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The Ancient Irish Brehon Law: The Promise of Sameness*

M. Stuart Madden
Past Distinguished Professor
Department of Law
Pace University School of Law
United States of America

I. Introduction

The ancient Irish Brehon Law guided tribal Celtic populations of Ireland and parts of Scotland for perhaps 1000 years, conveyed in an oral tradition of poem and story and later in written manuscript until the final English subjugation of Ireland (Éire)[1] in the Seventeenth Century. It was named for its guardians and exponents, a roving class of lawyers whose disposition of disputes brought before them were the warp and woof of civil order in an island organized in clans, with no coherent, indivisible state. Brehon Law did not derive from the *jus civile* of Rome or Romanized Western Europe but rather from a broader *jus naturale* of fundamental and universal ideas of right and wrong that have influenced man from time before time.

In addition to its indigenous tribes of Celts, Ancient Ireland was a bouillabaisse of invasive British, Western European and Nordic populations – the southern Picts of the Western Scottish Isles;[2] Angles, Saxons, and Jutes;[3] the Norwegian and Danish Viking assaults of particular vigor in the Ninth Century;[4] and in the Eleventh Century the Anglo-Normans;[5] and ultimately in 1541 with the establishment of English rule under Henry VIII as King of Ireland.

Beginning in earnest with the Norman Invasions of 1169 and 1171 A.D., the Anglo-Norman hegemon and proxies in Ireland were a true army of occupation, imposing Tudor ecclesiastic, civil and criminal law throughout the realm. Not content to permit English law to govern the population centers while co-existing with what they viewed as the uncouth pagan law of the Brehons in the countryside, while inventing for these populations and their culture[6] the phrase "beyond the pale",[7] the Anglo-Normans sought to extirpate Brehon Law, and more generally Gaelic culture, root and branch.[8]

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1 The modern Irish Éire evolved from the Old Irish word Ériu.

2 THE OXFORD HISTORY OF BRITAIN 50, 78 (Kenneth O. Morgan, ed.) (Oxford 1984).

3 WILLIAM E. BURNS, A BRIEF HISTORY OF GREAT BRITAIN 26 (Infobase 2010).

4 WILLIAM E. BURNS, *id*. at 91 (noteworthy for casual plundering [that] gave way to a policy of conquest and settlement).

5 *Id*. at 156. The Anglo-Normans comprised a combination of ethnic Anglo-Saxons, Normans and French.

6 For example, the English Statute of Kilkenny (1367 A.D.) prohibited an array of native Irish cultural practices from traditional clothing to Druidic faith.

7 The term "pale", derived from the Latin *pālus* for stake, meant a fencepost, and the fence itself that gave boundaries the area it contained. Originally the English Pale was that land proximate to Dublin in which royal

Teaching or adhering to Brehon Law was flatly prohibited, and even possession of Brehon manuscripts was a crime,[9] but samizdat transcription and dissemination continued. As a consequence of English suppression, many of the manuscripts were secreted underground and suffered damage or total loss. This mistreatment of the Irish was accented by active English dragnets in search of all vestiges of Brehon law, including martial excavations of sites suspected of hiding Brehon writings.

The word *keltoi* (Celtic) was first used in Sixth Century B.C. to describe these people who shared a family of languages rooted in a lost ancestral tongue. Their largest concentration settled in England, Ireland Britain, and Gaul. Even as England resisted comprehensive Romanization, Ireland was practically impervious, leaving the Christian and pagan communities in Ireland unique within the Romanized West and largely uninfluenced by Rome from the Third Century through the Norman Conquests of 1169 and 1171.

The ancient Celtic Churches of Ireland and the British Isles were as estranged from Rome and Roman Catholicism as were the Irish inhabitants, a result of ancient antagonisms fortified by the centuries in which the Gaelic populations were isolated from Western Europe, and *a fortiorari* Rome, due in large measure to the serial pagan invasions.[10] Within a few generations of the Norman Conquests,[11] the Gaelic clan chiefs regained wide regions of Ireland, and "might have won more, had they not incessantly quarreled among themselves."[12]

Brehon Ireland was a great cultural experiment in which Brehon judges, by trial and error and with their multitude of glossators, cultivated a corpus of law that was ever perfecting itself by accretion, as does a coral reef. Brehon Law was true living law, first pagan, and then Catholic, until it was torn asunder under Tudor England.

As had earlier cultures the laws of which were reposed in an oral tradition, such as that of the ancient Greeks,[13] so too for centuries expression of Brehon Law and custom was the province of an elite group of traveling judges who in oral narrative originally, preserved and presented Brehon principles to the largely unlettered Irish audience.[14] As more and more of the oral legal tradition was committed to writing, a goal emerged to reconcile hundreds of discrete manuscripts into an organized work. It had become apparent to all that transcription of this enormous corpus of Brehon teaching could better be advanced if rendered in written Gaelic.

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law was enforced. Colloquially, "beyond the pale" described something, in this instance the Gaelic culture, was "outside the boundaries".

[8] Ireland was forced into the Church of England Protestantism by Henry VIII between 1536 and 1541, furthered by Oliver Cromwell's armies (1649-1653), under color of the English Parliament, and completed with the Irish Catholic Jacobian 1691 surrender at Limerick.

[9] By a statute passed in Kilkenny in 1367 Anglo-Saxon legislators denounced the Brehon law as "wicked and damnable[.]". M. J. Gorman, *The Ancient Brehon Laws of Ireland*, 61 U. PA. L. REV. and AM. L. REG. (No 8) 220 (1913).

[10] The Irish Celts and their English counterparts "had never had much to do with Rome [in large part due to] the geographical distance to Rome and, especially, a long period in the Fifth and Sixth centuries during which the Celts had been cut off from the Church on the continent by the pagan invasions." VLADIMIR MOSS, THE FALL OF ORTHODOX ENGLAND: THE SPIRITUAL ROOTS OF THE NORMAN CONQUEST, 1043-1087 at p. 4 (2011):

[12] 1 WINSTON S. CHURCHILL, A HISTORY OF THE ENGLISH SPEAKING PEOPLES 266 (1956).

[13] For example, in ancient Greece the Greek word for law was *nomos*, or custom. It was largely unwritten, and as its divination, articulation and application rested in the noble classes. *See generally* MICHAEL GAGARAN, WRITING GREEK LAW 93-109 (Cambridge 2009).

[14] Prior the transition to written texts of Brehon Law the original style was spoken *rosc*, a form of poetry, that was rhymed and "committed to memory, and thus handed down from one generation of Brehons to another." M. J. Gorman, *Ancient Brehon Laws* at p. 219.

Patrick, in an agreement with his former opponent Lóegair (died c. 462 A.D.), *floruit*, according to the King Lists, as a King of Tara or High King of Ireland, appointed a Committee of nine persons to revise the ancient laws of Erin—three kings, three ecclesiastics, and three poets and antiquarians. Following three years of exacting labor from to 338 to 441 A.D., translated as the Senchus Mór (Great Ancient Tradition), alternately the "law of freemen" or the "free land-tillers".[15] The laws were written originally in *Bearla Feini*, a Fenian dialect that posed initial and enduring difficulties in consistent translation.[16]

Medieval Irish scholars, or glossators, thereafter annotated the manuscripts, reconciling inconsistencies and discordances while elaborating and interlacing available accounts of decisions reached by Brehon lawyers applying the law. Practically all of the writing in the ancient Gaelic idiom took place over the course of the century between 650 and 750 A.D., and became the English language texts upon which the Nineteenth Century scholars would rely. The tenacity of the laws' oral tradition is described the opening paragraphs of the *Senchas Mór*, which include the exhortation that Poets "Sing out" its provisions, adding rhetorically: "What has preserved the tradition of the men of Ireland? The joint memory of the ancients, transmission from ear to ear, the chanting of the poets."[17] In 1852 Irish scholars, Eugene O'Curry and John O'Donovan, began translating the discovered manuscripts. With nearly 50 tracts in varied condition and completeness, the *Senchas Már* was and remains the largest of these groupings translated.[18]

The Gaelic realm of agricultural Hibernia was to an extent an established society, but not for this reason a centralized one. It was socially nuanced but not unitary in the sense of any other Western Kingdoms. Even under the suzerainty of Tudor England Brehon Ireland was not so much organized as it was synthesized or harmonized with a structural footprint of natural law. Unlike many ancient cultures the social guidance of Brehon Law was based not in myth, folklore or faith, but instead upon a secular commitment to peaceful pursuit of the common weal that brought respect and security to individuals insofar as their lives and activities furthered the interests of the entirety. In proximity to England and with the continental nations in flux and fraught with conflict, the cohesion of Middle Antiquarian Ireland around principles of individual autonomy reliant upon with confidence in a communitarian legal and social system permitted an otherwise diffuse group of families and clans to subordinate individual and tribal competition to a collective appreciation of a common endeavor of safety, prosperity and welfare.[19]

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[15] Irish Manuscripts: The Senchus Mór – (Brehon Law Academy), www.brehonlawacademy.ie › single-post › 2014/06/05.

[16] LAWRENCE GINNELL, THE BREHON LAWS: A LEGAL HANDBOOK at p. 17 (T. Fisher Unwin/London 1894) (reprinted Forgotten Books 2012/www.forgottenbooks.org).

[17] CATHERINE DUGGAN, THE LOST LAWS OF IRELAND: HOW THE BREHON LAWS SHAPED EARLY IRISH SOCIETY at p. 13 (Glasnevin/Dublin 2013).

[18] Many of the original written Gaelic sources appear with parallel translation in ANCIENT LAWS OF IRELAND: URAICECT BECC AND CERTAIN OTHER SELECTED BREHON LAW TRACTS (IRELAND) (Commissioners for Publishing) (1901), (1923)(transl. W. M. Hennessey)(hereinafter ANCIENT LAWS: BREHON LAW TRACTS). With limited redundancy other tracts appear as ANONYMOUS, ANCIENT LAWS OF IRELAND vol. 1 (1865) (transl. W. Nelson Hancock).

[19] Catherine Duggan writes of the legal system of Brehon Ireland as "detailed, sophisticated and humane", revealing "a complex society in which learning was revered, social mobility was expected, and fairness and harmony were social goals." CATHERINE DUGGAN, THE LOST LAWS at p.1.

While social mobility was attainable, the route to it was most paved most comfortably for members of one's tribe. Land could be privately held, but as each owner was a member of a clan or tribe, the community retained a residual interest in any land conveyances, such that an owner seeking to sell an interest had first to offer it to a tribal member before selling it to an outsider. M.J. Gorman, *The Ancient Brehon Laws of Ireland*, 61 U. PA. L. REV. No. 4 (A.L.R.)(1913) at p. 224.

II. The Brehon Law

This article does not canvass the grand scope and protean particularity of the hundreds of specific delicts - corporal, contractual and dignitary – within the Brehon Codes. These are discussed comprehensively and excellently in other resources.[20] Rather I will turn to selected, illustrative examples that together reveal a tapestry rich in its demonstration of social constraints and cultural imperatives of Brehon Ireland.

Natural Law Underpinnings

The collective conscience underlying Brehon Law was not achieved by ecclesia,[21] but instead by the finely distinghuished, incremental decisions of Brehon lawyers building upon centuries of experience shared orally or in written Gaelic. Whether in the oral tradition or in the later application of the written Gaelic, in resolving disputes brought before them, the Brehon Judges would consider the developed customary law and apply it in an individualized way in what has been described as the "custom of following custom", and even more broadly reflecting the law of nature.[22] In this granular course, the interests of the individual are submerged in the interests of the whole.

Brehon Law exhibited a perfect intersectionality with its Druidic forbears[23] through the Anglo-Saxon subjugation and its eventual extirpation under Henry VIII. For the individual Irish (*Éireannach*), the monadic consciousness under Christianity did not generally disrupt pursuit and advancement of the non-theistic realm of Brehon Law. The compensatory schemata of Brehon Ireland took on "the mantle of the people as a whole in producing the health and security of that society."[24] In its fashioning of individual justice in specific disputes, Brehon Law worked a communitarian, although not distributive, justice. Even as its privileges and protections were available equally to all, Brehon Law nevertheless recognized and reinforced an existing economic hierarchy by factoring in disputants' socio-economic rank in calculating remedial compensatory calculations.[25]

Brehon Law was civil and not criminal in the modern understanding of that term.in nature. For the fastidious particularity brought to the Brehon Codes, no developed distinction was ever reached distinguishing civil from criminal wrongs nor were the principles applicable to the cases of contract ever clearly distinguished from those applicable to torts or crimes.[26] In cases of whatever nature the suit was brought by the aggrieved or the estate. Should the action involve personal physical injury alone, any restitutionary obligation was extinguished upon the criminal's death.

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[20] *E.g.*, GINNELL, THE BREHON LAWS, *supra* at note 16; M.J. Gorman, *The Ancient Brehon Laws of Ireland, id*.; Neil McLeod, *Assault and Attempted Murder in Brehon Law*, 33 IRISH JURIST 351-391 (1998); Katharine Simms, *The Contents of Later Commentaries on the Brehon Law Tracts*, 49 ERIU 23-40 (1998).

[21] In the definition of ancient Greece, an *ecclesia* was defined as a political assembly of citizens. A group of politicians who would gather to debate was an example of an *ecclesia*.

[22] *Cf*., Dennis L. Sweeney, *The Common Law Process: A New Look at an Ancient Value Delivery System*, 79 WASH. L. REV. 251, 261 n.43 (2004).

[23] The Druids were a learned priestly class, the name probably deriving from the expression "knowledge of the oak", or "profound knowledge," 106 BARRY CUNLIFF, THE CELTIC WORLD 106 (Greenwich House/New York 1996).

[24] Claire Hall, *The Day God Rode In: The Realness of Things Past: Ancient Greece and Ontological History*, 42 LONDON REV. OF BOOKS 11, 12 (Feb. 20, 2020).

[25] So too in United States tort law, a largely common law tradition, a plaintiff's recoverable future pecuniary loss is affected by his or her predictable economic horizon, *i.e*., a successful physician may recover more per annum for a lasting injury than would a blue-collar laborer.

[26] GINNELL, THE BREHON LAWS at p. 184-85.

On the other hand, should the action involve damage to or loss of property, upon the wrongdoer's death responsibility in restitution remained in the *sept*,[27] the result of which was that "[e]very clan and every clansman had a direct monetary interest in the suppression and prevention of crime."[28]

As the ancient Gaelic communities had no central martial authority, conclusions of the Brehons included no peremptory or imperative language, and were not enforced in any tradition of modern states, choosing instead to "leave the law to prevail *suo vigore.*"[29] Decisions were given effect by a popular acceptance and communal respect made possible by broadly based confidence in their underlying wisdom and the legal processes appurtenant thereto. Brehon Law was secular, and coexisted with Canon Law, save for instances of serious inconsistency.[30] The customary law that the Brehons maintained was dependent not upon the power of a central authority but instead its popular acceptability.[31]

The Brehon Restitutionary Goals

In the main, Brehon Law was a compensation mechanism for resolving disputes in which there was harm suffered by taxing the wrongdoer with an obligation to pay the victim. The law provided for two components or variables: (1) the payment of an "*honour*-price", that varied with the status of the victim; and (2) an *eric* (or *eraic*) fine, that varied with the severity of the injury, with the total fine being a multiple of the *honour*-price and the *eric* fine.[32]

There being no metallic currency in early Ireland, a combined fine was calculated in *cumhals*,[33] the conventional units of value. *Cumhal* meant, literally, a bond-maid or female slave.[34] However, in a land the chief wealth of which consisted in land, horses, cattle, sheep and pigs,[35] in practice a *cumhal* was the equivalent to the value of three cows, or three ounces of silver.[36]

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27 From the Gaelic word meaning "progeny" or "seed", importing a family or clan of the same surname.

28 GINNELL, THE BREHON LAWS at p. 186.

29 GINNELL, THE BREHON LAWS at p. 27.

30 Such was true in the case of Gaelic acceptance of polygamy that was abandoned under pressure from Christianity. *See* Julia Brodsky, *What Were Ireland's Brehon Laws*?, FOLKLORE (Feb 8, 2019).

31 DUGGAN, THE LOST LAWS at p. 31.

32 "The *eric* [reparation] was given, as its name imports, to the relatives of the person slain, in the proportion in which they were entitled to inherit his property, that being also in accordance with the degree of relationship, and usually with the degree of relationship, and usually with the degree in which those persons were really sufferers." GINNELL, THE BREHON LAWS at p. 190.

33 Compensation measured in *cumhals* was easily harmonized with contemporaneous Frankish and Ostro-Gothic continental compensation (sometimes termed composition) systems essaying to reduce blood feud, vendetta or trial by combat resolution of claims of homicide or maiming. The terms *weregeld* or *weregild* described the value of a person's life, reduced to a money amount. M. Stuart Madden, *Paths of Western Law after Justinian*, 22 WIDENER L.J. 757, 758 (2013).

34 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 119

35 ANCIENT LAWS: BREHON LAW TRACTS, Heptads, p. 228 [ccxlix].

36 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 226. One aw text, the *Crith Gablach*, calculated the honour price of a freeman at fourteen *cumals*, or 42 cows. FERGUS KELLY, A GUIDE TO EARLY IRISH LAW 8 (Dublin Institute for Advanced Studies 1988).

For homicide, the full *honour*-price paid to the victim's family and the *eric* fine was seven *cumhals*, with six *cumhals* as a "body fine" (*dire*) price" and the seventh as "restitution" (*aithgin*).[37]

Where the damages exceeded three *cumhals*, the payment was to be made in property of three livestock species, *viz.,* one-third in cows, one-third in horses, and one-third in silver. Ordinarily, the amount of the fine in cases of murder was double that in ordinary cases of manslaughter. An important element in the calculation of the amount of damages was the intention of the wrongdoer, both as to the person whom he intended to injure, and the nature of the injury he intended to inflict. In the case of injuries inflicted on the person, it was attempted to schedule all possible hurts and setting different amounts.[38]

In terms of persons and positions, Brehon Law in its substantial Heptads to the BREHON LAW TRACTS (vol. 5) adopted a fastidious regimen of classifications pertaining to liberties and liabilities.[39] Illustrative is the Small Primer to the *Senchus Mór*,[40] in which translator Wm. M. Hennessey notes seven "grades" of cleric: "a lector, a small janitor, an exorcist, a sub-deacon, a deacon, a priest, and a bishop."[41] There were likewise seven grades of Poets:[42]

Communitarian Practices

Primary among the communitarian practices in Brehon Ireland was that of fosterage, a practice similar to that followed by Anglo-Saxons, Welsh and other Scandinavian populations. Fosterage involving a family's placement of younger children into the charge of other tribe members was commonplace. It's communitarian effects were obvious if one considers a family, let us say, four able children but holding land and livestock that required the labor perhaps only two of them, together with the mother and father, could place two of their children with the family of another tribe member whose work-able members was insufficient to their labor needs. The family placing the children would be relieved of the fiscal burden of raising them to majority, while the receiving family could devote the labor of the household to their actual needs. The fosterage arrangement was styled, alternatively, as "for affection", in which the placing family received no remuneration, or "for payment" by agreement between the two families. The receiving family was responsible for food, clothing and education of the children according to standards adopted in the Brehon code, was liable for any delicts of the children, and responsible for any injuries the child might suffer, until the end of the fosterage at the age of 14 for girls, the marriageable age, and 15 for boys,[43] for all wrongs committed by his foster children and for any injuries which they sustained while under his charge. On the other hand, the children were obliged to support their foster father in his old age, if his own children were dead or unable to support him.

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37 A definitive treatment of *honour* price and *eric* fine application for an array of wrongful injuries is that of Neil McLeod, *Assault and Attempted Murder in Brehon Law*, 33 IRISH JURIST 351-391 (1998).

38 The laws of Athelbright, the Saxon King of Kentwere on the same principle, and contain no fewer than sixty-seven different items of the sums to be paid for different injuries. *Id.*

39 There were 82 Heptads to BREHON LAW TRACTS (vol. 5) identified in the primary manuscripts, although scholars allow that there may have been more.

40 The Small Primer, introducing vol. 5, was intended as a manageable summary of what would follow, and was likely intended as a manual for use in the Brehon law schools for aspiring lawyers.

41 ANCIENT LAWS: BREHON LAW TRACTS, W. M. Hennessey Small Primer at p. 23. The devotion to the number seven is an apparent adoption of the Biblical number seven as importing perfection and completeness.

42 The *'fochloc*'- poet, the *'mac fuirmid'*-poet, the *'dos*'-poet, the '*cano*'-poet, the '*cli* '-poet, the *'ansruith'*-poet, the '*ollam*'-poet." ANCIENT LAWS: BREHON LAW TRACTS, W. M. Hennessey Small Primer at p. 27.

43 ANCIENT LAW: BREHON LAW TRACTS at p. 224.

Naturally in that time, however, less was expected from girls than from boys in this respect. This law of fosterage was also prevalent among the Anglo Saxons, the Welsh and the Scandinavians. [44]

In Matters of Gender

The Irish woman of this time withstood the burdens ordinary to the age. Marriages were arranged by clan or tribe elders, but divorce was permitted. While a woman could enter into a contract for goods or services, she remained under the "supervision" of the male head of household had the power to "annul" the contract.[45]

For all of this, in purely economic affairs Irish women had prerogatives and enjoyed latitude that were markedly modern. A woman could hold both tangible and intangible property, and also land, in her own name, and retain any profits. Should the woman divorce the man for cause, the woman could recover one/half of any dowry, and the husband retained no usufructuary interest in income earned or property acquired by his wife in the course of the marriage.

Marriage Pretenders Feint and puffery have forever attended the marital courtship minuet. Under Brehon Law, only such subterfuge as affected the man's capacity to wed or consummate a marriage provided the bride a remedy, either in annulment or compensation. Should a wife "quickly" refuse cohabitation with her husband, he could refuse return of any dowry.[46] A woman could without penalty leave an "unarmed" man who had "no weapon befitting him" [lacking serviceable genatalis]; a clergyman; a "barren" or impotent man; or "an over gross man" physically "not able for desire."[47]

Lies of the Husband A husband's prerogatives over the contractual and financial affairs of women in his family rested on the knife's edge of his honorable behavior. An array of mis-steps could strip away rights he may have been born to, and opened to the affected women, and most specifically the wife, remedies in economic autonomy over financial matters from dower interests to financial gains in any independent lucrative pursuits. Even when upon marriage the wife was "bound upon a son as *'nascaire'* and a surety as '*trebuire*'[tribal] security", she could seek divorce "whatever day they themselves think proper", and recover "[w]hatever has been given them [as] theirs by right, *i.e.* whatever has been given them in their dowry[.]"[48]

Ill-advised was the husband who bore "false witness" against his wife, for she could at her election "separate, or remain in the law of marriage," and irrespective receive not only her dowry but also full *honour*-price, as well as the *eric* for the false testimony.

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44 *Id.*

45 The male head of household retained ultimate responsibility for the acts of wives, offspring or minors in fosterage. "[A]ny contract, then, which is made with people [under] supervision in the absence of the person who protects them is no contract even though sureties may have guaranteed it, for their contracts are annulled by their 'heads' so that they are not enforceable against them, for instance, a contract with a woman, with a son, . . . with a slave, with a landless person, with a senseless person." DUGGAN, THE LOST LAWS at p. 65, citing *Berrad Airecta* section 37.

46 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 133.

47 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 135, listing those men precluded from contacting marriage, including those "whose … wives quickly turn away from them from cohabitation, so that what was given as dowry is forfeited to them: a barren man; an unarmed man; a man in holy orders; a churchman; a rockman [one without land]; a very gross man; a man who discloses of bed; —because there is no issue from a barren man; a wife is not easy for an unarmed man; a child on the road is not proper; it is not easy to apply the provisions of the law to a church; an over gross man is not able for desire."

48 "There are seven women women mentioned in the Brehon law, Heptads. who though bound upon a son as *'nascaire'* and a surety as '*trebuire*'[tribal] security, are competent to separate from their marriage, whatever day they themselves think proper. Whatever has been given them is theirs by right, i.e. whatever has been given them in their dowry is theirs by right." ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 295 [cccxv].

Casual cruelty in satire might pass unredressed, but "circulation", *i.e.* repetition of a hurtful satire of whatever kind would leave the husband vulnerable to the same remedy.[49]

A Woman's Forfeitures for Misconduct Distinct sanctions symmetrical to those imposed upon husbands were levied upon women whose stark misconduct, even if not separately susceptible to sanction, nevertheless warrant extinguishing a privilege.

A disappointing level of victim shaming or blaming is recognized in the Brehon Law's stripping or reducing a woman's *dire* or *honour*-price should they cohabit "unawares" with a man, or "by violence", or who "prostitutes her person to everyone" and only belatedly "adopts chastity", a woman "who conceals that she has been violated", or who forced by a man but "does not scream out until he has just escaped", or a woman "who avows that she will transgress against her husband", or a woman who makes an assignation with a man to come unto her in bush or bed".[50]

Further suffering loss of *dire* rights against a man was a woman in a *cathair* [city] dwelling is the woman who is sexually violated but who does not complain [scream] until the man has completely escaped from her uncaught, *i.e.*, she is free to the man with whom she has made an assignation until she screams, and after she screams." Absent a prior assignation, the man is "safe till she screams, but it is illegal after screaming."[51]

Of Outlaws and Pilgrims

Outlaws While remedies under Brehon law were frequently titrated with reference to clan status, all similarly-situated grievants stood in equality before the law.[52] Women[53], widows, orphans, travelers, foreigners, indeed all Irish who did not by felony self-ostracize themselves and thereby remove themselves from the community, were provided remedies for wrongs suffered.

Brehon Law provided an elaborate road to perdition for the committed misfit.For the three-fold commission a non-capital crime, such as lying, perjury or fraud, the offender lost half of his *honour*-price. Complete forfeiture would follow a fourth offense.[54]

It required a determined effort to live altogether without agency in Brehon Ireland. All of history has shown that many families can have malefactors, or black sheep, and ancients were no exception. A family risking ruin due to its obligations in compensation arising from the misconduct of its relative could escape this burden by having him declared a stranger or an outcast, upon payment of seven *cumhal*s to the tribal chief and seven years penance to the Church, plus two *cumhals* to the chiefs of any other land subjected to the misconduct.[55]

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[49] "A false story, *i.e.*, a woman of whom her mate, *i.e.*, her husband tells a false story, *i.e.*, a lie, *i.e.*, to bear false witness against her; she has her choice, whether she will separate, or remain in the law of marriage; and whichever of them she adopts, *dowry* and *honour*-price are to be paid to her, besides the '*eric*' for the false testimony. Circulation to a satire, *i.e.*, to repeat satire, whatever be the kind of satire." ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 295.

[50] ANCIENTLAWS: BREHON LAW TRACTS, Heptads, p. 273 [xlvii.]

[51] ANCIENT LAWS: BREHON LAW TRACTS, Heptads, at p. 275.

[52] ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 205.

[53] Relying vaguely upon the Anglican Bible's Old Testament, Brehon judges allowed polygamy or concubinage. Brehon law did, on the other hand, allowed divorce, in contravention of the Roman Church.

[54] GRINNELL, THE BREHON LAWS at pp. 191-92.

[55] "*Deoraidh frecair* [a transferred exile or outcast], *i.e.* an *urradli* [or tribeman] who is converted into a stranger [or outcast] in this manner. This is a man that is frequently committing crimes, and his family are not able to pay [the fines] for his crimes always; and it is thus they get rid of his guilt and make a *deoraidh frecair* of him, viz. his family pay seven *cumhals* to the *flaith* [or chief] and [a composition for] seven years of penance to the church ; and two *cumhals* of *cairde* [or amity] to each of the four borders, that is, with which the guilty person has intercourse of amity, and they are thus freed from his crimes. And after this if one of bis family should give

One could of their own volition separate from a tribe upon what could be termed a severance upon showing that he had committed no crimes against his tribal chief; that he reveal "the length and breadth" of any land or crops that he had to that point received from his Chief; and that he leave to the Chief two-thirds of it all.[56]

Pilgrims Protection of the *honour* price remedy was given the believing *erennach* going on religious pilgrimage. It represented a transactional privilege, and was operative only for the time span of the pilgrimage. One making a pledge to "sanctify he himself" to "perpetual purity", and set forth on a pilgrimage or take up a pilgrim's staff could receive a full *honour* price for any trespass to him, for such time as he completes the pilgrimage, or failing to do so, "does penance".[57]

Proceedings Upon Land

Trespass to Land Such was Brehon Law's commitment to equality that it provided for restitution for a trespassory violation of a man's home even if the trespasser were a Chieftain, plus the expense of "one night's entertainment[.]"[58] Should the unpermitted invasion also involve theft and plunder, the compensation due the owner was "the *eric*-fine for trespass and burning[,]" "even though [the trespasser] be the king of Ireland[.]"[59]

Tribal Rights in Undivided Land All undivided land was held by the tribe. An owner could leave land to his heirs, but upon his death ownership interest would inure also to other members of the owner's household, and successors. Some but not necessarily all heirs became joint but not absolute owners of the property. Upon exhaustion of any line of inheritors ownership reverted to the tribe.[60]. A land conveyance tainted by fraud was not invalidated if the transferee was an owner in good faith, the law providing: "In the case of a person who buys without stealing or concealment, with purity of conscience, the purchase is his lawful property according to God and man; if his conscience is free, his soul is free."[61]

While Irish landowners enjoyed discrete property rights permitting the use, enjoyment and profitable exploitation of land they occupied, these rights coexisted with the recognition that all land was hereditary to the clan or tribe. Thus, a possessor's activity that was inconsistent with tribal interests was improper and redressable as would be wrongful activity of any individual. Liability could follow anyone who on "tribe-land" was guilty of fratricide, of building an "unlawful" house, of false suit against another, of evading responsibilities common to the clan, or by oath entering into "unjust" contracts.[62]

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him a *baud* full of grain, or the use of a knife, or grazing for his horses, or land upon time, his guilt reverts to them again." ([glossator] Curry, from M'Firbis, gloss, tub toe.). ANCIENT LAWS: BREHON LAW TRACTS. at p. 205 Note.

56 "The *'fuidir*' of land may separate from his chief, provided he exhibit his possessions to the chief, and commit no crime against him; he shall show all that he receives from his chief, in its length and breadth, everything whether of land or of crops; he takes one-third, and leaves two-thirds to the chieftain besides." ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 361

57 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 125.

58 "If it is a man of the chieftain grade that comes to the house of a man of the *feine* grade, with a man more than his own full company, or over half the company of the man of the *feine* grade, be it thus that the man of the chieftain grade comes to his house, *i.e.* with a man over his full company, *i.e.* when it is for one night's entertainment, or a man over half his company when it is upon his customary needs." ANCIENT LAWS: BREHON LAW TRACTS, W. M. Hennessey Small Primer at p. 33 [liii].

59 "Every one may be attended by half his company when suing for debts of bargain and contract, and upon his customary needs; and though it be the King of Ireland that should go to the house of a man, [the man may' sue a case of theft and plunder . . . ." Should the man be so bold (or foolish) as to seek his own remedy, the victim and "his company" may go "to avenge [the perpetrator's] unlawfulness upon him, for having committed theft." *Id.* at 43.

60 M. J. Gorman, *The Ancient Brehon Laws* at 228-229.

61 M. J. Gorman, *The Ancient Brehon Laws* at 228.

62 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 463.

In one recorded holding, the Brehon Judge wrote: "[T]he land itself does not commit offence[.] I do not deem it lawful to give the inheritance of the tribe to the person who erects unlawful buildings upon it, and so commits an offence, or to the person who offends by giving it away for unlawful things", including making an "oath on the side of an extern from an extern chief, *i.e.* to take base stock" or entering "[f]alse contracts, *i.e.* who makes other unlawful contracts in entering into a covenant."[63]

As with claims for debts or damage, one claiming denial of provable rights in real property would first seek the private remedy of obliging the putative wrongdoer agree to arbitration before a Brehon. The claimant would first give notice of intent to enter upon the land, and if necessary, repeat that notice 10 days later. Should no agreement to arbitration be forthcoming, the claimant embarked on the theatrical but not for that reason less risky process of gathering his witnesses, entering the disputed land leading two horses onto the land and remaining on the border for a day and a night. If after escalating demonstrations the landholder remained obdurate, the claimant could enter a final time with eight horses and four witnesses, proceed to the center of the land, and take possession.[64]

Water Rights

Whether water be abundant or scarce, it is always valuable, and flowing water particularly so. After King Cormac Mac Art's introduction of water mills and water impoundment to Ireland in the Third Century, the Brehons gradually fashioned rules that guaranteed fair access to water resources and also protected the architects of such systems from most liabilities for personal injury or damage to adjoining land. Co-tenants of land were obligated to permit all other tenants "to conduct drawn water across the border."[65] Additionally, a tribe or clan could compulsorily take land "for the construction of a milltrace or pond", but "lands of a church, a dun or a fair green were exempted from this liability." Landowners constructing mill courses were immunized from responsibility for accidents occasioned by their construction.[66]

Hospitality

In earlier times, travel entailed substantial risks, both from the elements and also from persons of ill will. One of the most important customs that a Gaelic community could extend to the members of a different tribe was that of hospitality, which was the provision of unmolested travel together with provision of essential food and shelter when needed. The Ostrogothic, Frankish and other then extant groups of Western Europe adopted the norm of hospitality,[67] and so too did Brehon Law.[68]

The *cain*-law of St. Patrick ordained that "reception of a stranger is incumbent on every servant" of the church."[69] Whatever burden this might impose upon the static population was cross-subsidized by the expectation that its own members, upon traveling, would receive the same accommodations.

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63 *Id.*

64 M. J. Gorman, *The Ancient Brehon Laws* at 228-229.

65 M. J. Gorman, *The Ancient Brehon Laws* at 230.

66 *Id.*

67 Lex Gundobada (First Constitution) Sect. XXIX par. 7. *See* THE BURGUNDIAN CODE: LIBER CONSTITUTIONUM SIVE LEX GUNDOBADA: CONSTITUTIONES EXTRAVAGANTES 4 -5, 7 (Katherine Fischer, transl.) (U. Pa. Press 1949).

68 Conspicuous exceptions to the obligations of hospitality were "children, madmen, and old people." Rev. W. O'Halloran, *The Brehon Law*, HISTORY OF WEST CORK (Library Ireland 1916), www.libraryireland.com › WestCorkHistory › BrehonLaw

69 ANCIENT LAWS: BREHON LAW TRACTS, at p. 121.

Of Debt and Distraint

Without regular courts of law, Brehon Ireland provided a means by which a debtor could pursue a debtor. The creditor was expected first to give notice to the debtor in the hope that the matter would be privately resolved. Should this hope be forlorn, the obligee would proceed in "distraint" of the debtor's possessions that should be seized in satisfaction of the debt. In a land the primary wealth of which reposed in farm animals, largely horses, cattle, sheep and pigs, the obligee would mark the debtor's possessions subject to distraint by throwing a stone over the animals three times before witnesses.

There were no regular courts of law before which a creditor could summon an unwilling debtor. The creditor therefore first gave notice to the debtor of his claim, and if the matter was not settled, he proceeded to distrain the now subject livestock of the debtor. The law required that in distraining cattle that were not in a cow "house", a stone was to be thrown over them three times before witnesses, to indicate that they were seized. Ideally, the debtor would transfer ownership of the livestock identified. Should the owner fail in this, or ask for arbitration, the creditor would seize the cattle or other livestock and put them into a pound, and upon notice to the debtor take possession of the animals "gradually, so much a day, to the creditor, until the debt and costs were paid."[70] If the debtor had no possessions suited to distraint, he could upon notice himself be detained and obtain his release only upon presenting a surety in the amount of the debt, an approach giving rise to a detailed Brehon Law regimen of "hostage sureties."

There existed a practice, tracked in modern approaches, that in a case of fraud, one who purchased property for valuable consideration without notice of any fraud was protected from being required to disgorge the property for "defective covenant". This equitable immunity was recognized in language providing: "In the case of a person who buys without stealing or concealment, with purity of conscience, the purchase is his lawful property according to God and man; if his conscience is free, his soul is free."[71]

Animal Herding and Husbandry

All early agricultural communities adopted customs or laws that gave some protection to livestock owners herding animals from liability for losses sustained incidentally by others, often adjoining land owners. The *Senchus Mór* listed seven types of "drivings" that if done with due care ("without neglect") protected the herder from liability. These included "driving cows into grass; driving oxen to lawful service; driving cattle out of thy field; driving cattle out of thy meadow land, without malicious injury, into their own land, over a lawful boundary; driving cattle into their shed; driving pigs into their sties; driving horses into their stable—without concealment, without injury, without neglect, in any of these cases[.] [A]ll these are proper drivings."[72]

The herder would lose protection from liability, however, if any harm caused could have been avoided with due care, with the law providing the example of driving animals "[i]nto puddle, i.e. whose top is water, i.e. he could have found a better path. Into a quagmire, *i.e*. wavy at top, *i.e.* [a] shaking wave, *i.e.* '*crandach*.'[73] If the livestock of someone engaged in a "fair driving" and "without concealment" gored another's livestock, the herder was "safe" from responsibility, unless the herder "profit[ed] in the case" by retaining the animal's corpse for sale of the meat or skin, Should the attacking animal have shown "habitual viciousness", presumably known to the driver, he must pay "half debt".[74]

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[70] M. J. Gorman, *The Ancient Brehon Laws* at p. 221-222. Minute provisions applied to the debtor's obligations to provide adequate shelter, forage and protection from injury for distrained livestock.

[71] Established hierarchies precluded certain parties from actions for losses occasioned by the actions of specific classes of other parties, for example, a bondman against his chief, a son against his father, or a monk against his abbot. ANCIENT LAWS OF IRELAND: BREHON LAW TRACTS at p. 228.

[72] ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 273 [xlvii].

[73] ANCIENT LAWS: BREHON LAW TRACTS, Heptads, p. 273 [xlvii.] [clix].

[74] ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 137-139. In the matter of "habitual viciousness, compare the popular American law school case of *Sandy v. Bushey*, 128 A. 513 (Me. 1925), in which the owner of horse known to be preternaturally disagreeable liable without regard to due care for injury to another."

Brehon Law contained further provisions for the types of drivings that exposed the herder to compensatory responsibility. A driver wielding a "physical blow threatened with anger; breaking bones (unlawful fracturing); driving into a diseased cow-pen, putting another on the wrong path when a better path was known and available", or unwarranted "tarrying" would result in liability[75]

The Husbandry of Bees Bee keeping for plant propagation and honey, and also beeswax for candles, warranted a discrete manuscript entitle "Bee Judgements". Swarming bees, apiaries and honey were "all minutely provided for under all possible conditions, and provision was also made for compensation, not only to persons stung by bees, but to persons whose bees were killed, either intentionally or inadvertently."[76]

Events Involving the Shedding of Blood

Societies of sophistication that recoil generally from bloodshed have recognized that certain conflicts resulting in bloodshed are inevitable and not necessarily culpable. The *Senchus Mór* listed examples in which this immunity applied.

Mortal Matters in War The warrior who slew his foe in battle was immunized from responsibility, but only for the single day following the fatal encounter, revealing a telling objective that the better angels of battle, should such should exist, were ill-served when violence was unnecessarily prolonged.[77]

Permissible Homicide Apart from warfare, mortal combat was excusable in several discrete circumstances. Tribal warfare was permitted to secure the return of a son to his tribe of origin, *i.e.* into his patrimony, when the matter could not be resolved by oath or by payment of seven *cumals*.[78]

Short of homicide, a man or woman suffering a wrongful injury could be granted a remedy to be taken "out of any property of the defendant that he pleased." Compensation would be measured by severity, sometimes "so many *screpalls*[79] for a 'white' wound, so many for a 'red' wound, so many for a 'lump blow', so many for a wound which left a mark on the face, so many for one which left no mark," all "only fixed by the law for the Brehon's guidance." Compensation so measured was subject to modification by the Brehon Judge, "subject to increase or diminution by him according as negligence on the one side, contributory negligence on the other, provocation, self-defense, accident, or any other modifying element appeared in the case."[80]

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75 The glossator in the lattermost example elaborated regarding one specific decision that a Brehon judge had entered: "I have an exception in this case; if it is out of it they have come to him, and he put them away from him on the same path, and could not find a better path, he is safe; and [alternatively] if he found a better path, and did not put them on it, there is […] compensation in the case."ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 229 [clix].

75 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p, 463-65 [xlvii]

76 M. J. Gorman, *The Ancient Brehon Laws* at p. 230. Beekeeping was an ancient interest of law givers. In his The Laws, Plato described bee rustling as a form of conversion of personal property, noting the "humouring" of the bees on one owner's land so that they migrate to the other's property[.] PLATO, THE LAWS 50 (A.E. Taylor, transl.) (Everyman 1966).

77 "Blood which is shed in a battle, *i.e.* the blood which is shed from the man in a common permitted battle, i.e. the combatant is safe in the death of his own antagonist; [SM. III., 238]. It is safe to kill him in the battle, between any hour and the same hour of the next day, if it be between two territories, or within a territory." ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 273 [xlvii.]

77 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 273 [xlvii.]

78 "To bring a son, *i.e*. a battle for the purpose of bringing a son into the family of the tribe: if it cannot otherwise be decided, it is necessary to make battle, in order to settle it, *i.e.* taking him into his patrimony; *i.e*. if it cannot be confirmed by oath, or by seven '*cumals*,' battle is safe for him." ANCIENT LAWS: BREHON LAW TRACTS, Heptads, at p. 229 [ccxlix].

79 *Screpalls* were a measurement generally, with, for example, a two-year -old heifer worth four *screpalls*; a milking cow worth 24 *screpalls*. EDWARD O'REILLY, AN IRISH-ENGLISH DICTIONARY, *supra*.

80 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 195. Thus unlike the penalty provisions established in certain European civil and criminal codes, the reparation levels set in Brehon Law were

As a general proposition, in the legal systems of English-speaking peoples a perpetrator cannot be twice prosecuted and convicted for the same criminal act. It seems that this categorical immunity did not rest well in the minds of the Brehon judges who, considering it too sweeping, provided that even after one was "tried and fined for assault" while the victim was yet living could be brought again to trial should there be a "material change" in circumstances, such as if the victim should thereafter die as a consequence of the original assault.[81]

Other Sanguinary Affairs Brehon Law took pains to detail physical injury that would not entail imposition of either debt of sick-maintenance on the injurer. Included were injuries that the actor had not himself committed "by hand or tongue"[instigated];[82] "wounding initiated by a 'fool'; or blood shed by a '*cetmurinnti*' wife through just jealousy, from an adulteress who goes over her head; blood shed by a lawful physician, who cuts not a joint or a sinew, by order of his territory and family; blood which is shed in battle; blood of a man who sues contract; blood of a man who sues combat; blood of a boy in lawful sport." [83]

Immunities and Safe Conduct Wands Those granted immunity from responsibility for a killing or wounding might be granted a richly, even magically symbolic "safe-conduct wand". The "safe conduct wand" was the shaft of the "wounding spear" (or its "imitation"), that for three days granted protection to the actor providing he go "straight in the direction in which it goes or is cast, it is so that the safe-conduct ought to be granted straight over the territory, without hindrance in the direction in which it is desired to be granted". Invocation of the "safe conduct" immunity further provided that that the perpetrator in his flight be given hospitality in the form of food provisions "for four persons are due to him, and four cakes for each man with their condiment, and their seasoning."[84]

Immunities for Physicians The stature of the Physician class protected doctors from responsibility in compensation for harm to a patient when acting "by command". If the actor was "not a lawful physician" and the patient sustained harm, he would be taxed with full compensation irrespective of command. Lastly, if the Physician "promised the patient's recovery" and the patient died the Physician was liable for "full debt", and proportionate compensation for any partial recovery.[85]

Limitations on Immunities: Of Churches and Chieftans

Anglo-Norman Brehon Ireland was by no means abject in its deference to the Catholic Church. For its secular tenets, Brehon Law did require churches professing sacred sanction to be true thereto. Churches falling away from their sacred path, even if they suffered an economic or dignitary harm, would forfeit their right to *dire*. Among the shortcomings that could carry this penalty would be a church's refusal to offer hospitality; one that had become "a cave of thieves" or "a place of sin"; one under the leadership not of a cleric but rather a layman; and one in which the *erennach* (equivalent to Éireann or Ireland) has "promised perpetual purity, and severance from every obliquity, but who is not true, and who turns to sin again[.]"[86]

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nonbinding, representing amounts only "fixed by the law for the Brehon's guidance." GRINNELL, THE BREHON LAWS at p. 195.

81 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 89, noted that in giving judgment in any second trial "the judge would, of course, have regard to what was done under the first judgment."

82 "Within the *Feine* there are seven bloods that . . . are shed, which deserve not debts nor sick-maintenance, in the same way that there is blood with the *Feine* which you do not shed with your hand, which your tongue has not commanded, but for which it is you that pay debts and sick-maintenance: blood which a fool sheds from any person not guilty of hand or of tongue[.]" ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 273 [xlvii].

83 "[W]hoever ordered him to do so, it is he that pays." ANCIENT LAWS: URAICECT BECC: Heptads at p. 143 [clix].

84 ANCIENT LAWS: BREHON LAW TRACTS, W. M. Hennessey Small Primer at pp. 31, 33.

85 ANCIENT LAWS: BREHON LAW TRACTS, at p. 149.

86 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 361 cxxxix.

The social and religious benefit of a church tithe or offering could be tainted and rendered nugatory when either the donor's intent was unworthy, or if the gift was the provenance of theft, or furthered an objective inconsistent with the goals of the church.[87] The law details: "Such things as were given in as tithes or first fruits, if it go[es] to the prejudice of the church they were spent, there is a debt of theft without compensation in their case; and the person that gave them in, if he knew that it was not right for him to give them[.]"[88] Offerings could also be invalidated should they involve wrongful bloodshed, be paid from a woman's dowry; paid as *eric* for a crime; or sold "to persons outside of the tribe."[89]

The provisions of Brehon Law showed vigilance in forbidding a church to acquire things or land of value beyond its necessity or authority. It was required of churches that they only be led by an anointed cleric and not an "unworthy"[90] Churches were required to be vigilant not to exploit their canonical circumstances by accepting excessive rewards "beyond the lawful necessities" on pain of the penalties for theft.[91]

As a tribal chieftain enjoyed bounteous prerogatives over Irish of a lower station, so too he could be penalized should he take an unsanctioned advantage by presuming to compensate a tenant with stolen *seds*; or make to him a false oath; or who tak[e] an oath upon him, *i.e.* he acts a falsehood against his tenant, in swearing to a thing that truth does not sustain[.]"[92]

Dignitary Harm

The laws of the Ireland of Middle Antiquity provided jealously for the personal dignity of community members, and the *Senchus Mór* set forth remedies for insult and satire causing more than ephemeral harm to one's reputation. *Dire* compensation could be granted an individual tarred with a lasting sobriquet (*i.e.,* "a nickname which clings"); one wounded by oral or written "recitation of a satire of insults" behind the subject's back; one ridiculed on the basis of their mien, physique, or blemish, or one who suffered by the actor's repetition of such insults even if first levelled by a third party.[93]

Elsewhere the Heptads assigned levels of penalty depending upon the number of insults unburdened and the tenacity of the harm. A one-third of one's "*honour*-price" may be due if the insult is uttered a single time; one-half if the indignity "sticks to him for a year"; and a "full fine" if "it sticks to him forever." A full "*honour*-price" might be awarded still later for shame so severe as it follows the victim generationally, or "a perpetual disgrace in runes."[94]

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87 This approach seemingly represents the venerable "clean hands" doctrine of ancient and modern equity, by which an applicant to a tribunal seeking equitable remediation of a wrong, even if not an illegality, such as that of unjust enrichment, could only so plead if having no stain of unfairness on his own dealings.

88 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 131.

89 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 129.

90 ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p.123.

91 "And the things that were brought into the church, of tithes, first-fruits, and alms, if it is for illegality, *i.e.* beyond the lawful necessities of the church they were spent, there is debt of theft, and compensation from him; if it be to legality, *i.e.* for the lawful necessities of the church, there is debt of theft, without compensation in their case [.] . . . And the person who brought them into the church, if he knew that it was not right for him to give them, and that another '*erennach*' had been appointed previously, it is with him that the debt of theft lies, either jointly, or separately." ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 123.

92 ANCIENT LAWS OF IRELAND: BREHON LAW TRACTS, Heptads,at p. 195 [ccclxxxi].

93 "There are with the *feine* seven kinds of satire for which '*dire*' is estimated; recitation of a satire of insults in his absence; to satirize the face; to laugh on all sides; to sneer at his form; to magnify a blemish; satire which is written by a bard who is far away, and which is recited. Double '*eric*' is apportioned according to the face which is satirized; a nickname in which there is truth as a satire; a perpetual dis grace; the '*dire*' which is declared for them descends to the seventh man." ANCIENT LAWS: URAICECT BECC: Heptads at p. 231 [xxxiii].

94 The rune was an alphabetic script used in Northern Europe of the Middle Ages and served also in magic, its reference here perhaps importing the ineradicable and permanent nature of certain grave insults. ANCIENT LAWS: BREHON LAW TRACTS, Heptads at p. 229 [ccxlix].

Conclusion

Throughout the Druidic tradition and thereafter under Roman Catholicism, Brehon principles valued the personal and property rights of the individual only insofar as they were submerged in and furthered the preservation of the entire community.[95] All in Brehon Ireland, from the yeoman to the elite, were responsible to their Gaelic community in all affairs, from the quotidian to matters of life and death, and pursued a pluralistic sovereignty rejecting the foreign suzerainty of Tudor England as it had the Anglo-Normans and the Danes.[96] Withal, the Brehon Irish perceived himself as a part of a member of the *feine,* as opposed to identification as a member of a particular economic or social stratum. The animating ideal of the Brehon Irish seemed to be that they were living their destiny by conforming their lives and expectations to what had passed before and not what might lay ahead.

Brehon judges advanced Brehon Law's communitarian goals for 1000 years, an egalitarian justice that within it clan-based origins preserved a private law domain that was all-encompassing in its limited realm. There were many reasons to predict its continuation in an increasingly stable polity.[97] Sadly, the experiment and its apparatus were destroyed in satisfaction of a Tudor ideal that was never more than an over-extension of English royal religious vanity.

The Brehon Irishman's (*Éireannach*) uncoerced social contract subordinated the anomie of unruly individual or libertarian prerogatives to the perceived superiority of a civil order with a commonweal of static, communitarian dimension.[98] The Brehon era turned Karl Marx's Eighteenth Brumaire on its head,[99] with the Brehon judges' careful curating of Ireland's own ancient laws producing a corpus of law that found comfort in antiquity and generally spurned invitations to "create something that did not exist before."[100]

At the same time, in the ordinary course law givers of nation states have become familiar with the conveyed legal systems of contemporary but foreign legal systems, adopting, rejecting, or modifying laws external to their own for the perceived profit to their own constituents. Brehon Ireland was unique in the community of Western European nations in not only it's cultural insularity but in its incuriousity as to how other polities handled the same or similar legal matters.[101] In the recovered manuscripts, Brehon Lawyers revealed no sources of influence external to their own legal history within either the original oral histories, later Gaelic translations, or the learned glosses added thereto.

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[95] *E.g.*, Acts of the Apostles 4:32: "Now the whole group of those who believed were of one heart and soul, and no one claimed private ownership of any possessions, but everything they owned was held in common"

[96] Neil McLeod, *Assault and Attempted Murder in Brehon Law*, 33 IRISH JURIST 351 (1998).

[97] Catharine Duggan suggests: "The traditional laws prevailed for over a millennium because they were effective. The laws were grounded on basic societal values. They were based on certain common beliefs that one should be a responsible member of his kin group, that each person had certain duties, that fairness was not merely an ideal but a way in which small rural communities could work economically and socially." CATHARINE DUGGAN, THE LOST LAWS at p.124.

[98] Adoption, pursuit and implementation of Brehon Law throughout Gaelic Ireland represented the social "contract" or "covenant" described by Thomas Hobbes in Chapter 14 of his defining political work LEVIATHAN: OR THE MATTER, FORM AND POWER OF COMMONWEALTH ECCLESIASTICALL AND CIVIL 88-96 (1651)(A.R. Waller, ed.)(Cambridge 1904).

[99] Men "make their own history, but they do not make it as they please; they do not make it under self-selected circumstance, but under circumstances existing already given and transmitted from the past. The tradition of all dead generations weights like a nightmare on the brains of the living. And just as they seem to be occupied with revolutionizing themselves and things, creating something that did not exist before . . . they anxiously conjure up the spirits of the past to their service." Karl Marx, *The Eighteenth Brumaire of Louis Bonapate*, KARL MARX, WORKS OF MARX & ENGELS (1952)

[100] *Id.* Noteworthy is the assessment of M. J. Gorman that "in the great body of the Brehon law, there is no exposition of the general principles of the law, but only a mass of particular rules." M.J. Gorman, *Ancient Brehon Law* at p. 20.

[101] Professor Gorman observes that once fixed in its 439-441 A.D. translations, "neither bishop, King nor Brehon ever afterwards attempted to alter [it]". THE ANCIENT BREHON LAWS OF IRELAND at 219.

Brehon Law represented Irish custom for a millennium as if hermetically sealed from extraterritorial legal externalities. It is now conventional to evaluate societal behavior with reference to temporal awareness. In Brehon Ireland, even taking into account the sizeable concessions exacted of it during its era of Anglo-Norman Catholicism, the realm of Brehon Law thrived unchallenged in direct proportion to its temporal obliviousness to the legal maturation of its European contemporaries.

For these limitations, the ideational insularity of Brehon Ireland in the end proved an attribute. For example, the *Senchus Már* imposed none of the harsh retributive remedies trafficked in by the Graeco-Roman lawgiver Draco or perpetuated in the Code of Solon. In the granular, communitarian course of adding notes of the specific cases and their disposition, the Brehon legal scholars submerged the interests of the individual into the interests of the communitarian whole, and perpetuated these tenets, basing its decisions at once in morality and in an aversion to behavior disruptive to communitarian ideals. Even in its obstinate isolation, Brehon Ireland distinguished itself in its identification and implementation of legal immunities, prerogatives and protections that were progressive, and even enlightened, in its time or any time following.