

Contributors

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Lawyers in early Ireland

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BY FAR THE MOST IMPORTANT source of knowledge about the pre-Norman Irish lawyers are the Early Irish law-texts,¹ although information from these can be supplemented by information from the annals and other texts. The greater part of the law-texts is of course concerned with the law itself rather than the lawyers, and thus serves mostly to give us an insight into the minds of the academic lawyers. There are, however, two varieties of legal text which are closely concerned with practising lawyers, namely, texts on legal procedure,² and status-texts.³ The latter form a very important group amongst the early Irish law-texts, and deal with the various classes and grades of person in society, for example, kings, nobles, churchmen, craftsmen, etc. The subject matter of these texts, which might well be regarded as the earliest sociological textbooks of Western Europe, is relevant to the law in that the legal standing of any person (for example, the value of one's oath, the amount one might enter into a contract for, etc.) was determined by one's position in society, and the measurement used for this was *lóg n-enech* (honour-price), which varied greatly. Thus the king of a petty kingdom (*rí túaithe*) had an honour-price of 42 *séts* (= 21 cows), the ordinary self-sufficient farmer (*bóaire*) one of 5 *séts*, the chief poet (*ollam filed*) also had 42 *séts*, whereas the lowest grade of poet (*fochloc*) had 1½ *séts*. The status of the lawyers in early Irish society is a matter of some interest, and, as we will see, this is something which the texts give us information on.

1. D.A. Binchy, *Corpus Iuris Hibernici* (Dublin, 1978)—hereafter *CIH*—consists of a diplomatic edition of the vernacular Irish law-texts. The best general work on the laws is Fergus Kelly, *A guide to early Irish law* (Dublin, 1988). For editions of individual texts see the latter, pp. 264-83.
2. E.g. R. Thurneysen, 'Cóic Conara Fugill: Die fünf Wege zum Urteil', *Abh Preuss Akad Wiss, Phil-Hist Kl, Jahrg. 1925, Nr. 7*; Fergus Kelly, 'An Old-Irish text on court procedure', *Peritia*, v(1986), 74.
3. E.g. *Crith Gablach*, *Uraicecht Becc*, *Míadsleхта*, etc.; see F. Kelly, *Guide*, p. 267.

In this essay I propose first to look at the academic lawyers and their work, and then go on to the practising lawyers, both judges and advocates, which will involve examining some previously unedited texts.

Some remarks on the date of the law-texts will be appropriate at this point. The vast majority of Irish law-texts survive only in manuscript copies dating from the fourteenth to the seventeenth centuries; the earliest surviving manuscript containing legal material is Rawlinson B 502, written in the 1120s.⁴ The date of the manuscript is not of course the same as the date of composition of a particular text; on the basis of linguistic and historical criteria one can determine in varying degrees of precision the period to which a text belongs; in some cases this period is as narrow as a few years, while in others it is as broad as a century or two. We can thus build up a picture of a continuous legal tradition from the Old Irish period (c.600–900), through the Middle Irish period (c.900–1200), to the Classical Modern Irish period (c.1200–1650). The end of this tradition coincides with the demise of the Gaelic aristocracy and the social system which supported it.

Towards the beginning of the written tradition belong four important texts, the first three in Old Irish, and the fourth in Latin; *Bretha Nemed Toisech*, written in Munster in the second quarter of the eighth century,⁵ the *Senchas Már*, probably written towards the beginning of the eighth century,⁶ *Cáin Fuithirbe*, another Munster text, completed some time between 678 and 683,⁷ and the *Collectio Canonum Hibernensis*, which belongs to the early eighth century.⁸ The *Collectio Canonum Hibernensis* consists mostly of citations from Scripture, early church Fathers, and

4. This manuscript is preserved in the Bodleian Library in Oxford; that it was written at Glendalough is argued by Pádraig Ó Riain, 'The Book of Glendalough or Rawlinson B 502', *Éigse*, xviii (1980-1), 161.

5. See Liam Breatnach, 'Canon law and secular law in early Ireland: the significance of *Bretha Nemed*', *Peritia*, iii (1984), 439. The text is in *CIH* 2211-2232; my edition of the first part has appeared in *Ériu*, xl (1989), 1.

6. It is in fact a compilation of individual texts on various legal topics. See R. Thurneysen, 'Aus dem irischen Recht IV: 6. Zu den bisherigen Ausgaben der irischen Rechtstexte: I. Ancient Laws of Ireland und *Senchas Már*', *ZCP*, xvi (1926), 167; idem, 'Aus dem irischen Recht V: 8. Zum ursprünglichen Umfang des *Senchas Már*', *ZCP*, xviii (1930), 356.

7. See Liam Breatnach, 'The ecclesiastical element in the Old-Irish legal tract *Cáin Fhuithirbe*', *Peritia*, v (1986), 36.

8. Herrmann Wasserschleben (ed.), *Die irische Kanonensammlung* (2nd ed., Leipzig, 1885). For the authorship and date see James F. Kenney, *Sources for the early history of Ireland: ecclesiastical* (New York, 1929), pp. 247-50.

synods, both Irish and foreign, but it also contains secular regulations which are paralleled in the vernacular law-texts. Similarly many of the vernacular law-texts are concerned with ecclesiastical matters, and I have recently shown that some passages in these are in fact translations of sections of the *Collectio Canonum Hibernensis*.⁹ There are furthermore some instances, admittedly not very many, of a mixture of Latin and Irish in a single text.¹⁰ It should be noted, however, that the vast majority of the texts of all periods are written in Irish. The earliest datable text of the four mentioned above is *Cáin Fuithirbe*; there are, of course, other, shorter, texts which belong among the oldest stratum of Irish law-texts, but no text is earlier than the seventh century.

The early law-texts are composed in two forms, prose and verse: some are composed mostly or entirely in prose,¹¹ others mostly or entirely in verse,¹² while in others we find roughly the same amount of prose and verse.¹³ I have recently shown that a particular verse-type, based on alliteration and stress-count, which had been believed to be much more archaic than the prose texts is in fact nothing of the sort.¹⁴ The verse passages do, however, call to mind the poets. Already in the early law-texts we find references to, or citations from, other law-texts, which show that they are the work of literate scholars, rather than transcriptions of oral doctrine.¹⁵ The academic lawyers do not confine themselves to other law-texts, but in order to explicate various legal principles they press into service tales and sagas, which were normally the preserve of the poets.¹⁶

Who then were the scholars who wrote the early Irish law-texts? One class of person involved in their composition was the *fili* (poet), whose competence in the law is explicitly required by the Old Irish status-text *Uraicecht na Riar*, when it lists the

9. See the article referred to in note 5, and Donnchadh Ó Corráin, Liam Breatnach, Aidan Breen, 'The laws of the Irish', *Peritia*, iii (1984), 382 at 417-20.

10. E.g. *CIH* 1192.

11. E.g. *Uraicecht Becc* (*CIH* 1590-1618, etc.); see Kelly, *Guide*, p.267.

12. E.g. *Bretha Nemed Toisech*; see note 5.

13. E.g. D.A. Binchy (ed.), 'Bretha Déin Chécht', *Ériu*, xx (1966), 1.

14. See the article referred to in note 5.

15. E.g. in *Bretha Nemed Toisech*, *CIH* 2211.25 citing from *Antéchtæ mBreth*, and *CIH* 2213.29-30 referring to *Crith Gablach*.

16. E.g. the story of 'Finn and the man in the tree', *CIH* 879.23-880.14, ed. Kuno Meyer, *Rev Celt*, xxv (1904), 344 (see also *ZCP*, xxx (1967), 17), and 'The saga of Fergus mac Léti', *CIH* 882.4-883.22, ed. D.A. Binchy, *Ériu*, xvi (1952), 33; both of these are found among the Old Irish glosses on the *Senchas Már*.

qualifications of the *ollam filed* (master poet), the highest grade of *fili*, as *secht cócait drécht lais . . . is éola i cach coimgniu, 7 is éola i mbrithemnacht fénechais* (he has three hundred and fifty compositions/tales . . . he is knowledgeable in all historical science, and he is knowledgeable in the jurisprudence of Irish law).¹⁷ The word *fili* (plural *filid*) is usually translated 'poet', but it is clear that the *fili* was much more than a versifier—he was a learned academic who had undergone a rigorous education in all branches of secular knowledge; furthermore, he wrote in prose as well as verse.¹⁸ The *fili* as *fili* was mainly concerned with secular learning, but that is not to say that he was isolated from ecclesiastical learning; quite the opposite, for in very many cases of identifiable *filid* in the early period we find that they are either clerics as well as *filid* or at least have close connections with monasteries. Three instances will suffice: Colmán mac Lénéni (d. 604), who began his career as a *fili*, entered the church in later life, and founded the monastery of Clúain Úama (Cloyne, Co. Cork),¹⁹ Máel Muru Othna (d. 887), whose epithet *Othna* 'of Fahan' (Co. Donegal) shows that, if not a cleric, he was at least attached to the monastery there,²⁰ and Fland Mainistrech (d. 1056), the *fer léiginn* (man of Latin learning) of the monastery of Monasterboice, who wrote extensively on secular subjects, as a *fili*.²¹ The majority of the early law-texts are anonymous; two of the rare cases, however, where we have names of authors are revealing in this context. Both of these texts have already been mentioned above. The first is *Cáin Fuithirbe*, the prologue to which names those involved in the commissioning and drafting of the text, namely, Cummine, Díblíne, Banbán, all clerics, and Amairgen, a *fili*.²² It also names secular and ecclesiastical rulers who adopted and promulgated the laws contained in this text.²³ The second is *Bretha Nemed Toisech*, the authorship of which is ascribed to three kinsmen,

17. Liam Breatnach, *Uraicecht na Ríar: the poetic grades in early Irish law* (Dublin, 1987), p. 102, §2.

18. See the work referred to in the preceding note, especially pp. 98-100.

19. See R. Thurneysen, 'Colmán mac Lénéni und Senchán Torpéist', *ZCP*, xix (1932), 193.

20. See James Carney, 'The dating of Early Irish verse texts, 500-1100', *Éigse*, xix (1982-3), 177 at 178, 187.

21. See Eoin MacNeill, 'Poems by Flann Mainistrech on the dynasties of Ailech, Mide and Brega', *Archiv Hib*, ii (1913), 37.

22. *Peritia*, v (1986), 46-7.

23. *Peritia*, v (1986), 42-6.

collectively known as the *Ui Búirecháin*, that is, Forannán, a bishop, Máel Tuili, a *fili*, and Báethgalach, a judge.²⁴

All of this shows that the early Irish law-texts were written in a context of cooperation and mutual influence between ecclesiastics and lay academics, which also included the involvement of practising members of the legal profession. That this applies also to the anonymous texts can be seen both from their content, and from certain general statements about the nature of early Irish law, which we are fortunate to have, so to say, from the horse's mouth. Thus, for example, the discussion of the sources of Irish law with which the *Senchas Már* begins: *Senchas fer nÉrenn, cid conid roiter? Comchuimne da sen, tindnacul chúaise di araili, díchetal filed, tórmach ó recht litre, nertad fri recht n-aicnid* (What has preserved the tradition of the men of Ireland? The joint memory of the ancients, transmission from ear to ear, the chanting of poets, its being augmented by the law of Scripture, its being founded on the law of nature),²⁵ or the following statement in the prologue to *Cáin Fuithirbe* concerning the content of the main body of the text, but which may be taken to refer to early Irish law in general: *ro dílsigid la dub in dichubus* (That which is contrary to (Christian) conscience has been made forfeit by ink).²⁶

Again, what little we can determine of the place of writing of the legal texts is consistent with what has been said above. In some cases we can do no more than assign a text to a particular province, for example, *Bretha Nemed Toisech* to Munster.²⁷ The following passages on law-schools, from *The Triads of Ireland*,²⁸ however, are much more specific: *Féinechas Hérenn Clúain Húama* (The Jurisprudence of Ireland—Cloyne) (§12), *Bérta Féine Hérenn Corcach* (The Legal Speech of Ireland—Cork) (§16), *Brethemnas Hérenn Sláine* (The Judgment of Ireland—Slane) (§21). It is surely of significance that these, the only places mentioned in this ninth-century text as being renowned for their law-schools, are all monasteries.²⁹

The gradual build-up of a corpus of written law-texts provided a substantial amount of material for study and comment, and

24. See the article referred to in note 5.

25. I have made some minor adaptations to the text of R. Thurneysen, 'Aus dem irischen Recht IV', *ZCP*, xvi (1926), 167 at 175, §1.

26. *Peritia*, v (1986), 43, §15.

27. See the article referred to in note 5.

28. Kuno Meyer (ed.), *The triads of Ireland*, Todd Lecture Series 13 (Dublin, 1906).

29. For the dating see Meyer, op. cit., pp. x-xi.

already in the Old Irish period we have a significant body of secondary matter in the form of glosses on two of the primary Old Irish texts, namely, the *Senchas Már* (CIH 874.35–924.31)³⁰ and *Cáin Fuithirbe* (CIH 766.36–777.5; 1553.26–1555.40).³¹ The method employed in these glosses is usually to attach scholarly comment to a short citation, often consisting of no more than one or two words, from the original text; sometimes, however, the text being commented on occasions the citation of a complete text from elsewhere, either another law-text, or even a saga. Such works were clearly intended to be used with a complete copy of the text to hand, the citations serving simply to refer the reader to the particular part of the text to which the comment refers. In the Middle Irish period, and later, the method of glossing changes to one where a complete copy of the original text appears with glosses and commentary written between the lines, and in the margins. It should also be noted that the later the date the greater is the volume of commentary, a feature no doubt in part due to the widening gap between the contemporary form of the language and that of the original.³²

The glosses and commentaries are mainly of four kinds: (i) clarification of the plain sense of the original text, either by rewording, or by illustrating the relevant legal point with an example; (ii) citation of parallel passages from other texts; (iii) treatment of a statement in the original text in a far more detailed way by giving all imaginable attendant circumstances and showing how they affect the basic legal principle—this kind of extended gloss is usually referred to as ‘commentary’; (iv) etymological glosses which explain words by means of sentences or phrases consisting

30. These glosses have been dated to the eighth century by Thurneysen, ‘Irisches Recht’, *Abh Preuss Akad Wiss*, Phil-Hist Kl, Jahrg. 1931, Nr. 2, 60, and to the ninth by Binchy, *Celtica*, x (1973), 72.

31. See *Peritia*, v (1986), 36–7.

32. Glossing is, of course, not unique to Irish law-texts. In David M. Walker, *The Oxford companion to law* (Oxford, 1980), s.v. gloss, we find the following: ‘Textual interpretation by marginal or interlinear note, the basic method of the jurists who revived the study of Roman law at Bologna, and then of the canonists after Gratian’s *Decretum* and the beginning of papal decretal legislation. It was a long established traditional method in the study of classical literature, and also of Biblical texts. The Bolognese jurists were, however, the first to apply the method to legal texts . . .’. The dating here is far too late; for the glossing of Roman law-texts from an early period see Max Conrat, *Geschichte der Quellen und Literatur des römischen Rechts im früheren Mittelalter* I. Band [all published] (Leipzig, 1891), p. 108 ff. I am indebted to Professor Donnchadh Ó Corráin for this reference.

of words which both bear a phonetic similarity to the individual syllables of the words to be explained, and which are semantically relevant to the explanation.³³

One of the last developments in this scholarly tradition was the type of text which consists of citations from various texts arranged under a particular heading, and which provided a convenient handbook of the principles of Irish law.³⁴

We may now proceed to look at something of what the texts of the Old Irish period can tell us about the practising lawyers, beginning with the judge. The Old Irish status-text *Uraicecht Becc* distinguishes the following types of judge, which I list in ascending order, according to their honour-prices: (i) *brithem bes túalaing fuigell frisín n-áes dána* (a judge who is capable of giving judgment in matters relating to craftsmen), who has an honour-price of 7 *séts* (§43); (ii) *brithem bétraí Féne ocus filedachtae* (a judge both in matters concerning the laity and the poets), who has an honour-price of 10 *séts* (§44); (iii) *brithem* (a judge), who has an honour-price of 15 *séts* (§37); (iv) *brithem téora mbreth* (a judge of three judgments, namely, in matters concerning the laity, the poets, and the church), who has an honour-price of 20 *séts* (§38).³⁵ The information given here is of particular value in that it enables us to see how high their status in society was, as these honour-prices correspond respectively to those of the first four grades of nobles as given earlier on in the same text (§§11–14), namely, *aire désa*, *aire échta*, *aire tuise*, and *aire ard*. This text is concerned with judges within the *túath*, the petty kingdom, the smallest political unit in early Ireland; there were, however, judges of even higher status, as can be seen from the following previously unedited passage, which is concerned with the privileges of the judge.³⁶

33. On mediaeval etymology see Rolf Baumgarten, ‘A Hiberno-Isidorian etymology’, *Peritia*, ii (1983), 225.

34. See Máirín Ní Dhonnchadha, ‘An address to a student of law’, Donnchadh Ó Corráin, Liam Breatnach, Kim McCone (ed.), *Sages, saints and storytellers: Celtic studies in honour of Professor James Carney* (Maynooth, 1989), p. 159 at pp. 161–2.

35. For the Irish text see note 11. I follow the paragraph numbers of the translation by Eoin MacNeill, ‘Ancient Irish law: the law of status or franchise’, *RIA Proc*, xxxvi (1923), sect. c, 265 at 272–81.

36. *CIH* 1268.35–1269.20. My punctuation differs from that in *CIH*; also I expand abbreviations, omit the glosses, supply length-marks, and add some letters in square brackets. I would date this passage on linguistic grounds to the ninth century.

A folad o túaith nodo saora: a biatha cethruir, .i. a fer mancuine 7 a dias fogluma do torba túaithe 7 hé fadesin. Et ní bí a mias cen féoil ara-gella im, ara-gealla as maith *acht* ná roib cleith ná díhell and; dia roib dligid a réir ná téit tar díabal a b[i]id la lóg n-einech fó míad.

Mad fer túaithe b[i]id i cétud fri rí *nó* tuiseach oca mbé; diam clérech b[i]id i cétu fri aircindech n-úasal. Dligid toircsin taulche dó ó cách 7 éitsecht a airberta, a lá n-air, a lá mbúana, a lá n-ime a lá coibdine, suíre athgabála, a faosam *dechmaide*; it é folad brithemon fo-gní rí[g] 7 túa[i]th cenmothá ní do-formaig a suíre ar séota 7 céile.

Dliged ollum áiriullud /—*aile deac* do derbfíachad / o fir dian fiach fothaigedar / nó dia ndíla tromcinta / 7rl—

Suíre 7 biathad cacha brithemon in cach túaith imbi brithem; is innti a cháta 7 a suíre

Mad ardmaor las bet iltúatha 7 ilmuire a cháta 7 a toichned 7 a sárugud fo cátaid a rí oca mbí i coimriadh.

His considerations from the kingdom which ennobles [that is, appoints] him: he is to be given refection as one of four, that is, his servant and his two students [whom he instructs] for the benefit of the kingdom, and he himself. And his dish is not without meat, for which butter is a substitute, for which full milk is a substitute, provided that there be no deception or remissness there; if there be he is entitled to whatever he stipulates up to twice the value of his food, together with [the payment of] his honour-price in accordance with his status.

If he be a layman he sits with the king or lord who employs him, if a cleric he sits with the noble abbot. He is entitled to [demand] attendance by all at the mound [of judgment], and listening in silence to his exposition of law, his day's ploughing, his day's reaping, his day's fencing, his day's military assistance, immunity from distraint,³⁷ his ten days' conferring of protection; these are the considerations of a judge who serves king and kingdom, apart from whatever his nobility in the matter of wealth and clients adds.

A chief judge is entitled to earnings—a twelfth as certain fees from a man to whom he awards a payment, or whom he absolves from heavy liabilities, etc.

The noble status and refection of any judge is in whichever kingdom he is a judge in; in it is his status and his nobility.

If he be a superior officer with many kingdoms and many justices under him, his status and the penalty for refusing him food, and that for dishonouring him is in accordance with the status of his king who appoints him in a position of authority.

37. I take this to refer to vicarious liability, *cin inbleogain*, for which see D.A. Binchy, 'Distraint in Irish law', *Celtica*, x (1973), 22 at 32-3. Freedom from vicarious liability was a privilege of other persons who performed a public function in the kingdom, for example, the poet (*CIH* 954.5) and the smith (*CIH* 1593.18f. (*Uraiccht Becc*)).

This passage tells us that the judge was an official appointed either by church or state. It lists the various entitlements of his office, including the provision of refection for himself and his retinue, and labour services due; these are in addition to any advantages accruing to him from his own property and clients. Furthermore, it specifies the fee he is entitled to receive for hearing a case (from the successful party), and concludes with a statement on the greater status of a judge appointed by a king of higher rank than the king of a single petty kingdom (for example, king of a province).

These entitlements imply of course their corresponding duties, with which the next passage I wish to cite is mostly concerned.³⁸

Ceasc, caide ord breitheman do túaith nodo mbiatha? Do-gní a trí cach lae acht a ndomnach. Cadiat? .i. breath 7 astad airberta 7 airbert aoí iarna hastad. Ní tiaghuit a n-áirem dó bretha im thuinidhe tíre 7 im chórus comaitheasa 7 im córus n-athgabála 7 im córus fine, ar is focuru breithe ind sin beiris cen fochruic. Ní dlegar fochruic na hurcor díb acht díanbretha umpa di maigin. Is di foltaib breitheman dia túaith combeart dá crích, airbert fri flaith, fri senad, fri aes cerda, coná toirceat a túaith i n-indlighe; treiniugud dáil 7 turbaid 7 breatha im tuinidhe tíre gan áiriam.

Ceist, caite cia breth[em] cosin iubreithe [*leg.* inbreithe] eitergleoug [*leg.* etergléod] cach cеста? Ní *hansae*, co breithemain na ceannaithe i turgaib in cest má beth inde, 7 mana bé, téit i réir n-aigneda is gáithe isin crích co triur ara-bídh a túaith; tíagat a comrér chuide.

Inad in ollaman ag dáil urdligid a n-airecht cáid, i medón ardaireachta, i fiadnaise airdrígh, airm nó áit ina cluinither caisi cáich. Dligid sin somaine—lógh a deghdána, re taobh a firdligid—cáll conn cuibsech cuirethar ar gleo[d] dligid do cách.

What is the duty of a judge to the kingdom which feeds him? He does three things every day except on Sunday. What are they? Judging, and determining [the correct method of] procedure, and proceeding with the case after it has been determined. Judgments concerning ownership of land, and concerning the regulations of neighbourhood law, and of distraint, and of the kin are not taken into account for him, for those are minor matters (?) of judgment which he adjudges without a fee. One is not entitled to a fee for them nor to postpone them; rather they are to be swiftly judged on the spot. Among the duties of a judge to his kingdom are joint adjudication of [matters which involve] two territories, expounding law with a lord, with a synod, with men of art, lest they act illegally towards their kingdom; tripartition,³⁹ [fixing grounds for] delay

38. *CIH* 1932.1-17. My punctuation differs from that in *CIH*; also I expand abbreviations, supply length-marks, and add some letters in square brackets. This passage can also be dated to the ninth century on linguistic grounds.

and exemption, and giving judgments concerning ownership of land are not taken into account.

Who is the judge to whom it is proper to bring any problem for decision? It is not difficult, to the judge of the territory in which the problem arises, if there be one there, and if not, it goes for decision to the most skilled advocate in the kingdom together with the three people who are at the head of the kingdom;³⁹ they pass a decision on it together.

The place of the chief dispensing entitlements is in a noble assembly, [or] in the middle of a superior assembly, in the presence of a high-king, where he hears the cases of all. He is entitled to benefits—the fee for his goodly profession, together with his true entitlements—he who applies sense and conscientious intelligence to deciding entitlement for all.

The most important duty attaching to the office, then, is to give judgment in such matters as disputes over ownership of land, or disputes between neighbouring landholders or kinsmen, etc., without any entitlement to a fee, and with the requirement that such cases be settled without delay. This passage is concerned with the judge of the petty kingdom. Elsewhere we find a statement to the effect that one of the kinds of case which such a judge is to decide for no fee is not the concern of the higher grade of judge: *brithim ard arberta breith* [read *breth*] *fir fiad rig 7 tuath. Ni he as fuidlidi im comaidces crich* (a noble judge who expounds true judgments in the presence of kings and kingdoms, it is not he to whom cases concerning relationships between neighbours are to be submitted), *CIH* 573.18. It is reasonable to assume that the other minor types of dispute listed in the passage above are similarly not the concern of the latter kind of judge (doubtless the judge of a provincial king). In other words judges were distinguished not only by the level of their appointment, but also by the type of case which would normally come before them.

We can now go on to look at the advocates. The most important source is the following previously unedited passage, which is found amongst the Old Irish glosses on the *Senchas Már*, and is at least as early as the ninth century.⁴¹

39. I.e. threefold division of land between the lord, the kin, and the church, for which see the notes on §21 of my 'The first third of *Bretha Nemed Toisech*', *Ériu*, xl (1989), 1.

40. I.e. king, bishop, and chief poet, as specified in a similar passage in *Bretha Nemed Toisech*, *CIH* 2225.7-9.

41. *CIH* 896.19-41. D.A. Binchy makes reference to this passage in his '*Féchem, fethem, aigne*', *Celtica*, xi (1976), 18 at 26-7. My punctuation, etc. differs from *CIH* as in the preceding passage. For *nairidi* in *CIH* 896.28 the manuscript has *airidi*, and for *immm*, *CIH* 896.34 I read *immin*. For the dating see note 30.

Cis lir aigni? Ní *hansae*, a trí: glasaigni 7 aigni airechta 7 aigni fris-n-innle brith.

Cid a nglasaigne? Ní *hansae*, fer benus for éolus conách n-élai a les coruici airecht. Naidm n-airechta lais etar aitare 7 imitechta 7 fóeth imitechta. Naidm fri téchta .i. naidm comraicc má as-laíther in fiach. Cach naidm cona foasndís.

Coic séoit a llóg óad in sen do fer bélrá las ndéne. Trian cach lesa do[n]d aigne má[d] tobach, lethtrian ar frithbert, 7 ní acair acht ó bóairechuib aithech 7 bachlach—is é glasaighni in sin.

Aighni airechta *immurgu*, fer són ru-huca a les do airecht 7 dod-n-acair indi. In-fiadar dó in les; ta-n-acair íarum ón tráth co 'raile, ná tintai fora tacra in cétna co tici astad airbertai. Ní airidi *immurgu* cin astad n-airberta, cin athchomairc do brethemain mád ar bélaib brithi. Aignis lais uile 7 nascairecht 7 berrad 7 comaidhches 7 cáin lánomhnaí 7 maccslechtaí.

Ocus deich séoit úad do fer bélrá lais ndéni 7 a recht. *Ocus* trian cach besa [*leg. lesa*] dó cadesin má[d] tobach, lethtrian ar airbert. Do-gníd-side lesa aithech 7 bachlach 7 airech co ruici tuisech túaithi—is é aigne airechta in sin.

Aigne fris-n-innle breith, fer són taurrig tacraí fri bruinne breithi. As-beir fris aigne ad-gair: 'Aigni dom-air-so co rraib do lethi lim indiu immin les-[s]a'. Taurrig-sidi tacra *didiu* 7 ad-suidhi cin athcomarc do brethemain 7 berair breth fair. Is é fer in sin berus lethrian ar oirtaccra. Bélrá Féni lais uile acht tulbretha 7 ainches mbreithe.

.X. u.s. déc [*leg. Cóic séoit deac*] húaid do fiur forid-cain 7 a gairi 7 a recht. Trian cach lesa dó cachdesin [*leg. cadesin*] 7 is é in fer-sa a[d]-gair ó tosach [*leg. thóisech*] túaithi 7 ó brethemain 7 ó rí, acht gníma rachtairi, 7 ní beir baa ó brethemain acht a folta. A les ría cach les; trian dó ó cách ó n-acair olcena, a lethtrian ar frithbert. Is becc nach úais in fer-so ar aithgabáil fo bíth combi [*leg. con-mbí*] dochur dó.

How many [types of] advocate are there? It is not difficult, three: a 'fettering advocate', and a 'court advocate', and an 'advocate whom judgment encounters'.

What is the [meaning of the word] 'fettering advocate'?⁴² It is not difficult, a man who locks in expertise so that his case does not depart from him to a court. He is competent in enforcing [on behalf] of a court, including [taking] hostage-sureties, and driving off [distrained cattle], and swearing the driving off [was carried out lawfully].⁴³ Enforcing in

42. Binchy, *Celtica*, xi (1976), 26 takes *glasaigne* to mean "fresh" or "raw" *a.* (cf. "green" in colloquial English). It is clear from the text, however, that the first element in the compound is not the adjective *glas*, but rather the noun *glas* 'shackle, fetter' etc., referring to his function as enforcer.

43. I take the rarely attested word *fóeth* to be a compound of *fo* + *óeth* 'oath'. For *fóeth*, and *foaisndis* below, cf.: '... the average man must enlist the service of a professional jurist who will be able to assure the arbitration tribunal, should any dispute arise, that the seizure was made in accordance with the rules', D.A. Binchy, 'Distrain in Irish law', *Celtica*, x (1973), 22 at 32.

accordance with legality, that is, enforcing by means of combat if one absconds from [paying] the debt. Every enforcing with its accompanying declaration [that it was carried out lawfully].

Five *séts* are the payment from that person to the man of law with whom he studies.⁴⁴ A third of [the amount at issue in] every case to the advocate if it be levying, a sixth for opposing, and he only pleads on behalf of secular and ecclesiastical *bóaires*—that man is the ‘fettering advocate’.

The ‘court advocate’, on the other hand, that is a man who can take his case to a court and who pleads it there. The case is related to him; he pleads it then by the same time next day, and does not return to the same pleading until [the correct method of] procedure has been determined. There is, moreover, no acceptance [of a case] without determining [the correct method of] procedure, without consulting with a judge, if it be immediately before judgment. He is competent in all of advocacy, and enforcing, and abridgement, and neighbourhood law, and the law of marital union, and the law relating to sons.

And ten *séts* from him to the man of law with whom he studies, and his entitlement. And a third of [the amount at issue in] every case to him himself if it be levying; a sixth for acting in court. He acts for secular and ecclesiastical commoners, and nobles up to the leader of a *túath*—that man is the court advocate.

An ‘advocate whom judgment encounters’, that is a man who takes a pleading over at the brink of judgment.⁴⁵ The advocate who pleads says to him: ‘Advocate come to me so that you may be beside me today for this case’. He takes pleading over then, and fixes it without consulting with a judge, and judgment is given on it. That is the man who gets a sixth for preliminary pleading. He is competent in all of law except for immediate judgments and perplexity of judgment.

Fifteen *séts* from him to the man who teaches him, and dutifulness towards him, and his authority [over the student]. A third of [the amount at issue in] every case to him himself, and it is this man who pleads a case on behalf of the leader of a *túath* and a judge and a king, except for [matters which pertain to] the functions of a steward, and he takes nothing from a judge except his expenses. His case takes precedence over every other case; a third to him from those on behalf of whom he pleads otherwise, a sixth for opposing. This man is nearly of too high a status to be distrained, for he will overcome [anything which is] a disadvantage to him.⁴⁶

Thus we see that at least as early as the ninth century there was in place a well developed class of advocates who pleaded before

44. Lit. ‘does [it, viz. law]’.

45. The two instances of *tauríg* in this passage are the only examples known to me of finite forms of this verb, the verbal noun of which, *taurráin*, is fairly well attested.

46 Cf. note 37.

the court on behalf of all classes of person from commoner up to king. In the above passage the honour-prices of the various grades of advocate are given in an indirect way, expressed in terms of the fee paid by the student to the teacher on completion of his studies, which was equivalent to the honour-price of the grade the student attained.⁴⁷ The honour-prices of the two highest grades correspond to those of two of the grades of judge and of noble (see above), whereas that of the *glasaigne* is lower than that of the lowest grade of judge and corresponds to that of the normal commoner of early Irish law, the *bóaire* (self-sufficient farmer). They are distinguished according to their functions, their competence in the law, and the class of person they act for. The fee for acting for the defendant is specified as one sixth for the *glasaigne* and the *aigne fris-n-indlea breth*, and this no doubt also applies to the *aigne airechta*. On the other hand, the fee for *tobach* (levying), that is, successfully prosecuting on behalf of one’s client, is even more substantial, one third for all three, except when the *aigne airechta* and the *aigne fris-n-indlea breth* act together; in that case they take a sixth each.⁴⁸

The practising lawyers, then, both judges and advocates, are distinguished not only according to their competence in the law, but also according to the societal and political divisions of early Christian Ireland. Judges were appointed either by church or lay authorities, and advocates acted for both laymen and ecclesiastics.⁴⁹ Advocates were distinguished according to the status of the persons they acted for, while judges were distinguished according to the political importance of the king or monastery which appointed them.

In this essay I have attempted to give some account of the lawyers of early Christian Ireland, which could not have been done without taking into account previously unedited texts. Much work remains to be done at the basic level of providing editions, with translations and annotations, of the Irish law-texts, and as this work progresses so will it be possible to present a fuller picture of the early Irish lawyers than that which is presented here.

47. Cf. *CIH* 504.3 (= 1949.2; 1613.34, 2278.13, 2330.16), 1838.10 (= 2006.16).

48. Binchy, *Celtica*, xi (1976), 26–7, takes it that they must always act together, but the text does not bear this interpretation.

49. For ecclesiastical judges see also Donnchadh Ó Corráin, Liam Breatnach, Aidan Breen, ‘The laws of the Irish’, *Peritia*, iii (1984), 382 at 386–7 n.3.