Chapter Seven

Communities and Kinship

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The purpose of this chapter is to examine the local communities that existed in Britain and Ireland during the sub- and post-Roman periods. What was the nature of these communities? Should they be seen as population groups or territories? What were their internal dynamics and what were the personal networks that determined how their individual members interacted with one another? And how were such interactions, especially disputes, regulated by society? It is not an easy task to answer such questions for this particularly "dark" period: our extant historical documents are few and far between, and those that have survived are invariably later in date and not always reliable when dealing with the fifth to eighth centuries. Furthermore, most of these sources are concerned primarily with the important kingdoms and their rulers, and have little to say about the lives of their more ordinary inhabitants.

The fifth and sixth centuries represent a period of significant change and transition following the end of centralized Roman administration in the West. Writing probably in the mid-sixth century, the cleric Gildas referred to the Britons as "*ciues*," meaning possibly "countrymen" but also "citizens," and he described the British leader (*dux*) Ambrosius Aurelianus as being of the Roman people, "*gens*."[1] Like others living in post-Roman western Europe, Gildas clearly saw himself and his fellow Britons as continuing *Romanitas* in some way. However, it is also clear that Roman culture had effectively disappeared in most areas. Gildas himself stated: "the *ciuitates* of our land are not populated even now as they once were; right to the present day, they are deserted, in ruins and unkempt."[2] In fact, archaeological investigation has demonstrated that while many Romano-British towns were indeed still occupied by the late fifth and early sixth centuries, the nature of this occupation had changed significantly from what it had been two centuries earlier. These post-Roman communities were effectively squatting on the remains of their Roman predecessors, living "a sub-Iron Age lifestyle,"[3] little different from that of the Anglo-Saxon settlers.

Even in Ireland, which was never conquered by the Romans, the fifth and sixth centuries would seem to have witnessed significant socioeconomic and political changes reflected in the spread of new forms of settlement, notably the ringfort and crannog, which also had reflexes in parts of western Britain.[4] This same period in

Ireland witnessed the decline of the so-called "archaic" population groups mentioned on ogham inscriptions from the fourth to the sixth centuries as well as enumerated in later lists of *aithech-túatha* (lit. "rent-paying peoples").[5] Some of those peoples, such as the Corcu Duibne and the Osraige (or at least their ruling lineages), survived as independent kingdoms into the historical period, but most were probably reduced in status or even wiped out as political entities by the rise of new dynasties, most significantly the Uí Néill, during the course of the seventh century. An interesting feature of these early Irish population groups, it has been argued, is that they were not named after a biological ancestor (like Uí Néill, "Descendants of Niall") but after pagan divinities, whereas others took their names from animals (Artraige, "the bear-people") or colors (Ciarraige and Dubraige, both meaning "the black people"). The precise significance of these names is impossible to determine with any certainty, and the nature of these archaic peoples remains obscure. Similar obscurity pertains for England: occasional references in charters and narrative sources such as Bede, as well as unique documents such as the *Tribal Hidage*, must be supplemented by the evidence of archaeology, onomastics, and a degree of guesswork. The *Tribal Hidage*, which in its original form was probably compiled in the late seventh century, is a tax or tribute list of the various "peoples" then under the hegemony of the greater Mercia created by King Penda and assessed in "hides" (see below).[6] The extant list includes kingdoms, both large and small, such as the East Angles (assessed at 30,000 hides) and the *Cantware* (men of Kent, 15,000 hides), as well as far more obscure peoples such as the *Arosæte* (600 hides), who lived near the river Arrow (Warwickshire), and the *Hicce* (300 hides), whose name perhaps survives in modern Hitchin (Hertfordshire).

There are various ways of understanding these early local communities in Britain and Ireland. Some scholars have seen them primarily as "population groups," "folk areas," or "tribes," emphasizing therefore that it was the constituent "people" who gave a community its identity. Thus, the Old Irish word *túath* – like the Welsh cognate *tud* – literally means "people," though it is normally rendered as "petty kingdom" by historians, and while the precise meaning of the Old English (OE) suffix *-ingas* is debated (see below), it clearly referred to a group of people in some way. Similarly, it would seem that the OE word *scīr* ("shire") meant a share or division, perhaps of people,[7] but later came to have a more territorial meaning. However, the exact nature of these population groups is more difficult to determine. As an example, we can examine the so-called *-ingas* names, mentioned above. Many modern English place-names, especially in the south and south-east of England, seem to have been formed by combining a personal name with the plural suffix *-ingas*: for example, Hastings (*Hæstingas*), Reading (*Rēadingas*), and so forth. The basic meaning of such names is "sons or descendants of X," and so earlier scholars regarded such place-names as evidence of the initial Anglo-Saxon settlements, perhaps by small, mobile family units. However, J. McN. Dodgson and others have shown that since the distribution of *-ingas* names does not correspond to that of early pagan cemeteries, they rather represent a later stage of colonization or secondary settlement away from the initial settlements, perhaps in the sixth (or early seventh) century.[8] The suffix may still have designated the descendants of a common ancestor, whether real or imagined, but alternative translations include "followers or dependents of X" (where X would be a "founder" rather than biological ancestor), suggesting a rather more complex form of social organization than that of a familial band of immigrants.

An alternative approach has been to see these early population groups in terms of spheres of jurisdiction or lordship, rather than simply groups of people. For example, the early English *scīr*, which should not be compared with the later county-shires but rather with the "small shires" characteristic of later medieval northern England and lowland Scotland (Hallamshire, Hexhamshire, and so on),[9] would seem to have designated an area under the jurisdiction of a *scīrman*, perhaps to be translated as "ealdorman." Thus, the laws of King Ine of the West Saxons (see below) state: "If anyone goes away from his lord without permission, or steals into another *scīr*, and is discovered there, he is to return to where he was before and pay 60 shillings to his lord." The same document also refers to a person seeking "justice in the presence of any *scīrman* or other judge."[10] The northern "shires" may have originated in seventh-century Northumbria, perhaps continuing earlier Romano-British patterns which were more effectively replaced further south.[11] Similarly, one early Irish law tract states that "a *túath* is not a *túath* without a scholar, without a church, without a poet, without a king to extend contracts and treaties to [other] *túatha*," and another states that every *rí túaithe* ("king of a túath") should have a *brithem* ("judge").[12] Again, the *túath* is defined in terms of those who exercised power over it, especially the king, rather than its constituent people or kindred groups.

However, these population or jurisdiction areas certainly had, or at least came to acquire, a territorial aspect as well. Bede and other Latin sources refer to larger examples of such units as *regiones*, "regions," and many later administrative units would seem to have derived from these older folk-areas. Thus, it has been argued that the *Woccingas* ("the people of Wocca") in what is now Surrey formed the basis of the later hundreds of Chertsey and Woking, in which their name is still preserved.[13] Some *regiones* were subdivided into smaller units which formed the basis of later parishes, perhaps in a similar way to the way in which the Hwicce (an early "kingdom" in the west Midlands) formed the basis of the diocese of Worcester.[14] The Hwicce are an interesting case in point, since it has been argued that their territory – itself an amalgamation of smaller peoples – was, in turn, based on an earlier Romano-British unit, and such continuity of Roman and even Iron Age territories has been postulated for other cases, though this is difficult to prove with any certainty. These territories, however delineated, served as the basis for a largely self-sufficient agrarian community, probably practicing transhumance, with a main, well-cultivated core and less-developed woodland and pasture. By c.700, the territory probably had one or more "central places" which served as an administrative focus and which, in many instances in England, became royal vills. Here, we are reminded of the so-called "multiple estate model" regarded as characteristic of the early medieval Celtic economy in Britain, but with an influence on English territorial organization as well.[15] Indeed, it has been argued that *-ingas* names may represent estates, with the *-ingas* place as the main settlement and those based on *-ingetūn* and *-ingaham*, such as Sneinton and Nottingham (both Nottinghamshire), as associated or attached settlements of the estate.[16]

Ethnicity, Kinship, and Status

Documents dating from the seventh and eighth centuries begin to give some indication of the nature of local communities. From these sources, it may be suggested

that an individual's position in a community and his or her interaction with other members of the community were determined by a number of often interrelated factors: ethnicity, kinship, social status, and ties of lordship. Of these, the first is perhaps the most difficult to study: anthropological and historical research have shown that "ethnicity" is a very slippery concept, often based more on *perceived* identity than on biological or linguistic realities. For Britain, the old scenario, based on narrative sources such as the *Anglo-Saxon Chronicle*, of the mass migration of Germanic invaders, slaughtering the native population and pushing the surviving Romano-Britons westward, has long since been discarded. Today, historians and archaeologists talk more in terms of assimilation and intermarriage between the two ethnic groups. This would help explain more fully why the West Saxon kingdom at the end of the seventh century clearly contained a sufficient number of native British men and women for the laws of King Ine to include regulations concerning "Welshmen" (*Wilisc, Wyliscne mon*), though they were explicitly given a lower status than their English counterparts.[17] Interpretation of archaeological evidence may also support this view of early "English" communities as ethnically mixed, though with members who were at least perceived to be of Romano-British ancestry being at a distinct socioeconomic disadvantage.[18] Indeed, recent analysis of DNA from what are now England and Wales, indicating significant genetic variation between the two areas, has been interpreted as arising not necessarily from a mass migration from the continent into England but rather from an "apartheid-like" social organization: the deliberate limiting of intermarriage between the immigrant Germanic minority and the socially and economically disadvantaged native British majority could have resulted in differential reproductive successes on the part of the two groups which, over a number of generations, would lead to the expansion of the Germanic genetic variants at the expense of the "Celtic" DNA.[19] Evidence from other parts of Britain may indicate a similar picture of checkered assimilation. The Irish settlers who penetrated into various parts of south Wales, and other parts of western Britain, during the fifth and sixth centuries, clearly did so in sufficient numbers to leave a not-insignificant impression on the archaeological and onomastic records.[20] Individuals who were commemorated in bilingual Irish ogham and Latin inscriptions were clearly socio-economically and politically important local figures, leaders of, in many cases, cultur-ally mixed communities. In south Wales, the Welsh side of the equation was eventually to dominate the process of assimilation, whereas in western Scotland the opposite appears to have prevailed.

Kinship, or ties of blood relationship, represented perhaps the most fundamental social network for most people, whether commoners or kings, in early medieval Britain and Ireland. One's family were one's best friends. Indeed, the Old English word *freond*, now "friend," could also mean "kinsman," and similarly Old Irish *fine*, "kindred, kinsman," was cognate with OE *wine* ("friend") and could indicate a sup-porter or friend. Kinship was primarily agnatic and patrilineal: that is, the most important family ties for practical purposes were traced through one's father and other direct male ancestors, and the most important kin were largely men who shared a common male ancestor. Cognatic and bilateral kindred could be important in certain circumstances, but it was one's agnates who counted for most.

Historians and anthropologists often distinguish between close kinsmen, especially the nuclear family, and more distant relatives of various degrees. The most basic

kinship unit was undoubtedly the nuclear family, comprising a man, his wife (or wives), and children. In Anglo-Saxon England, the most fundamental land unit was the "hide" (OE *hīd*) which Bede describes as *terra unius familiae* ("the land of one family"), but originally – like its cognate *hīwisc* – it may have referred to the nuclear family or household itself.[21] The nuclear family was both patriarchal and patrilineal in character: the father, as head of the household, was the main authority, and most of his rights, including land, would have passed to his sons. Indeed, in Ireland, the *mac béoathar* or "son of a living father" had very little legal independence from his father, even if he had reached the age of majority, to the extent that "he controls neither foot nor hand."[22] Marriage was in many ways an economic transaction between families. Early English laws refer to a man buying or purchasing a wife and, in certain circumstances, the "bride price" could be paid back. The Celts seem to have categorized marriages according to the level of input of the two sets of kinsmen, including the contribution of property to the new household. Furthermore, in Ireland, and perhaps in Scotland and Wales, polygyny was recognized by law. The church opposed this practice and also sought to control the closeness of kinship between husband and wife. The children of a nuclear family would normally have been the offspring of the man and his wife, though various kinds of artificial kinship were recognized. In Ireland and probably Wales, fosterage involved the temporary movement of a child aged between 7 and 14 to another household, and in England spiritual kinship between godfather and godson was regarded on an equal footing with that of a lord and his "man."

Beyond the nuclear family, the significance of more distant kin seems to have varied to some extent. For England, historians have debated whether cousins and other kinsmen acted together as corporate "descent groups" or lineages, as was certainly the case among the Celtic-speaking peoples.[23] In Ireland, before c.700, the most important kin-group was the *derbfhine* ("true or certain kindred"), which comprised a man's living male relatives descended from his great-grandfather. In addition to this four-generation agnatic lineage, the Irish laws refer to other groups, such as the *íarfhine* or "after kindred" descended from a great-great-grandfather, and even the *indfhine* or "end kindred" descended from a great-great-great-grandfather, but for most practical purposes it was the *derbfhine* which counted. By the early eighth century, it appears that a narrower group of three generations, the *gelfhine* ("white or bright kindred"), had come to replace the *derbfhine* as the most fundamental lineage.

Kinship was an important mechanism for regulating various aspects of society and economy. Kinsmen were integrally involved in the settlement of disputes, and especially the blood-feud (discussed in more detail below), both on the side of the offender as well as that of the victim. In early Ireland, land and farming were largely organized by the kin, and the *derbfhine* functioned as a "joint-farming cooperative."[24] The *fintiu* ("kin-land") was jointly owned by the *derbfhine*, with each member having an equal share, and these men undertook collective plowing and pasturing, according to certain contracts. *Fintiu* was inherited "partibly," that is divided, among the kinsmen, and could not be alienated outside the *derbfhine* without the permission of the whole kin-group. It seems that much of the earliest Anglo-Saxon land had also been kin-land and was similarly inalienable and inherited partibly. However, the development of *bocland* ("book-land") in the seventh century allowed the perpetual

alienation of land to the recently established church recorded in a charter (*boc*), and must have been designed to prevent the claims of later kinsmen. Kin-land could be carefully delimited in order to prevent anyone from outside the kindred using it. It has been suggested that the location of early (even pagan) Anglo-Saxon burials on or near the boundaries of later parishes may indicate that they functioned as boundary markers for early estates, though this has been debated by scholars.[25] However, the evidence from the Celtic-speaking areas seems more convincing: an early Irish law tract on claiming hereditary right to kin-land states that land boundaries could be marked by a *fert* (grave-mound) or *fertae* (a collection of mounds or of burials in one mound), and ogham inscriptions, which date from the fourth to sixth centuries and occur mostly in Cos. Kerry, Cork, and Waterford, have been seen as early boundary markers as well as graves.[26] Similar arguments have been put forward for so-called "early inscribed stones" from Wales as well as other parts of western Britain, dating from the fifth to seventh centuries.[27] The occurrence of patronymics on these early and ogham-inscribed stones may accordingly have indicated a claim to the bounded land by the kinsmen of the interred individual. Thus, it would appear that the connection between land and kinship continued after death.

In addition to ethnic and kinship ties, a person's position in society was also affected by his or her legal status or rank. Although documentary sources often give the impression that later social distinctions also prevailed in the early post-Roman period, it seems that this was not the case. Archaeological evidence for the Anglo-Saxon settlers in Britain, in the form of cemeteries and buildings, suggests that in the fifth and early sixth centuries, the earliest English society was hierarchically relatively "flat." During the sixth century, richer grave-goods indicate an emerging socioeconomic divide, which becomes even more marked in the seventh century. Status was partly hereditary and partly based on wealth, and as such it was by no means fixed: as an eighth-century Irish law tract on status from Munster, *Uraicecht Becc* ("Small Primer"), states, "the freeman goes into the seat of the unfree, and the unfree into the seat of the free." Beyond this fundamental distinction between being "free" and "unfree," our sources refer to kings, nobles, and commoners as different types of freemen. The early Irish law tracts (see below) were especially hierarchical and describe different "grades" of king, noble, and commoner respectively, as well as of "poet" (*fili*) and cleric. In both the Germanic and Celtic systems, status was indicated in terms of calculable "value": the higher one's status, the higher one's value. In England, *wergild* (or *wergeld*), meaning "man-price" or "man-money," was the compensation to be paid for a victim of a homicide to their kinsmen (see below), and was normally calculated in shillings, though the value of a shilling could vary between kingdoms and over time. In Ireland, value was represented in terms of one's honor-price (*log n-enech*, lit. "value of the face"), which – given the lack of a monetary system – was calculated in terms of various units of livestock or precious metal, especially the *sét* ("chattel," worth one heifer) and *cumal* (lit. "female slave," worth ten cows in many texts), both of which varied in precise value. Status was not simply a matter of individual pride and snobbery, but also had practical implications for one's role in society: the value of a person as an oath-helper or a witness in law suits, for example, might depend on their status (see below).

The most fundamental status was that of the male, free peasant, who was head of a household. In England, this was the *ceorl* ("churl," but it could also mean

"husband"): it seems likely that originally the *ceorl* was a freeman who held one hide (*hīd*) of land – about 120 acres – but this definition was breaking down by the seventh century.[28] It is often stated that the equivalent of the *ceorl* in Ireland was the *bóaire* (lit. "cow-freeman"), defined in terms of certain property qualifications, such as the possession of 14 *cumals*, though the laws do describe different grades of *bóaire* and the richest *bóaire* would certainly have surpassed the Anglo-Saxon *ceorl* in terms of wealth. The laws also describe other grades of freeman, including the *ócaire* ("young-freeman") who, being poorer than the *bóaire*, was unable to maintain a household, and the *fer midboth* ("man of middle huts") who was a freeman past the age of fosterage (14 years) but who had not yet attained majority (21 years) and therefore had not inherited property. At the bottom of the social hierarchy were the unfree: hereditary slaves who were tied to their lord's land. Gildas states that the early Anglo-Saxons enslaved defeated Britons,[29] but by the seventh century we have evidence of English slaves too. As the passage from *Uraicecht Becc* quoted above indicates, though hereditary, slavery was by no means a fixed status, and the church was active in freeing slaves. According to Bede (*HE*, iv. 13), Bishop Wilfrid of York freed or "manumitted" 250 slaves on his estate at Selsey (Sussex); and laws of King Wihtred of Kent (see below) required manumission to take place in a church (*EHD*, I, 397 [9]). There were also those whose status was to some extent semi-free, and whose fortunes could go either way over time. The Irish laws describe various kinds of tenant – such as the *fuidir* and the *bothach* – who were relatively poor and were therefore obliged to work for a lord in return for land but were not tied to the land as such. The different grades of *fuidir* depended upon the amount of land held. However, over a number of generations, a family could descend to the status of *senchléithe* or household slave. Similarly, the *læt* of early seventh-century Kent was perhaps a freedman whose family would achieve full freedom after a number of generations.

Whereas the commoner status appears to have depended primarily on wealth, that of nobility was at least in part based on lord and client relationships. The early Anglo-Saxon nobleman, variously termed the *gesith* ("companion") and *gesithcund* ("*gesith*-born"), was essentially the king's "companion." As such, he owed his royal lord military service and could be penalized severely for failing to do so. Bede and other early Anglo-Saxon sources refer to nobles who would follow their king into exile or even make the ultimate sacrifice and die defending him in battle. The Irish noble or *aire* (lit. "freeman") was defined, not by his connection to the king, but rather by the number of clients that he had. Thus, the highest grade of noble, the *aire forgaill* ("*aire* of superior testimony") should have 20 free-clients and the same number of base-clients, while the *aire ardd* ("high *aire*") should have ten of each. This Irish system of clientship (*célsine*) formed a further social network, and can be compared with the various kinds of so-called "feudal" relations characteristic of early and high medieval Europe: the lord (*flaith*) would give a "fief" (*rath*), usually of cattle, to his client (*céle*) in return for certain food-rents and services, depending on the type of clientship. Thus, the free-client (*soer-chéle*), who was a nobleman or perhaps a freeman, paid a fixed annual interest for the "free-fief" for seven years, after which time it could become his property, and performed homage and personal service, especially attendance on his lord. On the other hand, the base-client (*doer-chéle* or *gíallnae*) paid his lord food-rent and interest on the "fief," and also owed hospitality and manual services of various sorts. Whereas free-clientship could be terminated by the

client with no penalty, base-clientship was rather more difficult to leave without the lord's permission. The latter was the typical form of clientship for a non-noble freeman and, despite the title, did not indicate some kind of servile status.

Law and Law-making: Dispute, Feud, and Settlement

By the seventh and eighth centuries, an individual's position in a community was determined by ethnicity, kinship ties, and status. Our best evidence for how these definitions worked out in practice is legal. For the period before c.750, most of our direct evidence of law comes from two Anglo-Saxon kingdoms (Kent and Wessex) and from Ireland. The extant Welsh laws were written down in the twelfth and thirteenth centuries and, while at least some provisions probably can be shown to derive from early medieval practices, much of it is late and, in some cases, has been influenced by English law. Similarly, no very early laws survive from what is now Scotland, though it may be assumed that the inhabitants of the Gaelic kingdom of Dalriada followed laws not entirely dissimilar to their cousins in Ireland. All surviving early English law (not here including ecclesiastical legislation) is in the vernacular, and was, at least in appearance, royal legislation. The earliest texts, dating from the seventh century, are all attributed in the extant manuscripts to kings: Æthelberht, king of Kent (probably written c.602–3); Hlothhere and Eadric, also kings of Kent (c.685); Ine, king of the West Saxons (688–92); and Wihtred of Kent (695; *EHD*, I, 391–407). Furthermore, Bede states how Æthelberht established for his people, "with the advice of his councilors, judicial decrees after the examples of the Romans."[30] However, it has been argued that royal involvement in these so-called law codes increased over time. In terms of linguistic style and arrangement, Æthelberht's "code," in particular, seems more like traditional Kentish customs (*æl þeaw*) presented in a written – rather than oral – medium, rather than straightforward royal legislation. (It is the new, *literary* mode that therefore is "after the examples of the Romans" as Bede mentions.) Hlothhere and Eadric explicitly state that they have added *domas* ("judgments, decisions") to the laws that their forefathers had made, and Ine speaks (in the first person) of establishing true law (*æw*) and true "royal judgments" (*cyne-domas*). The irregular and repetitive structure of Ine's code certainly has the appearance of a series of decisions responding to specific problems as they arose. Royal involvement in judicial process is indicated in the law of Æthelberht by the payment of fines (*wite*) to the king as well as compensation (*bot*) to the victim or his kinsmen. These seventh-century laws therefore appear to trace a shift from customary law recorded in writing to royal law made and enacted in writing.[31]

   The development of medieval native Irish law, sometimes called "Brehon Law," is a rather different matter.[32] The surviving legal manuscripts are relatively late, dating mostly from the fifteenth and sixteenth centuries. However, it is believed that most of the texts contained therein were first written down, in Old Irish, originally between the early/mid-seventh and mid-eighth centuries. Then, in the ninth century, Irish jurists began glossing and adding commentaries to these texts, and continued to do so until the sixteenth century. In addition, the tracts themselves quote fragments of *fénechas* – that is, aphorisms and verse texts on customs – which are older, perhaps dating from the very earliest Christian period, and which had probably been transmit-

ted orally. It is not always an easy task to separate the various strata that accumulated during a period of almost a thousand years. The texts themselves take the form of "tracts," which seem effectively to have been school-books or instruction manuals for aspiring professional judges. As such, they represent an attempt to describe existing legal tradition, and do not constitute royal legislation (*rechtge*): there is some evidence that kings could legislate under special circumstances, such as defeat in battle or at times of plague, but this was not written down, following Roman legal tradition as copied in England and on the continent. Many legal texts appear to have formed part of collections, such as *Senchas Mar* ("The Great Tradition") put together in the north of Ireland during the second quarter of the eighth century, and *Bretha Nemed* ("Judgments of Privileged [or Sacred] Persons"), which were compiled in Munster around the same time using tracts that had been transmitted or composed at different law schools. Other texts, such as the text of status *Críth Gablach* ("Branched Purchase"), from shortly after c.700, survive as independent tracts. The compilation of the collections may have been partly inspired by the *Collectio canonum Hibernensis*, a collection of ecclesiastical law based on biblical and conciliar material but touching also on secular customs, put together in the early eighth century. Indeed, scholars now generally agree that Christianity and canon law had a direct and major influence on the native legal tradition, though the result was different from what was happening elsewhere in Europe, again because of the lack of influence of Roman law. It is worth emphasizing that whereas the seventh-century Anglo-Saxon laws were associated with particular kingdoms, early Irish law was generally regarded as valid for the whole of Ireland, even though individual tracts had been originally composed at specific law schools.

While Irish native law was not legislated law, in the sense of emanating from or backed by some central authority, and so could not be "reformed" as such by means of subsequent law-making in the same way as Anglo-Saxon, it could undergo changes reflecting developments in social structure and practices. Indeed, the nature of the extant Irish tracts, referring to earlier *fénechas* and incorporating later glosses and commentaries, means that such changes can sometimes be detected. For example, from *Críth Gablach* we can determine that by the beginning of the eighth century, physical injury was to be compensated for by means of payment according to status. Originally, it seems that the offender had been required to provide his victim with "sick maintenance" (*folog n-othrusa*), perhaps in his own house, and to support the victim's retinue, until the victim had recovered, but this was subsequently changed, first to the provision of food, a doctor, and nurse at the victim's house, and finally to the payment of compensation.[33]

Indeed, most of the pre-viking laws from Britain and Ireland were "tort law": concerned with specifying the compensation due to a victim or his or her kinsmen to be paid by the offender and/or their kinsmen. As the example above shows, this could take the form of repairing any damage caused, but far more often it involved some kind of compensatory payment. The amount of compensation would depend partly on the nature of the offence, whether to the victim's person or property, and also on the status of the individuals involved, but could also depend on where the offence was committed. In Æthelberht's law, offences range from hair-pulling, for which the compensation was a mere 50 *sceattas*, to the killing of a man, for which

the ordinary *wergild* was 100 shillings. The purpose of the payment was to compensate the victim or his kinsmen for any loss or damages incurred as a result of the offence and thus put an end to any dispute which may otherwise have arisen.

The most infamous form of dispute was undoubtedly the feud or blood-feud. This was common in both continental and insular Europe, and had been described by the first-century Roman author Tacitus in his *Germania*. The feud can be defined as a conflict or series of conflicts between individuals or groups of individuals – usually kindred groups – resolved either through private vengeance or by means of the payment of compensation for the initial offence, which in many cases was a homicide. The killing of the slayer by the kinsmen of the victim should not necessarily be regarded as being symptomatic of a lawless society, though the payment of compensation was presumably a more socially acceptable means of resolution. There are few surviving records of real-life disputes, including feuds, before c.750, and those few that do survive were invariably recorded by, and served the interests of, the church.[34] Therefore, much of our knowledge of dispute settlement for this period derives from provisions described in the laws.

The Old English word *wergild* ("man-price") is commonly used today for the system of compensatory payments due for the injury or killing of a person found in most Germanic and Celtic societies in the early medieval period. The *wergild* was determined primarily by the status of the victim and was paid, in the case of homicide, to the kinsmen, who could include members of both the maternal as well as paternal agnatic lineage. For example, the laws of Hlothhere and Eadric give the *wergild* of a freeman at 100 shillings (compare Æthelberht above) and that of a nobleman at 300 shillings. Ine's laws appear to give a much higher *wergild* for equivalent ranks, though this may have been because of the lower value of coinage in Wessex. As stated above, Ine also devotes some space to offenses involving Welshmen whose *wergild* was usually lower than that of an equivalent Englishman. In Irish law, compensation for a killing was of two kinds. First, there was a *wergild* payment called *éraic* (sometimes *cró*) which was fixed at seven *cumals* for all freemen – noble or commoner – and was paid to the victim's *derbfhine*; on the other hand, there was the *lóg n-enech* (honor-price) which was paid both to the victim's agnatic and his cognatic kinsmen and was determined by the status of the kinsman: presumably because it was the kin who had "lost face" by the offence. Similarly, later Welsh law also made a distinction between *galanas*, which means both the feud and the *wergild* payment, and *sarhaed* (or *sarhad*), which refers both to an injury involving an "insult" and the compensation paid for the insult, determined by status. It would seem that, as a general rule, close kinsmen – the nuclear family – were entitled to a higher proportion of a *wergild* than more distant relatives. Thus, Æthelberht's laws refer to the payment of 20 shillings "at the open grave" (that is, soon after the death of the victim) and then the whole *wergild* within 40 days: this 20 shillings may correspond to the *healsfang* ("grasp of the hand") which was an initial payment made to close kinsmen who were presumably most acutely aggrieved by the loss of the victim and, accordingly, most likely to seek revenge (*EHD*, I, 392 [22]).

As well as the kin of the victim, those of the slayer were involved in the feud and were liable to pay compensation, unless they repudiated him. Thus, according to Æthelberht, if the slayer "departs from the land," his kinsmen should pay half of the victim's *wergild*. Furthermore, the feud could also involve ties of lordship as well as

kinship. In Anglo-Saxon law, the master was liable for a homicide committed by his servant or slave, and the "saga" *Cynewulf and Cyneheard*, entered in the *Anglo-Saxon Chronicle sub anno* 755, describes a feud involving a series of killings in which some of the participants explicitly state "no kinsman was dearer to them than their lord" (*EHD*, I, 176). Feuds which cross over the boundaries between kingdoms were also covered in the laws. For Ireland, *Críth Gablach* describes how a posse of five armed men could be led by the *aire échta* ("nobleman of slaughter") into a neighboring *túath* to take revenge for an offence.[35]

According to both Anglo-Saxon and Irish laws, not all killings were necessarily grounds for pursuing a feud: there were certain "justifiable" killings which could not legitimately be avenged. For example, the late seventh-century fragmentary Irish tract *Córus Fine* ("Legal Ordering of the Kindred") states that killings in revenge for a man of one's *derbfhine*, for a foster-child of the kindred, for a man adopted into the kindred, or for a "sister's son" were all justifiable.[36] Elsewhere, it is stated: "It is lawful to kill in battle, or to kill a thief caught in the act of stealing. An unransomed captive [*cimbid*] may be killed by the individual or kin whom he has wronged, and a violator of the law [*fer coilles cáin*] may be killed by anybody."[37] In England, according to the laws of Ine, the killing of a thief would appear to have fallen into this category, and these laws also emphasize that the guilt of the slayer must be proved before the feud could be pursued. Æthelberht's earlier statement that "if one servant kills another *without cause*, he is to pay the full value" may imply that killing "with cause" would be treated differently (*EHD*, I, 395 [86]).

It is perhaps not surprising that the violence of the feud, and society in general, attracted the concern of the church. The *Penitential* of Bishop Theodore of Canterbury stipulates that if anyone kills a man in revenge for a kinsman, he should do penance for the homicide, though the period of penance could be reduced if he were willing to pay the required compensation.[38] Clearly, Theodore did not regard killing in revenge for a kinsman as a justifiable act. During the late seventh and eighth centuries, many Irish monasteries issued so-called *cána* (sing. *cáin*, "regulation" or "tax"), usually in the name of a saint, including the *Cáin Adomnáin* (AD 697), known in Latin as *Lex innocentium*: Adomnán's law sought to stop violence against "innocents," namely women, children, and clerics, and was prepared to employ penance, amputations, and even death, as well as compensation payments, in order to do so.[39] On the other hand, whereas the growing involvement of Anglo-Saxon royal legislation on the feud was previously regarded as an attempt to limit the feud and the apparent lawlessness, it is more common now to see this as an attempt to assume control of its mechanics and the ensuing profits, for example, via "fines" (OE *wite*). Indeed, the fact that later kings still legislated about the feud indicates that it continued to be an important element in society (see chapter 27).

The non-violent resolution of a blood-feud or any other kind of dispute required the willingness of the offender to come to a settlement with the victim and his or her kinsmen, and to pay the relevant compensation. Indeed, since the kinsmen of the offender were themselves involved in the dispute, it was in their interests to come to a settlement. As pointed out above, according to Æthelberht's laws, a slayer's kinsmen were responsible for paying half of the *wergild*, if the slayer "departs from the land" (*EHD*, I, 392 [23]). The laws therefore contained various methods and procedures aimed at bringing the relevant parties, notably the alleged offender,

to a settlement. One of the most elementary means of self-help described in Irish law was that of *athgabál* or distraint: in its most primitive form, this involved the immediate seizure of the offender's chattels or property by the injured party as a way of compelling him to settle the dispute.[40] The property could then be held for a specified period or "stay" after which, if no settlement had been reached, it was forfeit. Later on, the injured party was required to give advance warning of intention to distrain the offender: here, the intended effect was the same – to enforce a settlement – but the means was less immediate and, no doubt, less contentious. Similarly, the laws of Ine would appear to prohibit an injured party from performing distraint (*wracu*, lit. "vengeance") "before he asks for justice for himself," presumably implying that it was permitted once the offender had failed to do him justice. An alternative way of enforcing a settlement was that of surety; that is, a person who was responsible for ensuring the correct actions of another. The eighth-century Irish tract entitled *Berrad Airechta* ("Shaving of the Court"), which incorporates earlier material, refers to three kinds of surety as the means of guaranteeing agreements and contracts: the *naidm* (earlier *macc*) or "binding surety" who "bound a contract" by pledges and was therefore responsible for enforcing it; the *ráth* ("paying-surety") who had agreed to pay a debt using his own property should the offender fail to do so; and also the *aitire* ("hostage-surety," lit. "go-between") who could be effectively imprisoned by the injured party in the case of a broken contract.[41] Later Welsh law also provided for a surety (*mach*) whose function corresponded to that of the Old Irish *naidm*.

If methods such as distraint and the use of sureties failed to achieve a settlement, the parties could resort to independent judgment by a judge or court. Even, in the relative anarchy of the mid-sixth century, Gildas stated that Britain had judges (*iudices*), though he added, perhaps for rhetorical effect, that they were wicked (*impius*).[42] The Kentish laws of Hlothhere and Eadric state that an injured party or plaintiff could bring a charge against an offender at "an assembly or meeting" (*mæðel oppe þing*) and that the offender should give surety and should do the plaintiff "such right/rectification as the judges of the people of Kent shall prescribe for them" (*EHD*, I, 395 [8–10]). Such assemblies would appear to have been local public gatherings, involving legal experts who determined the final judgment and – like the later hundred-courts that replaced them – were held on or near boundaries, roads or rivers, or at places marked by stones or trees. In Ireland, a case could be brought before a judge (usually singular) or *brithem*, either at a similar public assembly (*airecht*, "court") or privately at the judge's house. Such lawsuits could involve the use of witnesses, preferably independent eye-witnesses to a contract, and also compurgators or "oath-helpers," who would support the oaths and pleadings given by the disputing parties but whose value as such depended on their respective status.

Conclusion

The communities that existed in Britain and Ireland following the disappearance of Roman administration were a product both of earlier forms of social organization and of new dynamics. The political, economic, and demographic changes of the post-Roman period were played out on the smaller stage as well as on a larger, more

well-documented level. Groups of people, the basic element in any society, coalesced into larger groups and into territories occupied by these groups. People became kingdoms. The dynamics of these local communities were organized by means of interrelated networks, based on ethnicity, kinship, status, and lordship. These networks helped define an individual's position in society and formed the basis of how that society regulated itself. Thus, the settlement of disputes between individuals recognized the importance of kinship ties and status as the means of facilitating settlements and ensuring social cohesion within the community as a whole.

Notes

1 Winterbottom (ed.), *Gildas*, pp. 17, 24, 28, 90, 95, 98.
2 Ibid., pp. 28, 98.
3 Blair, *Anglo-Saxon Oxfordshire*, p. 3.
4 Edwards, *Archaeology of Early Medieval Ireland*, pp. 15–19, 35–7.
5 Charles-Edwards, *Early Irish and Welsh Kinship*, pp. 147–65; MacNeill, "Early Irish population-groups."
6 Davies and Vierck, "The contexts"; Dumville, "The Tribal Hidage"; Gelling, *The West Midlands*, pp. 79–85.
7 Cameron, *English Place Names*, p. 51.
8 Dodgson, "The significance"; Gelling, *Signposts to the Past*, pp. 106–21; Kuurman, "An examination."
9 Barrow, *Kingdom of the Scots*, pp. 7–68.
10 Whitelock (ed.), *English Historical Documents* (*EHD*), I, 400 (8), 403 (39).
11 Joliffe, "Northumbrian institutions."
12 Binchy (ed.), *Corpus Iuris Hibernici*, p. 1123.
13 Blair, *Early Medieval Surrey*, pp. 13–14. For the "hundred," see chapter 27 of this volume.
14 Hooke, *The Anglo-Saxon Landscape*; Sims-Williams, *Religion and Literature*, pp. 29–39.
15 See, e.g., Jones, "Early territorial organization" and "Post-Roman Wales."
16 Stafford, *The East Midlands*, p. 30.
17 *EHD*, I, 401 (23.3, 24.2), 402 (32), 405 (54.2), 407 (74); Grimmer, "Britons in early Wessex."
18 Härke, "'Warrior graves?'"
19 Thomas et al., "Evidence for an apartheid-like social structure"; Weale et al., "Y-chromosome evidence."
20 Richards, "The Irish settlement."
21 Charles-Edwards, "Kinship, status and the origins of the hide."
22 Charles-Edwards, *Early Irish and Welsh Kinship*, pp. 36–7.
23 Lancaster, "Kinship in Anglo-Saxon society – I."
24 Ó Corráin, "Ireland c.800," p. 553.
25 Bonney, "Early boundaries and estates"; Goodier, "The formation of boundaries."
26 Charles-Edwards, "Boundaries in Irish law."
27 Edwards, "Early-medieval inscribed stones"; Handley, "The early medieval inscriptions."
28 Charles-Edwards, "Kinship, status and the origins of the hide."
29 Winterbottom (ed.), *Gildas*, pp. 27, 98.
30 Sherley-Price and Latham (eds.), *Bede*, ii. 5.

31 Wormald, "*Exempla Romanorum*"; "*Inter cetera bona*"; *Making of English Law*, pp. 92–101.
32 Charles-Edwards, "Early Irish law"; Kelly, *Guide to Early Irish Law*.
33 Binchy, "Sick-maintenance in Irish law."
34 For example, Sharpe, "Dispute settlement," pp. 174–7; Wormald "A handlist," p. 259.
35 Binchy, *Críth Gablach*, pp. 70–2.
36 Charles-Edwards, *Early Irish and Welsh Kinship*, p. 505.
37 Kelly, *Guide to Early Irish Law*, pp. 128–9.
38 Whitelock, *The Beginnings*, p. 42.
39 Meyer (ed.), *Cáin Adamnáin*.
40 Binchy, "Distraint in Irish law."
41 Sharpe, "Dispute settlement," p. 183.
42 Winterbottom (ed.), *Gildas*, pp. 29, 99.

Further Reading

For two useful introductions to early medieval insular law, see Fergus Kelly's *A Guide to Early Irish Law*, and the late Patrick Wormald's *The Making of English Law*; for studies of law in practice, see the various papers collected in *The Settlement of Disputes in Early Medieval Europe*, edited by Wendy Davies and Paul Fouracre. Law and society for the Celtic-speaking peoples are comprehensively covered in Thomas Charles-Edwards, *Early Irish and Welsh Kinship*. Margaret Gelling's *Signposts to the Past* remains a useful introduction to early English society through place-names.

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