

## Chapter 1

### *Saints, Seaways and Dispute Settlements*

Thomas Glyn Watkin

In his book, *Trial by Fire and Water: The Medieval Judicial Ordeal*,<sup>1</sup> Professor Robert Bartlett argues that there is what he terms a 'strong likelihood' that the ordeal in Europe was of Frankish origin,<sup>2</sup> and that it spread from the Frankish kingdom to other parts of Europe with the advance of Christianity and Christian kingship.<sup>3</sup> This thesis is primarily concerned with the protohistorical period, that is the period prior to A.D. 800, although Professor Bartlett also argues that the subsequent spread of the ordeal into Scandinavia and the lands of eastern Europe during the tenth to the thirteenth centuries was also connected with the conversion of these countries to Christianity.<sup>4</sup>

In the protohistorical period itself, Professor Bartlett notes that the only form of ordeal encountered is that of the cauldron, which institution is vividly described in the sixth-century *De gloria martyrum* of Gregory of Tours. According to Gregory, a fire was built up and a cauldron was placed upon it, which was left there until it was boiling fiercely. A small ring would then be tossed into the boiling water and the person whose oath was to be tested was required to bare his arm and plunge his right hand into the boiling water to recover the ring. Gregory notes that grasping the ring was a far from easy matter, not only by virtue of the scalding effect of the water but also because the bubbling of the water made the ring difficult to locate.<sup>5</sup> It was this form of ordeal which, according to Professor Bartlett, was to find a place among the native laws of the West Saxons, the Visigoths, the Lombards and the Frisians, in each case as a result of Frankish influence.<sup>6</sup> Professor Bartlett believes that there was one part of Europe where this form of ordeal was to be found during the protohistorical period which had no connection with the Frankish kingdom, namely Ireland. Here, Professor Bartlett believes, the tradition of the ordeal of the cauldron was distinct from that of the Franks, because he states, there

<sup>1</sup> (Oxford, 1986).

<sup>2</sup> *Ibid.*, 4.

<sup>3</sup> *Ibid.*, 47, 153, 155.

<sup>4</sup> *Ibid.*, 43.

<sup>5</sup> *Ibid.*, 4; citing Cap. 80, *Monumenta Germaniae Historica, Scriptores rerum Merovingicarum*, i, Bruno Kisch, ed. (Hanover, 1885), 542-43.

<sup>6</sup> *Ibid.*, 7.

were 'few plausible paths of influence or suggestions of common ancestry which would link these two early bodies of legal material (unless we have recourse to the *deus ex machina* of the Indo-European heritage).<sup>7</sup> He sees the Irish situation as 'quite exceptional', a tradition uninfluenced by others and itself without influence. The Irish ordeal amounts in his judgement to 'an autonomous and self-contained story'.<sup>8</sup> The evidence for the existence of the ordeal by cauldron in protohistorical Ireland comes from the seventh or eighth century,<sup>9</sup> and the texts credit St. Patrick with the introduction of the practice to Ireland, interestingly stating that it was one among several forms of trial introduced by the saint.

The first purpose of this essay is to suggest that Professor Bartlett is incorrect in his view that the Irish version of the ordeal by cauldron was beyond the pale of Frankish influence. It is submitted that there was a plausible path of influence by which the ordeal by cauldron could have arrived in Ireland between the sixth century, when Gregory of Tours wrote his account of the institution, and the seventh century from when the information from Ireland comes. Moreover, as one would expect from Professor Bartlett's own views, that plausible path of influence is connected with the conversion of the Irish to the faith of Christ. Indeed it can be argued that if the tradition of ascribing the introduction of the ordeal to Patrick proves nothing else, it certainly connects the advent of the institution in the memory of the Irish people with the coming of Christianity.

Modern scholarship has decisively rejected the initial introduction of Christianity into Ireland as being the mission of St. Patrick. Professor Daniel A. Binchy, in his masterly survey of the biographers of the patron saint,<sup>10</sup> believes the first major Christian mission to Ireland focused upon the south east of the country and was led by Palladius, a deacon of the church of Auxerre in France, who had travelled to southern Britain with St. German in A.D. 429 and may have been recommended by St. German for the Irish mission of A.D. 431. Professor Binchy, however, notes that even prior to the Palladian mission of A.D. 431, there is evidence of Latin loan-words being borrowed into the native Irish language to cover such concepts as Christian, priest and church.<sup>11</sup> These earlier Christian influences are ascribed to contact with the Christian peoples of southern Britain and Gaul at the close of the fourth century.

The picture presented by this evidence, therefore, is not one of Ireland as a closed society during the fourth and fifth centuries. Rather it is of an Ireland which had contacts with and received influences from southern Britain both in Roman and post- or sub-Roman times, and which in part directly and in part

<sup>7</sup> *Ibid.*, 5-6.

<sup>8</sup> *Ibid.*, 6.

<sup>9</sup> See, *Ancient Laws of Ireland*, W.N. Hancock, etc., ed. 6 vols. (Dublin, etc., 1865-1901), i, 195-99; v, 457, 471-73; *Corpus iuris hibernici*, D.A. Binchy, ed. 6 vols. (Dublin, 1978), ii, 393-94; i, 233, 238; iii, 916; v, 1872-73; vi, 2232.

<sup>10</sup> See D.A. Binchy, *Patrick and his Biographers: Ancient and Modern. Studia Hibernica*, ii (1962).

<sup>11</sup> *Ibid.*, 165-68.

through southern Britain was also in contact with what was still at that time Roman Gaul. The sort of travelling to which the incursion of Latin loan-words and the mission of Palladius and later Patrick bears witness was by no means uncommon at this time. There were, in fact, strong links between the lands on the western seaboard of Europe in the fourth and fifth centuries, links which were to continue during the succeeding centuries. The importance of these maritime links for the social history of the lands concerned has been demonstrated admirably by the late Professor E.G. Bowen, most notably in his works *The Settlements of the Celtic Saints in Wales* and *Saints, Seaways and Settlements*,<sup>12</sup> the latter of which has provided not only the title but much of the inspiration for this paper. Bowen brought to light a matter which had remained obscure to earlier writers, namely that during the sub-Roman period the lands of the western seaboard of Europe had not been divided but rather united by the seas which lay between them. Professor Bartlett seems to have fallen into the trap which Bowen warned against: as a result he has seen Ireland as a remote, isolated corner of Europe. This was not so. Once the Romans had withdrawn from southern Britain at the start of the fifth century, the crossing of the Narrow Seas, that is the English Channel, became by degrees more perilous as protection from marauders was lost. The action of Vortigern in engaging the Saxon fleet as mercenary protection in 426 suggests that the crossing of the Narrow Seas was no longer protected by the Romans. As the south east of Britain and the north east of Gaul became subject to disturbance at the hands of the barbarian invaders, so there was a return to the use of the western sea routes by the peoples of the western fringes of Britain. The results of this resumption of activity along the western sea routes have been well described by Bowen:

The southern section of the major sea-route soon became active with particular emphasis on the links between south-western France and northern Spain with Ireland. Refugees from Aquitaine made their way across the seas to southern Ireland taking with them their culture and the last echoes of classical learning. These were the *alumni* of Bordeaux and other cities of south-western Gaul recorded by an anonymous author as leaving their homeland early in the fifth century. Literary experts have been able to detect the influence of the continental rhetorical style among the earliest Leinster poets, and there seems to be no difficulty in accepting the derivation of this style from the continental *literati* of the fifth century. It is thought that many of the rhetoricians of Gaul attached themselves to the native princes of southern Ireland and Britain at this time, but more particularly to the Irish chieftains, because Ireland was a safer refuge. They might even be responsible for the introduction of the Christianity that was known to have existed in southern Ireland in pre-Patrician times. The links of Ireland with Spain seem to be equally clear. Orosius writing in the early fifth century speaks of a city in Galicia, which he calls Brigantia, as having some kind of direct relationship with Ireland. Modern authors stress the presence in Ireland at this time of specialized art motives, like the marigold design,

<sup>12</sup> E.G. Bowen, *The Settlements of the Celtic Saints of Wales*, 2nd ed. (Cardiff, 1956), hereafter S.C.S.W.; E.G. Bowen, *Saints, Seaways and Settlements* (Cardiff, 1969), hereafter S.S.S.

which must have reached the island by the same route from Spain or southern France. This motive is usually considered to be the most characteristic feature of Visigothic art. It is found all over Spain and again in Lisbon, while occasional examples occur in France from Poitiers southwards.<sup>13</sup>

Professor Bartlett's notion of an isolated Ireland is a far cry from this description by Bowen, who establishes that these western sea routes 'brought the Gallic, Spanish and even the North African world into contact with southern Ireland, Cornwall and Devon, south-east Wales, north-west Wales, the Isle of Man, the Galloway peninsula and the Solway area'.<sup>14</sup> These lines of communication were to remain open and of importance until the Islamic conquest of North Africa, Spain and finally Bordeaux and Aquitaine gradually severed the connection during the seventh and eighth centuries. After that, even though some contact was renewed as the tide of Islamic conquest ebbed, the routes never assumed the same importance that they had enjoyed from the fourth to the seventh and eighth centuries.<sup>15</sup>

The fact remains that the links between Ireland and France were in use in the centuries separating Gregory of Tours' account of the ordeal by cauldron from the Irish texts claiming its arrival to be connected with the coming of Christianity, centuries during which control of the French end of this link passed from the hands of the Romans into those of the Franks. This, it is submitted, is a sufficiently plausible path of influence to refute Professor Bartlett's view that the Irish ordeal is uniquely that land's own development, and to restore the Irish ordeal to the fold of those derived under Frankish influence with the arrival of Christian missions.

This suggestion solves one problem only to create another, for if Ireland received the ordeal from the Franks as a result of contacts forged along the western sea routes, it is pertinent to ask why Wales, which enjoyed similar links, did not witness a comparable reception. Wales, it is generally accepted, knew nothing of the ordeal until the coming of the Normans in the twelfth century.<sup>16</sup> The second purpose of this essay is to suggest a reason why the ordeal was not received into Wales during the protohistorical period, even though Wales was subject to much the same set of influences as was Ireland at this time.

Wales was quite distinct from Ireland in one very important regard. Wales had been part of the Roman empire. It has been noted by historians of the Roman period in Wales that Roman troops were withdrawn from this area of Britain speedily from the time of the Emperor Hadrian onwards, and this

<sup>13</sup> S.S.S., 51-52, citing Orosius, *Opera*, Book I, Cap. ii; A.W. Clapham, 'The Origins of Hiberno-Saxon Art', *Antiquity*, viii (1934), 50; V.E. Nash-Williams, *The Early Christian Monuments of Wales* (Cardiff, 1950).

<sup>14</sup> S.S.S., 57.

<sup>15</sup> *Ibid.*, 76-77.

<sup>16</sup> Bartlett, *op. cit.*, 47-48.

has been recognized as a sign of a fairly rapid degree of Romanization.<sup>17</sup> This has also been treated as an indicator that south Wales was relatively quiet in its acceptance of Roman rule, and that, within three generations of the Flavian conquest, the indigenous population had come to regard itself as in some way 'Roman'.<sup>18</sup> Such feelings could only have been strengthened by the grant of Roman citizenship to all the free inhabitants of Wales along with all free inhabitants of the empire in A.D. 212 by the *constitutio Antoniniana* of the Emperor Caracalla. With the withdrawal of the official Roman presence at the start of the fifth century, modern scholarship prefers to consider that Roman Britain went into a period of slow decline rather than an instant return to non-Roman habits. This is almost certainly true if Salway is correct in his view that there was never any deliberate intention to abandon Britain, but that events on the continent so delayed a reassertion of control that ultimately there was no province left to recover.<sup>19</sup>

It would appear that at the time of Roman withdrawal from Wales, loyal men were appointed to posts in the area, which posts later became hereditary, so that late Roman administrators and their descendants gradually became the princes of sub-Roman times. Likewise there is considerable evidence to support the retention of a strong element of *Romanitas* in south Wales during the sub-Roman period, particularly with regard to the continued use of Roman lines of communication, the survival of the Christianity which by the time of the withdrawal was part and parcel of Roman citizenship, and the abiding influence of the Latin language.<sup>20</sup> Thus it was that when St. German made his missionary visit to south Wales in A.D. 429 to counter the spread of the Pelagian heresy, he found what has been described as 'a still recognizable late-Roman society, with bishops, robed officials and a tribune'.<sup>21</sup> Such evidence led Bowen to conclude that south-east Wales in particular was 'a thoroughly romanized area', in which a form of sub-Roman life was to continue for a century or more after the withdrawal.<sup>22</sup>

The survival of *Romanitas* in the church is argued in the south east of Wales by the continuance of bishops with some form of territorial or diocesan jurisdiction during the sub-Roman period.<sup>23</sup> Moreover, in the Celtic church as a whole during the protohistorical period, one finds the preservation of the primitive Christian custom of naming meeting places of worship after their founders or the owner of the house. This preserves the conservative continental practice of the fifth century but differs from the developments that occurred

<sup>17</sup> P. V. Webster, 'The Roman Period', *Glamorgan County History, II, Early Glamorgan: Prehistory and Early History* (Cardiff, 1984), 305.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, 308; Peter Salway, *Roman Britain* (Oxford, 1981), 415-45.

<sup>20</sup> Webster, *op. cit.*, 308-9.

<sup>21</sup> J. K. Knight, 'Glamorgan A.D. 400-1100: Archaeology and History', *Glamorgan County History, II*, 316.

<sup>22</sup> S.S.S., x; S.C.S.W., 14-15.

<sup>23</sup> S.S.S., x.

in much of western Christendom in the succeeding centuries.<sup>24</sup> This element of conservative Romanism is also present in the manner in which the leading families of this sub-Roman society clung to the Latin language as though to a birth-right. Latin, together with what has been termed 'all the greatness that was Rome', was seen as the rightful inheritance of these chieftains, and their tombstones were invariably inscribed not in their native British tongue but in Latin.<sup>25</sup>

As well as being an area in which a sense of continuing Romanism was preserved in the consciousness of the people, south Wales was also a place of refuge for like-minded folk from other parts of southern Britain forced to flee during the fifth century before the Saxon invaders.<sup>26</sup> Their immigration could only have served to strengthen the native population's sense of forming a remnant of the great Roman people. North Wales was also not without its Roman survivals. It is now generally accepted that before their departure, the Romans settled north Wales with *foederati*, moved into the area from southern Scotland. It is this movement, it is now believed, that was to become known as the invasion of the 'Sons of Cunedda', and the descendants of these immigrants were to form a focus around which Christianity, Latin and Romanism generally were to survive in the north after the Roman withdrawal.<sup>27</sup>

The importance of these remnants of the Roman population to the survival of Christianity and the emergence of the Celtic church in Wales is now widely acknowledged. It also deserves to be recognized that their faith was but one aspect of their Romanism. These were people who were Roman citizens by birth, and their law was therefore Roman law. Given that they may at first have looked to the return of the Roman forces of government and defence, it is reasonable to imagine them consciously attempting to preserve their Roman lifestyle and their Roman customs. In other words, the population of Wales after the departure of the Romans bears a distinct cultural resemblance to peoples of southern France, Italy and Spain who had once known Roman rule, and who after the fall of the empire in the west continued to live according to the vulgar Roman law, the Roman customs as they remembered them.

Nor is this connection between the population of Wales and the peoples of the vulgar Roman law fanciful. The reality is that south Wales and southern Gaul had enjoyed important links during Roman times, particularly with regard to trade. This is borne out abundantly by the archaeological evidence from Roman settlements in south Wales.<sup>28</sup> These connections remained operational during the sub-Roman period, when they were kept alive by the use of the western sea routes. Indeed, although these sea routes were in use even before the coming of the Romans, their preservation after the fall of the western empire can be

<sup>24</sup> S.C.S.W., 2.

<sup>25</sup> *Ibid.*, 99-100.

<sup>26</sup> *Ibid.*, 35.

<sup>27</sup> *Ibid.*, 70-72; S.S.S., xi.

<sup>28</sup> Webster, *op. cit.*, 302-3.

attributed in the main to the surviving Roman tradition in western Europe,<sup>29</sup> a tradition that was highly prized in Wales.

The evidence for continued connections between Wales and the Gallo-Roman population of France is again plentiful. At one end of the scale lie such items as the similarity between the liturgy of the Celtic church in Wales and that of the Gallican church, which liturgies may have been identical.<sup>30</sup> There is also the continued importation of Mediterranean and Gaulish pottery. As J.K. Knight has written regarding south Wales in the period A.D. 450–650, 'its cultural affinities lie not so much with the barbarian successor states as with areas like Spain, non-Frankish Gaul or parts of Italy, where a post-Roman society used similar inscriptions and pottery'.<sup>31</sup> During the sixth century, south Wales saw the appearance of simple forms of the chi-rho monogram above the Latin memorial inscriptions that were still adhered to, similar to those encountered on early Christian inscriptions in Gaul and Spain.<sup>32</sup> The Latin inscriptions on these stones is normally in the *Hic Iacet* form, which formula also occurs in Italy, France and the Rhineland. V.E. Nash-Williams in his magisterial study of *The Early Christian Monuments of Wales* argues for a French influence, and within France locates the main area of influence within the Rhine valley, around the great Roman cities of Lyon and Vienne.<sup>33</sup> He has demonstrated that the early Christians who are commemorated by these stones had migrated to Wales from western Gaul by means of the sea routes and settled in the north-western and south-western portions of the country, with a marked concentration in the Brecon area. These immigrants probably chose Wales as a settlement because of cultural affinities and helped reinforce the remnant of Roman culture which existed there.<sup>34</sup> Their inscriptions are dated by the consular year, and witness the continuation of an ordered system of government on Roman lines within Wales during the sixth century.<sup>35</sup>

Another feature of the continuing Romanism of the south-eastern corner of Wales, in particular, was the respect accorded to classical learning. This feature

<sup>29</sup> S.S.S., 79.

<sup>30</sup> R.W.D. Fenn, 'The Age of the Saints', *A History of the Church in Wales*, David Walker, ed. (Penarth, 1976), 19.

<sup>31</sup> Knight, *op. cit.*, 318.

<sup>32</sup> *Ibid.*, 345.

<sup>33</sup> *Ibid.*, 335, citing Nash-Williams, *op. cit.*; S.C.S.W., 16–17; S.S.S., 50–53.

<sup>34</sup> S.C.S.W., 54–55; S.S.S., 61–62.

<sup>35</sup> S.C.S.W., 20–21, citing Nash-Williams, *op. cit.*, nos. 103, 104:

One of their memorials at Penmachno in Caernarvonshire states that it was set up 'in the time of Justinus the Consul'. Justinus was consul in A.D. 540 and the use of his name was limited on the continent to monuments in the Lyon district. He was the last consul whose name appears on inscriptions in the western world. This reference to Justinus not only dates the inscription and indicates its associations with the Lyon area but also shows that this thoroughly Roman culture was carried into Wales. Indeed, a nearby inscription mentions a *magistratus* and a *civis* indicating an ordered system of government on the Roman model in north-west Wales in sub-Roman times.

See also S.S.S., 52–53. It is also worth noting that the development of the monastic element in Celtic Christianity is associated with immigration from these parts of France: see, S.S.S., 128.

is linked with the earliest saints of this area, Dyfrig, Cadoc and Illtud. Dyfrig, or Dubricius, has many of the attributes of an ecclesiastic in the Roman provincial mould, while Cadoc is believed to have been descended from a princeling of Gwent, who as has been shown, was probably originally a Roman administrator in that area. All three are said to have been followers of St. German,<sup>36</sup> which description again reinforces the Gallic connection. Indeed, the influence of German is of great importance to the argument because, although born in Auxerre to noble parents, he was most probably educated at Lyon and Arles before undertaking legal studies at Rome where he was to practise most successfully. On return to Gaul, he was appointed to the office of *dux* of the area around Auxerre, and this he remained until ordained against his will. His biography is significantly recorded by Constantius of Lyons, so that there is plenty of evidence to connect the saint with Roman Gaul, and particularly with the Lyons area.<sup>37</sup> Constantius' *Life* therefore accords with the archaeological evidence concerning the links between Wales and the Gallo-Roman culture of the Lyons area, later to be part of the *pays de droit écrit*.

The evidence therefore points to Wales being, during the fifth and sixth centuries, a land with a conscious Roman heritage, which heritage was most closely bound to the Christian faith. This Roman inheritance was kept alive and indeed reinvigorated by immigrants from Gaul as the Frankish invasions progressed southward. The people of Wales appear to have preserved their Roman heritage by retaining a devotion to the use of Latin and by upholding Roman forms of government. They are comparable in this regard to the lands of southern France, Spain and Italy, where the memory of Roman law was also preserved in vulgar form. It is difficult not to conclude that there is a high probability that the customs of Wales at this time would have preserved this cardinal element of the Roman tradition. Such a tradition would militate against the ordeal being received into the legal order as a method of proof when the western sea routes ceased to connect Wales with Roman Gaul but with the Frankish kingdom.

Ireland, on the other hand, had no such Roman heritage. When the Gallican missionaries, Palladius and later Secundinus, Auxilius and Iserninus, arrived in the south-east, they would not have been able to appeal to the sort of common cultural values which had appertained in Wales. The Frankish method of proof may have proved more attractive than the other methods of trial which the Patrick traditions associate with the arrival of Christianity. Ireland provided fertile soil for the transplanting of the ordeal from the Frankish kingdom with which the western sea routes were to bring it into contact. Wales, however, had memories of better ways, and may therefore have felt little if any temptation to abandon them in favour of less sophisticated techniques.

<sup>36</sup> S.S.S., 136-37; 67-69.

<sup>37</sup> C.J. Smith, 'St. German of Auxerre', *The History of Roath St. German's*, Marmaduke Warner and A.C. Hooper, ed. (Cardiff, 1934), 17-24.



There is one question that remains to be asked. Indeed, the final purpose of this essay is to raise it, although no attempt will be made to answer it. Given the ready acceptance of Roman culture in many parts of Wales and their jealous retention of the same after the Roman departure, given the continued connections with those parts of Europe which were similarly inclined and the haven offered by Wales to peoples from certain of those lands as the territory of the empire was gradually lost, did the Welsh preserve a large, if vulgar, element of Roman law in their native customs? The difficulty posed by this question is that the Welsh law books come from a much later period, yet the weight of archaeological and cultural evidence which derives from the protohistorical period demands that it be given serious consideration.