

## PROPERTY RIGHTS IN CELTIC IRISH LAW\*

JOSEPH R. PEDEN

*Department of History, Baruch College of the City University of New York*

"The laws which the Irish use are detestable to God and so contrary to all laws that they ought not to be called laws. . ."

Edward I of England (1277)

"Leviathan in swaddling clothes"

D. A. Binchy on the Irish *Tuath*

### INTRODUCTION

It is impossible at the present time to present a systematic, coherent description of the ancient Irish law of property. The reason is that a considerable portion of the sources have not been published in modern scientific textual editions and translations. The principal sources used repeatedly by historians in the 19th and early 20th centuries are the multi-volumed editions of the old Irish law tracts edited and translated by Eugene O'Curry and John O'Donovan and published posthumously by other editors between 1864 and 1901. While both these pioneer scholars were competent in their understanding of Middle and early Modern Irish, the language of the glosses and commentaries, neither was able to cope too successfully with the archaic and very technical terminology of the Early Irish texts of the law—the oldest and most valuable strata for understanding Irish legal concepts and principles. The later editors of the O'Curry - O'Donovan transcriptions and translation were, with one exception, almost wholly ignorant of the Irish language, and the result was that their footnotes were misleading and inaccurate, their introductory essays teemed with misinterpretations, and the printed texts themselves were full of glaring errors.<sup>[1]</sup>

\*This paper was given at a symposium on "The Origins and Development of Property Rights" sponsored by the Institute for Humane Studies at the University of San Francisco, 17-20 January, 1973.

Scientific study of the Irish law tracts had to await the development of Celtic philology. This was begun in the early 20th century through the interest of the German Celticist Rudolph Thurneysen, the English linguist Charles Plummer and the Irish historian Eoin MacNeill. These three undertook the first really competent study of the difficult Old Irish texts, and more importantly, they trained and encouraged younger scholars to pursue the very difficult linguistic, historical and juristic studies which would prepare them for further study of the law tracts.

Unfortunately, many historians not specializing in the study of the ancient Irish law tracts have been unaware of the textual inaccuracies of the O'Curry - O'Donovan translations and have continued to incorporate their older unscientific work, and that of their editors, into their own work. For example, one of the most commonly cited sources for early Irish history is Patrick Joyce's *A Social History of Ancient Ireland*, first published in 1906 and republished in 1913 and again as late as 1968. This work is notoriously inaccurate; it has no sense of the fact that a chronology of at least 1000 years is being covered during which some changes in social and legal institutions took place. Joyce's book was used between 1914 - 1918 when the great French historian P. Boissonade was preparing his epochal history of social life and work in medieval Europe. Thus Boissonade speaks of "the soil of Ireland (belonging) to 184 tribes or clans. . . the clans held the land in

common. . . no man held individual property save his household goods, and each held only the right of usufruct over his strip of *tribal* domain. . . in each *district* of Ireland the free population lived *communistically* in immense wooden buildings . . . they lived and fed in common, seated on long benches, and all the families of the district slept there upon beds of reeds. . .". One can see immediately that the writer is using the words "tribe", "clan", "tribal domain", "district" and "population" equivocally, leading to great confusion. Almost every part of this passage is incorrect or very misleading.<sup>[3]</sup>

We might ignore Boissonade's errors except they are typical of many other secondary sources including the *Cambridge Economic History*, whose editor Eileen Power, incidentally, translated Boissonade's work into English in 1927. Worse yet, this translation was reprinted as a Harper Torchbook in 1964 and circulates widely in American colleges, perpetuating errors dating back more than 60 years.

Even when native Irish authors like lawyer Daniel Coghlan attempted to write a systematic description of land law under the ancient law tracts, his work was described by a scholarly reviewer as "inaccurate and unreliable, of little value".<sup>[4]</sup> Despite nearly 50 years of persistent and rewarding scientific study of the Irish law tracts by professionally competent philologists and jurist-historians, a recent historical work appeared which ignores all that has been published on the problem of Irish land law in the ancient law tracts, and in a chapter entitled "Celtic Communism" repeats all the inaccuracies of Joyce.<sup>[5]</sup>

Under these circumstances, conscious of my own lack of knowledge of the Irish language, and keenly aware of the shoals that await the historian who is not expert in this highly specialized field of study, I have deliberately avoided all reliance upon authorities who are not themselves trained in Irish language and history. I am not presenting a coherent systematic review of the Irish law of property; I am presenting a review of what the most competent Irish scholars of the last half century have discovered since they applied modern scientific

philological and historical standards of criticism to the ancient Irish law tracts.

My survey of the literature indicates that (1) private ownership of property played a crucial and essential role in the legal and social institutions of ancient Irish society; (2) that the Irish law as developed by the professional jurists—the brehons—outside the institutions of the State, was able to evolve an extremely sophisticated and flexible legal response to changing social and cultural conditions while preserving principles of equity and the protection of property rights; (3) that this flexibility and development can be best seen in the development of the legal capacity and rights of women and in the role of the Church in assimilating to native Irish institutions and law; (4) that the English invasion, conquest and colonization in Ireland resulted in the gradual imposition of English feudal concepts and common law which were incompatible with the principles of Irish law, and resulted in the wholesale destruction of the property rights of the Irish Church and the Irish people.

## I

Irish law is almost wholly the product of a professional class of jurists called *brithim* or brehons. Originally the Druids and later the *filid* or poets were the keepers of the law, but by historic times jurisprudence was the professional specialization of the brehons who often were members of hereditary brehonic families and enjoyed a social and legal status just below that of the kings. The brehons survived among the native Irish until the very end of a free Irish society in the early 17th century. They were particularly marked for persecution, along with the poets and historians, by the English authorities. The statutes of Kilkenny (1366) specifically forbade the English from resorting to the brehon's law, but they were still being mentioned in English documents of the early 17th century.<sup>[6]</sup>

The absence from the function of law-making of the Irish kings may seem startling. But Irish kings were not legislators nor were they normally involved in the adjudication of disputes unless requested to do so by the litigants. A king was not a sovereign; he himself could be sued and a

special brehon was assigned to hear cases to which the king was a party. He was subject to the law as any other freeman. The Irish polity, the *tuath*, was, one distinguished modern scholar put it, "the state in swaddling clothes". It existed only in "embryo". "There was no legislature, no bailiffs or police, no public enforcement of justice . . . there was no trace of State-administered justice". Certain mythological kings like Cormac mac Airt were reputed to be lawgivers and judges, but turn out to be euhemized Celtic deities. When the kings appear in the enforcement of justice, they do so through the system of suretyship which was utilized to guarantee the enforcement of contracts and the decisions of the brehon's courts. Or they appear as representatives of the assembly of freemen to contract on their behalf with other *tuatha* or churchmen. Irish law is essentially brehon's law—and the absence of the State in its creation and development is one of the chief reasons for its importance as an object of our scrutiny.<sup>[7]</sup>

The bulk of the Irish law tracts were committed to writing in the late seventh and early eighth centuries, and though influenced somewhat by the impact of Christianity, they are basically reflective of the social and legal principles, practices and procedures of pagan Irish society. In the early ninth century, the oldest texts were being glossed because the original meaning was no longer certain, or practice had in fact undergone developmental change. By the 10th century elaborate commentaries were being added which indicate that the texts were either so obscure to the new generation as to be inexplicable, or change had become so marked that the commentaries often contradict the text itself. Part of this confusion was due to the very archaic and technical language of the earliest texts and the subsequent change in the Irish language from what we call now Old Irish to Middle Irish. If we recall the marked differences between the English of Chaucer and that of Shakespeare, we will understand the difficulties of the brehon jurists over a comparable period of time.<sup>[8]</sup>

To complicate matters further, the earliest Irish texts reflect the existence of several different schools of law, each producing its own particular code or tract. While all the tracts

are recognizably Irish in character, they do reflect local, perhaps regional differences; if the evidence were fuller, several local schools might be identified. As of now it appears that a northern and a southern regional affinity can be detected. The fact that in later historical times certain families of brehons were associated with specific *tuatha* or regions suggests that local variations in specific procedures and penalties were almost inevitable. But from the tenth century, the legal fiction arose that the Irish law was a unity and all contradictions were to be explained away by the commentaries. The multiple and competing law systems of the early period were now subjected to homogenization to produce what was considered to be a uniform law for the whole island. And this fiction, like the equally unhistorical claim that there was a single High-King of Ireland—the King associated with Tara—retained its hold on historians down to the application of modern textual criticism in the 20th century.<sup>[9]</sup>

The conversion of the Irish to Christianity begun in the fifth century was bound to affect profoundly Irish life and institutions. The Christian church was already very Romanized in its institutional and cultural conceptions. It was urban-oriented and, thanks to St. Augustine, had reconciled itself to the Roman conception of the State as part of the natural (if sinful) order of the world. In Ireland Romanized Christians found a wholly rural-oriented society with a barely embryonic conception of the State, and a well-developed legal tradition in which law making was the special function of essentially private persons—a professional class of jurisconsults and arbitrators known as the brehons. Law and order, and the adjustment of conflicting interests, were achieved through the giving of sureties rather than State-monopolized coercion. The Church could not depend upon the Irish kings to compel their people to convert to Christianity nor could they use the State to impose Christian law on an unwilling population. Significantly, the conversion of the Irish was undertaken without State-directed compulsion and not a single martyrdom is associated with the Church's triumphant success.<sup>[10]</sup>

Without the instrumentality of the State to

enforce its commands, the Church's impact on Irish law was still very weak in the sixth century; canonical texts of this period forbid Christians to make use of the brehon's court against one another. They are to resort to the clergy to arbitrate among them as in the pre-Constantinian Church. But the collapse of the Roman empire in the West, and the isolation from Roman influences, coupled with the rise of a wholly native clergy during the period, forced the Irish Church to integrate itself more fully into the native Irish institutions and culture.<sup>[11]</sup>

In legal tracts dating from the late seventh and early eighth centuries, the clergy are recognized in their seven ranks, with appropriate honor-prices, and other rights and obligations under the law. The right of free men to bequeath property to the Church under certain conditions was recognized, and the right of women to give gifts was also approved by the jurists. St. Patrick had mentioned the practice of newly baptized women placing their gold bracelets upon the altar as a gift, and his practice of returning them. He may have done so to avoid litigation as to their right to make such a gift at this early period when their legal capacity was dubious. The law also ruled out deathbed bequests to the Church as invalid due to possible mental impairment, and the laws on marriage and other sexual relations remained wholly pagan.<sup>[12]</sup>

The failure of the Church to impose its own will upon the Irish law is best appreciated if one considers the fact that the Church was compelled to create its own legal codes in which a wide variety of criminal and moral practices were outlawed and appropriate penalties assigned. The so-called penitentials of the Irish Church were later carried by Irish missionaries to the continent and became a vital part of the judicial structure of the entire Western Christian Church. Penalties ranged from set periods of prayer, fasting, abstinence, pilgrimage, hermitage, exclusion from the sacraments, and other spiritual acts, to a fixed scale of monetary commutations of these penalties. The influence of Irish secular law, with its dependence upon monetary compensation for offenses under law, seems clear.<sup>[13]</sup>

One way in which the Church did influence Irish law was by seeking to have the Irish kings and assemblies accept a specific written code of law composed by an outstanding ecclesiastic. The Annals of Ulster for A.D. 778 record that Bresal, Abbot of Iona, and Dunnchad, King of Southern O'Neill "confederacy", had agreed to accept the laws of St. Columcille, founder of Iona, as binding upon their peoples. This was something akin to a treaty or compact governing internal and external relations. The compact publicly committed the people represented here by their king to obey the new law. This is the closest that the Irish got to legislating a system of law. The law codes, always attributed to some saint, represent the intrusion of Christian moral practices into the customary law of the land—the brehons' law. They were largely concerned with ensuring better protection for the persons and property of the clergy, their households, clients, servants, tenants, and ordinary women and children. There were also efforts to impose Sabbath laws. But these new ecclesiastic-inspired codes were thoroughly Irish in structure and principles. As Kathleen Hughes has put it: "The general effect of Christianity upon Irish law was to modify it without dislocating it; its rigidity was reduced and the result was a strengthening of native institutions".<sup>[14]</sup>

The study of the law texts and the canonical texts has suggested to at least one historian that the existence of two competing law systems in medieval Gaelic Ireland reflected a more subtle tendency in Irish jurisprudence and practice to conceive of *Ecclesia* and *Tuath* as separate and alternate entities with each having its own rights, and relations between the two governed by contract. For example, a study of the development of the Church's manner of holding land suggests that it seems to have controlled some of its property as a sovereign entity—outside and apart from the authority of any king and the jurisdiction of any *tuath*. Some churches were very clearly held under lay proprietorship—the proprietor being a layman with the right of patronage. In other cases the land was given away without any restrictions at all—public or private—into absolute allodial ownership by an ecclesiastical corporation. In some cases

familial land was donated with the consent of all the kindred but the abbot or cleric holding the benefice had to be chosen from the kindred of the donor. For example, ten of the first eleven Abbots of Iona were kinsmen of the founder, St. Columcille. Lastly, royal land—land which was attached to the public office of the kingship—was donated to the church with the consent of the assembly of the *Tuath* in return for the clergy performing spiritual offices without fee among the people. These lands were apparently freed of all public obligations—to billet troops, answer a call to arms or give tribute to the king.<sup>[15]</sup>

The Church continually pressed to free itself of all obligations to lay owners or public authorities. This effort accelerated during the 11th and early 12th century as part of the Gregorian reform movement and the investiture controversy. But as early as the 6th century, many monasteries were operating as virtual ecclesiastical *tuatha* ruled by their abbots. Daughter houses were established which recognized the abbot of the founding house as their “overlord” and the many houses and properties, tenants, clients and unfree dependents located over wide areas of the British isles and Ireland appear to be ecclesiastical principalities dealing with the secular *tuatha* as equals rather than subjects. By the early seventh century the Archbishopric of Armagh heads a federation of churches spread across the north and west of Ireland, while the bishoprics of Kildare, and probably Cork and Emly in the south, are following suit. Armagh claimed overlordship over any church that was free of obligations to an existing overlord—be he king, lay proprietor or abbot. By the 8th century the bishops of Armagh and Kildare, and the Abbots of Iona, Clonmacnois and Bangor were rulers over vast ecclesiastical principalities free of the rule of any secular authority.<sup>[16]</sup>

This situation continued in those parts of Ireland not subjected to English rule. For example, when the native Irish archbishop of Armagh, Nicholas mac Moel Iosa, received the notorious papal bull *Clericis laicos* asserting the most extreme papal claims to immunity from State control (issued by Boniface VIII in 1296), he called a meeting of the kings of all the *tuatha*

within his jurisdiction, explained the implications of the papal bull, and asked for their oaths of affirmation. Apparently without any great conflict, they agreed to respect the immunity of the clergy, their property, tenants and artisans from any lay impositions—fiscal, alimentary or servile, and undertook to respect the right of the clergy to have all cases involving their delicts, debts or contracts heard in the bishop’s court rather than the brehon’s. They further undertook the obligation of acting as sureties to the church for the apprehension of anyone in their jurisdiction who failed to appear before the episcopal courts.<sup>[17]</sup>

While the Archbishop had no difficulty in getting the Irish kings to recognize the immunities of the Church, he ran into grave difficulties with the English king Edward I whose rule extended over parts of the province of Armagh. He was accused by Edward’s officials in Ireland of wholesale usurpation of the King’s rights over the Irish Church. He had appropriated to himself the custody of the temporalities—properties—of vacant bishoprics and abbacies; he had consecrated new prelates for these offices without the king’s license; he had heard pleas in his court that by right belonged to the King’s court, to the detriment of the royal prerogatives and revenues. Archbishop Nicholas defended himself by arguing that he had acted in accordance with the ancient rights (under Irish law) of his Church as in the days before the conquest, rights which the English king Henry II had sworn to uphold. Edward replied to that argument by imposing a heavy fine and ordering that his officials make sure no Irishman ever was elected again as Archbishop of Armagh.<sup>[18]</sup>

This is but one clear instance in which the property rights and the freedom the Irish church achieved under Irish law were to be radically reduced under the impact of English feudal and common law traditions. By the 14th century, the antagonism of the two peoples was so great that the English government forbade any religious order, monastery, collegiate church or cathedral to admit to its membership anyone of Irish nationality. Moreover, anyone who was Irish presenting himself for ordination to clerical orders in a diocese under the English king’s jurisdiction was presumed to “have lived con-

tinuously among evil people and to come from an evil background", and was to be denied sacred orders. Thus were the native Irish dispossessed of their own churches in their own land to give places to foreign invaders.<sup>[19]</sup>

## II

Let us now examine in some detail the character of Irish law and the role of property in Irish legal and social institutions.

Irish society was a precisely stratified, class-conscious society in which one's social rank had legal and economic foundations. The earliest law tracts divide the population into two legal classes: the free and the unfree. The free are the kings, nobles and commoners—all those who own land and thus enjoy the franchise, a place in the assembly of the *tuath*, and have a legal capacity to make contracts in their own right or through their father, husband or male kinsmen. Possibly under the influence of the Church, which had seven orders of clergy, the jurists subdivided the kings into three grades, the nobles and commoners into seven each. The grade or rank of a man was determined by the amount of property he owned and the number of clients he had. Since the clients varied according to his available wealth (see below), wealth was the principal basis for a man's rank in Irish society. The unfree were those who did not own land, thus did not have the franchise, and were usually household retainers or tenants at will of a landowner.

What is somewhat surprising is the fact that these ranks and categories were not fixed. The law texts say that "the free may sit in the seat of the unfree" and "the unfree may sit in the seat of the free". "Everyone may become free by his wealth and unfree by his lips". The free who become unfree are those who sell all their land or rights or body in service to another (slavery). The unfree in the seat of the free are those who buy land or the right to the franchise by their art (skilled craftsmen), their talent (bards), or by husbandry (tenants at will). This social mobility is reflected in the legal maxim: A man is better than his birth. The only class excluded permanently from recovering their

free status were those who had forfeited their lives for some crime, but were ransomed and kept as servile tenants by some free man. But generally, wealth, talent or skilled craftsmanship were enough to make free status possible. In effect, economic self-sufficiency was the hall-mark of free status.<sup>[20]</sup>

While some historians have been dubious as to the reality of the fine distinctions in grade or rank which the law tracts reveal when applied to the actualities of everyday life, I do not share their view. Admittedly medieval intellectuals in general, and the Irish jurists in particular, show a marked predilection for making numerically ordered distinctions in all sorts of situations. But it must be remembered here that the assessment of a man's property—its character and value (land, chattels, clients)—was absolutely necessary if he was to participate in the very elaborate system of suretyship which was the basic mechanism by which all law was enforced. And it also was vital to assess his honor-price—another essential part of the Irish system of justice.<sup>[21]</sup>

The honor-price (*dire* or *enclann*) was the payment due to any free man if his honor or rights were injured or impugned in any fashion by another person. It might be invoked for the violation of any contract, any act of violence to his person or that of his dependents, any trespass on his rights or property, or even a malicious use of "satire" without cause which damaged his reputation (usually the work of a bard or poet). In the oldest texts, honor-price varied in amount according to the rank of the victim, and the penalty for the offense varied, being fixed according to the seriousness of the offense at the amount of his honor-price or some multiple or fraction thereof. At a later stage of legal development, the jurists established fixed penalties for specific crimes and enforced them equally regardless of the rank of the victim. But in addition, the offender still had to pay the honor-price appropriate to the victim's rank.

Honor price was also essential in the workings of the surety system by which means all judgments of the brehons' courts were enforced. Since law enforcement was not a func-

tion of the state or king in the Irish *tuath*, it was entirely dependent upon each party in an action or suit providing himself with sureties who would guarantee that the judgment of the brehon's court would be honored. If a person was about to bring suit, he sought sureties to help him in persuading the defendant to submit to peaceful adjudication of the dispute; this might involve applying the law of distraint in which the plaintiff seized some movable property of the defendant and impounded it under lawful procedures until the defendant gave surety that he would submit to adjudication. If he refused to do so, the community would consider him an outlaw—and he and his property would lose the protection of the law.<sup>[22]</sup>

There were three kinds of surety: first, a surety might offer the plaintiff to join him in enforcing his claim against the defendant. Since Irish law did not distinguish between tort and criminal actions, all crimes or suits were punished by payment of fines and honor-prices. Thus the plaintiff—if he won his suit—became a creditor, the defendant became a debtor. The surety guaranteed payment by pledging his own honor-price. A second form of surety (*aitire*) had the surety pledge his person and freedom as a guarantee. If the party defaulted on his obligations, the surety had to surrender himself to the aggrieved party and then begin to negotiate his freedom by paying the debt and also the honor-price of the creditor for this new injury. Once freed he could of course try to recover his losses from the defaulter.<sup>[23]</sup> A third type of surety (*rath*) guaranteed that in the event the debtor defaulted the creditor would be paid out of the surety's own property. If the surety was subjected to loss, the debtor must pay his honor-price. If he defaulted, his honor-price was forfeited and he lost his legal status.

Because of the vital role that it played in the surety system, honor-price was one of the chief attributes of a person's rank and only men of full legal capacity possessed it in their own right. Wives, children and sons living in their father's house were protected by the honor-price of their husbands, fathers or male guardians. Sureties and compurgators—persons who gave oaths as to the truthfulness of con-

testants in a legal dispute—had to have their honor-price assessed because they were forbidden to pledge payment of any debt beyond the value of their honor-price which was, of course, assessed on the basis of their rank which was in its turn based upon an assessment of their wealth. Thus ownership of property in all its forms was the basis of a man's legal status and marked the extent of his participation in and protection within the legal system.<sup>[23]</sup>

The Irish law recognized three distinct kinds of contract: *sochor*, *dochor* and *michor*. A *sochor* was a "good contract" which had three qualities: it was a contract between two or more free men; these free men were legally capable to act (not insane or minors or otherwise restricted in legal capacity); and lastly, the objects exchanged were of "equal profitableness". In contrast is the *dochor* or "bad contract" in which the first two qualities are present, but the third is lacking. Here the seller has suffered some loss of value in the exchange. What appears to be present here is the intrusion of the Christian concept of the "just price", perhaps an early influence of the Church upon the law. But what is most significant is that, while failure to exchange at a just price renders a contract "bad", it does *not* render it invalid. An invalid contract—called *michor*—is one which is illicit or void because one or more of the parties had not the legal capacity to act in his own right or was not a free man. The moral dubiousness of the *dochor* is not the issue and has no direct legal impact. However, as we shall see, the legal distinction did have legal impact in cases where women executed contracts in the absence of their husbands, or men without the consent of their wives in some instances.<sup>[24]</sup>

As in so many ancient societies, in Ireland many economic transactions took place under the guise of a contractual relationship known as clientship. In Irish law, clientship was of two distinct types—free and base, distinguished from one another by the type of services required by each. Free clientship (*soer-celsine*) was the grant by a king or noble to another free man of livestock in return for the payment of a "rent" of  $\frac{1}{3}$  of the value of the livestock to be

paid annually for 7 years. At the end of that time, the client became sole and absolute owner of the livestock and his clientship terminated. All classes of free men were eligible to become free clients without any loss of legal status, franchise or honor-price. The only other obligations were that the free client did homage to his "lord" or creditor by standing in his presence and by attending him on certain ceremonial occasions. Since a noble's or a king's rank depended in part on the number of clients that he had attending him, the Irish upper classes invested a large part of their assets in acquiring as many clients as they could afford. This gave them increased social and legal status, and probably increased their political power in the assemblies as well. It also raised the value of their honor-price, thereby increasing their capacity to act as sureties and compurgators.

The base client was also a free man, an owner of some land, but usually a commoner. He received a grant of either stock or land from a person of higher rank in return for the payment of an annual rent in kind (a food-rent) proportionate in value to the value of the borrowed land or stock. In addition he owed specified labor services to his "lord" or creditor, and this is why his clientship was "base".

The Irish apparently considered that laboring for another man somehow impugned one's honor because the "lord" had to pay the base client upon the initiation of the contract the value of his honor-price. In return the "lord" was entitled to receive a percentage of the base client's honor-price and other compensation paid to him if he sustained any injury or violence resulting in a legal settlement. The base client thus remained a free man and could terminate his base clientship at any time upon returning the "lord's" property and compensating him for any possible losses.<sup>[25]</sup>

The Anglo-Norman invasion of Ireland in the late 12th century and the subsequent partial conquest of its territory was to have a detrimental effect upon the status and legal rights of the Irish clients, particularly on those who were base. Neither form of Irish clientship was equivalent to Anglo-Norman vassalage. Free clientship was essentially a form of commercial contract in which the purchaser bought live-

stock on a deferred time payment system. He remained free in legal status and the contract was terminable at the end of seven years or even earlier if paid in full. No one could mistake this for a feudal bond of vassalage or a fief despite the free client's minimal social obligations to his creditor. But base clientship, where manual labor services were required along with an annual food-rent, was more easily misunderstood by the Anglo-Normans as equivalent to English villeinage or serfdom.<sup>[26]</sup>

In Irish law among the ranks of the unfree were a specific class—the *sen-chleithe*—who are the legal equivalent of the English villeins. They are hereditary holders of a parcel of land in return for uncertain service and pass as appurtenances of the land should it be alienated or sold. They are included as part of the owner's property for purposes of assessing his honor-price and rank. Another class of the unfree are the *fuidir* who are not "villeins" in Irish law but are tenants at will bound to uncertain services. However, they are free to move or abandon their holding upon due notice to their landlord, and may rise in social status or fall to the rank of *sen-chleithe* if they have had ancestors living on the same land for nine generations—an unlikely situation.<sup>[27]</sup>

With the English occupation both the *fuidir* and the base clients were reduced to serfdom under English law. They are called *betaghs* or *betagius* in the English documents from the 12th century onwards. The *fuidir* lost the right to leave his holding and the possibility of rising in status. The base client lost his personal status as a free man, his right to the ownership of his own land and moveable property, and the right to bequeath his property to the Church or others. Even the free clients seem to have suffered some loss in status as the distinction between them and the base clients was often ignored by the English in their efforts to seize the properties of the conquered Irish. Thus the English conquest meant a vast displacement and dispossession, and loss of status for most of the Irish landholding classes and tenantry as well.<sup>[28]</sup>

As we have already indicated, one of the most persistent myths of Irish history is the belief that a form of primitive communism



prevailed in landholding. Due in part to the failure of the translators and editors of the law tracts published in the 19th century to use such words as "tribe", "clan" and "sept" precisely, later writers, particularly those dependent upon Patrick Joyce's work as a source, confused the lands of the *tuath* with those of the *fine* or family. In addition, Irish law recognized joint-ownership and co-tenancy as well as co-operative work ventures. All of these have been vaguely described in different places as "communal ownership" or communism.

In a very detailed critique of Joyce's work, Eoin MacNeill, one of the first professional historians who was also able to read and interpret the law tracts from their manuscripts with competency in Old Irish, pointed out that there was no evidence whatever to suggest that the lands of the *tuath* were held in common or periodically redistributed. Quoting Sir Henry Maine who had admitted that "all the Brehon writers seem to have had a bias towards private as distinguished from collective ownership", MacNeill wryly comments that it was hardly a bias—it was a reality. It was a myth of collective ownership that was the product of bias. There are only two kinds of land which seem to have been viewed as being without owners: mountain peaks and woodlands or forests which were not partitioned or appropriated. There was also the land that belonged to the king by reason of his office. But since the kingship was normally hereditary within a kindred or *derbfine*—four generations of males of which one had been a reigning king—even the royal domains had a semi-private character as they circulated in usufruct within the royal dynasty.<sup>[29]</sup>

The English government encouraged Irish rulers to surrender their *tuath* and its landed territory to the English Crown which would then re-grant it in feudal tenure to the Irish king who thenceforth would be a feudal vassal. The result of such a transaction in effect would be to transfer ownership of all lands from the allodial Irish owners to the English king and then as a fief to the new Irish vassal—dispossessing the people to the benefit of the Crown and the Irish former king. Needless to say, such Irish kings were swiftly repudiated by their people.<sup>[30]</sup>

Ownership of property in Ireland was generally absolute; but some instances of limitations were recognized in the law tracts. For example, there were three instances in which the rights of ownership were subject to adversative prescription. If two successive generations of landowners failed to challenge the right of a millrace to cross their land without receiving some form of compensation for the infringement, the millrace became the absolute property of the mill owner(s). The same rule applied to the construction of a fishing weir across a stream or estuary and the right of way of a bridge or plank roadway across a stream or bog. Also, the law recognized that certain personal "necessities" suspended private property rights in particular instances: a man might take a single salmon from a stream or a single drawing of a net from a river or lake without infringing on the property rights of the owners; he could also cut a sapling for a riding crop or the shaft of a spear or commandeer a wagon to carry home a corpse. The gathering of nuts or kindling from woodlands was free to all equally, provided the woodlands were not partitioned or appropriated for private use. Seaweed could be taken also under the same restrictions. As for wild beasts, they belonged to whoever killed them.<sup>[31]</sup>

A very common form of property holding was joint-tenancy. This was especially common where the kindred were acting as a close economic unit in livestock raising or tilling the soil. In a pastoral enterprise where summer and winter pasture were needed and large herds of cattle, sheep or kine required only a few persons to attend them in the fields, co-tenancy was a reasonable solution involving both division of labor and maximum utilization of land. The Irish took a dim view of trespassing and neighbors were required to give each other sureties against trespass; in co-tenancy of land, the repair and maintenance of fencing was the responsibility of each co-tenant along the outer boundary of his own land; failure to keep it properly fenced compelled him to pay a fine to his co-tenants, and he probably forfeited his surety to his neighbor for trespass as well. Each tenant was required to supply some tool which was stored in a common place; each

morning he was required to appear at a fixed time when the day's work on the fencing would begin. If late, another might take his tool for the day and he paid a fine. The co-tenants also took turns in guarding their livestock. To protect themselves against suit for negligence, the co-herders set limits to their personal liability before witnesses and gave sureties to each other. The losses due to attacks by wolves, gorings, and wanderings into bogs were provided against by these contracts, and individual responsibility for loss thus established.<sup>[32]</sup>

A form of joint-ownership was used in the construction of mills. The owners were usually monasteries, kindred groups or individual joint-owners. If a mill was wholly within the lands of a single landowner that would obviate the need for joint-ownership. But frequently the water for the millrace and pond had to be diverted from a distant lake or stream. This meant that the owners of the source of the water, and the landowners through whose land the millrace ran, had to be compensated for the infringement of their property rights. This might be done by payment of a single sum to the owners of the land or water resource, or else recognizing them as joint-owners with specific rights of use of the mill for set periods in varying proportions. The owner of the mill and pond and the owner of the source of the waters got the largest share, with the landowners of the land through which the millrace passed getting proportionately less. (It was noted elsewhere that the landowners had to allow the millrace and could lose their rights to compensation after two generations).<sup>[33]</sup>

The climate of Ireland is such that drainage is a major problem. Thus ditches abound for drawing off water, and for keeping cattle impounded. The occurrence of drownings was apparently so common that the jurists waived the liability of owners for drownings in ditches, or other accidental deaths in ditches surrounding cattle pens, homesteads, churches, or grave mounds, or in millraces and ponds, peat bogs or from footbridges. But if an accident was due to the failure to fence one's fields, the owner was liable to be fined.<sup>[34]</sup>

One of the more difficult problems in studying the Irish law of land ownership is the prop-

erty of a family or kindred group. MacNeill admits that here we may have "communal" ownership. By this he means that certain land cannot be sold without the consent of the *derb-fine*—all males descended from a common great-grandfather to the third generation. Thus this group is also the normal range of inheritors and also entitled to the compensation for homicide for any of its members. While each member held and disposed of the fruits of his own parcel of land, some residual control was exercised by the kinsmen. When the land was redistributed is not clear, but some division must have taken place when a young man came of age, perhaps his share of his father's patrimony was transferred at this time. If he died without sons, it probably was redivided among his brothers. Sons were the normal and equal heirs of their fathers, and their mothers.<sup>[35]</sup>

Whether land was distributed in proportional share upon the death of any kinsman amongst all the kinsmen seems dubious. The fractionalization would seem very much against the interest of orderly management. Some writers imply this was the case, but may have been misled by a law tract dealing with the division of compensation due a dead man levied on his murderer by an armed raid into another *tuath*. In this tract, the deceased's compensation is obviously movable—it had been captured and taken from another territory. Also, it was divided first into three thirds—one went to the king and nobles of every grade above the deceased's; a second third to the members of the hosting other than the above; and the last third to the deceased's kindred. This last third was then divided by a series of apportionments by fractions among the kinsmen according to the closeness of their relationship to the dead man. This legal rule for a specific type of blood-letting, should not be assumed to be the norm for the division of ordinary property. Thus the actual distribution of landed property may well have been confined normally to the immediate male issue, while the more distant kinsmen retained residual rights of inheritance in case of failure of direct issue.<sup>[36]</sup>

One result of the English conquest was the displacement of the Irish law of inheritance. Under the feudal customs of England the law

of primogeniture prevailed and was also applied to Ireland. Certain 16th century legal agreements have Irishmen trying to preserve the old system of equal sharing among sons, but these were not recognized in English courts, thus disinheriting the normal Irish heirs.<sup>[37]</sup>

One last look at Irish concepts of property right may be revealing. A 17th century manuscript reveals a poetic dialogue between two contestants before a *brehon*. The first, representing the "men of Munster", claims they own the Shannon River and its resources on three grounds; the Shannon was conquered in the 11th century by the Munster king Brian Boru from the Vikings; that the river in its lower courses runs through their lands; and that in a previous case Brian's rights were upheld. The poet representing the "men of Connacht" bases his claim on the fact that the river was always recognized as theirs from the time of Patrick to that of Brian; that the passage of a river through the land of Munster does not make it the property of Munster, any more than a man travelling through Munster becomes thereby a Munsterman; that the judgment in favor of Brian was invalid because made by a foreigner (thus unfamiliar with Irish law); and lastly that the river belonged to Connacht because it had its source in that land.

The *brehon* decided in favor of the poet of Connacht. He held that "just as the offspring of every father belongs to the father and inherits his patrimony, the natural father of every stream is every unexhausted well from which it springs forth first". As the Shannon has its source in Connacht, it and its resources belong to the men of Connacht. The previous judgment on behalf of Brian is interesting also, and not repudiated explicitly. Brian as presumptive owner of the river claimed ownership of a jewel found in the gullet of a fish taken from the river by a trespassing fisherman. He won his claim since the fish in a lake or river belonged to its owner.

Rivers and streams and waters in Ireland are still held in private ownership-but by descendants of the English feudalists.<sup>[38]</sup>

### III

A fair test of the sophistication of any legal system might be to examine the extent to which women enjoy legal capacity and property rights. By this standard Irish law in the 8th century may have had more sophistication than English law in the days of Queen Victoria.

Irish law was typically Indo-European in that it was patriarchal in character at the dawn of the historical period. In all the oldest legal texts women have no legal capacity to act or own property in their own right. They are under the tutelage of some male—father, brother, husband or son—just as if they were children.

Yet even under this burden, women were in practice straining to break the bonds of the law. The early law tracts found it necessary to mention that a husband has the right to rescind any contract made by his wife in his absence, even if she had found sureties to support it. The contract was deemed invalid, and the sureties as well. But the clear implication is that women were in fact making contracts in their husband's name in his absence, and the jurist who composed the tract must have been under some pressure to acknowledge the practice, for he specified that such an invalid contract could be validated if the husband neglected to repudiate it within 15 days of his return home or of his being notified of its existence.<sup>[39]</sup>

The legal incapacity of women is also evident in the earliest forms of marriage contract in which the wife is under her husband's tutelage. But already a concession to her appears. If she is of rank equal to him, she may interpose to prevent him making a *dochor*, a "bad" or disadvantageous contract (see above). Her intervention does not invalidate the contract; it merely suspends its coming into force until her son or husband's kinsmen can be informed and given time to act. The implication is that her husband is about to alienate property that is not fully his to dispose of. Even if she is only betrothed, a woman can intervene in some instances to prevent her future husband from acting, at least temporarily.<sup>[40]</sup>

Another somewhat important breach which opened the way for extending women's legal capacity was recognition of her right to give a gift of a value no greater than her honor-price—normally half that of her husband. Gift-giving is not a contractual act, but it implies the capacity to own property in one's own right. Specifically she had the right to give the "product of her own hands" to the Church.

The greatest departure from the system of male tutelage over women is found in the law tract called the *Senchas Mor* composed in the early 8th century and reflecting the teachings of a school of law operating in Northern Ireland. There, as in so many other cases, one of the pressure points for granting women wider legal capacity was the natural desire of sonless fathers to wish to bequeath their property to their daughters. In the *SM* daughters are recognized as having the right to a life interest in the landed property of their father if he left no sons, or presumably grandsons of the male line. But at the daughter's death, the land, which appears to have been familial, reverted to the natural male heirs of the father's *fine* or kindred. As an heiress to such property, the daughter logically had to have the means to protect it; therefore she was recognized as having a variety of legal rights including the right to sue and be sued, to engage in distraint and even to make legal entry on disputed or unoccupied land by almost the same procedure as was open to males in the same circumstances. Recognition of life interest in familial land in certain circumstances also implied that she had full ownership of the product of that land, and the right to dispose of it freely. The older form of marriage contract in which the woman was under her husband's tutelage did not lend itself to such a situation, and it now gave way to a new form of marital contract which soon became the norm among the propertied classes. Called a marriage of "mutual portions", it required that each partner to a marriage bring to it a set portion of property which was to be held jointly by husband and wife, its profits being divided proportionately between them. In this joint ownership-partnership, no contract was valid without the consent of each partner,

except when the contract "advanced their common well-being". If either party made a *dochor* or disadvantageous contract, it could be rescinded within 15 days of the other partner returning home or receiving notification of its having been made. Specific types of contracts mentioned in the texts include the hire of land, the purchase of livestock, the purchase of necessary household equipment or supplies, and agreement between kinsmen for joint tillage of fields. No object whose lack was disadvantageous to the joint household could be sold without mutual consent.<sup>[42]</sup>

In addition to the property which the marriage partners held jointly, each could own additional property, including the profits of their joint holding, in absolute single or sole ownership. The only restriction on the profits of their joint enterprise was that the wife could dispose of her share only to the value of her honor-price which was half that of her husband. This may have had some further restriction as to time limit but the texts are silent on it. The husband's share of the profits of their joint household was his sole property, but in certain instances his wife could dispose of it without his consent. She could alienate it to his advantage, but was subject to a fine if she acted without his consent. If he incurred any loss in the transaction, and she somehow made a gain, she could be sued by her husband for theft. This rule seems to envision embezzlement or fraud among partners.<sup>[43]</sup>

A woman could inherit property from her mother if there were no sons, but normally the sons were the natural heirs to their mother's as well as their father's property. If childless, a woman's property reverted to her nearest male kinsmen—not her husband—or she could bequeath it to the Church.

One of the most startling aspects of the Irish law was its treatment of the rights of women in various sexual relationships outside Christian marriage and their right to divorce. In one legal tract no less than ten different kinds of sexual union between males and females are legally recognized—each having a very precise legal character, each partner enjoying specific property rights and obligations. From a Christian

viewpoint, some of these relationships are clearly polygamous, others irregular, some even casual or violent. Most legal systems in Christian Europe denied these women legal status and rights, and extended these deprivations to the children unless the father recognized them. The Irish law recognized rights of maintenance and support which vary in degree and amount according to the character of the sexual union. For example, in a marriage of mutual portions the cost of "fostering" or rearing a child is shared equally by the parents; but if the child is born of a bondwoman, or as a result of rape, or in secret, the father is responsible solely for its rearing costs. In some instances the male has some control over the woman's property rights and a right to share in her honor-price; in others she controls some of his property rights and shares in his honor price. The detail, extensiveness, balance and proportionality with which the rights and obligations of each partner are assigned in these very unchristian couplings is unique in the law tracts of Christian Europe.<sup>[44]</sup>

Although it has been suggested that this is another instance of the archaic and unreal character of the Irish law tracts, which could not have had validity in a Christianized Ireland, the evidence suggests otherwise. Throughout the medieval period, both Irish clerical and foreign commentators frequently denounce the Irish for their failure to suppress sexual promiscuity and adhere to the marriage laws of the Church and "civilized" societies. It is most unlikely that the Irish were more promiscuous than other peoples; but it was their unique practice of continuing to separate canon law from civil law that seemed so scandalous to other Europeans.<sup>[45]</sup>

Similarly, the Irish law recognized the right of divorce. A man might repudiate his wife for dishonoring him, doing him some injury or willful abortion. But, incredibly, the wife could initiate a divorce action against her husband! She could charge consanguinity, incurable infirmity, sterility, cruelty evidenced by lasting injury, slanderous remarks as to her character, abandonment for another woman, willful neglect in supplying the necessities of life, or aban-

donment by reason of his entering a monastery. None of the above except consanguinity was grounds for annulment in canon law. There were also some eleven categories of legal separation with respective property rights and obligations regarding the care of children and distribution of property. That these laws were not "obsolete" can be shown in the marital history of Gormflath. Wife first of Olaf, Viking king of Dublin, widowed, she married Malachy, king of Meath and High-King of Tara A.D. 980. Malachy repudiated her, and she later married and divorced Brian Boru, who also won the High-Kingship by replacing Malachy. Thus she had two ex-husbands still living when she became betrothed to a third, Sigurd, Earl of Orkney.<sup>[46]</sup>

While the history of Irish law between the 8th and 17th centuries is very sketchy due to the lack of surviving historical materials, occasional references indicate that women continued to enjoy an exceptional standing in law with regard to their property rights down to the end of native Irish culture and independence in the early 17th century. In the early 14th century there is reference to a woman acting as an agent for an English proprietor whose cattle have been "stolen" by some Irishmen. She is commissioned to mediate for their return—the Irish having in their law invoked the law of distraint on the Englishmen's cattle. There is even a reference to a woman sitting as an arbitrator along with a brehon in a suit. In the early 17th century the English observer Sir John Davies in his book investigating why the Irish were so hard to conquer remarks: that the Irish are so savage that "the wives of Irish lords and chieftains claim to have sole property in a certain portion of the goods during coverture with the power to dispose of such goods without the assent of their husbands; (therefore) it was resolved and declared by all the (English) judges that the property of such goods should be adjudged to be in the husbands and not in the wives as the (English) common law is in such cases". This is but another example of the destructive and retrogressive effect of the imposition of English common law on the legal status and property rights of the Irish people.<sup>[47]</sup>

### CONCLUSION AND SUMMARY

While a comprehensive survey of the Irish law of property and property rights cannot yet be written, we can already see that the idea of private ownership permeates those aspects of the law which have been subjected to recent study. The Irish frankly and openly used assessments of property as the criterion for determining a man's social and legal status, the extent of his capacity to act as a surety or compurgator, and to fix the amounts of compensation due him as a victim of crime or any kind of injury. Ownership of land determined a man's status as free or unfree and his right to participate in the public assembly. The needs of the Church modified but did not alter the basic character of native Irish institutions and law. While it secured for itself almost total freedom from lay ownership and secular obligations, it was never able to fully destroy the essentially secular character of Irish law as exemplified in the laws on marriage and divorce. The legal capacity of women showed exceptional development and gave women property rights in the 8th century that were centuries ahead of those enjoyed by English women. The fact that Irish law was the creation of private individuals who were professional, even hereditary, jurists, gave to the law both a conservative yet flexible and equitable character. Their power rested upon the free consent of the community in choosing them as arbitrators in disputes; and this made equity and justice more likely than in royal courts where the interests of the State and its rulers are paramount. The invasion and conquest of Ireland, the work of over 400 years before it was completed, was eventually fatal to the Irish system of law and the culture and civilization it expressed. The English State was incompatible with the Irish *tuath*; the English common law was totally incompatible with the Irish law. Ireland from the 12th century was a single land in which two nations and two laws and two cultures engaged in a constant struggle for survival. The end came in the early 17th century with the flight of the last Irish kings from Ulster and the new plantation of that region by Pro-

testant Scots sent by James I—that most absolute of English Kings.

As for the native Irish and their ancient culture, the English official Sir John Davies thought he said it all:

"For if we consider the Nature of the Irish Customes, we shall finde that the people that doeth use them, must of necessitie bee Rebelles to all good Government, destroy the commonwealth wherein they live, and bring Barbarisme and desolation upon the richest and most fruitfull Land of the world".<sup>[48]</sup>

### NOTES

1. *The Ancient Laws of Ireland*, 6 volumes, 1865 - 1901. The most complete evaluation of the law tracts by a competent Irish philologist and jurist is D. A. Binchy's Rhys Memorial Lecture before the British Academy entitled *The Linguistic and Historical Value of the Irish Law Tracts* (London, 1943). Also Binchy, "Ancient Irish Law", *Irish Jurist* NS 1 (1966), 84 - 92.
2. Patrick W. Joyce, *A Social History of Ancient Ireland* (Dublin, 1906). 2 vols. Reprinted in 1913 and 1968.
3. P. Boissonade, *Life and Work in Medieval Europe*, trans. by Eileen Power (London, 1927). Harper Torch book edition (New York, 1964). See pp. 78-79 of the latter.
4. See the review of Daniel Coghlan's *Ancient Land Tenures of Ireland* in *Irish Law Times and Solicitors' Journal* (March 10, 1934). Further comments in July 14 and Sept. 15 issues. The reviewer is anonymous.
5. P. Beresford Ellis, *A History of the Irish Working Class* (London, 1972). The author ignores all modern scholarship on the subject and rejects MacNeill's criticism of Joyce because he was pro-capitalist!
6. Binchy, *Historical Value of Irish Law Tracts*, 22. Also, Gearoid Mac Niocaill, "Notes on Litigation in late Irish law", *Irish Jurist* NS 2 (1967), 299 - 307, and G. J. Hand, "The Forgotten Statutes of Kilkenny", *Irish Jurist* NS 1 (1966), 301.
7. D. A. Binchy in *Early Irish Society* (Dublin, 1954). 56-58. Also, Myles Dillon and Nora Chadwick, *The Celtic Realms* (London, 1967), 93 - 98.
8. Binchy, *Irish Jurist* NS 1 (1966), 84 - 92.
9. *Ibid.* See also, Eoin MacNeill, "Prolegomena to a Study of the Ancient Laws of Ireland" *Irish Jurist* NS 2 (1967), 106 - 115.
10. The most authoritative recent study of the Irish Church in the pre-conquest period is Kathleen Hughes, *The Church in Early Irish Society* (London, 1966). See chapters 4 and 5 in particular here.
11. *Ibid.* Chapter 12, pp. 123 - 133 and Chapter 5, pp. 45 - 55.
12. *Ibid.* Also, for St. Patrick, see R.P.C. Hanson, *St. Patrick: His Origins and Career* (New York, 1968), 139.
13. Ludwig Bieler, "The Irish Penitentials", *Scriptores Latini Hiberniae* (Dublin, 1963).
14. Hughes, Chapter 14, pp. 143 - 156. See especially 149 - 153.
15. See paper given to Columbia University Faculty Seminar

- in History of Legal and Political Thought (1966) by Prof. Charles Donohue of Fordham University: *On the Senchas Mor, an early 8th century tract including material on Church-State Relations*. Also, Hughes, 161.
16. Hughes, Chapter 8, pp. 79-90 on monastic *paruchia* and Chapter 11, pp. 111-122 on Armagh.
  17. J. A. Watt, *The Church and the Two Nations in Medieval Ireland* (Cambridge, England, 1970), 160-169.
  18. *Ibid.*
  19. *Ibid.*, 206 - 207 and 211.
  20. Eoin Mac Neill, "The Law of Status or Franchise", *Proc. Royal Irish Academy* 36C (1921-24), 265 - 316. See here p. 273.
  21. Binchy expressed some doubt on this in his *Historical Value*, p. 33.
  22. See Dillon and Chadwick, *Celtic Realms* (London, 1967), 98 - 99. Also, see Mac Neill, *op. cit.*
  23. *Ibid.*
  24. Rudolf Thurneysen, "*Sochor and Dochor*", *Essays and Studies in Honor of Prof. Eoin Mac Neill*, edited by John Ryan S. J. (Dublin, 1940), 158 - 159.
  25. For a discussion of clientship, see D. A. Binchy, *Crith Gablach* (Dublin, 1941), pp. 78, 80, 96 - 97 and 107. Also, Dillon and Chadwick, 95 - 96.
  26. Gearoid Mac Niocaill, "The Origins of the Betagh", *Irish Jurist* NS 1 (1966), 292-298. Liam Price disagrees with Mac Niocaill in *Eriu* 20 (1966), 185 - 190, but J. A. Hand is convinced by Mac Niocaill's analysis in his *English Law in Ireland 1290 - 1324* (Cambridge, 1967), 213.
  27. Binchy, *Crith Gablach*, 105.
  28. On *fuidir*, *Ibid.* 93. Otherwise, see *op. cit.*
  29. Eoin Mac Neill, *Celtic Ireland* (Dublin, 1921), 144 - 151.
  30. On the policy of "surrender and re-grant" under Henry VIII see J. C. Becket, *The Making of Modern Ireland* (London, 1966), 18 - 19.
  31. D. A. Binchy, "Irish Law Tracts Re-edited: Coibnes Uisci Thairidne (AL IV, 206-222)", *Eriu* 17 (1955), see p. 81 n. 9 52ff. Also, Mac Neill, *Celtic Ireland*, 170 ff.
  32. *Ancient Laws*, IV, p. 372 ff.
  33. *Op. cit.*
  34. *Ibid.*, 71-72
  35. Mac Neill, *Celtic Ireland*, 152 - 176. Also, Mac Neill, "The Irish Law of Succession", *Studies* 8 (1919), 367 ff.
  36. Mac Neill, *Studies* 8 (1919), 376 - 377. Also, Kuno Meyer, in *Eriu* 1 (1904), 214 - 215.
  37. J. Otway-Ruthven, "The Native Irish and English Law in Medieval Ireland", *Irish Historical Studies* 8 (1950), 1 - 16.
  38. Brian O'Cuiv, "The Poetic Confrontation about the Shannon River." *Eriu* 19 (1962), 89 - 105. The poem is dated to the 15th century.
  39. D. A. Binchy, ed. *Studies in Early Irish Law* (Dublin, 1936). This is the most complete study of the status of women in Irish law and the product of a seminar conducted by Rudolph Thurneysen, the distinguished Celticist. See here D. A. Binchy, "The Legal Capacity of Women in Regard to Contracts", *SEIL*, pp. 207 - 234, especially 211 - 216.
  40. Binchy, *SEIL*, 216 - 217 and 224 - 225.
  41. *Ibid.*, 226-227 and on 209 note 1. Women could act as sureties under certain limitations, see pp. 232 - 234. On gifts see Myles Dillon, "The Relationship of Mother and Son, Father and Daughter and the Law of Inheritance", *SEIL*, 129 - 179 *passim*.
  42. Binchy, *SEIL*, 226-228.
  43. *Ibid.* 227 - 230. Some texts indicate daughters may inherit some kinds of chattels from their fathers, Dillon, *SEIL*, 171, n3.
  44. Nancy Power, "Classes of Women Described in the Senchas Mor", *Studies in Early Irish Law (SEIL)*, 81 - 108.
  45. For a discussion of Irish marriage law and 12th century criticisms of it, A. Gwynn, "The First Synod of Cashel", *Irish Ecclesiastical Review* 66 (1945), 81 - 92; 67 (1946), 109 - 122.
  46. August Knoch, "Die Ehescheidung in alter Irischen Recht", *Studies in Early Irish Law*, 235 - 268. For Gormflath, see Edmund Curtis, *A History of Ireland* (Dublin, 1950), 28-30.
  47. A quotation from Sir John Davies on "The Irish Custome de Gravelkind" in a review of *Studies in Irish Law* edited by D. A. Binchy in *The Irish Law Times*, 15 August, 1936.
  48. Sir John Davies, *A discovery of the true causes why Ireland was never entirely subdued* (London, 1612), 165.