

# The Evidence for Consensus in the Irish Law-texts of the Seventh to Ninth Centuries AD

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In this paper I provide a summary of the Irish situation with regard to law and consensus, concentrating in particular on the law-texts of the seventh to ninth centuries AD. An important fact to emphasise at the outset is that the manuscripts – dating mainly from the fourteenth to sixteenth centuries – are much later than the texts themselves, so we are not dealing with original documents, but with copies of copies many times over. The texts are in Classical Old Irish couched in a rather formal style: the various authors (practically all anonymous) put a lot of thought, care and effort into drafting these documents. The range of subjects dealt with is remarkable. Some of the texts treat of general topics such as rank, marriage, the family, legal procedure, etc. Others consist of specialised treatments of a single legal area. For example, one text is concerned with the legal problems which may arise through the construction of a water-mill, particularly if the mill-race has to be cut through another's land<sup>1</sup>. Another text deals solely with the obligation of a person to look after someone whom he has illegally injured. This text is of particular interest on account of the abundant information which it provides on Early Irish medical practice<sup>2</sup>. Some of these law-texts have survived the process of copying and recopying remarkably well, and it is possible to establish and translate the original Old Irish with a fair degree of confidence. But other texts have, sadly, not fared so well, and survive in fragments, sometimes only partially decipherable. And yet other law-texts have not survived at all: we know of their existence merely from references in glossaries. But we should of course be grateful for what we have.

The task of making early Irish legal material available to the academic world and other interested persons goes back to the nineteenth century, when two very fine Irish scholars, John O'DONOVAN and Eugene O'CURRY, worked on the transcription and translation of the legal manuscripts which had then been identified, mainly in the libraries of Trinity College Dublin, the Royal Irish Academy, the British Library, and the Bodleian Library

1) D. A. BINCHY, *Coibnes Uisci Thairidne*, in: *Ériu* 17 (1955), p. 52–85.

2) D. A. BINCHY, *Bretha Crólige*, in: *Ériu* 12 (1938), p. 1–77.

Oxford. They both died before the publication of the first volume in 1865, so regrettably it was marred by misprints and other errors. In all, five volumes of facing text and translation were produced, and a final sixth glossary volume came out in 1901<sup>3</sup>). The general reception of the six volumes of the ›Ancient Laws of Ireland‹ was rather negative, but at least their publication illustrated the remarkable richness of the material.

The most important name in the field of early Irish legal studies during the first part of the twentieth century was that of Rudolf THURNEISEN, who held professorships at Freiburg and then Bonn. He originally worked on Old Irish literary and linguistic topics, but in mid-life developed an interest in early Irish legal material. His scholarly strategy was two-fold: to re-edit the material which had been particularly mishandled in the ›Ancient Laws of Ireland‹, and to edit the considerable body of law-texts which had been omitted. Still, over three-quarters of a century later, his editions are models of accuracy and insight. His last major legal project was an edition of a text dealing with marriage, concubinage and divorce, published in 1936 by the Royal Irish Academy in ›Studies in Early Irish Law‹, a very useful collection of essays and editions<sup>4</sup>).

The other great name in twentieth-century legal studies is that of Daniel A. BINCHY, who contributed fine editions of a number of law-texts in the journals *Ériu* and *Celtica*. But perhaps his greatest achievement was in publishing a reliable diplomatic edition in six volumes of virtually all the surviving legal material in Irish. An immense and courageous undertaking, this work was published by the Dublin Institute for Advanced Studies in 1978, in BINCHY's seventy-ninth year.<sup>5</sup>) The existence of this ›Corpus Iuris Hibernici‹ means that every scholar working in the field of Irish legal studies has access to a careful transcript of what each legal manuscript actually has, with full word-division and extensive cross-references and suggested emendations. BINCHY's work has been made all the more useful by the publication in 2005 of Liam BREATNACH's ›Companion to the Corpus Iuris Hibernici‹, which provides information on the subject-matter of every text, long or short, and deals with the manner in which the legal material was organised in the law-schools<sup>6</sup>).

In spite of the fact that his textual editions and his ›Corpus Iuris Hibernici‹ were well received by Irish scholarship, BINCHY himself became rather despondent about the future of early Irish legal studies, and entitled one of his last publications ›Corpus Iuris Hi-

3) W. NEILSON HANCOCK et al., *Ancient Laws of Ireland* 1–6, Dublin 1865–1901.

4) Rudolf THURNEISEN, *Cáin Lánamna*, in: *Studies in Early Irish Law*, ed. D. A. BINCHY, Dublin 1936, p. 1–80. A new edition in English of this text has been made available by Charlene M. ESKA, *Cáin Lánamna: An Old Irish Tract on Marriage and Divorce Law*, Leiden and Boston 2010.

5) D. A. BINCHY, *Corpus Iuris Hibernici* 1–6, Dublin 1978.

6) Liam BREATNACH, *A Companion to the Corpus Iuris Hibernici* (Early Irish Law Series 5), Dublin 2005.

bernici – Incipit or Finit Amen?<sup>7)</sup> But, in fact, the publication of his *Corpus* acted as a spur to a new generation of scholars, and – among other benefits – lead to the establishment of the Early Irish Law Series. The ultimate aim of this series is to provide editions with reliable English translations of all our extensive inheritance of legal material in Irish, suitable both for the professional scholar and the general reader alike. Five volumes have been published to date and half a dozen more are in various stages of readiness. So, the work goes on ...

Almost all the surviving law-texts are accompanied by an extensive apparatus of glosses and commentary of various periods, testifying to the continued vitality of the academic law-schools, right down to the final defeat of the Irish aristocracy at the Battle of Kinsale in 1603, and their subsequent exodus in the so-called »Flight of the Earls« in 1607. So we have documents relating to native Irish law of a full millennium from the seventh century down to the beginning of the seventeenth century, when English Common Law finally ousted the indigenous system. Particularly noteworthy is the fact that the most abundant legal material comes from the beginning of this period, mainly the seventh and eighth centuries AD, when an extensive programme of legal composition was embarked upon. The main collection, entitled the *Senchas Már* »Great Tradition« is known to have included about forty-seven separate tracts. Where, one wonders, did the impetus to undertake this massive project come from? Needless to say, the concept of law goes back into the distant recesses of pre-history, and would have been present in embryonic form among our hunter-gatherer forebears. The surviving Celtic languages share a basic legal vocabulary, which indicates that at the Common Celtic period – sometimes placed as far back as 1000 BC – legal concepts such as suretyship (Irish *macc*, Welsh *mach*), and distraint (Irish *athgabál*, Breton *adgabaél*) were already recognised. So we can assume that before the introduction of any form of writing into Ireland, there would have been specialised legal experts, who arbitrated in the case of disputes and used a recognised set of legal principles to arrive at a resolution of whatever was at issue. It is highly probable – as BINCHY maintained – that they knew by heart extensive legal compositions in verse to guide them in their decisions.

The Christianisation of Ireland was initiated in or around the fifth century. With Christianity came the use of Latin and the circulation of documents in that language. As monasteries were established all around the country, there naturally would have been a need for monastic rules and penitential texts setting out what was permissible under the Christian regime, and what was forbidden. Christianity brought with it a new way of looking at many aspects of daily life. In particular, it is clear that the traditional Irish polygamous marriage did not fit in with the ideal of life-long monogamy favoured by the

7) D. A. BINCHY, *Corpus Iuris Hibernici — Incipit or Finit Amen?*, in: Proceedings of the Sixth International Congress of Celtic Studies 1979, ed. Gearóid MAC EOIN, Anders AHLQUIST and Donncha Ó hAODHA, Dublin 1983, p. 149–164.

Church. Irish converts to Christianity also had to get used to the idea of not working on a Sunday, and having no truck with the practitioners of the displaced pagan religion of their ancestors. Old habits die hard, and we find the ›First Synod of Saint Patrick‹, dating probably from the sixth century, outlawing the swearing of oaths before the druid (Old Irish *druí*), the priest of the pre-Christian Celtic world<sup>8</sup>). And when a penitential forbids some activity we can be sure that it is going on.

On many issues it is clear that compromises were worked out. The full Christian marriage – though regularly presented as the ideal in the law-texts – could not realistically be imposed on Early Irish society, so we find that the law explicitly recognises the rights and privileges of the concubine, though she goes by the term *adaltrach* from Latin *adultrix* ›adulteress‹ with all its negative connotations. Indeed, as in every society with a strong religious lobby, there must always have been tension between secular law and the desire of the church to legislate against sin as well as crime. So we find that the ecclesiastical law-text *Cáin Domnaig* ›The Law of Sunday‹ specifically forbids milling on Sunday<sup>9</sup>), whereas the the secular law-text on watermills includes Sunday as a day of normal use for the mill<sup>10</sup>).

The extent to which the Old Irish law-texts reflect real life is not easy to establish. Some of the texts seem too complex and also too neat-and-tidy to have ever actually been carried through in practice. For example, *Bechbretha*, ›bee-judgements‹, a seventh-century text on the law relating to honeybees, describes how a stray swarm of bees should be shared out between (1) the owner of the hive, (2) the person who follows and captures the swarm, and (3) the person on whose land the swarm has alighted<sup>11</sup>). How often was this complex mechanism ever actually put into practice? Of course, all law-texts are to some extent artificial abstractions. No legal code devised by any human mind – no matter how intricately conceived – can possibly provide a just solution for every eventuality. The question of how early Irish law worked out in practice is particularly relevant because of the almost total lack of case-law in the surviving material. In the few cases where a precedent is cited for a particular rule, the source is usually biblical. For example, a text on contracts emphasizes the binding nature of a contract, even when it may be unfair to one party. It gives the precedent of Adam's exchange of the whole world for a single apple. Though clearly a very unequal contract, it is nonetheless a valid one, because Adam was an adult male of sound mind not acting in ignorance or under duress<sup>12</sup>).

Confirmation of the general historicity of Irish law also comes from external sources. After the Anglo-Norman invasion of 1169, officials of the English Crown realised early

8) Ludwig BIELER, *The Irish Penitentials (Scriptores Latini Hiberniae 5)*, Dublin 1963, p. 56 § 14.

9) Vernam HULL, *Cáin Domnaig*, in: *Ériu* 20 (1966) p. 160 § 1.

10) See discussion by BINCHY, *Coibnes Uisci* (as n. 1), p. 59.

11) Thomas CHARLES-EDWARDS and Fergus KELLY, *Bechbretha* (Early Irish Law Series 1), Dublin 1983, p. 78 § 43.

12) Neil McLEOD, *Early Irish Contract Law* (Sydney Series in Celtic Studies 1), Sydney 1991, p. 164 § 33.

on that one of the most resilient aspects of the Irish socio-political system was its traditional law, which they termed Brehon Law, from the Irish word *brithemain*, plural of *brithem* »judge.« Much energy was devoted towards the end of abolishing or at least curtailing the practice of native Irish law, at first with limited success. Indeed, there are records that some of the major Anglo-Norman families themselves adopted Irish law, along with Irish language and customs<sup>13</sup>). In the mind of English officialdom, Irish law was dangerous on a number of counts, in particular the manner in which the king's court was in many situations by-passed. So we get denunciations of such processes as the private distraint of goods to pay for a fine or debt without going to court. Also repugnant to the English authorities was the manner in which compensation for a killing could be effected by the payment of a fine to the relatives of the victim. With some justification, this was looked upon as making things too easy for rich murderers. So we can deduce from the condemnations of various aspects of Irish law that the system in broad terms was that described in the Irish texts themselves.

Also of relevance is a very important summary of Irish law which I am in the process of editing and translating for submission to the Early Irish Law Series. As I have mentioned, most of our law-texts are from the seventh to ninth centuries AD – the main collection, the ›Senchas Már‹, having been put together in the second half of the seventh century<sup>14</sup>). Thereafter, the emphasis in the academic law-schools was on the work of interpreting and expanding upon the original texts. However, one notable exception has survived: this is a general summary of Irish law by Giolla na Naomh Mac Aodhagáin, who was chief justice of the province of Connacht, and whose death in 1309 is recorded in the Annals. At the beginning of this lengthy Treatise he explicitly states that he is basing his work on the Old Irish law-texts of about half a millennium previously, and that his intention is to provide a simplified version of »the hard text of Irish«.<sup>15</sup>) Even though English Common law had been in operation in parts of Ireland for over a century, little influence from this quarter is discernible in the Treatise, apart from the appearance of the jury-system, going under the name *fínné*, a word borrowed from Norman French *vigny*, ultimately Latin *vicinetum* »neighbourhood«.

There is another category of Old Irish literary composition which I believe also to be of special relevance to the theme of this conference. These are conventionally termed the »wisdom texts«. We know from Old and Middle Irish literature generally that the early Irish were very fond of proverbs, and this disposition gave rise to a number of texts which can be viewed as developments of the proverbial *genre*. These are learned compositions,

13) Fergus KELLY, *A Guide to Early Irish Law* (Early Irish Law Series 3), Dublin 1988, p. 253–4.

14) Liam BREATNACH, *The Early Irish Law Text Senchas Már and the Question of its Date* (E. C. Quiggin Memorial Lectures 13), University of Cambridge 2011.

15) BINCHY, *Corpus Iuris Hibernici* (as n. 5), vol. 2, p. 691.1–699.4; Fergus KELLY, *Giolla na Naomh Mac Aodhagáin: a Thirteenth-century Legal Innovator*, in: *Mysteries and Solutions in Irish Legal History*, ed. D. S. GREER and N. M. DAWSON, Dublin 2001, p. 1–14.

but I believe that to a greater or lesser extent they originated from folk tradition. For example, one of these texts, *Tecosca Cormaic* ›The Teachings of [King] Cormac‹, as recounted to his son Cairbre, contains some passages of weather-lore. Such material is of wide frequency in popular wisdom in any farming or fishing community anywhere – particularly in the uncertain climates of Western Europe. So, the author of ›*Tecosca Cormaic*‹, probably working in the ninth century, may have adapted from popular usage such sayings as ›ice is the mother of corn, snow is the father of fat‹, in other words, a cold winter benefits growth and fruitfulness in the following year<sup>16</sup>. As in many traditions of folk wisdom, this text contains a good deal of anti-female material, mostly of a humorous variety. For the purposes of this conference, the most significant section of the text provides a summary of the recommended behaviour of a king, nicely illustrating the somewhat contradictory expectations heaped on any head of state<sup>17</sup>. Thus, there is great emphasis on the beneficial effects of the king's justice (*fír flathemon*) which causes the earth to be fruitful, the river-mouths to be full of fish, and the trees to be laden with fruit. He must exert his authority through keeping hostages in fetters, restraining the mighty, and slaying evil-doers. He should keep a sword-smiting troop for the protection of his kingdom, and launch raids into adjoining territories. It is stressed that it is necessary for the king to be acquainted with law and other branches of learning. He should learn poetry and every craft, and should also buy works of art. A section of the text deals with the proper behaviour of a king and his guests at a feast, and advises that there should be liberality of dispensers, music in moderation, joyous countenance, short story-telling, harmonious choruses, and lighted lamps<sup>18</sup>. From around the same period, another wisdom text – known as the ›Triads of Ireland‹ – arranges ideas in groups of three, and sometimes touches on the nature of kingship. In one Triad, we are told that the three best things for a king are ›justice, peace and an army‹, which I think sums up the ideal reign quite acutely<sup>19</sup>.

An earlier wisdom text, *Audacht Morainn* ›The Testament of Morann‹, probably from the seventh century, contains a more focused and detailed assessment of the essentials of kingship. As in the case of ›*Tecosca Cormaic*‹, ›*Audacht Morainn*‹ lays great stress on the beneficial consequences to the territory of the king's justice. This justice not only guarantees peace and stability, but is also expected to bring about abundance of corn, fruit, fish, milk-yields, fertility of women, and protection from plagues, lightning and enemy attack<sup>20</sup>. Morann stresses the interdependence of a king and his people, and advises ›let

16) Kuno MEYER, *Tecosca Cormaic: The Instructions of King Cormac Mac Airt* (Todd Lecture Series 15), Dublin 1909, p. 36 § 17.

17) *Ibid.*, p. 2–6 §§ 1–2.

18) *Ibid.*, p. 10–12 § 4.

19) Kuno MEYER, *The Triads of Ireland* (Todd Lecture Series 13), Dublin 1906, p. 32 § 242.

20) Fergus KELLY, *Audacht Morainn*, Dublin 1976, p. 6 §§ 12–21.

him care for his subjects (*túatha*), they will care for him; let him help his subjects, they will help him«. <sup>21)</sup> He urges the king to be cautious as well as just, and compares his task with that of a charioteer: »For the driver of an old chariot does not sleep. He looks ahead, he looks behind, in front and to the right and to the left. He looks, he defends, he protects, so that he may not break with neglect or violence the wheel-rims which run under him.« <sup>22)</sup> He is warned not to redden many fore-courts, for bloodshed is a vain destruction of all rule and of protection from the kin for the ruler. He should not let a concern for treasures or rich gifts blind him to the sufferings of the weaker members of society, and should ensure that the old are treated with due respect. All types of merchandise must be correctly valued in his kingdom, and he should see to it that lords treat their clients fairly. Craftsmen should be properly paid for the production of well-made manufactured articles.

The text concludes with a description of four types of king, an interesting and original venture into the realms of political philosophy, touching on some of the themes explored in much greater detail in Machiavelli's fifteenth-century study, ›The Prince‹. The most admirable ruler, according to ›Audacht Morainn‹, is the true ruler (*fírflaith*) who »smiles on the truth when he hears it«. Next to him in worth is the wily ruler (*ciallflaith*) who does not have the full legitimacy of the true ruler, but yet has the military capacity to defend his borders and exact tribute. Less successful is the reign of »the ruler of occupation with hosts from outside«, as he has difficulty controlling his army. Finally, the reign of the violent and tyrannical bull-ruler (*tarbflaith*) is one of constant turbulence<sup>23)</sup>.

I now discuss what we know about how kings fitted into the Irish legal system, and investigate the limits of their power. But first I must stress on what a small scale the average early Irish king operated. We have a considerable amount of genealogical material from the early Christian period – mainly dealing with ruling families – and this indicates the existence of up to 150 petty kingdoms in what is quite a small island. Such a kingdom was called a *túath*, and had its own king or *rí túaithe*, king of a *túath*. Some kings were strong enough to exact tribute and hostages from neighbouring *túatha*, and thereby achieved higher status than a king of a single *túath*. A law-text on status entitled ›Críth Gablach‹ provides us with a very interesting account of the structure of early Irish society – it is a perceptive attempt to convey how the different levels in society relate to one another<sup>24)</sup>. This text describes the second level of king as one who is overlord of three or four *túatha*, and consequently is entitled to a higher honour-price than that of the lowest category of king: he is called a *rí túath* »king of kingdoms«<sup>25)</sup>. At a higher level again we

21) Ibid., p. 4 § 9.

22) Ibid., p. 8 § 22.

23) Ibid., p. 18 §§ 58–62.

24) D. A. BINCHY, *Críth Gablach* (Mediaeval and Modern Irish Series 11), Dublin 1941.

25) The »honour-price« is the sum paid for any affront to the person or honour of a freeman, and is related to the rank of the offended party: see KELLY, *Guide* (as n. 13), p. 8–9.

have the provincial king (*rí cóicid*) who ruled over one of the five (or later seven) provinces. There is occasional mention in the law-texts of a king of Ireland (*rí Éirenn*), but it is clear that while provincial kings sometimes claimed overlordship of Ireland, in reality no-one was ever fully in control of the whole island.

One important aspect of a king's role in society is the matter of his observance of the law, or failure to do so. Our sources – particularly law-texts and wisdom texts – devote a lot of attention to the ideal of a law-abiding king, and this theme is also well worked in the saga literature. In theory, the very kingship of a king is dependent on his observance of the law: a Legal Heptad states that if a king eats stolen food or defaults on his oath, he loses his honour-price and hence his right to rule<sup>26</sup>). Similarly, if he commits the heinous crime of *finjal*, that is, killing a member of his own family-group or *fine*, he also forfeits his right to rule. But the annals record many instances of a king slaughtering his near relatives, and continuing to rule. So, as so often in human society, theory and practise are not in agreement. One very interesting law-text entitled *Córas Bésgnai*, 'the Ordering of Discipline', provides an important analysis of what held early Irish society together: *cach thuath co rig, cach rí cona thuaith docum n-eclasa cona grádaib* »every people to the king, every king with his people to the Church with its grades«<sup>27</sup>). So it seems that the author – quite probably a churchman himself – argues that the people look to the king, and that he, along with his people, looks to the organised Church to provide them with guidance on how to operate a properly functioning society.

In the sagas, the king is sometimes portrayed as a judge. There is a dramatic episode in a saga which describes the arrival of the young Cormac mac Airt at the gates of the royal seat of Tara<sup>28</sup>). He observed a woman being addressed by the royal steward and given some information which caused her to weep. On enquiring what was wrong, he was told that the woman's sheep had broken into the queen's woad-garden and grazed on her woad-plants, a valuable source of a strong blue dye for cloth. The king had ordered that the sheep be forfeit in recompense for their offence. Cormac, though an unknown youth, immediately challenged the king's judgment, and stated that it should have been »one shearing for another«, in other words that only the fleeces of the sheep, not the sheep themselves, should have gone in recompense for the grazing of the woad-plants. This judgement was relayed to the king, who immediately realised that he had given a false judgment or *gáu fhlathemon*, and handed over his kingship to Cormac.

But in real life it is clear that things were somewhat different: we have a great deal of information about the professional judge or *brithem*, an important member of society who secured one twelfth of the value of any legal case upon which he adjudicated: if he judged that a fine of twelve cows was appropriate in a particular case, one of those cows

26) BINCHY, Corpus (as n. 5) vol. 1, 14.34–15.4.

27) BINCHY, Corpus (as n. 5) vol. 2, 527.4–5.

28) Tomás Ó CATHASAIGH, *The Heroic Biography of Cormac Mac Airt*, Dublin 1977, p. 122.



went to him. Nonetheless, we know that the king also had a role in the administration of justice within his *túath*, particularly in major cases. One surviving law-text gives a brief account of the procedure at a law-court<sup>29</sup>. The author is evidently thinking of a session at which a number of cases was heard. The court is presided over by a king, bishop or chief poet – the king presides in ordinary secular matters, the bishop in matters relating to the church, and the chief poet in matters relating to poetry. A number of judges (*brithemain*) are assigned a central position in the court, and in front of them are the litigants, each represented by an advocate. On either side are other categories of person who have a part or interest in the case: sureties, witnesses and historians or *senchaid*, learned men who might be required to give expert evidence on such matters as traditional boundaries. The crucial information provided by this text is that the substance of the judgment was decided by the judges, but that it was approved and announced by the president of the court, whether king, bishop or chief poet.

In the traditions of many peoples throughout the world, a king is credited with the devising or codifying of a set of laws. This applied for example in the case of King Hammurabi for Assyrian law, the Emperor Justinian for Roman law, Kings Rothari and Liutprand for Lombardic law, King Howel the Good for Welsh law, and many others. We do not in the Irish tradition have a particular king whose name is stamped on the national law-code. Nonetheless, the introductory material to the main collection of law-texts, the ›Senchas Már‹, contains a tradition that on the arrival of Christianity, the traditional law of the pagan Irish was brought into line with Christian principles with input from three bishops, Patrick, Benén and Cairnech, three kings Loigaire mac Néill, king of Ireland whose seat was at Tara, Corc Mac Luigdech king of Munster and Dáire king of Ulster, and three learned men Ros mac Trechim, Dubthach moccu Lugair (who is decried as a legal expert, *súí bérla féne*) and Fergus the poet<sup>30</sup>.

Our texts regularly distinguish two categories of law. The first is called *Féinechas*, which might be translated, ›The Law of the Irish (*Féini*)‹, the body of law which the Irish inherited from Common Celtic times, and which, as we have seen, shares many basic features with medieval Welsh law. In contrast, we have proclaimed law, called *cáin* or *re-chtgae*. ›Críth Gablach‹ refers to the entitlement of a king to issue an emergency ordinance in a time of plague, or after defeat in battle, or to repel foreign invaders, specifically the Saxons. There is also the very significant stipulation (of special relevance to this conference) that the king may issue an ordinance of traditional law in response to pressure from his people. The wording in the text is careful: ›It is the people who choose it, and the

29) Fergus KELLY, An Old Irish Text on Court Procedure, in: *Peritia* 5 (1986) p. 74–106.

30) John CAREY, An Edition of the Pseudo-Historical Prologue to the Senchas Már, in: *Ériu* 45 (1994), p. 11–12.

king who confirms it.<sup>31)</sup> The text gives no further details, but I think we can envisage some such situation as there being general disquiet, presumably voiced at the assembly or *óenach*, that some aspect of the traditional legal code was being flouted. The king is then expected to ensure that a communal effort is made to put things right. This is not royal legislation as such – the law is already there – but it is the king who in this situation is expected to take the initiative.

In other cases *cáin* or proclaimed law may in fact be innovatory. The annals provide many instances where a *cáin* is proclaimed in a particular territory. Often, it is proclaimed simultaneously by a king and a prominent ecclesiastic: there may be a ceremonial circuit accompanied by holy relics. Sometimes, only the king is mentioned in the annals, and sometimes only an ecclesiastic. The most famous such *cáin*, the text of which fortunately has come down to us, is *Cáin Adomnáin*, ›The Law of Adomnán,‹ an abbot of Iona in Scotland, whom the Annals of Ulster record as having brought this law to Ireland in the year 697<sup>32)</sup>. The subject-matter of this law was mainly concerned with offences against women, but also touched on the protection of children and clerics. The innovatory aspect of this law is that it doubled the penalty for offences against women and other innocents, with particular reference to those carried out during warfare. In ordinary secular law, a crime of violence against a woman was assessed according to the rank of her husband or other male guardian, and there was no extra penalty involved on account of her sex. Another *cáin* dealt with the fines imposed on those who worked or carried out unnecessary travel on a Sunday, much of the revenue going to the Church.

I conclude with a brief account of the theory of Kingship in early Christian Ireland. Various early texts emphasise that the body of the king must be perfect – any physical blemish debars him from kingship. ›Bechbretha‹ records that a certain king Congal had to abdicate the kingship of Tara on the grounds that he had lost the sight of one eye<sup>33)</sup>. There is repeated stress on the necessity for a king to behave in a manner suited to his elevated rank. Another law-text states that a king's honour-price is reduced to that of a commoner if he takes his hound and goes off hunting by himself. This clearly was not regarded as dignified behaviour – a proper king must always be accompanied by a suitable retinue. He also forfeited his honour-price if he demeaned himself by carrying out menial toil with mallet, spade or axe. In theory, the king should not be defeated in battle, though here real life did not always tally with the ideal. We know from the annals that kings were often defeated in battle, and yet managed to cling on to their kingship, in some cases carrying out further onslaughts on their enemies on later occasions.

31) BINCHY, *Críth Gablach* (as n. 24), p. 20. See also discussion by Thomas CHARLES-EDWARDS, A Contract between King and People in Early Medieval Ireland? *Críth Gablach* on Kingship, in: *Peritia* 8 (1994) p. 107–19.

32) KUNO MEYER, *Cáin Adamnáin: an Old-Irish Treatise on the Law of Adamnan* (Anecdota Oxoniensia. Mediaeval and Modern Series 12), Oxford 1905.

33) CHARLES-EDWARDS and KELLY, *Bechbretha* (as n. 11), p. 68 § 32.

As we have seen, there is much emphasis on the supernatural effects of the king's justice or *fír flathemon* on the fertility of the soil and the general prosperity of the kingdom. Such ideas are widely attested in many ancient cultures, eloquently expressed for example in Homer's *Odyssey*; »a blameless king, one who fears the gods [...] maintaining right, and the black earth bears wheat and barley, and the trees are laden with fruit, and the sheep bring forth and fail not, and the sea gives store of fish, and all out of his good guidance, and the people prosper under him«. In 1909 Siegmund HELLMANN edited a Latin text attributed to Cyprian, entitled ›De duodecim abusivis saeculi‹ ›On the Twelve Abuses of the Century‹, which he believed to have been written in Ireland in the second half of the seventh century, and which was widely quoted on the continent from the ninth century onwards, and was used by Bishop Jonas of Orléans in his ›De institutione regia‹ of 884 and by Bishop Hincmar of Reims in his ›De regis persona et regio ministerio‹ of circa 860. HELLMANN suggests that ›De duodecim abusivis‹ may well have helped to influence the medieval notion of kingship<sup>34</sup>.

It is noteworthy that the section in this text on the *rex iniquus* »unjust king« agrees quite closely in content with part of the Old Irish text on kingship ›Audacht Morainn‹<sup>35</sup>. However, although there is a certain similarity of phrasing between the Old Irish ›Audacht Morainn‹ and ›De duodecim abusivis saeculi‹ there seems to be nothing sufficiently unusual to prove influence in either direction. Thus, the Latin text states that the justice of the king brings about »abundance of corn« just as the Irish text refers to »abundance of every high tall corn«. The Latin text likewise attributes the fecundity of the trees to the justice of the king, just as the Irish text speaks of »abundances of great tree-fruit of the great wood« which result from his justice. These are similar, but rather commonplace sentiments. The question must therefore – for the moment at least – be left open.

SUMMARY: THE EVIDENCE FOR CONSENSUS IN THE IRISH LAW-TEXTS OF THE SEVENTH TO NINTH CENTURIES AD (FERGUS KELLY)

This paper provides a general account of the Old Irish law-texts, dating from the seventh to ninth centuries AD, with a summary of the editorial and interpretative scholarship which has been carried out on this material since the mid-nineteenth century. Attention is then focused on what the law-texts can reveal about the nature of early Irish kingship. In

34) Pseudo-Cyprianus, *De XII Abusivis Saeculi*, ed. Siegmund HELLMANN (*Texte und Untersuchungen zur Geschichte der alchristlichen Literatur* 34), Leipzig 1909. See further discussion by Hans-Hubert ANTON, *Pseudo-Cyprian: De duodecim abusivis saeculi und sein Einfluß auf den Kontinent, insbesondere auf die karolingischen Fürstenspiegel*, in: *Die Iren und Europa* 2, ed. Heinz LÖWE, Stuttgart 1982, p. 568–617; Aidan BREEN, *De XII Abusivis: Text and Transmission*, in: *Texte und Überlieferung*, ed. Próinséas Ní CHATHÁIN and Michael RICHTER, Stuttgart 2002, p. 78–94.

35) See discussion by KELLY, *Audacht Morainn* (as n. 20), p. xv–xvi.

spite of traditions of the passing of judgements by mythological kings, the evidence of the law-texts indicates that historically the role of the king was that of president of the court of law, approving and announcing judgements arrived at by professional judges (*brithemain*). The early Irish king was not a legislator or codifier of the law, but was nonetheless entitled to issue ordinances in times of emergency, such as plague or invasion. He could issue an ordinance of traditional law in response to pressure from his people, presumably voiced at an assembly (*óenach*).

This paper also examines the theory of kingship propounded in the wisdom-texts, notably in the seventh-century ›Audacht Morainn‹, which lays great stress on the necessity for kingly justice (*fír flathemon*), which was believed to bring about abundant harvests, fruit on trees, fish in rivers, fertility of women, and general prosperity in the kingdom. Finally, the paper adverts to the possibility that the Old Irish wisdom-texts contributed to the continental *Specula Principum*, and may have influenced the medieval notion of kingship.