduction

One of the most fascinating questions concerning Medieval Irish and Anglo-Saxon society is not one about what was done when all went well, but rather, what was sought to be done when matters were not as they ought to be. In dealing with these early societies, the limits of what was seen to be acceptable behaviour can often best be determined by examining such accounts as we have left of transgressions of these limits. In many cases the records describing how the authoritative figures of a society chose to curb these transgressions of the social boundaries yield the greatest deal of information on the inner workings and underlying mechanisms of the respective societies. And yet, in the field of early Irish and Anglo-Saxon literature, where information of the sort is often already scant to begin with, a substantial part of the textual evidence for this area of research has been largely overlooked or barely touched upon. As two major factors in the early Irish and Anglo-Saxon societies, secular and ecclesiastical legislation was highly influential in shaping and maintaining the social boundaries for these peoples. These boundaries can be seen in the early Irish and Anglo-Saxon penitential handbooks and secular law texts.

With regards to the ecclesiastical literature, one of the best places to go to when looking for boundaries, be they social or religious in nature, are the penitentials. These started out as relatively short texts providing a framework to aid priests and monks in correcting the offences of their fellows and of their flocks which arose when human nature raised its insidious head, leading the people to sin. However, eventually those texts came to lead a life of their own, growing ever more expansive and coming to include every possible manner in which the soul could slide from the straight and narrow path, and slip into a state of sin that when not amended could only result in the everlasting torments of hell. This is not to say that these penitentials were intended solely as manuals for punishment to curb the weakness of the flesh. Rather the penitentials sought to remedy the sins affliction of the soul, using the pre-set

correctional measures, in much the same way a physician would do when administering medicine to a patient.

Such was not the case for the law texts. These laws and regulations were intended not only to correct and deter, but also to solve disputes in a way which would result in less, or at least less overt, bloodshed. If left uncontrolled, such disputes always held the potential for a severe disruption of society, the most famous example of which being the blood feud which could be carried on for generations. The laws not only provided regulations regarding the blood-feud, but also stipulated the proper conduct of the people in such matters as for instance possession and marriage. These laws could be used in much the same way as the penitentials with regards to the determination of a punishment for the guilty party. Yet they are also markedly different from the penitentials in that the laws often provided satisfaction for the offended and did not provide a scouring of the guilty soul.

Naturally, it is important to approach these accounts with caution. They are likely to be biased due to the political or theological motives of the authors and subsequent editors or scribes. Keeping these potential issues in mind, however, the early Irish and Anglo-Saxon penitentials and laws can provide a veritable treasure trove of information. This particular branch of literature becomes even more interesting when one takes a closer look at those areas where the legal texts and the penitentials infringe on each other's domains. It is these areas of potential overlap that are the focus of this dissertation. The main focus is to see in what manner and to what extent the penitentials and the secular laws have influenced each other, first in Ireland, and then as the penitentials made their way to the Anglo-Saxon areas how these texts and the institutions from whence they came have coexisted. By closely reading selected portions of the Early Irish and Anglo-Saxon penitentials and laws, focussing on areas of mutual influence and interaction the aim is to come to a better understanding of the importance of these works. A placement of the penitentials and secular laws in a social

historical context will serve to highlight the social boundaries they explore through the transgressions they describe.

Chapter 1

Historical background

In the first millennium A.D. Europe was faced with a great many changes, not the least of which was the introduction of Christianity. In the two areas we are concerned with here, Anglo-Saxon England and early Ireland, the new religion and the institutions that accompanied it triggered far reaching changes in the existing social systems. Christianity not only directly affected personal beliefs and the more official matters of religion. Rather, it had an impact on all areas of life including those which at first glance may not seem immediately applicable with the welfare of the soul, such as politics and law. The purpose of this chapter is to give a brief introduction to Irish and Anglo-Saxon society in the period just before, during and immediately after the conversion. By establishing the basics of what Irish and Anglo-Saxon secular society looked like and how they were structured during this period it becomes possible to examine in what manner the church carved out its niche. From there on it is possible to analyze how both ecclesiastical and secular offices shaped and reshaped themselves in order to adapt to the social and political changes brought on by the establishment of Christianity in Ireland and Anglo-Saxon England. Additionally, the general overview of the social and historical background will form a basis for the discussion of certain constructions and class distinctions. This in turn will facilitate the discussion of the cross-fertilization between the penitentials and secular law texts, which will take place in the later chapters.

The establishment of Christianity in Ireland.

Even though strictly speaking Christianity is likely to have arrived in Britain earlier than it did in Ireland, the Christianization of the British by the Romans was fractional and mostly faded away after the Romans retreated to the continent. The earliest large scale overseas Christianization took place in Ireland. Legend has it that it was St Patrick who brought Christianity to Ireland, a popular story which is usually heavily embellished with sensational accounts of the banishment of snakes and which is often bedecked with green coloured accents. However, as might be expected, this version of the historical event is not entirely true. In his article “St Patrick and the Irish People” Ludwig Bieler explores the idea that St Patrick was preceded by Palladius, who was sent to Ireland in 431 to become “their first bishop [...] with orders to organise a diocese on the basis of Christian communities already existing” (290). It is generally accepted that there must have been small groups of Christians already living in Ireland, probably predominately in the southern or possibly the central areas, previous to the arrival of the first official missions to the island. However, the influence of this first mission by Palladius on the conversion of the rest of the people of Ireland was quite limited. It is likely that Palladius’ mission was not at all aimed at spreading the gospels, but rather was merely intended to support and regulate the pockets of Christians in the south. What little evidence there is on these early stages of the conversion suggests that until the arrival of St Patrick Christianity did not reach the northern areas at all.

In contrast to the limited influence of Palladius’ mission, St Patrick not only succeeded in converting many of the Irish, but he is also credited for the early stages of the establishment of the foundations of the early Irish Church. An important factor for St Patrick's success was that, contrary to Palladius, Patrick was personally acquainted with Ireland and its people before the start of his mission. St Patrick grew up in a Christian community situated in the Welsh area in what may be considered the final remnants of Roman Britain. However, he was captured during a raid at a young age and lived in Ireland as a slave for several years until he

was able to return to Britain. After his return he entered the Church and relocated to continental Europe to further his studies. It was due to his previous experiences “that his tactics were clearly devised so as to suit the Irish social structure, and that in building up the Irish Church he successfully managed to adjust Roman institutions of church government to the peculiar conditions of his missionary field” (Bieler, “St Patrick” 291). Although it is possible that the presence of a small number of Christians in Ireland before St Patrick’s arrival facilitated the process, it is quite probable that it was his tailored approach to the conversion of the Irish that would prove to be the most influential and effective. Thus, when he landed in Ireland as a missionary, St Patrick knew that what he would encounter could not be dismissed as a ragged band of misguided barbarians led by malevolent magicians. Pagans they were, but the inhabitants of early Ireland were part of a complex and varied social structure upon which the founders of the early Church could build. Indeed, the well regulated pre-existing social structure appears to have been one of the key factors used by the church in the conversion to the new religion, allowing them to target their efforts to people of high social standing and authority. Combined with an often seen appeal of Christianity to individuals of low social status, such as slaves and women, this resulted in a conversion which happened simultaneously from the bottom up and from the top-down. Additionally, by equating the status of high ecclesiastical positions, such as a bishop, with that of secular individuals with high status, such as kings, the acceptance of the authority of the church officials was facilitated.

Before moving on to a discussion of the consequences of the conversion of the Irish it is beneficial to first have a closer look at the organization of early Irish society as it is believed to have been just before the arrival of Christianity. However, there are a few issues that must be kept in mind. Most importantly, much of what is believed to be true of pre-Christian Ireland is based on deduction. It was not until the arrival of Christianity that writing

became a means in which to record history and describe and prescribe social interaction. This has as a result that there is the potential for a Christian filter to have been superimposed onto the orally transmitted accounts. Although some non-Irish sources exist from before the fourth century which describe or mention Ireland and its people, these accounts are likely to have been biased as well, which means that these sources must be treated with care. However, several assumptions can be made about Irish society preceding the conversion, which are backed with sufficient textual and archaeological evidence to render them useful.

One of the characteristics of early Irish society is that it was very much an agricultural society. This is an important element to keep in mind because when looking at the written evidence available, such as the heroic cycles or even the secular laws with their emphasis on status, one may well be tempted into adopting a rather one-sided point of view, namely that of the privileged or *nemed*. However, for most people in early Ireland, including those of high social status, the agricultural organisation of the year governed their everyday existence. Indirect evidence for this can be found in both the secular law texts and penitentials, which often include references to specific agricultural practices and periods. An example of the importance of the agricultural aspect of early Ireland is the ploughing time, which could temporarily transform society into a partially egalitarian system since virtually all individuals capable of working on the fields would be required to do so during that time. Another example of the effect of the agrarian nature of early Irish society is that certain pagan customs and celebrations closely connected to the agrarian cycle of the year sometimes proved to be very difficult for the Christian church to dispel, and in some cases even the church's common and generally effective practice of Christianising these customs would require a long and determined effort before the final pagan remnants were eliminated (Peterson, 120-45).

Although there were times when agricultural necessity temporarily laid claim to the effective organisation of early Irish society, during the remainder of the year the organisation

of society was strictly regulated. The most important determining factor within early Irish society was that of status, or the lack thereof. Fergus Kelly gives a useful grouping of the various social classes in his book *A Guide to Early Irish Law*. According to Kelly, “the most important social distinctions seem to be [...] between those who are *sóer* ‘free’ and those who are *dóer* ‘unfree’ (9). The main difference between the free and the unfree was that the free possessed an honour price according to their rank and their possessions. Payment and reception of fines as well as the availability of legal actions were determined by this worth of a person. Thus, the fine for injuring a person with a high honour price would be higher than if the injury was done to a person of a low honour price, which was often ascribed to the idea that the person of high social rank would also suffer a greater loss of status by that injury. In later laws we see that the reverse also applies, in that the person with the higher honour price is liable to pay higher fines. It is most likely that the system of status dependent payment predates the arrival of Christianity. The appearance of the old social distinction in the laws signal an adoption of the underlying system into the Christian materials. A similar dependency can for instance be seen in several of the penitential texts, where those who have a higher social or ecclesiastical status are held to higher standards and are liable for higher punishments.

At the base of the social ladder one finds the slaves, male and female, who were fully dependant and had no social or legal status. The status of a slave appears to be almost sub-human, a point which is emphasized by the use of their value, significantly usually that of a female slave, as a monetary measure in the law texts in much the same way as was the monetary equivalence of cattle. Punishment for their actions and payment for injuries inflicted by them were the responsibility of their owner, who was liable to pay for any damages done by the slave. In turn, the owner would receive the payment of fines for injuries inflicted on a slave, but they had no other protection against harm. Some hierarchical distinction appears to

have been made within the general slave class, most likely depending on their background and skills. Occasionally there are allusions to a slightly higher social status for one who has become enslaved as punishment for infractions as opposed to a slave who is descendant from a long line of slaves. Also, the monetary value, and the therewith connected value of a fine or recompense, of a slave could rise with an increase of their skills. Slaves could potentially buy themselves free, with the exception of penal slaves who had to serve their time, though it is not likely that this occurred very often.

Just above the slave, in both status and legal standing, there is the *cimbid*, a person awaiting punishment for his offences (Kelly, 97). The *cimbid* did not have any legal rights except that he could not be killed by anyone other than those who had the legal right to exact justice from the *cimbid*. Finally, there is a group of other unfree persons. The members of this group usually consisted of unconnected small farmers who did not own the lands they worked, nor necessarily had family ties to it. It is possible that some of these were for instance freed slaves or their descendants. They were allowed to rent a portion of a lord's land. Their legal standing is only slightly higher in that they could not be killed at will but they possessed no honour price, and were not free to leave their lord whenever they pleased. However, they were allowed to keep part of the revenue created through their labours for their own use and there are indications that in some few cases they might have been allowed to buy themselves out from under their lord's yoke and into a position of higher social status against steep rates.

The next rung on the organizational and social ladder is occupied by the free men, though the term 'free' is in this case a fairly stretchable one. Social cohesion was maintained by interdependency of all members and responsibilities one had towards family and lord appear to have been strictly regulated. Again, working our way from bottom to top the first group that is encountered is that of the unprivileged who, according to Kelly, are likely to have been the most numerous. These possessed little to no land but rather paid rent to their

lord in addition to providing other various services. The main difference between this group and the unfree farmers mentioned above is that the free possessed a personal body price. Payments delivered for injuries or other transgressions of the law were calculated on the basis of this honour price, an arbitrary value being assigned to separate parts of the body consisting of a fraction of the body price, the sum of which could not exceed the honour price of the individual. The honour price was dependent on status, and thus this lowest group had the lowest honour price. The more privileged freemen would also have a higher legal standing and were able to freely enter contracts and swear oaths and stand sureties for an amount which could be up to that of their honour price, but which was usually maximised at a portion of it. Freewomen also possessed an honour price, though this was usually adapted to their inherent lower social status and was generally set at half that of their fathers or husbands. They were considered to be largely legally incapable in that they could not stand surety, and although they could swear oaths these were of a lesser value in concordance with their status and honour price. For their general actions in legal matters women are believed to have been mostly dependent on their husbands or other males in their family.

Family and kinship was a highly important part of Early Irish society though it is important to keep in mind that this does not necessarily mean a nuclear family. A freeman would be part of a *derbfine* or true kin. The members of the *derbfine* are those descendent from a common great-grandfather and the *derbfine* in turn is part of the larger and more general group of the *fine* or kin. The members of a *fine* were not necessarily directly related to each other though blood, though often they were, and could include individuals who were only distantly related through marriage or who were taken into the *fine* group through personal merit. Usually it was the *derbfine* that was entitled to receive the payment for injuries in case this payment could not be made to the victim, as for instance in the case of death. However, the reverse was also true: if for some reason the freeman could not or would

not make good through payment the true kin would be held liable, but, if necessary the entire kin group could be held accountable. In such a case, the relation to the perpetrator would determine the payable amount. The father's and grandfather's status and occupation was also considered to be important. Thus, a craftsman who was the third descendant of a continuous line of craftsmen would be assigned a higher status than a craftsman who was the first of his line. This link between family and occupation can be seen in many areas of early Irish society, and it appears that one who could not trace such a direct lineage could not attain the highest positions. A clear example of this can be found in the *Uraicecht na ríar* which maps out the grades of poets. In his edition of the *Uraicecht na ríar*, Liam Breatnach points out that what he calls the "three generations requirement" (94). Without having a father and a grandfather who were both poets, a poet can never attain the highest level of the poets, the Ollam, even if he were to have both the natural ability and completed his education to the highest degree.

It was however not only an elaborate set of family ties that was important in the early Irish period. A freeman would usually also be part of a *túath*, which is often translated as tribe. However, a description of a *túath* as a small kingdom may be more accurate, for a *túath* was ruled by a king or *rí tuaithe*. Often these regional kings would in their turn owe fealty to a higher king, who was lord over a greater area and was sometimes called *ruiri* or great king. in *A Guide to Early Irish Law* Fergus Kelly refers to the existence of provincial kings, or *rí ruirech* "a king of great kings"(17). Kelly notes that although the concept of a king of Ireland was already present in the 7th century, "no Irish king ever managed to make it a reality, and most law-texts do not even provide for such a possibility" (18). Kingship of a *túath* was non-hereditary, but rather the king was selected from a likely group of *nemed*. These could be, and often were, related to the previous king. For a king to be a great king there are sometimes provisions regarding family, since the status of an individual depended on that of his father or grandfather. The status of an individual alone was highly unlikely to have been high enough

to allow him to obtain the position of high king. Although family bonds were most likely to have been present amongst some of the members of a *túath*, this was not at all obligatory and even in a very small *túath* unrelated members would certainly have been present (Patterson, 11). There is however a group of freeman who would not have been a dependant part of a *túath*. These were the freemen belonging to a school or discipline, such as *filid* or poets, as well as Christian clerics after the conversion of Ireland was established. They are thought to have been for the most part free to cross the various borders without hindrance and were usually not under the jurisdiction of the various local *túath* kings. They did need to answer to either a regional king or a bishop when they wished to venture outside their own territory. It is likely that a similar situation existed for the druids before the conversion. However, with the coming of Christianity the class of druids was either utterly eradicated, as various religious tales and hagiographies would have us believe, or more likely was fairly naturally divided up and assimilated into the various learned classes of *fili* (poets) and *brithemon* (judges). Regardless of what scenario took place, the majority of the texts written after the conversion tends to no longer mention the druids. When the druids do make an appearance in a text, they are usually referred to in decidedly negative terms. It is possible that the Church partially filled the gap as keepers of knowledge and tradition left by the disappearance of the separate druid class, whilst the importance and possibly the number of the *filid* increased as well.

In Ireland the separation between church and state was significantly greater than in the other Christian areas. One of the possible reasons for this might be the existence of a learned class consisting of poets and lawyers, which is likely to have been secular and in some form to have been present prior to the introduction of Christianity. The early Irish kings were always accompanied by members of this independent learned class and were assisted by them in the judgement of lawsuits. Members of the clergy are but very rarely found in such advisory positions except in a few cases where the situation under consideration dealt with

ecclesiastical matters, such as theft of church property by a secular person of high status. The relative separation between secular and ecclesiastical members of society is also visible in the organisation of the court of law. In “An Old-Irish Text on Court Procedure” (ed. F. Kelly) it is stated that a king, a poet, and a bishop would be expected to be present on the same dais, at least for the more high profile cases (77). This might be a result of an intention to infuse as much authority into the court as possible. However, this description need not at all be typical and Kelly suggests that the court being described here was in all likelihood not a single small regional law case, but rather a large and potentially multi-day court session where many law cases would be judged.

It appears that a differentiation and where possible a degree of separation between secular and ecclesiastical legal matters was generally maintained during these court procedures. Kelly notes that in general the bishop would judge ecclesiastical cases, whilst a secular judge would do so for secular cases. However, when the judge is not “prepared to swear an oath in support of his judgement, the case is referred to the king or bishop” (“O-I Court”, 90). This is possibly an indication that when a suitable judge could not be found for a law suit, the case could be judged by another judge worthy person, even if this meant crossing the boundary between secular and ecclesiastical disciplines.

The distinction between the secular and ecclesiastical legal disputes did certainly not mean that there was no cooperation between the underlying institutions. Although the lines between ecclesiastical and secular areas were for the most part clearly visible, there was a great deal of mutual influence. As is to be expected, the ecclesiastical influence on secular laws increased at nearly the same rate as that of the importance of Christianity in other areas of early Irish society and went hand in hand with the formation of the formal institutions of the church. As has been mentioned above, the early missionaries in Ireland utilised the tools available to them, both the underlying social structures and the more abstract ideas and

worldviews. John Carey suggests a possible example of this in his article “Saint Patrick, the Druids, and the End of the World”. According to Carey, St Patrick used a pre-existing belief in a fiery end of the world which is believed to have been taught by the druids. Patrick offered an alternative to his audience in the form of a flood which would wash over Ireland and which would protect the faithful. Carey suggests that through the utilisation of the older story combined with a specific adaptation of Christian teachings St Patrick achieved a level of spiritual seduction which was to be one of his most effective tools for the conversion. As Carey states, “Patrick may have been imagined to be providing a rather unorthodox alleviation to fears already firmly rooted in the worldview of Irish paganism: with such promise, he would have been able to offer his audience something they already knew they wanted” (48).

It was however not just a utilisation of the pre-existing stories that St Patrick used in his efforts to bring the Irish people to Christianity. Through his knowledge of the Irish he was able to use the social structures to his benefit. Although he was not always formally welcome at the courts of the Irish kings, both high and low, Saint Patrick knew that it would be possible for him to buy favour and protection and permissions from the noble families. Second sons, and other young nobles who stood little chance of reaching influential positions within their households were attracted to these new ideas and possibilities and became ready followers of his. Due to his awareness of the Irish expectations and social structures St Patrick was able to successfully adjust his methods and strategies to achieve his missionary goals.

When compared to the European Church of the early Middle Ages it becomes clear that the Irish Church was in an extraordinary position. Especially when contrasted with its closest neighbour Anglo-Saxon England there are several fundamental elements that stand out. As mentioned before, the separation of church and state was a much greater feature in Ireland than anywhere else in Christian Europe. Moreover, the internal organisation of the

Irish Church with its focus on asceticism and monasticism caused the Irish or rather Celtic Church to differ vastly from the Roman Church. The austerity of the early Irish church also limited to some extent the possibilities for political influence. This is not to say, however, that the Celtic Church did not have any influence outside of Ireland; on the contrary, the situation was quite the reverse. There is a great deal of evidence showing the appearance of Celtic missionaries in England and the continent, and the austerity and learning of these Celtic missionaries often served to impress pagans and new converts alike. The special nature of the Celtic church set it apart from the Roman mother church, and at times even placed it in direct opposition with regards to fundamental church doctrines. Although many attempts at uniformity within the Church were made, the Celtic church long remained a separate entity within this larger Christian framework, and it would not be after the final threats of the Viking raiders had passed that the final controversial remnants of the early Celtic Church were to disappear.

The conversion of Anglo-Saxon England

The situation in Anglo-Saxon England was significantly different from that of early Ireland. Christianity had already set its first tentative steps in Britain during the period of Roman occupation. Indeed, as can be seen in the case of St Patrick, it was from Britain that the initial contact with Christianity in Ireland originated. However, with the fall of the Roman Empire and the abandonment of Britain the influence of the Roman Church gradually decreased until very little of it was remembered at the time of the influx of the Angles and Saxons. Some small vestiges of Christianity seem to have remained though and occasionally small groups of Christians trickled into Anglo-Saxon society, often in the wake of marriages between local Anglo-Saxon kings and Christian continental brides or other politically motivated impulses. It would however be some time until the Roman Church was to have a strong foothold in the

Anglo-Saxon areas. According to Dorothy Whitelock, “the first mention of the Bishop of London [...] is the letter which Gregory the Great sent along with the pallium to Augustine in 601” (*History, Law and Literature*. 4). Though the influence of Christianity was certainly spreading by then, the Anglo-Saxon conversion was mostly still highly fragmented and dependant on the willingness of local leaders to adopt the new faith.

Augustine was sent to Anglo-Saxon England by Gregory the Great, under a vow of obedience, in an active attempt to firmly establish the Roman Church. In his highly informative book *The Coming of Christianity to Anglo-Saxon England* Henry Mayr-Harting suggests a number of possible reasons for this mission to the Anglo-Saxon area. He believes that “Gregory’s missionary zeal itself sprang from a fusion of monasticism with its revolutionary social implications on the one hand, and ecclesiastical office with its tradition of service on the other” (54). Thus, under Gregory there was not only the desire to spread Christianity, but also the knowledge of how to work within a secular political setting. According to Mayr-Harting, Gregory the Great indeed “wanted the English to have the benefit of the Gospel” (60), but it appears that Gregory also had an ulterior motive. Devoid of the control usually exercised by the Roman Church, the Christians already living in England were not under the guidance of a bishop and there was a serious risk of heresy in the Anglo-Saxon area. Mayr-Harting states that “the Anglo-Saxons were still honest-to-goodness heathens” (60), and yet the few Christians that were there had already given rise to a heretic in the form of Pelagius. Moreover, the Arian heresy still had a strong following among certain continental Christians. Gregory, despising heresy, was determined not only to bring the Anglo-Saxon people to Christ but also to ensure that they were strictly held to orthodoxy. Mayr-Harting believes that the timing of Gregory’s mission was also highly important for its success. There appears to have been a period of relative political stability under Ethelbert which is likely to have had a beneficial effect on Augustine’s actions. However, the conversion of Anglo-Saxon

England went far from smoothly and for almost a century there are several instances in which there was a reversion to paganism accompanied by the ousting of the Christian officials. Often this happened in the wake of the death or defeat of a Christian lord. Usually such a regression into paganism was then in turn again followed by a renewed influx of Christian missionaries a short while later. One of the main reasons for the ultimate success of the establishment of the Roman Church in England was the realisation that the combination of the Christian religion and the powerful political ties that were associated with it was seen as desirable by several of the Anglo-Saxon kings.

It would be unwise to think of Anglo-Saxon England as a unity at this point. Rather, sixth-century England was highly fractionalised and the various kings and lords ruled relatively small territories. As an illustration, H. R. Loyn suggests that in terms of acreage the Danish rulers of the late Anglo-Saxon period governed far more of England than even for instance Alfred who is still remembered and revered as one of the great English kings (Loyn, xvi). Though there was a definite increase in the influence of the kings, regional differences remain visible and important throughout the Anglo-Saxon period regardless of the insistence of the kings that they were the rulers of all of England. Interestingly, it is the idea of kingship over an extended area and a varied people, rather than the rule over a small group of people sharing the same background that sets the Anglo-Saxon kings apart from their conquering and settling ancestors.

It is often assumed that the organisation of early Anglo-Saxon England still fairly closely mirrored the Germanic model from the areas whence the settlers came. To at least a certain extent this assumption is correct and at the very least it allows for some useful generalisations. One such is that the social structure of early Anglo-Saxon England was one of a lord and his followers who were supported by a number of both free and unfree workers. Though they are often hidden in the shadows of history the free and unfree workers, such as

craftsmen and farmers, shepherds and slaves milling corn, were of great importance to the success of an area. Anglo-Saxon society was very much an agrarian society, although just as was the case in early Ireland agrarian did not automatically mean peaceful. For centuries, local squabbles kept England in a constant state of unrest, with lord fighting lord over prestigious landmarks and valuable arable lands. However, there was an important difference between the early Irish people and the settlers of Anglo-Saxon England. The early Irish shared a common history and background, though regional differences and variations certainly existed. For the Angles, Saxons, Jutes and various other Germanic tribes moving into Britain such a common ancestry and history cannot be assumed and it is likely that the differences quite outweighed the similarities between the tribes. Regardless of these hurdles, in a relatively short while a unity appeared among the early Anglo-Saxons. A possible explanation for this could be the availability of a common enemy in the form of the Britons, who may have provided a sense of togetherness against an 'other'. After the assimilation of the British into Anglo-Saxon society, either as slaves or otherwise, the increase of unity among the Anglo-Saxons continued and a sense of a united people different from the original Germanic tribes emerged. Seen from that angle, the shift from regional lordships ruling tribal lands to kingship governing a greater area may have been a logical continuation of this general process.

The idea of kingship in Anglo-Saxon England appears to be somewhat similar to that of kingship in early Ireland. In theory kingship was nonhereditary although the family connection, or blood royal, was important and often the successor would be a brother, uncle, son or nephew of the previous king. Whether this was originally because of some divine connection between the gods and the blood relatives of the king, or because of the more practical reasons of wealth, specific training and political connections is unknown. Loyn believes that it is quite likely to have been a combination of these factors. He states that a

“member of such a kindred was expressly king-worthy”(13) but that this was due to several reasons “genetic as well as economic”(13). Evidence for a perceived link between certain families and a divine right to rule may be found in the meticulous drawing up of genealogies linking the royal family to the pagan gods and heroes. Christianity offered a useful addition to the question of origin of authority in the form of the idea of divine kinship which invested a ruler, and later any member of a royal family, with automatic divinely inspired authority. This is reflected in the additions to the genealogies, creating a link between members of the royal family with key biblical figures. As a result, from the earliest attempts to conversion onwards there is a close connection between the church and the ruling class. In turn, the church could and would expect cooperation from the kings and nobles for their attempts to bring the new faith to the English in addition to repayments in the form of monetary aid, land grants and building permissions to establish churches and monasteries. However, despite these attempts to inspire authority to the figure of a king, the desirable situation of political stability and continuity deemed necessary for the Church and the people to prosper was often difficult to achieve and sustain.

The church also altered the position of other social classes but on the whole this was a far more gradual process and most of the older class distinctions remained intact throughout much of the Anglo-Saxon period. The social structure of Anglo-Saxon England was strictly hierarchical and in essence quite similar to the Irish situation. Much of the information now available on the structure of Anglo-Saxon society comes from the law texts, it is in these that one can find the different classes most clearly defined. The most important distinction between the classes was their personal monetary value or *wergild*. In Anglo-Saxon England a system of payments for injuries was in place, which was in essence similar to that in Ireland, though without the *eric* fine. As Neil McLeod explains in his article “Compensation for Fingers and Teeth in Early Irish Law” the *eric* fine was a fine for murder. “The payments of

body-fine (*corpdíre*) and restitution (*aithgein*) together made up the fine” (345). As a general rule the un-free did not have a body price and were therefore not paid for injuries inflicted upon them. For the most part women and children had only a fraction of the honour price of the men, again depending on age and social position, although there are instances in the laws where a higher *wergild* value is assigned to women of higher social standing, such as wealthy widows or women in higher ecclesiastical positions. The amount of the wergild and a person’s status in society were mutually dependant. This also led to the punishment for unlawful actions being more severe for those of a higher social standing. Since the Church in essence opposed blood feuds and also needed a system to protect itself and its members, it readily supported this less violent mechanism for dealing with unwanted behaviour.

As the influence of Christianity grew in society, the laws and regulations reflecting this society also became more Christian in nature and there are instances where the position of the church was adopted into secular legislation, as will be discussed in the later chapters. This was a gradual process but there is another important cause for this alteration of society and secular legislation. As was the case in other areas, Christianity provided a great influx of learned people and the impulse given to the education of the English is an important element to the success of the Christian church.

Over the course of the Anglo-Saxon period the fractionalization of the area decreased as a lesser number of kings amassed ever more power and controlled larger areas. The Church grew together with this development and as the need for educated men increased due to the heightened complexity of state management the church increased its influence in state matters. As the area under control by a single king increased, the king could no longer be present in person for all state affairs and “the king had to rely more on the cooperation of men with special authority and responsibility in their own localities” (Loyn, 100). Thus, the king was counselled in his actions by the *witan*, a group of influential nobles and occasionally

members of the king's household. It is likely that this system of counsellors to the king already existed in pre-Christian times, though probably in a rudimentary form, and the counsellors were probably brought up side by side to the future king. However, little is known about the precise manner in which the close companions to the king went from the station of being his most trusted and knowledgeable warriors to the more or less organized group of well informed and highly influential statesmen. The *witan* and ealdormen of late Anglo-Saxon England are likely to have had a substantial amount of power in their own localities as well as over the decisions of the king, and their position as regional rulers under the king is reflected in the later laws.

The Church was the only institution capable of the education of the wise men of Anglo-Saxon England since, in contrast to Ireland, there was no other class or school for the amassment and teaching of knowledge to rival the Church. As a direct consequence a separation of church and state was not, nor could be, present in Anglo-Saxon England, which is reflected in the active counselling and influencing of the kings in matters of secular law by the English bishops. The influence of the Church certainly did not limit itself to matters of law and the boundaries between secular and ecclesiastical areas of society, though perceivable to the modern eye, were not at all clear-cut nor were they necessarily seen by the Anglo-Saxons themselves. Stephen J. Harris suggests in his article "The Alfredian 'World History' and Anglo-Saxon Identity" that through an active integration of Christianity into the perceived history of the Anglo-Saxon peoples eventually the Anglo-Saxons became or at least came to see themselves as one people, not so much because of genealogy but rather through their shared Christian religion (482). This resulted in Christianity becoming one of the defining features for the unification of the English people.

There were however various areas in which the church did not have as much influence as it might have wished. Certain customs originating from pagan times remained, regardless

of Christian views on them. Among these remnants of the old ways of life slavery and the keeping of concubines met with especially strong opposition from the Church. The Church was not entirely successful in eradicating these old customs though, and there is evidence that until the middle of the Anglo-Saxon period there were even church officials who kept both slaves and concubines. Yet there were also definite areas in which the Church was successful in altering Anglo-Saxon society towards a more idealized Christian society. From the early times of the conversion onwards the church focussed on securing and altering the position of women and slaves in society. Eventually the Church succeeded in making it desirable for the Anglo-Saxon people to reform by granting heavenly rewards to those who freed their slaves and ceased having concubines. Through rewarding the desired behaviour with heavenly bounty the church was relatively successful but it was a slow process. As will be shown in the chapter on Anglo-Saxon law the opposition from the secular legislators remained strong for a rather long period of time. There are several areas where cultural customs and ecclesiastical desires clash, and where church views and secular ideas on society were in an uneasy opposition. By looking at the secular laws and the ecclesiastical views from canon laws and the penitentials the slow alteration of the Irish and to a larger extent Anglo-Saxon society into Christian societies can be traced.

Chapter 2

Early Irish penitentials and laws

As briefly mentioned in the introduction, one of the key areas of concern in this dissertation is that of the control that ecclesiastical and secular authoritative figures exercised on society as a whole as well as on separate individuals in Early Ireland and Anglo-Saxon England. Our main written evidence with regards to this practice comes from three different kinds of texts: the secular laws, ecclesiastical laws, and the penitentials. In this chapter the main focus will be on

the early Irish laws and penitentials in general and upon certain specific elements in those texts which most clearly reflect the desire for social control. However, there is one category which will be largely omitted in this paper, namely that of the ecclesiastical laws. The early Irish canon law did in some cases include matters involving penance and at times also gave directions for the proper performance of penance. The reason for not including the canon law here is that it primarily dealt with the inner workings of the Church and monasteries. Because of this limited scope canon law contains little information about the early Church's relationship with general society, or about the attempts to control the behaviour of the lay people. Whenever such matters are mentioned in the early Irish canon laws they can often be found in a very similar form in the penitentials, as well as in a number of the secular laws. The exclusion of the ecclesiastical laws from the texts used in this paper, apart from a few instances where clear directions and requirements are given with regards to penance, is thus not expected to have a detrimental effect upon the reliability of the work.

Although modern readers are likely to have different views on the idea of law than the early Irish people may have had, the topic of law as a means to control and potentially guide society will need little introduction. Regardless of whether one thinks of customary law or of the tradition of royal decree and legislation, most people can be expected to have at least a basic notion of some of the more general functions of laws. This same level of familiarity cannot, however, be expected of the penitentials. Therefore, it would be best to start this current chapter with a short exposition of the origin and nature of the penitentials as well as their purpose within the early Irish church.

The most straightforward explanation of what makes a particular text a penitential is that the text in question can be described as a handbook, or instruction manual, for the determination of the particular penance to be performed by the penitent following confession. A key element in this is the systematic approach that was taken with regards to the

determination of the proper ritual for confession, penance, and restoration. Many of the penitentials are also striking in their meticulous organisation of the various sins and the appropriate penances for them within a well ordered system. Confession was, and is, an important part of the Catholic Church. The proper applications of the corrective measures which are to follow the confession of one's sins to the confessor were strictly regulated by the church from its earliest applications. The penitentials differ from other ecclesiastical texts in that they were specifically composed for this one reason: the education and guidance of the confessor. An important side-effect of this setting down of regulated and specific penances was that it also resulted in the elimination of the risk of having either random or merely arbitrary punishments for sins. However, this strict regulation did not prevent the penitentials to develop and change over time. In some instances they had to be altered according to local needs, such as for instance when the penitentials made their way to mainland Europe. In other cases they were influenced by the particular philosophical convictions of the composer of a given penitential text. This could explain why it is possible to find different penances for the same sins. In some texts it appears to depend on whether the composer was convinced that it was better to be severe than to risk the soul, whereas other's clearly took into account the fallibility of human beings.

The penitentials as we now know them are most likely to have originated in Wales. According to Ludwig Bieler, there is no consistently convincing evidence for this to be otherwise, whilst he sees as a point in favour of this hypothesis the "penances for acting as guides to the 'barbarian invaders', obviously the Anglo-Saxons" (*Irish Penitentials*, 3) in four early sixth century penitential texts, a date which would make them the earliest penitential texts remaining to us. Regardless of whether this hypothesis is true, it is certain that these early penitential texts specifically belong to the tradition of the Celtic church. It appears likely

that the penitential documents and the underlying tradition of penance made their way from Wales to Ireland due to the relatively close connections between Ireland and Wales at that time. From thereon both text and tradition were developed further by the Irish branch of the Celtic church. The influence of the continental European church appears to have been minimal, and once the notion of a structured penitential handbook arrived in Ireland both the penitential discipline and the penitential handbooks were developed in a manner that specifically catered for the Irish situation.

The main difference between the Celtic penitential discipline and the older continental traditions is a reform of the ritual of penance. On the continent, the performance of penance was a once in a lifetime, public affair, heavily ritualized and structured. One of the most striking features of the public form of penance was the physical appearance of the penitents in church. Depending on the gravity of their sin the penitents would be assigned a different position in the church during mass, and they would be expected to show their contrition in their appearance, sackcloth and ashes being frequently mentioned as examples of this. In certain cases the penitent could even be temporarily excommunicated to provide an incentive to perform all elements of penance, while protecting the other Christians from the potentially dangerous influence of the corrupted. There is little evidence on whether the actual confession itself was made in public, or whether the penitent was allowed to privately confess to a bishop before performing public penance. The absence of accounts of public confession suggests that there is a greater likelihood for private confession followed by a public show of contrition. However, such conclusions remain purely conjectural, and several scholars believe that there may have been a differentiation between public sins and private sins. By this they mean that it is possible that public sins such as adultery or theft would require public confession in addition to the public performance of penance.

In contrast, penance in the Celtic church was private in nature, and could be repeated whenever the need arose. This also meant that the underlying nature of confessing and making good with God and the Church was no longer merely a preparation for death. On the continent sinners often postponed their confession until the last possible moment, but in the Celtic church penance became part of the everyday workings of religion and could be used as a means to educate the Christian and curb the inclinations towards sin. Confession itself was fully private and confidential and “in Medieval Ireland to disclose the information given in confession was one of four grave offences for which there could be no penance”(McNeill and Gamer 28). With regards to the manner in which penance was performed in the Celtic church, there is little to no evidence of anything akin to the elaborate rituals of continental penance. Rather, the early penitentials give us the impression of a personalised penance which appears to be fully in line with the stark asceticism of the early Celtic church. Thus, one of the main features of penance in the penitentials is fasting and, less frequently, various other forms for the mortification of the flesh are mentioned. Although rituals were certainly employed in the performance of confession when compared to the performance of penance on the continent a sense prevails of an individualised nature of the early Irish church and penance in early Ireland. The Lenten period continued to be of special significance in this. In this a personal relationship with God and the Church is emphasised as well as the sinner’s own responsibility with regards to the welfare of the soul. This change in tactics is not nearly as surprising as it may seem at first glance. At the time when the first penitentials make their appearance Christianity was not nearly as well-established in Ireland as it was on the continent. Rather, we find pockets of Christian communities operating within larger groups of predominantly pagan Irish. These early penitentials are likely to have been intended primarily for the use within monasteries. It was not until these monasteries gained power and status outside of their original boundaries that the ritual of penance was introduced to the newly Christianised

people. According to Kathleen Hughes, the first people to whom penance and confession were applied were the “church clients who did the farm work” for the monks, and to whom the monastery functioned much in the same manner as a *tuath* (*A New History*, 313). Within this setting a bishop, but more frequently an abbot, might be compared to a lord or local king in status. Similar to the demands a lord may have of his dependants, the tenants of the monastic lands came to be expected to live at least to some extent in accordance with the teachings of the Church. This meant for instance that they could have but one wife and were expected to observe the Sabbath as well as certain periods of abstinence with regards to for example sexual intercourse and food and drink. However, whether these conditions were superimposed by the Church perhaps in order to reduce temptation towards the monks, or whether the tenants themselves desired to live their lives according to the example provided by the monks is unknown. Regardless of the underlying motives, from the earliest Irish penitentials onwards we find rules specifically for monks and nuns in addition to differentiated rules accompanied by less severe penances intended for lay people. *Over time the penitentials became more inclusive and, as a result of this, more complex due to having to cater to the needs of both monasteries and the growing Christian population in general. As new penitentials were being created, the older measures were often retained while a larger number of potential sins were included in the lists. This in turn led to an even greater complexity of the penitentials, but also carried the risk of reducing the penitentials’ usefulness for their regular application.*

Unfortunately there are no written accounts of how the people of Ireland were made aware of the specific proper Christian conduct expected from them by the Church. Although, as mentioned earlier, the penitentials and the performance of penance had in the Celtic church an educational function in addition to being a restorative to the soul it seems unlikely that the penitentials were read out to the general public. Some scholars, for instance Mary Flowers Braswell, suggest that “the lists were to be read aloud to the confessant [...] and the often

formidable Latin translated for him if necessary” (21). Though at first glance this suggestion may seem a fair attempt to answer the questions of awareness of sin and the general application of the penitentials, it does not take into account the great care with which the handbooks were treated. Reading out of a full penitential text to a sinner coming to his confessor or ‘soul-friend’ for confession seems unlikely to have been thought a wise idea. It is entirely possible that the danger such a practice would pose to the soul of one who has already proven to be weak and open to temptation would be deemed too great by the confessor. However, there are also instances in which the confessor is urged to be thorough in his questioning of the sinner, lest he may forget to address any potential form of sinful behaviour. This negligence could potentially lead to the damnation of the soul of the penitent after the sinner’s demise because full penance for all the sins would not have been performed. There were provisions in most penitentials for a less severe penance in the case of ignorance of the sinfulness of certain actions or thoughts. However, although the infraction was unintentional, the sin itself could not go unaddressed, for the smallest stain upon the soul could endanger an unimpeded rise to heaven.

In some instances one may find warnings in the penitentials which urge the confessor to not read out the penitential texts since this might in itself lead to sinful thoughts or even behaviour which might otherwise never have occurred. These statements usually include the warning or even threat that if a ‘soul-friend’ so betrays the soul he is supposed to aid by, wittingly or unwittingly, leading the penitent to sin, the sin will also be added as a sin to the confessor as if he himself had committed it. However, a confessor was sure to be thorough in his questioning of the penitent for as Frantzen suggests: “[i]t was the priest’s duty to bring the penitent’s offences to light [...] [i]f through his fault the sinner did not confess completely, the priest bore the guilt of the hidden sins and of his own sin in allowing another’s to go unconfessed” (The Literature of Penance, 31). Often the gravity of that sin would then be

increased many times, through the assumption that it was worse for a priest to sin, so that the confessor would potentially be in peril of utter damnation.

As one can see from this dilemma, the penitential texts were a valuable tool in the aid of the confessor, but their practical use appears to have been extremely complicated, especially considering the ever increasing complexity and detail in the penitentials over time. Even though the confessor was expected to know his flock well and thus ought to have been able to expect certain sins to occur in his area, the danger of either neglecting or inciting a sin was always present. In modern times there is an additional possibility for the education of the people in the form of sermons, but since in the early Irish times all official church services were in Latin, providing the people with a sermon on the topic of sin would have done little to aid the understanding and knowledge of the general listener. Listing sins during private sessions seems to be unlikely to have been either successful or wise. It is imaginable that proper Christian conduct was actively taught by the members of the church or potentially by secular members of the community in a manner similar to that of the secular laws. These were pronounced to the general population in meetings under the supposition that informing the people of what the laws contained might prevent them from breaking the law. It is imaginable that the Church educated the people in a similar manner to keep them from committing sins but this is only likely to have worked well for actions for which the sinfulness, and unlawfulness, was generally understood and would necessarily have excluded any mention of sinful behaviour lest the suggestion should lead to sin. Also, regardless of the possibility of an active form of education of proper Christian conduct there is no direct evidence for any such practice. In fact, there is very little textual evidence on how the early Irish Christian laity, as opposed to those who had actively entered the church, practiced their faith nor do we find references to a catechesis of the general Irish people.

Cassian and penance as a cure for sin

Before continuing with the cooperation between the penitentials and secular laws it might be prudent to pay closer attention to the theological foundations of penance. From what is mentioned above one might get the impression that penance was intended as specific punishment for sins, especially in combination with the existence of meticulous lists of commutations. These commutations, or *arre*, consist of lists of short but severe physical punishment intended to replace the generic penance of prolonged fasting. These mortifications of the flesh could in some cases be at least partially replaced with payments to the church or by the giving of alms to the poor. Put like this, the image of Chaucer's Pardoner seems not far away, and indeed during Chaucer's time the system had become corrupted. However, in the early stages of penitential discipline the texts greatly emphasised an entirely different aspect of penance. In the early Irish and Anglo-Saxon church the performance of penance was not seen as punishment but rather medicine for the soul which had become sick because of sinful thoughts and behaviour. This idea stems from the early mediaeval notion of contraries curing contraries. In the words of Alexander of Tralles, “the duty of a physician is to cool what is hot, to warm what is cold, to dry what is moist, and to moisten what is dry” (McNeill and Gamer, 44). In mediaeval medicine this notion was part of the idea of illness being caused by an imbalance of the humours, the four elements or substances that were thought to fill the human body. In order to correct the balance the opposite or contrary element had to be stimulated.

In early mediaeval theology this idea was applied in an attempt to cure the underlying causes for sins. One of the potential reasons for the particular organisation of the handbooks for penance could be that they were seen much like a physician's manual. In order to facilitate the finding of the cure the organisation of sins in the penitentials was often based on Cassian's idea of the eight principal vices: gluttony, fornication, avarice, anger, dejection, languor,

vainglory, and pride (McNeill and Gamer, 19). For each sin there was an opposite, for instance in the case of gluttony the opposite or contrary would be fasting. This system for the arrangement and cure for sins can be found in both the early Irish (e.g. Finnian) and the Anglo-Saxon penitentials (e.g. Theodore), and there are many cases in which there is clear instruction on the medicinal nature of penance.

The early cooperation between law and penance

An important element of the penitentials is the level of influence from, as well as influence on secular law. Although they eventually came to work relatively close together, the relationship between the secular and ecclesiastical authorities was not always an easy one. In the *Canons Attributed to St. Patrick* we find the demand that Christians were not to take their disputes to the secular, or perhaps more importantly at this time still pagan, legislators on pains of excommunication (McNeill and Gamer, 77). However, this sentiment was very much an early one, declared during a time when the Christian position in Irish society was rather tenuous. These sentiments soon gave way to a desire for cooperation between the Church and the secular authorities and “by about 700 the church had adjusted itself to the secular law” (*A New History*, 315). Indeed, throughout most of the later penitential texts we find references to penalties that are quite similar to those that exist in the laws as well as several demands that secular laws ought to be obeyed. An example of this cooperation is given in the article “The Laws of the Irish”. In it, Ó Corráin, Breatnach, and Breen suggest that a fragment of the law text *Bechbretha* “forms the basis of the passage in “The Irish Penitential” dealing with punishment for theft (413). Both texts set the same restoration to be made for stolen livestock depending on the kind of animal. For one stolen sheep, four sheep must be given in its place, while for a horse or a pig only two new animals must be provided. Interestingly, if a stolen animal is kept alive by the thief the penalty is greatly reduced and the thief must give back the

stolen animal and one animal in addition to it for restoration (414). There is however a much more direct piece of textual evidence in “The Irish Penitential”, which shows that there was at least some measure of co-dependency between secular laws and penitentials. In the chapter on avarice it is stated that “if the culprit can pay the *érics* which God has appointed in law and rule, his penance is consequently less” (McNeill and Gamer, 161). In the chapter on anger this same penitential text states the required penance for the killing of anyone who is not kin, or a person in orders. Here again we find the condition that “if the offender can pay fines, his penance is less in proportion” (McNeill and Gamer, 166). These are clear examples of ecclesiastical and secular rules of working together to curb unwanted behaviour.

According to Oakley, the influence of the secular laws on the penitentials went far beyond just the occasional co-operative penalty. Rather, he feels that one of the main aspects of the penitential discipline found in the early Irish penitentials as well as in the later penitentials from the Anglo-Saxon areas, namely that of the tariffed penance, is directly related to the tariffs present in the secular laws. These tariffs apply for instance not only to the repayment of stolen goods, but also to injuries either to the physical body or to the status of a person. In the laws these tariffs are dependant on the social status of both perpetrator and victim in the case of personal injuries, or on the monetary value of both the loss of status and economic revenue which results from for instance the theft of a sheep. In the penitentials, the tariffs appear usually to be mostly dependant on the moral status of a person. However, in contrast to Oakley’s suggestion, Bieler feels that just the existence of a similar system is not enough to assume a direct link between secular legislative tariffs and tariffed penance.

According to him, it is the presence of commutations in the penitentials that rules out such a link. Bieler suggests that “if one could find in Irish law any rule under which, instead of the traditional compensatory penalty, a smaller amount payable within a shorter period of time may be substituted, this would correspond roughly to the ecclesiastical *arre* [commutation]”

(51). According to Bieler no such rule exists, and indeed there is no early Irish law which lays such a claim. However, this dismissal of a potential link of the underlying systems appears to be somewhat hasty. When looking at both traditions there are indeed some striking similarities in the organisation of the reparations, regardless of whether these are reparations or fines for the injury of a human or for the injury done to God through sin. The acceptance of penitential rule and its incorporation into both legislation and the general practice of religion points towards a possibility that the idea of a tariffed penance and commutation may well have been a natural adaptation from an already known and accepted system existent in early Irish society.

What is perhaps most surprising to a modern reader is that there is co-operation between the penitentials and the secular laws at all. The adoption of a system based on status might be explained a necessity to adapt one's tactics specifically to early Irish society but the inclusion of the demand that secular law needs to be upheld and that repairs must be made before penance can be undergone and the guilty party can be restored to the church is quite remarkable. In addition to the references within the secular laws for the need to undergo penance there are various instances in which for instance the payment of tithes is declared mandatory. This can only be explained by the desire of both the church and the secular legislators to work together in their efforts to control the actions of the people. The occurrence of these secular laws which regulate certain ecclesiastical matters is all the more interesting because of the at least relative separation between church and state that existed in early mediaeval Ireland. This separation is explained to a substantial degree by the existence of a legal tradition before the arrival of Christianity to Ireland. Unfortunately, our knowledge of the early medieval Irish secular legislative system is coloured. Most of the textual material has come through the ages in manuscripts produced by Christian scribes. As T. M. Charles-Edwards suggests: in early Ireland “writing itself is identified with Christianity: in legal

matters, a book is a book of Canon Law or a penitential” (A New History, 350). The early Irish secular laws were preserved in the memories of either the druids or potentially in the memories of members of another learned class, and were transmitted orally. When we finally do encounter written sources this is after the establishment of Christianity in Ireland and there is strong evidence of the efforts of Christian scholars to bring the secular laws in alignment with the teachings of the Church in those texts. An example of this is the pseudo-historical introduction to the ‘Senchas már’, in which it is suggested that the secular law already in existence before the coming of Christianity was in essence good, and that only those elements have been retained which were in concordance with the teachings of the Church.

Chapter 3

Anglo-Saxon penitentials and laws

As has been shown above, the coming of Christianity to the Irish and Anglo-Saxons resulted in a great many social changes and altered the way in which these societies were governed. In Ireland there continued to be a degree of separation between secular and ecclesiastical authority and rule. This was not however the case in Anglo-Saxon England. According to Thomas Oakley, the relative unity between Church and state in Western Europe was a direct result of the power vacuum left behind after the collapse of the Roman Empire. He suggests that “in this period of confusion the church assumed many of the attributes of a state” (*English Penitential Discipline*, 13), with authoritative ecclesiastical figures assuming responsibilities which were previously the domain of the secular statesmen. Oakley feels that the situation in Britain after the departure of the Romans was quite similar to the confusion on the continent, which in turn appears to have enabled the Church to create a larger area of social and political control. As is sometimes the case with Oakley’s assumptions, the previous statement may be somewhat over-generalised and does not fully take into account the amount of time between the departure of the Romans and the arrival of the church. However, it

appears to be true that there was a power vacuum that was not, or at the least not permanently, filled by either the native population or the Germanic invaders. As has been mentioned earlier early Anglo-Saxon England consisted of many separate territories, each with their own lord and inhabited mostly by his followers. Potentially the invading tribe intermingled with the original inhabitants, either as a potentially submissive demographic group which came to be absorbed into the Germanic tribe or as slaves. During the constant struggles for power and land the church seems to have been able to settle down in small areas. At first it is likely that this was only a small trickle of Christians coming in from continental Europe. After the arrival of Augustine the conversion of Anglo-Saxon England began to pick up steam and it would not be long before the local lords came to see the added value of a well organised and generally peaceful group of well educated persons. In contrast to early Ireland, the church grew alongside with Anglo-Saxon England as it became more united and began to find its own identity. Because of the simultaneous development of the rudiments of Anglo-Saxon England and the rise of the Church there, the ecclesiastical and secular worlds became intertwined. It is often suggested, for instance by Wormald, Whitelock, and Frantzen, that to attempt to distinguish between the two worlds would result in an artificial separation which was certainly not felt during Anglo-Saxon times. This is not to say of course that there is no differentiation possible that all. Rather, it is important to realise that a desire to look for a separation of church and state would be a modern construct which is not necessarily applicable to the Anglo-Saxon situation.

The nature of the Anglo-Saxon church is also quite different from the Church in early Ireland with regards to certain key elements. Having been much more influenced by continental Christianity it lacked some of the stark asceticism of the Celtic Church whilst at the same time it had a far greater interest in the secular world, especially with regards to areas of power and control. This greater influence from continental Christianity can also be seen in

the characteristics of the Anglo-Saxon penitential tradition. According to Oakley and Bedingfield, there is a good chance that the Anglo-Saxon church was at the very least familiar with the concept of public penance. However, because of the inherent drawbacks of public penance it does not appear to have been applied much in Anglo-Saxon England, although occasional references are made with regards to an awareness of the public penitential option. In *The Penitential of Theodore* the absence of public penance is mentioned in the chapter on the reconciliation of the sinner with the Church and the Christian community, which states that “Reconciliation is not publicly established in this province, for the reason that there is no public penance either” (McNeill and Gamer, 195). It is highly unlikely for such a reference to be made if there was no awareness of the option of public penance. Oakley, taking matters a step further, suggests that “several passages in the penitential of Theodore may possibly mean that he introduced parts of public penance” (*English Penitential Discipline*, 77) and Bedingfield suggests that public penance was available to the Anglo-Saxons, but was probably only considered in highly specific cases. He remarks that “Wulfstan and others may have been aware of how public penance was performed in the ancient church, or on the continent” (“Public Penance”, 253) but also concedes that there are no references available that would cause one to assume that the highly ritualised public penance was a general feature of the Anglo-Saxon penitential discipline.

The earliest penitential of the Anglo-Saxon church is that of Theodore, which McNeill and Gamer date at around 668-690 is at least in part based upon an older Irish text, possibly Cummean’s. It is important here to realise that the Irish penitentials that reached the Anglo-Saxon areas were already further on in their development and were on the whole aimed at the general Christian population of an area as opposed to their earlier focus on purely monastic rule. The Anglo-Saxon church and the local leaders were quick to realise the potential within the penitentials for social control. Despite of the insistence on the medicinal aspects of

penance as a cure for sin, which was certainly a part of the Anglo-Saxon penitentials, Oakley brings up the possibility that the majority of the secular interest in penance was for its punitive value. He states that “From the requirement then, by secular laws, of penance for crimes [...] it is evident that the punitive phase of penance was stressed by the secular authorities” (*English Penitential Discipline*, 43). As has been mentioned above, many of the Anglo-Saxon kings utilised the authority of the church to add weight to their own rule and legislation. The self-regulating nature of the Celtic penitential discipline meant that it was an ideal addition to the tools used by the church and the secular laws in controlling Anglo-Saxon society.

The use of the penitentials to strengthen Anglo-Saxon laws can most clearly be seen in the punishments for perjury and oath-breaking, probably because of the importance of oaths in the general everyday functioning of Anglo-Saxon society. In this, the Anglo-Saxon system resembled that of the early Irish where the weight of an oath was dependant on the status of the oath taker. Whether it was used to swear to the legitimacy of a purchase or for proving one's innocence in the court of law, it was the value of one's word and that of any of the witnesses that was the decisive element. However, if one had a sufficient number of witnesses willing to swear an oath in support and provided that no one found out that one was committing perjury the secular laws had very few possibilities to entice a person to honesty. It is precisely in such cases that the added weight of perjury as sin combined with the ecclesiastical penance thereof was of great use. A possible reason for this might be found in the supposition that there is a great difference between misrepresenting or withholding information from a judge, and the fear of God's judgement on the sin of oath breaking. Because of its importance to the general functioning of secular legislation perjury was heavily penalised in the secular law texts throughout the Anglo-Saxon period and with the rise of the penitentials the secular laws added the provision to undergo penance for perjury as directed in

the penitentials. An example of this can for instance be found in Æthelstan's Greatley code, item 26, which states that one who has committed perjury cannot be buried in a consecrated grave unless the bishop of the area has given witness to the performance of penance¹. An example from a later period is Edmund's London synod, which puts an equal penalty upon both perjurers and the practise of magic. The punishment for these cases was excommunication, unless they performed penance². Coming to the final stages of the Anglo-Saxon period heavy penalties for perjury can be found in Cnut's second law code item 36 and 36.1. In these we find that if a false oath is sworn on a relic the hand with which the oath is sworn is taken off, though as an alternative the perjurer may be allowed to pay half of his wergild, and he is never again trusted to swear an oath unless he has undergone deep penance. These instances, which are but a few of many possible examples, clearly illustrate the use of penance in the attempts to prevent and if necessary punish perjury in secular Anglo-Saxon laws. The Æthelstan text even refers to written instructions, which are most likely to be instructions found in a penitential.

Interestingly, it appears that the more tentative the hold of a king was the more he relied on reinforcement of the secular legislation by references to the power of the church and the religious aspect of compliance. An example for this may be found in V Æthelred (1008). This text not only reiterates a rather common notion of the church being under the protection of king, God, and all Christians (Liebermann, 241. 10.1), but also includes a clear direction to all Christians to live a proper Christian life and to confess their sins freely and regularly so that God will once again be merciful to the English people³. This tendency to a greater cooperation between church and state in turn also seems to lead in some cases to stricter

¹ "Ond se ðe manað swerige, [...] buton he hæbbe ðæs biscopes gewitnesse [...] þæt he hit swa gebet hæbbe, swa him his scrift scrife" (II Æthelstan 26. Liebermann, *Die Gesetze der Angelsachsen*. 164).

² "Ða ðe mansweriað 7 liblac wyrcað, beon hi a fram ælcum Godes dæle aworpene, buton he to rihtre dædbote gecirran þe geornor" (I Eadmund 6. Liebermann, *Die Gesetze der Angelsachsen*. 186).

³ "Ac lufige man Godes riht heonan forð georne worden 7 dæde; þonne wyrð þysse þeode sona God milde." (V Æthelred, 26. Liebermann, *Die Gesetze der Angelsachsen*. 242.)

penalties for perjury. A similar tendency of cooperation is also reflected in the penitentials, though for them the severity of the penance required usually depends on whether the particular penitential was part of a lenient or strict tradition. An important difference between the penitentials and the secular laws is that the penance prescribed in the penitentials usually depended on intent. Thus, in the penitential of Theodore for instance the penance for perjury is less if it was committed out of necessity (Theodore VI, 2. McNeill and Gamer, 190.) and Bede's penitential includes provisions for the possibilities of perjury being committed unknowingly or because the oath taker was being forced by his lord. Such provisions in the judgement of perjury are not usually found in the secular laws.

The mutual influence of the penitentials and the secular laws on each other is not limited to the penalties for perjury. Examples for the potential cooperation of penitential discipline with secular legislation are numerous. They range between penalties for the sale of countrymen or Christians to heathen lands, possibly as slaves, to deviations from the ideal Christian marriage such as sexual relationships with slaves or concubines, and murder. There appears to be a particularly strong similarity between the provisions for the reasons for murder in both the penitentials and the secular laws. In both, the penalty in the case of for instance murder in revenge of close kin is markedly less than that for murder out of anger or greed. In the penitentials however, penance is still required for killing out of revenge or in warfare. It is likely that these provisions are a result of attempts to curb the system of the blood-feud whilst allowing revenge if no other satisfaction could be obtained. In Theodore's penitential there is even a reference to the custom of fines: "If one slays a man in revenge for a relative, he shall do penance as a murderer for seven or ten years. However, if he will render to the relatives the legal price, the penance shall be lighter, that is, [it shall be shortened] by half the time." (McNeill and Gamer, 187). In this same penitential, the penalty for slaying under the command of a lord or in warfare is limited to 40 days. In this, as in some other

instances that have been mentioned, it appears to be that the penance is given for the sin though there is no guilt. According to Bernard Verkamp, this may be clarified by taking into account Augustinian's theories on the permissible sins. In his article "Moral treatment of Returning Warriors in the Early Middle Ages" Verkamp notes that "anger [...] may be permitted [...] for the enforcement of a just authority [...] but there is always something sinful about [it]" (233). The sin of killing in battle comes from the desire to perform the action, even if the reasons for the desire were valid.

The full extent of the cooperation between Church and state in Anglo-Saxon England can best be seen in the works either created or inspired by Wulfstan. Not only did Wulfstan compose homiletic and other ecclesiastical material, but he also edited and even partially rewrote various earlier secular laws, such as Edward's laws, in order to bring them into agreement with theological teachings and canon law. In addition to this he also wrote or at the least directed the creation of secular laws such as those of Æthelred and Cnut. In these laws the ecclesiastical references are numerous, and Wulfstan's personal concerns regarding the spiritual welfare of the English permeate throughout the legislative material. Thus, in for instance the laws of Æthelred, there are directions to all the English people to cease sinning and perform penance, next to laws specifically directed at members of the Church, as well as regular secular legislation. In Cnut's laws secular penalties regarding the transgression in marriage stand side by side with theological explanations and suggestions for the proper conducts of a Christian as well as warnings against the influences of the devil. In these texts, which were produced under the authority of Wulfstan, we can find the culmination of the processes of making laws, both secular and canon, and the writing of penitential texts. In this, Wulfstan is the embodiment of the political and spiritual merger of Church and state.

Conclusion

The purpose of this dissertation was to look closely at the early Irish and English penitentials and laws in an attempt to find those areas where the secular and ecclesiastical world came together to shape society. As has been shown above there are many instances in which the Church and the secular legislation have cooperated in ordering and regulating early Irish and Anglo-Saxon society. One of the main examples of this can be found in the penalties for perjury in both the penitentials and secular laws. By placing the penitentials and secular laws in a historical context the increased intertwining of Church and state has been illustrated.

However, the field of research on the relationship between the penitentials and the secular laws is as of yet far from exhausted. Despite frequent calls for an increase in attention to the early penitential literature of Ireland and England, studies featuring this subject have been few and far between. This is a pity because research in this area not only gives us a better understanding of the social views of the Anglo-Saxons and Old Irish, but also the way in which these standards were maintained by their secular and ecclesiastical rulers respectively and the interesting interplay between these two authorities.

Bibliography

Bedingfield, Brad. "Public Penance in Anglo-Saxon England." *Anglo-Saxon England* 31

(2002): 223-255. Web. 13 Mar. 2011.

Bieler, Ludwig, ed. *The Irish Penitentials*. Dublin: The Dublin Institute for Advanced Studies, 1963. Print.

---. "St. Patrick and the Irish People." *The Review of Politics* 10.3 (1948): 290-309. Web. 5 May 2011.

Braswell, Mary Flowers. *The Medieval Sinner; Characterization and Confession in the Literature of the English Middle Ages*. East Brunswick: Associated UP, 1983. Print.

Breatnach, Liam. "Canon Law and Secular Law in Early Ireland: the Significance of *Bretha Nemed*." *Perditia* 3 (1984): 439-459. Web. 20 Mar. 2011.

Breatnach, Liam. "The Ecclesiastical Element in the Old-Irish Legal Tract *Cáin Fhuithirbe*." *Perditia* 5 (1986): 36-52. Web. 12 Apr. 2011.

Carey, John. "Saint Patrick, the Druids, and the End of the World." *History of Religions* 36.1 (1996): 42-53. Web. 4 Mar. 2011.

Clunies-Ross, Margaret. "Concubinage in Anglo-Saxon England." *Past & Present* 108 (1985), 3-34. Web. 4 Mar. 2011.

Connolly, Hugh. *The Irish Penitentials and their Significance for the Sacrament of Penance Today*. Dublin: Four Courts Press, 1995. Print.

Cross, J. E. and Andrew Hamer., ed. *Wulfstan's Canon Law Collection*. Cambridge: D. S. Brewer, 1999. Print.

Finberg, H. P. R. *The Formation of England 550-1042*. London: Hart-Davis, MacGibbon, 1974. Print.

Fisher, D. H. V. *The Anglo-Saxon Age c.400-1042*. London: Longman, 1973. Print.

Frantzen, Allen J. *The Literature of Penance in Anglo-Saxon England*. New Jersey: Rutgers UP, 1983. Print.

Hancock, W. N., ed. *Din Techtuzad and Certain Other Selected Brehon Law Tracts*. Dublin: A. Thom & Co, 1879. Print.

---. ed. *Uraicecht Becc and Certain Other Selected Brehon Law Tracts*. Dublin: A. Thom & Co, 1901. Print.

Harris, Stephen J. "The Alfredian World History and Anglo-Saxon Identity." *The Journal of English and Germanic Philology* 100.4 (2001): 482-510. Web. 6 Mar. 2011.

Kelly, Fergus. *A Guide to Early Irish Law*. Dublin: Dublin Institute for Advanced Studies, 1988. Print.

Kelly, Fergus. "An Old-Irish Text on Court Procedure." *Peritia* 5 (1986): 74-106. Web. 7 Apr. 2011.

Kenney, James F. *The Sources for the Early History of Ireland: Ecclesiastical; An Introduction and Guide*. 1929. New York: Columbia UP, 1966. Print.

Liebermann, F., ed. *Die Gesetze der Angelsachsen*. Vol. 1-3. 1903. Munich: Savigny-Stiftung, 1960. Print.

Lovell, Colin Rhys. *English Constitutional and Legal History, a Survey*. New York: Oxford UP, 1962. Print.

Loyn, H. R. *The Governance of Anglo-Saxon England 500-1087*. London: Edward Arnold, 1984. Print.

MacNeill, Eoin. *Early Irish Laws and Institutions*. Dublin: Burns Oates and Washbourne, 1934. Print.

---. *Phases of Irish History*. 1919. Dublin: M. H. Gill & Sons, 1937. Print.

Mayr-Harting, Henry. *The Coming of Christianity to Anglo-Saxon England*. London: B. T. Batsford, 1972. Print.

McLeod, Neil. "Compensation for Fingers and Teeth in Early Irish Law." *Peritia* 16 (2002):

344-359. Web. 12 May.

McNeill, John T. and Helena Gamer. *Medieval Handbooks of Penance; A Translation of the Principal Libri Poenitentiales and Selections from Related Documents*. 1938. New York: Columbia UP, 1990. Print.

McNeill, John T. "Medicine for Sin as Prescribed in the Penitentials." *Church History* 1.1 (1932): 14-26. Web. 4 Mar. 2011.

Meyer, Kuno, ed. *Cáin Adamnáin; an Old-Irish Treatise on the Law of Adamnan*. Oxford: Clarendon Press, 1905. Print.

Oakley, Thomas P. "Commutations and Redemptions of Penance in the Penitentials." *The Catholic Historical Review*. 18.3 (1932): 341-351. Web. 04 Mar. 2011.

---. "The Cooperation of Mediaeval Penance and Secular Law." *Speculum* 7.4 (1932): 515-524. Web. 5 Mar. 2011.

---. "Cultural Affiliations of Early Ireland in the Penitentials." *Speculum* 8.4 (1933): 489-500. Web. 5 Mar. 2011.

---. *English Penitential Discipline and Anglo-Saxon Law in Their Joint Influence*. 1923. New York: AMS Press, 1969. Print.

---. "Some Neglected Aspects in the History of Penance." *The Catholic*

- Historical Review* 24.3 (1938): 293-309. Web. 3 Apr. 2011.
- . "The Penitentials as Sources for Mediaeval History." *Speculum* 15.2 (1940): 210-223. Web. 4 Mar. 2011.
- Ó Corráin, Donnchadh, et al. "The Laws of the Irish." *Peritia* 3 (1984): 383-438. Web. 8 Nov. 2011.
- Ó Corráin, Donnchadh. "Synodus II Patricii and Vernacular Law." *Peritia* 16 (2002): 335-343. Web. 8 May 2011.
- Oliver, Lisi. *The Beginnings of English Law*. Toronto: Toronto UP, 2002. Print.
- Payer, Pierre J. *Sex and the Penitentials; The Development of a Sexual Code 550-1150*. Toronto: Toronto UP, 1984. Print.
- Smith, Julie Ann. *Ordering Women's Lives; Penitentials and Nunnery Rules in the Early Medieval West*. Aldershot: Ashgate, 2001. Print.
- Stafford, Pauline, ed. *A Companion to the Early Middle Ages; Britain and Ireland c.500-c.1100*. Chichester: Blackwell Publishing, 2009. Print.
- Thurneysen, Rudolf. "Cōic Conara Fugill; Die Fünf Wege zum Urteil. Ein Altirischer Rechtstext." *Abhandlungen der Preussischen Akademie der Wissenschaften* 1925: 1-87. Print.

Verkamp, Bernard J. "Moral Treatment of Returning Warriors in the Early Middle Ages." *The Journal of Religious Ethics* 16.2 (1988): 223-249. Web. 4 Mar. 2011.

De Waardt, J. M. D. *Voedselvoorschriften in Boeteboeken; Motieven voor het Hanteren van Voedselvoorschriften in Vroeg-middeleeuwse Ierse Boeteboeken 500-1100*. Rotterdam: Erasmus Publishing, 1996. Print.

Whitelock, Dorothy. *The Beginnings of English Society*. 1952. Harmondsworth: Penguin Books, 1959. Print.

---. ed. *English Historical Documents c. 500-1042*. 1955. London: Eyre & Spottiswoode, 1968. Print.

---. *History, Law and Literature in 10th-11th Century England*. London: Variorum Reprints, 1981. Print.

Wormald, Patrick. *The Making of English Law: King Alfred to the Twelfth Century*. Vol.1. 1999. Oxford: Blackwell Publishers Ltd, 2001. Print.