



DE GRUYTER  
OPEN

*Studia Celtica Posnaniensia Vol 4 (1), 2019*  
*doi: 10.2478/scp-2019-0002*

## THE TRANSMISSION OF IRISH LAW IN THE FOURTEENTH AND SIXTEENTH CENTURIES: EXPLORING THE SOCIAL AND HISTORICAL CONTEXTS

MARIA HALLINAN

*National University of Ireland, Galway*

### ABSTRACT

This paper seeks to examine the contexts in which the Old Irish law tracts were transmitted in the period following the church reforms and Anglo-Norman invasion of the twelfth century, focusing primarily on the fourteenth and sixteenth centuries. Within these time frames two major themes will be appraised: 1) the English attitudes towards the practice of Irish law, and 2) the roles of the medieval lawyers and/or their patrons in political life. The central aim of this paper is twofold; firstly to shed light on the historical and social contexts in which the legal materials were later transmitted, and secondly, based on this, to posit some theories as to the possible incentives behind the transmission of the law tracts in these periods.

**Keywords:** Medieval Irish Law, Fourteenth Century Ireland, Sixteenth Century Ireland, Medieval Irish Lawyers, Manuscript Contexts

### 1. Introduction

When the majority of the early medieval Irish law tracts were originally committed to writing in the Old Irish period (c. 600-900 AD), particularly between c.650-750 AD, and continually transcribed during the Old Irish and early medieval Irish period, the milieu in which they were written and transmitted was primarily ecclesiastic. Before the religious reforms of the twelfth century monasteries and church schools were the epicentres of both ecclesiastic and secular learning, preserving and composing mythological, historical, pseudo-historical, poetic, genealogical and legal materials. Simms (2005: 35) draws attention to the fact that almost every scholar of native learning found in annalistic entries before 1200 can be classified as either a member of the clergy or

a teacher in a church school. Ó Cróinín (2017: 140)<sup>1</sup> notes the explicable link between the rise of Christian monastic schools and learning in early medieval Ireland, and remarks on the consensus among several scholars that the writers of the law tracts were most probably clerics in monastic schools. The production of materials such as mythological sagas would seemingly go against the very core of the Christian ethos of this period. Johnston, however, has convincingly argued – in relation to the pre-Christian saga material composed and transmitted in this milieu – that it is flawed to seek out a theological foundation for the compositions of these materials, rather we should focus on the “historical and social environments which these churchmen inhabited” (Johnston 2013: 134). This is encapsulated, for instance, through the pseudo-historical tradition of medieval Ireland which purports to inform us of the origins of the Irish and in doing so brings the “pre-Christian” peoples, that is, the *Túatha Dé Danann*, to the fore.<sup>2</sup> This would eventually culminate in the compilation of the *Lebor Gabála Éirenn* “Book of Invasions” in the late eleventh century, which tells of the multiple invasions that eventually led to the settling of the Gaels in Ireland. Williams remarks that although the mythological aspects of these stories appear to represent a pagan, and thus pre-Christian, past “the story of successive invasions is demonstrably not pre-Christian; it developed gradually in early Christian Ireland” (Williams 2016: 140). He believes that the ecclesiastic *literati* of this period took “from the professional poets’ genealogies, images, and ideas about their native gods” (Williams 2016: 192). These churchmen of the pre-twelfth century reform period ultimately then, according to Johnston, engaged with lay society on a cultural as well as a political level, leading her to the conclusion that “the Church was so deeply embedded within Irish society that social solidarity trumped theological purity” (Williams 2013: 134). This assessment is something we may extend to the writing and transmission of the native laws. Church involvement in the writing and transmission of these materials would also serve to place ecclesiastics on a good standing within the legal corpus. However, this picture changes with the church reforms of the twelfth century. With the coming of continental orders such as the Augustinians and Cistercians, the role of the church in the composing and transmission of “secular” materials, which included the

<sup>1</sup> See also Donnchadh Ó Corráin. 1984a. “Irish vernacular law and the Old Testament”, in: Próinséas Ní Cháthain and Michael Richter (eds.). *Irland und die Christenheit: Bibelstudien und Mission / Ireland and Christendom: the Bible and the Missions*. Stuttgart: Klett-Cotta: 284-307. For the influence of canon law on secular law see Donnchadh Ó Corráin, Liam Breatnach, and Aidan Breen. 1984. “The laws of the Irish”, *Peritia* 3: 382-438; Donnchadh Ó Corráin. 1984b. “Irish law and canon law”, in Próinséas Ní Cháthain and Michael Richter (eds.). *Irland und Europa: die Kirche im Frühmittelalter / Ireland and Europe: the Early Church*. Stuttgart: Klett-Cotta: 157-66.

<sup>2</sup> Mark Williams. 2016. *Ireland’s Immortals: A History of the Gods of Irish Myth*. Princeton: Princeton University Press: 128-94.

laws, deteriorated (Kelly 2009: 250). With the decline of the involvement of the church in the writing and transmission of the law tracts, this duty fell to a number of secular learned families who continued to work on these materials right up until the seventeenth century. Although, as remarked upon by Ó Corráin (2011-12: 207), these families and their members very likely kept a close connection to the church, many of whom derived from monastic centres and schools, taking the materials necessary for their work from those places. Mac Cana (1974: 129), for instance, notes the reputation of the Ó Dálaighs as churchmen as well as poets and experts in native learning. He remarks also on the two sub-divisions of the Ó Duibhgennáin family, one of which had a school of secular learning in Castlefore in Leitrim and the other which was associated with the church of Cill Rónáin in Roscommon, built by one of their members, Fearghal Muimhnech Ó Duibhgeannáin, in 1339. Nevertheless, the motivations for writing the laws in the period before the twelfth century were ultimately intrinsic to the monastic milieu in which they were preserved. However, what were the incentives for the later medieval law-schools after the Anglo-Norman invasion and church reforms? Kenneth Nicholls (1987: 429) believes that “by the late medieval period the early Irish law texts had become a purely antiquarian study”. Such a view was also held by two of the most prominent medieval Irish legal scholars of the twentieth century, Rudolf Thurnesysen and Daniel Binchy. Patterson (1989: 43-44) gives an overview of their views on the later legal materials. Thurnesysen (1973: 63) believed the later lawyers to have been “peddlers of antiquarianism”, with Binchy (1976: 13) holding the view that the later strata of legal commentaries and glosses,<sup>3</sup> although they may help us in elucidating the meaning of a particular word in an Old Irish law tract, are not exceptionally helpful to the legal historian due to these later scholar’s lack of knowledge of the earlier legal materials. Patterson herself argues that the use of these later glosses and commentaries actually showcase how these later scribes “continuously manipulated [the legal

---

<sup>3</sup> For a discussion of these later glosses and commentaries see Riona Doolan. 2018. “Marginalia, incorporated commentaries or reference commentaries: the terminology of later legal sources”, in: Anders Ahlqvist, and Pamela O’Neill (eds.), *Fir fesso: a festschrift for Neil McLeod*. Sydney: University of Sydney: 87-96; Liam Breatnach. 2016. “The glossing of the early Irish law tracts”, in: Deborah Hayden and Paul Russell (eds.), *Grammatica, Gramadach and Gramadeg*. Amsterdam: John Benjamins: 113-132; Thomas Charles-Edwards. 2014. “The manuscript transmission of *Bretha comaitchesa*”, in: Elizabeth Boyle, and Deborah Hayden (eds.), *Authorities and adaptations: the reworking and transmission of textual sources in medieval Ireland*. Dublin: Dublin Institute for Advanced Studies: 95-120; Fergus Kelly Fergus. 2002. “Texts and transmissions: the law-texts”, in: P. Ní Chatháin and M. Richter (eds.), *Ireland and Europe in the Early Middle Ages: Texts and Transmissions*. Dublin: Four Courts Press: 230-42; 234-9; Liam Breatnach. 1996. “On the glossing of the early Irish law-texts, fragmentary texts, and some aspects of the laws relating to dogs”, in: Anders Ahlqvist, (et al., eds.), *Celtica Helsingiensia. Proceedings from a Symposium on Celtic Studies, Commentationes Humanarum Litterarum 107*. Helsinki: Societas Scientiarum Fennica: 11-20.

tradition] so as to harness it to contemporary legal concerns” (Patterson 1989: 52). She argues that there is no reason for us not to view the Irish judicial system as a functional one in the later medieval period, whose foundation was built upon the use of the law tracts as important tools for legal learning.

The views purported by Nicholls, Thurneysen and Binchy, I believe, wrongly negate all other possible incentives the members of the later law-schools, and perhaps even their patrons, had for transmitting the legal materials in the later medieval period. We do not apply this “purely antiquarian” interest to other modes of literary texts, such as narrative, genealogical or hagiographical materials. Genealogies served the propagandistic motives of certain families, most famously for instance in the cases of the Dál Cais and Uí Ní Néill dynasties (Ó Corráin 1995: 71; 74-7). Hagiographical material served the political agendas of monastic centres and even narratives, for example *Acallam na Senórach*, engaged with shifting attitudes of the period such as changing attitudes towards marriage which it did so through contrasting the advantages of Christian marriage as dictated by canon law as opposed to “pagan” marriage customs.<sup>4</sup> It thus seems unlikely that Irish law – which continued to be practised until its abolishment in English parliament in the early seventeenth century – may not have served a purpose beyond purely antiquarian interest, perhaps stretching beyond this into the political sphere.

This particular study will focus primarily on the fourteenth and sixteenth centuries. The main reason for this is due to the fact that these are the two periods in which we have both evidence of legal writing by the secular law schools, and English sources relating to the practice of these laws. These two periods, therefore, act as two contrasting points whereby a historical and social contextualisation may be achieved.

## 2. The Learned Families

After the church reforms and Anglo-Norman invasion of the twelfth century, the task of preserving, glossing and commentating on the Old Irish law tracts fell to several important secular law-schools. These included the Mac Aodhagáin (MacEgan),<sup>5</sup> (Mac Flannchadha MacClancy), Ua Deoráin (O’Doran)<sup>6</sup> and Ua Duibhdabhoireann (O’Davoren)<sup>7</sup> families, amongst a

---

<sup>4</sup> See Annie Donahue. 2004/2005. “The *Acallam na Senórach*: A medieval instruction manual”, *Proceedings of the Harvard Celtic Colloquium* 24/25: 206-215.

<sup>5</sup> See Martin J. Blake. 1909. “Two Irish brehon scripts: with notes on the MacEgan family”, *Journal of the Galway Archaeological and Historical Society* 6: 1-8; T. B. Costello. 1940. “The ancient law school of Park”, *Journal of the Galway Archaeological and Historical Society* 19: 89-100.

<sup>6</sup> See Nerys Patterson. 1986. “The O’Doran legal family and the sixteenth century recensions of

number of other smaller Ulster law-schools (Kelly 2009: 250-60).<sup>8</sup> Gearóid Mac Niocaill notes how these families, from the thirteenth century onwards, “turned to law from other activities” (Niocaill 1973: 28-9). He points to the example of the MacEgans, who had previously been secular tributaries of the Ó Ceallaigh kings of Uí Maine and whose eminence in the legal materials began at the end of the thirteenth century (Niocaill 1973: 29). He remarks how the only pre-fourteenth century manuscript containing a law tract was most likely of ecclesiastical provenance (Oxford, Bodleian Library, Rawlinson MS B 502) (Niocaill 1973: 29). We have a gap, then, of around a century between the church reforms and Anglo-Norman invasion, and the production of manuscripts by these learned families containing large amounts of legal materials. This gap may possibly simply be attributed to the turnover of duties from the church to the legal families taking some time to gain a solid footing. Ó Corráin (2011-12: 208), on the other hand, believes that the Anglo-Norman invasion was the major catalyst behind why manuscript production seemingly seized in this period, noting that many of the most well-endowed churches fell to the conquerors, who plundered and seized church property. In any case, Carney (1987: 689) has noted a general lack of manuscript production between 1150 and 1350, followed by a kind of literary revival in the fourteenth century, reaching its peak in the fifteenth. He does admit that this could be ascribed to the use of stone houses or castles by the *litterati* of this period which afforded better protection of the manuscript materials. There may, however, have been other motivations, including the attitudes towards Irish law in these periods, which provided incentives for these learned families to begin transcribing the legal materials on a greater scale.

---

the Pseudo-Historical Prologue to the *Senchas Már*”, *Proceedings of the Harvard Celtic Colloquium* 6: 131-149; Nerys Patterson. 1991. ‘Gaelic law and the Tudor conquest of Ireland: The social background of the sixteenth century recensions of the Pseudo-Historical Prologue to the *Senchas Már*’, *Irish Historical Studies* 27: 193-215.

<sup>7</sup> See George E. MacNamara. 1912. ‘The O’Davorens of Cahermacnaughten, Burren, Co. Clare, Part 1 (Historical)’, *Journal of the North Munster Archaeological Society* 2, no. 2: 63-93; George E. MacNamara. 1912. ‘The O’Davorens of Cahermacnaughten, Burren, Co. Clare, Part 2 (Genealogical)’, *Journal of the North Munster Archaeological Society* 2, no. 3: 149-64; William O’Sullivan, 1999. ‘The Book of Domhnall Ó Duibhdábhóireann: provenance and codicology’, *Celtica* 23: 276-299; Elizabeth Fitzpatrick. 2008. ‘Antiquarian scholarship and the archaeology of Cahermacnaughten, Burren, Co. Clare’, *The Other Clare* 32: 58-66.

<sup>8</sup> See also Máire Áine Sheenhan. 2016. *Law, Poetry and Medicine: The Literate Professionals in Autonomous Gaelic Ireland, c. 1250 - c. 1630*. Unpublished PhD Dissertation: University College Cork: 27-75 for a discussion on the distribution, activities and roles of these later law-schools.

### 3. Attitudes to Irish Law: Fourteenth Century

The English attitude towards the practice of Irish law in the fourteenth century is encapsulated through a number of laws promulgated in Ireland in 1366 to curb the assimilation of the Anglo-Normans with the native Irish and compound English authority in the country. These laws – known as the Statutes of Kilkenny – were enacted by Lionel of Antwerp, son of King Edward III.<sup>9</sup> The statutes consist of thirty-five articles prohibiting those of Anglo-Norman descent from speaking the Irish language, dressing like the Irish, and fostering Irish children or sending their children to be fostered, among a number of other prohibitions. These statutes make it very clear from the outset that its promulgators consider the Irish in a negative light, describing them as “the Irish enemies” (Hardiman 1843: 5; 7). Our concern here, however, is Article Four, which attacks the practice of Irish or “Brehon” law directly:

that no Englishman be governed in the termination of their disputes by March law nor Brehon law, which reasonably ought not to, be called law, being a bad custom; but they shall be governed, as right is, by the common law of the land (Hardiman 1843: 17; 19).

Resistance against the use of Irish law over English law was evident even a century before these statutes. A letter recorded in the *Calendar of Documents Relating to Ireland* from the king to Henry Archbishop of Dublin and justiciary of Ireland dated 1222 sets out King Henry III’s wish for writs of bounds used in England to be utilised in the same way in Ireland. He remarks on how “in Ireland by Writ of Bounds are framed differently from what they are in England” and that “this is contrary to the law of England” (Sweetman 1877: 87). The king mandates “that henceforth pleas of Bounds in Ireland be held and framed as they are held and framed in England. The laws of Ireland and England are and ought to be the same”. The final sentence portrays the important sentiment that the crown wished for there to be a common law between England and Ireland. In another letter from the King, this time to the Treasurer and Barons of the Exchequer in Dublin, recorded and dated 1257, the king notes that it had previously “been provided that the same laws should be used in the land of Ireland as in the kingdom of England, and that the same writs for the recovery of lands and tenements should run in both countries”

---

<sup>9</sup> A translation of the statutes is provided in James Hardiman (ed.). 1843. “A Statute of the Fortieth Year of King Edward III., enacted in a parliament held in Kilkenny, A.D. 1367, before Lionel Duke of Clarence, Lord Lieutenant of Ireland”, in: *Tracts Relating to Ireland*, vol 2. Dublin: The University Press: 3-121. This can be accessed at the website *CELT: The Corpus of Electronic Texts* (online at <https://celt.ucc.ie/published/T300001-001/>, accessed 30. 5. 2018).

(Sweetman 1877: 87). Taking these entries in the *Calendar of Documents*, along with the article attacking Irish law in the Statutes of Kilkenny, one's knee-jerk reaction would be to theorise that one of the incentives for the learned families to write down the Irish laws in this period was to assert its authority against a foreign power who is attacking its validity. The examples from the *Calendar of Documents*, however, refer only to writs, and although they portray a general wish for a common law to exist between Ireland and England, do not attack specific Irish legal customs. In the same vein, the Statutes of Kilkenny only prohibit the practice of Irish law by those of Anglo-Norman descent; it does not prohibit the practice as a whole. Peter and Fiona Somerset Fry have remarked that the statutes were not primarily meant as an attack on the native Irish but more as an attempt to ensure the preservation of the cultural and political identities of their conquerors (Somerset Fry 1988: 93). The statutes also proved difficult to enforce on a practical level; without the necessary level of administration and organisation the practices the statutes wished to prohibit among the Anglo-Normans continued (Somerset Fry 1988: 94).<sup>10</sup> Ultimately then, did these events provide incentives for the transmission of law tracts in the fourteenth century? Due to the observations concerning the evidence above, it is unlikely that the law tracts were transcribed in this period primarily as a conscious backlash to English attitudes to the practice of Irish law. It is possible that the encroachment of a foreign power provided some sense of urgency for the preservation of these materials. If we turn our attention to the sixteenth century, however, the attitudes towards Irish law would certainly support a theory positing that one of the incentives behind the production of Irish legal materials was to assert independence against the incursion of a foreign power on native customs.

#### 4. Attitudes to Irish Law: Sixteenth Century

The social and historical context of the sixteenth century obviously differs from that of the fourteenth century, especially considering that it was a period which saw the pitting of the Protestant faith by the English monarchy against the Catholic faith in Ireland. In terms of the attitudes towards Irish law, unlike the fourteenth century where the Statutes of Kilkenny sought to ensure the English in Ireland did not engage in the practices of Irish law, the sixteenth century saw a much harsher attitude come to the fore wherein the use of Irish law was viewed as one of the reasons why Ireland had not come under complete control

---

<sup>10</sup> See also Nerys Patterson. 1991. "Gaelic law and the Tudor conquest of Ireland: the social background of the sixteenth-century recensions of the pseudo-historical prologue to the *Senchas Már*", *Irish Historical Studies* 27, no. 107: 200.

of the crown. This is particularly evident through entries recorded in the *Calendar of State Papers*. In an entry dated 11<sup>th</sup> July 1588 (Hamilton 1877: 557-68) entitled “A book of instructions touching the province of Connaught and the country of Thomond, by Sir Richard Bingham, knight, Chief Commissioner there” we are told that after the Irish are “brought to “obediencie,” the next way to reduce them to civil order, is to withdraw the people from the liking or using of their accustomed Brehon laws, Irish orders and customs”. In another letter dated 20<sup>th</sup> October 1589 (Hamilton 1885: 251), from Edward Whyte (clerk of Bingham’s Council) to Sir N. White, Master of Athlone, it is described how the Burkes of Connacht and other rebels in the area “have also established the Brehon laws, and have mass and other exercise of the Popish religion, which they dared not have hitherto of a long time”. Here the use of native Irish law is on par with the practice of the Catholic faith and seen as an open act of rebellion. If the practicing of Irish law was a clear act of rebellion, surely the same could be thought of the act of committing it to writing?

The use of writing as a way of defining cultural identity in the face of a foreign power is highlighted by Ó Macháin who observes how in the second half of the sixteenth century, during the Tudor conquest, Gaelic lordships and the ruling families within these lordships “were anxious to assert their autonomy, self-assurance, and defiance” (Ó Macháin 2012: 121). Because of this, they utilised bardic poetry, which Ó Macháin describes as “a time-honoured, tradition-laden means of validating the independence and ascendancy of any given patron” (Ó Macháin 2012: 121), leading to a rise in patronage in this type of literature in the sixteenth century. This resulted in a resurgence in bardic poetry as “statements of independence and pre-eminence” (Ó Macháin 2012: 122). It must be noted at this point that there was a difference between the patronage of bardic poetry and the patronage of Irish legal materials in this period. Bardic poetry was granted patronage by several families specifically for the very reasons just identified. On the other hand, it is likely a good number of the legal tracts were written in an academic sphere for the purpose of learning, and not just specifically granted patronage for political agendas. Nevertheless, considering the extremely unforgiving English attitude to Irish law in this period, it would not seem too far-fetched to consider the possibility that the copying of Irish legal materials in some instances could be viewed as a way of consciously objecting to this attack on the native Irish legal system in the sixteenth century. A good number of manuscripts containing legal materials survive from this period. Manuscripts, or sections of manuscripts consisting of legal materials, dated to the sixteenth century include: London, British Library, MS Harley 432; Dublin, Trinity College, MS H. 3. 18 (=1337); Dublin, Trinity College, MS H 3. 17 (=1336); Dublin, Royal Irish Academy, MS 23 Q. 6; London, British Library, MS Egerton 88; Copenhagen,



Det Kongelige Bibliotek, MS NKS 261b (originally part of Egerton 88); and London, British Library, MS Nero A7 (dated to 1571). Those considered codices of the fifteenth or sixteenth century include: Dublin, Trinity College, MS H 4. 22 (=1363); London, British Library, MS Egerton 90; and Dublin, Trinity College, MS E.3.3 (=1432). We also have one dating from the seventeenth century: Dublin, Trinity College, MS H 2.15b (=1317). Although pinpointing the exact provenance of each of these manuscripts is a difficult task, something may be said of several of them. Egerton 88 was produced by the O'Davoren family and includes a note by a scribe named Aedh who was working from the MacEgan law-school in Park, Galway (Kelly 2009: 257-8). TCD H 3. 17 and Egerton 90 are both connected to the O'Doran family, with a scribe identifying a quaternion in TCD H 3. 17 as having been begun in lower Leinster (Kelly 2009: 256-7). Similarly, Patterson has shown a strong connection between MS Harley 432 and the O'Doran family, and points out that one of its scribes, "F", was writing from Disert Labrais, six miles southeast from Limerick (Patterson 1986: 132). She also remarks upon the O'Doran connection to RIA 23 Q. 6 section B, which seems to have been partly written in Roscommon (1986: 140), but also has associations with the MacEgans as section A was written in that families' school in Duniry (Patterson 1986: 140; Kelly 2002: 240). Patterson astutely notes that "the geographical distribution of the activities of the branches of the O'Dorans is obviously extensive, ranging from Wexford to Clanwilliam and up to Leix and Roscommon" (Patterson 1986: 140). Similarly, the MacEgans had schools in Ormond in Tipperary and in Duniry and Park (along with other locations) in Galway (Kelly 2009: 253). The later secular families also worked alongside each other frequently, meaning a manuscript may have a connection to more than one family. Take for instance, TCD H 3. 17 which although mainly attributed to the MacEgans was also worked on by the O'Dorans (Patterson 1986: 134). Being unable to pinpoint the provenance of all the manuscripts, along with the vast geographical distribution of these learned families, means that it is unfortunately extremely difficult to say if one part of the country produced more legal materials than another. One must also consider that even if a pattern such as this did emerge, this could merely come down to circumstance, that is, the extant manuscripts from one area happened to survive. Patterson does remark that perhaps so many manuscripts belonging to the MacEgans survive because of "their possession of schools and estates in western regions, remoter from the impact of the reconquest" (Patterson 1986: 137). This does not preclude the production of legal materials in other areas of the country, however.

Ultimately, the number of extant manuscripts containing legal materials from this period, coupled with the English attitude to Irish law, supports the possibility that the transmitting of these materials in some instances may have been a way of consciously pushing against the encroachment of English rule

and its attack on native customs. More work however is needed, particularly on the area of patronage of the later learned legal families, to shed additional light on this conjecture.

#### 4. The Roles of Lawyers and their Patrons in Political Life: Fourteenth Century

The medieval lawyers were not only active in their academic lives but were also involved in the political life of the period, or at least were certainly aware and affected by the political lives of their patrons. In the fourteenth century two entries in the *Annals of the Four Masters* (hereafter *AFM*) note the death of two judges during battles their patrons were engaged in. The battle of Coill an Chlocháin is described in an entry dated 1309 (O'Donovan 1848-51: s.a. 1309.1) wherein Aodh mac Eoghain, the king of Connacht, is slain by Aodh Bréifneach, a member of the Clan Mhuirheartaigh Uí Chonchobhair (Clan Murtagh O'Conors) (Simms 2001: 10). On Aodh Bréifneach's side fell Giolla na Naomh Mac Aodhagáin "Chief Brehon of Connaught, and the most illustrious of the Brehons of his time" (O'Donovan 1848-51: s.a. 1309.1).<sup>11</sup> This is the same Giolla na Naomh to whom is ascribed the writing of two legal poems, one discussing the main principles of distraint (Dublin, Trinity College, MS H 3. 18 = 1337) and another which is an instruction to student of law<sup>12</sup> (Dublin, Trinity College, MS H 4. 22 = 1363 and Dublin, National Library of Ireland, MS G1). He also wrote a legal tract found in TCD H 3. 18 dealing with delicts and contracts<sup>13</sup> which showcases borrowings of Anglo-Saxon legal terms and principles (Kelly 2001: 5-6; 2002: 240) highlighting the innovation on the part of this medieval Irish lawyer.

In 1316 the annalist describes the Second Battle of Athenry (O'Donovan 1848-51: s.a.), fought between Fedlim Ó Conchobair, the King of Connacht and the "the English of West Connaught" including William Burke. Fedlim was

---

<sup>11</sup> *ollamh Connacht i m-breitheamhnas, & aoin-pher do derschuidh do breithemhnaibh na h-aimsire i m-baoí.*

<sup>12</sup> For a discussion, edition and translation of this text see Máirín Ní Dhonnchadha. 1989. "An address to a student of law", in: Donnchadh Ó Corráin, Liam Breatnach, and Kim McCone (eds.). *Sages, Saints and Storytellers: Celtic Studies in Honour of Professor James Carney*. Maynooth: An Sagart: 159-77.

<sup>13</sup> For a discussion of this text see Gearóid Mac Niocaill. 1973. "Aspects of Irish law in the thirteenth century", in: G.A. Hayes-McCoy (ed.). *Historical Studies X: Papers Read Before the Eleventh Irish Conference of Historians*, 1973: 25-42; Kelly, Fergus. 2001. "Giolla na Naomh Mac Aodhagáin: a thirteenth-century legal innovator", in: D. S. Greer and N. M. Dawson (eds.), *Mysteries and Solutions in Irish Legal History*. Dublin: Four Courts Press: 1-14; Kelly, Fergus. 2002. "Texts and transmissions: the law-texts", in: P. Ni Chatháin and M. Richter (eds.), *Ireland and Europe in the Early Middle Ages: Texts and Transmissions*. Dublin: Four Courts Press: 230-42.

slain along with his brehon, Eoin Mac Aodhagáin (John MacEgan). Fedlim Ó Conchobair was Aodh mac Eoghain's son, who was killed by Aodh Bréifneach in the battle of Coill an Chlocháin.

What is clear from the above entries is that the Meic Aodhagáin of Connacht clearly served under the O'Conors of that area (something which has already been noted by a number of scholars) (Kelly 2009: 253-4; Blake 1909: 4; Costello 1940: 89), Giolla na Naomh under Clan Mhuircheartaigh Uí Chonchobhair and Eoin mac Aodhagáin under the O'Conor Roe. Giolla na Naomh's grandson, it seems, was involved in the production of the legal materials found in Dublin, Trinity College, MS H 2. 15a (=1316), which contains several tracts belonging to the *Senchas Már* law text. There is a memorandum on the bottom of p. 36 written in Irish by Aodh Mac Conchubair, Mic Giolla na Naomh, Mic Duinn Shléibhe Mic Aodhagáin (Abbot and Gwynn 1921: 90; O'Neill 2014: 44). This Aodh seems to be the grandson of the same Giolla na Naomh slain at the battle of Coill an Chlocháin. Apart from a clearly suitable timeline between the two figures supporting this view, the use of the surname Mac Duinn Shléibhe, which Máirín Ní Dhonnchadha has noted is only found used with this particular Giolla na Naomh (1989: 161), consolidates the familial link between these two figures. The memorandum is dated Christmas night 1350, which Aodh describes as the second year of the plague. He writes a prayer for the protection of himself and his friends during this plague, which he wrote "in his own father's book" (Abbot and Gwynn 1921: 90-1). The plague he refers to is most likely a plague dated 1349 in *AFM, Annals of Connacht*, and *Annals of Loch Cé* which particularly affected the area of Magh-Luirg (Moyleurg) (O'Donovan 1848-51: s.a. 1349.5; Freeman 1971: s.a. 1349.6; Hennessy 1871: s.a. 1349.5), located in north-east Connacht. The same plague is also mentioned in *Annals of Ulster* but dated there to the year 1346 (Hennessy and MacCarthy 1887-1901: s.a. 1346.6). His death is recorded in *AFM* in 1359 where he is described as "the choicest of the Brehons of Ireland" (O'Donovan 1848-51: s.a. 1359.7).<sup>14</sup>

During the fourteenth century there was a large amount of internal conflict between the O'Conors for the kingship of Connacht.<sup>15</sup> During the time preceding Aodh's memorandum in 1350, however, there was a period of relative stability wherein the king of Connacht, Toirdhealbhach Ó Conchobair, ancestor of Toirdhealbhach Donn (O'Conor Don) (Simms 2001: 2), reigned from 1324-1345, being deposed for a period in 1342 by Aodh mac Aodha Bréifnigh Uí

---

<sup>14</sup> *Aodh mac Conchobhair Meic Aedhaccáin d'écc aen-rogha bretheaman Ereann.*

<sup>15</sup> Katharine Simms provides an exemplary account of these conflicts in her 2001 article, "A lost tribe: the Clan Murtagh O'Conors", *Journal of the Galway Archaeological and Historical Society* 53: 1-22.

Chonchobhair, the last of the clan Murtagh O’Conors to hold the kingship of Connacht. His son Aodh reigned from 1345-1350, and again from 1351-56, being deposed between 1350-1351 by Aodh, ancestor of Toirdhealbhach Ruadh (O’Conor Roe) (Simms 2001: 2), and again for a period in 1353. Perhaps this period of relative stability of patronage for Aodh of TCD H 2. 15a is what led to the transmitting of the law tracts in this period. The transmission of manuscripts in this period has also been linked to the consolidation of power by Gaelic families within the context of internal struggles (i.e. between Gaelic families or branches of families, not against the English). Georgia Henley uses the contents and style of the Book of Ballymote, created during the end of the fourteenth century, as an example of this, remarking that it contains “displays of group identity motivated by ‘changing power relations’” (Henley 2015: 26). In light of the political circumstances (i.e. conflicts over the succession of the kingship of Connacht) surrounding the making of this manuscript,<sup>16</sup> she believes that its commission by its patron Tomaltach mac Taidgh Mac Donnchadha, named as king of Tír Oillela on folio 66r, was a way for the Mac Donnchadha family “to reaffirm their territorial holdings in the face of frequent raiding and an uncertain future” by “commissioning hereditary historiographers to write down their genealogies, solidifying their dynasty’s claim to an ancestral past between the covers of a book that invoked the cultural strength of pre-Norman Ireland and its distinctive artistic style through displays of interlace and zoomorphic initial letters” (Henley 2015: 27). It is also interesting to note that Toirdhealbhach Ó Conchobair is named as king of Connacht on colophons found on folios 62r and 105v of this manuscript (Henley 2015: 26), meaning Tomaltach sided with him in the succession disputes of the period (Henley 2015: 27). Obviously, the nature of the contents in the Book of Ballymote differs from that of the law tracts. However, the use of manuscripts and the preservation of native materials as a way of asserting dominance within Gaelic Ireland is interesting to note, and perhaps may have also played a role in the transmission of the law tracts in this period. Again, however, a more detailed study on the nature of patronage relating specifically to the legal materials, which is out of the bounds of this study, would shine a better light on this.

##### 5. Roles of Lawyers and their Patrons in Political Life: Sixteenth Century

The roles of Irish lawyers in the political life of the sixteenth century, along with the view that the practicing of Irish law was an act of rebellion, goes against the idea that the laws were still written in this period as a pure act of

---

<sup>16</sup> See also Ruairí Ó hUiginn. 2018. “The Book of Ballymote: scholars, sources and patrons”, in Ruairí Ó hUiginn (ed.), *Book of Ballymote: Codices Hibernenses Eximii 11*. Royal Irish Academy: Dublin: 191-220.

antiquarian interest. In a letter dated January 31<sup>st</sup> 1572 from Sir Edward Fitton, Lord President of Connacht and Thomond and the Vice-Treasurer of Ireland, to Lord William Burghley, Lord High Treasurer of England, we have enclosed the following:

Description of the old Irish law, called, “Kylcolgashe,” administered by their Judges, called “Breanes,” which inflicts punishment to the fourth generation, not only in a right line, but also on collateral relatives: in the handwriting of the Brehon James Oscyngan. Latin (Hamilton 1860: 465).

The description of the Irish custom of “kylcolgashe” (*cin comhfhocuis*) is given in Latin in the handwriting of a judge known as James Oscyngan (Ó Scingín), who it seems Sir Edward Fitton procured the letter from before he sent it to Burghley (McInerney 2011: 114).<sup>17</sup> This means that this letter showcases an example of an Irish judge active within the English administration, something already noted by a number of scholars. Patterson (1989: 48), for example, observes several instances wherein Irish judges worked as negotiators on behalf of their lords who were swearing allegiance to the crown.

There is another letter dated from 1593 mentioning the role of a judge, sent by Hugh Maguire, lord of Fermanagh, to Hugh O’Neill, the Earl of Tyrone, intercepted by Turlough [Lynagh] O’Neill’s men. Both Maguire and O’Neill were extremely prominent figures during the Nine Years War (1593-1603) who resisted English rule in Ireland. In it, Maguire speaks of his advances and attacks on areas around Ballymote, including a castle housed by Sir Richard Bingham’s brother George. He goes on to request that O’Neill:

send William M’Croddan [In margin, a brehon or judge under the Earl] from the East [In margin, from the Bann, which is east from Maguire’s country] without stay, about the business that you know yourself (Hamilton 1890: 113-4).

What exactly the judge William M’Croddan (Mac Rodáin) was needed for is uncertain; Maguire clearly did not want to commit this to writing, perhaps fearing the letter would be intercepted and handed over to the enemy, which it was. In any case, this judge clearly had a role to play in the political agenda of both O’Neill and Maguire, proving these lawyers were impacted by and involved in the political turmoil of this period, acting both within an English and Irish agenda. Regarding the latter, Patterson (1989: 44) further notes the involvement of judges in the political life of the time, wherein members of the learned classes partook in uprisings against the Tudor conquest, acting as

---

<sup>17</sup> For a full transcription of the letter see Herbert F. Hore. 1857. “Irish brehons and their laws”, *The Ulster Journal of Archaeology* 5: 43.

diplomats, messengers and advisers, and how some were even executed by English officials or had their lands forfeited due to their opposition. She remarks that:

They were unavoidably caught up in contemporary events of great urgency. It is not easy to reconcile their active involvement in the affairs of the day with Thurneysen's assessment of them as detached antiquarians (Patterson 1989: 44).

Based on the documentary evidence, Irish lawyers in this period were clearly actively involved in political life, meaning these roles were most likely not far removed from the practice of transmitting the legal materials in the sixteenth century.

## 6. Concluding Remarks

An examination of the social and political contexts in which the Old Irish law tracts were transmitted (as well as glossed and commentated on) in the fourteenth and sixteenth centuries helps us glean aspects of the lives of the medieval learned families and lawyers, and the possible incentives they may have had for engaging in the production of manuscripts containing legal materials. In the fourteenth century, the English attitude towards the practice of Irish law was far from positive but was certainly not as severe as in the sixteenth century. The transmission of Irish law in the sixteenth century could very well be viewed as a way of asserting the validity of native Irish customs against a foreign power. This, along with the active roles of lawyers in the political life of this period, would challenge the idea that the Old Irish law tracts were transmitted purely out of antiquarian interest. Whilst preservation for preservation's sake may have been one of the motivations, it is unlikely to have been the only one. The motivations in the fourteenth century are more difficult to shed light on, and more work on the nature of patronage is necessary. However, the political activities of one's patrons, along with the beginning of attacks on the Irish legal system, must have impacted the learned families on some level. It is also interesting to observe that these materials may have been used as a way to assert authority within the sphere of the Gaelic lordships, as opposed to the sixteenth century where it was used outwardly against the encroachment of English rule. Ultimately, even though the character of this appraisal is one which must by its very nature be speculative, it is hoped that these questions would become pertinent ones within the future scholarship of medieval Irish law.

## ACKNOWLEDGEMENTS

The research was supported by the Irish Research Council (under the Government of Ireland Postgraduate Scholarship Programme) whose support the author would like to gratefully acknowledge.

## REFERENCES

- Abbot, Thomas K. and Edward J. Gwynn. 1921. *Catalogue of the Irish Manuscripts in the Library of Trinity College, Dublin*. Dublin and London: Hodges, Figgis & Co. and Longmans, Green, & Co.
- Binchy, Daniel A. 1976. "Irish history and Irish law: II", *Studia Hibernica* 16: 7-45.
- Blake, Martin J. 1909. "Two Irish brehon scripts: with notes on the MacEgan family", *Journal of the Galway Archaeological and Historical Society* 6: 1-8.
- Breatnach, Liam. 1996. "On the glossing of the early Irish law-texts, fragmentary texts, and some aspects of the laws relating to dogs", in: Anders Ahlqvist, (et al.,eds.), *Celtica Helsingiensia. Proceedings from a Symposium on Celtic Studies, Commentationes Humanarum Litterarum 107*. Helsinki: Societas Scientiarum Fennica: 11-20.
- Breatnach, Liam. 2016. "The glossing of the early Irish law tracts", in: Deborah Hayden and Paul Russell (eds.), *Grammatica, Gramadach and Gramadeg*. Amsterdam: John Benjamins: 113-132.
- Carney, James. 1987. "Literature in Irish, 1169-1534", in: Art Cosgrove (ed.). *A New History of Ireland*, vol 2. Oxford: Oxford University Press: 688-707.
- CELT: Corpus of Electronic Texts, Online: University College Cork. URL: <<http://www.ucc.ie/celt>>.
- Charles-Edwards, Thomas. 2014. "The manuscript transmission of Bretha comaithchesa", in: Elizabeth Boyle, and Deborah Hayden (eds.), *Authorities and adaptations: the reworking and transmission of textual sources in medieval Ireland*. Dublin: Dublin Institute for Advanced Studies: 95-120.
- Costello, Thomas B. 1940. "The ancient law school of Park", *Journal of the Galway Archaeological and Historical Society* 19: 89-100.
- Doolan, Riona. 2018. "Marginalia, incorporated commentaries or reference commentaries: the terminology of later legal sources", in: Anders Ahlqvist, and Pamela O'Neill (eds.), *Fír fesso: a festschrift for Neil McLeod*. Sydney: University of Sydney: 87-96.
- Donahue, Annie. 2004/2005. "The Acallam na Senórach: a medieval instruction manual", *Proceedings of the Harvard Celtic Colloquium* 24/25: 206-215.
- Fitzpatrick, Elizabeth. 2008. "Antiquarian scholarship and the archaeology of Cahermacnaghten, Burren, Co. Clare", *The Other Clare* 32: 58-66.
- Freeman, A. Martin (ed.). 1944. [Reprint 1971]. *Annála Connacht, The Annals of Connacht*. Dublin: Dublin Institute for Advanced Studies.
- Hamilton, Hans Claude (ed.). 1860. *Calendar of State Papers Relating to Ireland 1509-1573*. London: Longman, Green, Longman & Roberts.
- Hamilton, Hans Claude (ed.). 1877. *Calendar of State Papers Relating to Ireland 1586-1588, July*. London: Longman, Green, Longman & Roberts.

- Hamilton, Hans Claude (ed.). 1885. Calendar of State Papers Relating to Ireland 1588, August-1592, September. London: Longman, Green, Longman & Roberts.
- Hamilton, Hans Claude (ed.). 1890. Calendar of State Papers Relating to Ireland 1592, October-1596, June London: Longman, Green, Longman & Roberts.
- Hardiman, James (ed.). 1843. "A Statute of the Fortieth Year of King Edward III., enacted in a parliament held in Kilkenny, A.D. 1367, before Lionel Duke of Clarence, Lord Lieutenant of Ireland", in: Tracts Relating to Ireland, vol 2. Dublin: The University Press.
- Henley, Georgia. 2015. "The intersection of ethnicity and material culture: manuscripts, book shrines and political realities in late medieval Gaelic Ireland", *Studia Celtica Fennica: Suomen keltologisen seuran vuosikirja* 12: 21-34.
- Hennessy, William M.(ed.). 1871. The Annals of Loch Cé, 2 vols. London: Longman.
- Hennessy, William M., and B. MacCarthy (eds.). 1887-1901. Annals of Ulster. 4 vols. Dublin: Hodges, Figgis & Co.
- Hore, Herbert F. 1857. "Irish brehons and their laws", *The Ulster Journal of Archaeology* 5: 36-54.
- Johnston, Elva. 2013. Literacy and Identity in Early Medieval Ireland. Woodbridge: Boydell & Brewer.
- Kelly, Fergus. 2001. "Giolla na Naomh Mac Aodhagáin: a thirteenth-century legal innovator", in: Desmond S. Greer and Norma M. Dawson (eds), *Mysteries and Solutions in Irish Legal History*. Dublin: Four Courts Press: 1-14.
- Kelly, Fergus. 2002. "Texts and transmissions: the law-texts", in: Próinséas Ní Chatháin and Michael Richter (eds.), *Ireland and Europe in the Early Middle Ages: Texts and Transmissions*. Dublin: Four Courts Press: 230-42.
- Kelly, Fergus. 1988 [Reprint 2009]. A Guide to Early Irish Law. Dublin: Dublin Institute for Advanced Studies.
- Mac Cana, Proinsias. 1974. "The rise of the later schools of *Filidheacht*", *Ériu* 25: 126-146
- MacNamara, George E. 1912. "The O'Davorens of Cahermacnaughten, Burren, Co. Clare, Part 1 (Historical)", *Journal of the North Munster Archaeological Society* 2, no. 2: 63-93.
- MacNamara, George E. 1912. "The O'Davorens of Cahermacnaughten, Burren, Co. Clare, Part 2 (Genealogical)", *Journal of the North Munster Archaeological Society* 2, no. 3: 149-64.
- Mac Niocaill, Gearóid. 1973. "Aspects of Irish law in the thirteenth century", in: G.A. Hayes-McCoy (ed.). *Historical Studies X: Papers Read Before the Eleventh Irish Conference of Historians*, 1973: 25-42.
- McInerney, Luke. 2011. "A Mac Fhlannchadha fosterage document, c.1580", *The Irish Genealogist* 13, no. 2: 93-128.
- Ní Dhonnchadha, Máirín. 1989. "An address to a student of law", in: Donnchadh Ó Corráin, Liam Breatnach and Kim McCone (eds.). *Sages, Saints and Storytellers: Celtic Studies in Honour of Professor James Carney*. Maynooth: An Sagart: 159-77.
- Nicholls, Kenneth. 1987. "Gaelic society and economy in the high middle ages", in: Art Cosgrove (ed.). *A New History of Ireland*, vol 2. Oxford: Oxford University Press: 397-438.
- Ó Corráin, Donnchadh. 1984a. "Irish vernacular law and the Old Testament", in: Próinséas Ní Cháthain and Michael Richter (eds.). *Irland und die Christenheit: Bibelstudien und Mission / Ireland and Christendom: the Bible and the Missions*. Stuttgart: Klett-Cotta: 284-307.
- Ó Corráin, Donnchadh. 1984b. "Irish law and canon law", in: Próinséas Ní Cháthain and Michael Richter (eds.). *Irland und Europa: die Kirche im Frühmittelalter / Ireland and Europe: the Early Church*. Stuttgart: Klett-Cotta: 157-66.



- Ó Corráin, Donnchadh. 1995. "Irish origin legends and genealogy: recurrent aetiologies", in: Tore Nyberg et al (ed.) *History and Heroic Tale: a Symposium*. Odense: Odense University Press: 51-96
- Ó Corráin, Donnchadh. 2011-12. "What happened Ireland's medieval manuscripts?", *Peritia* 22-23: 191-223.
- Ó Corráin, Donnchadh, Liam Breatnach and Aidan Breen. 1984. "The laws of the Irish", *Peritia* 3: 382-438.
- Ó Cróinín, Dáibhí. 2017. *Early Medieval Ireland: 400-1200*, 2<sup>nd</sup> Edition. London and New York: Taylor & Francis.
- O'Donovan, John. 1848-51. *Annals of the Kingdom of Ireland by the Four Masters*, 7 vols. Dublin: Hodges & Smith.
- Ó Macháin, Pádraig. 2012. "Two Nugent manuscripts: the Nugent Duanaire and Queen Elizabeth's Primer", *Ríocht na Midhe: Records of the Meath Archaeological and Historical Society* 23: 121-142.
- O'Neill, Timothy. 1984 [Reprint 2014]. *The Irish Hand: Scribes and Their Manuscripts from the Earliest Times*. Cork: Cork University Press.
- O'Sullivan, William. 1999. "The Book of Domhnall Ó Duibhdábhoireann: provenance and codicology", *Celtica* 23: 276-299.
- Ó hUiginn., Ruairí. 2018. "The Book of Ballymote: scholars, sources and patrons", in: Ruairí Ó hUiginn (ed.), *Book of Ballymote: Codices Hibernenses Eximii 11*. Royal Irish Academy: Dublin: 191-220.
- Patterson, Nerys. 1986. "The O'Doran legal family and the sixteenth century recensions of the Pseudo-Historical Prologue to the *Senchas Már*", *Proceedings of the Harvard Celtic Colloquium* 6: 131-149.
- Patterson, Nerys. 1989. "Brehon law in late medieval Ireland: 'antiquarian and obsolete' or 'traditional and functional'?", *Cambridge Medieval Celtic Studies* 17: 43-63.
- Patterson, Nerys 1991. "Gaelic law and the Tudor conquest of Ireland: the social background of the sixteenth-century recensions of the pseudo-historical prologue to the *Senchas Már*", *Irish Historical Studies* 27, no. 107: 193-215.
- Sheenhan, Máire Áine. 2016. *Law, Poetry and Medicine: The Literate Professionals in Autonomous Gaelic Ireland, c. 1250 - c. 1630*. Unpublished PhD Dissertation: University College Cork.
- Simms, Katharine. 2001. "A lost tribe: the Clan Murtagh O'Conors", *Journal of the Galway Archaeological and Historical Society* 53: 1-22.
- Simms, Katharine. 2005. "Bardic schools, learned families", in: Seán Duffy and Ailbe Mac Shamhráin and James Moynes (eds.). *Medieval Ireland: An Encyclopedia*. New York and London: Routledge: 35-7.
- Somerset Fry, Peter and Fiona Somerset Fry. 1988. *A History of Ireland*. London and New York: Barnes and Noble Books.
- Sweetman, Henry S., (ed.). 1875. *Calendar of Documents, Relating to Ireland: 1171-1251*. London: Longman & Co.
- Sweetman, Henry S., (ed.). 1877. *Calendar of Documents, Relating to Ireland: 1252-1284*. London: Longman & Co.
- Thurneysen. Rudolf. 1978. "Das keltische Recht", translated by Dafydd Jenkins, in: Dafydd Jenkins, *Celtic Law Papers*. Brussels: Librairie Encyclopédique.
- Williams. Mark. 2016. *Ireland's Immortals: A History of the Gods of Irish Myth*. Princeton and Oxford: 128-94