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Mythology and Law: The Importance of Mythology in the Study of Pre-historic Irish Law

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Abstract

This research involves an examination of popular ancient Irish mythology and traditional Irish law. This research examined some of the earliest known written records of the Irish epic The Táin alongside the codified early Irish laws, called Brehon laws. This research specifically examined the travel rights of each strata of early Irish society, and whether the rights recorded in the Brehon laws are reflected in the mythological record. The goal of this paper is to show how examination of traditional myths can help scholars to better understand the societies they are studying, as well as the legal structures of those societies. By highlighting the overlaps between the recorded laws and the myths of early Ireland, this paper shows how scholars can use the study of myth in their examination of early laws.

Keywords

Ireland, mythology, law, Brehon, travel.

Introduction

Prehistoric Ireland remains one of the least researched fields in Western European History. When one thinks of Irish history, generally nothing before the coming of Christianity in 500 AD, or the Viking invasions of 700 AD, comes

to mind. However, Ireland boasts some of the oldest known human settlements in Europe. The early settlers of Ireland built complicated structures, had intricate religious practices, composed epic poetry, and had a sophisticated legal code. The isolated state of the Emerald Isle allowed Irish culture to develop largely untouched and unchanged by the Roman Empire and its Classical influences. This fact makes Ireland somewhat unique, both in its culture and legal codes. In order to understand the ancient Irish legal system, it is first important to understand pre-historic Ireland

Historical Background: The Irish Celts

Ireland has been continuously settled since the Mesolithic period, dating from 8000-4000 BC. A recent discovery in Cork suggests that Ireland may have been settled from as early as 10,000 BC.[1] Despite an extensive archaeological record, little is known of these earliest settlers beyond their eating habits and settlement structures. It is not until the end of the Bronze Age (2500 BC-500 BC)[2] and the beginning of the Iron age (500 BC-500 AD)[3] that evidence allowing archaeologists and historians a glimpse into pre-historic Irish culture emerges.

It is commonly accepted that the Irish of this period in history, also known as the Irish Heroic Age (1000 BC-500 AD), were Celtic, although it is not always clear what is meant by this name.[4] The term "Celts" generally refers to a large group of people who occupied an area stretching from France through the most western parts of the Irish Isles.[5] Those who study the Celts thus break them into distinct sub-groups based on geographic boundaries and cultural differences.[6] The best-known work describing Celtic culture was written by Julius Caesar. In his work, *Commentarii de Bello Gallico,* Caesar describes many aspects of every day Celtic life, including a lust for warfare, religion and specific battle tactics.[7] Caesar paints a picture of a barbarian tribe, with no "real culture" or organized way of life.

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1 O'Riordan, S. (2013), "10,000-year-old settlement found in Cork", *Irish Examiner*, available at: http://www.irishexaminer.com/ireland/10000-year-old-settlement-unearthed-in-cork-251299.html

2 McCaffrey, C. (2002), *In Search of Ancient Ireland*, Ivan R. Dee, Lanham, p. 6.

3 Ibid. P. 49.

4 Ibid. P. 57

5 Rollenston, T.W. (1911), *Celtic Myths and Legends*, T.Y. Crowell, New York, p. 3.

6 Ibid.

7 Caesar Julius (1869), *Gallic Wars, transl.*, Harper & Brothers, New York, 240 p.

Although Caesar's exaggerated descriptions of Celtic life contained some truth, they primarily described the continental Celts, who lived in Gaul and Iberia, modern day France and Spain. The Celts who became the Irish were from a group called the Insular Celts occupying modern day Scotland, Wales, England, and Ireland. However, historians have relied on Caesar's works to draw some basic conclusions about the Insular Celts: they had a tribal society, warfare was for glory as much as political advantage, and they had sophisticated metal working techniques.[8]

Despite their distance from Rome, not all of the insular Celts were immune from Roman influence. When the Romans first invaded Britain in 55 BC, they were unsuccessful in taking control of the Island.[9] It was not until 43 AD that a successful invasion of Britain was launched under Emperor Claudius.[10] This campaign led the Romans to take control over most of what is now modern day England. Certain parts of Britain remained impenetrable to Roman forces. This is most evident physically in the still standing structure of Hadrian's wall, which lies near the border between modern day England and Scotland. The wall was intended to separate the Roman settlers from the Celts and other peoples who occupied Scotland.[11] It is less well known that the Romans failed to conquer parts of Cornwall in Southwest Britain, parts of Wales, and all of Ireland. Although Scotland, Wales, and Cornwall remained independent from the Romans, they were heavily influenced by Roman culture through trade and political dealings. Today the main cultural distinctions between these areas and the conquered parts of the British Isles lie in the language. Though they adopted many Roman cultural characteristics, they remained linguistically distinct. Scotland, Wales, and Cornwall continued to use their native Celtic languages, which share common roots with ancient and modern day Irish.[12]

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8   Other Roman works have served as windows for historians into everyday life of the Continental and Insular Celts. For example, the statue called "The Dying Gaul" depicts the clothing, facial hair, and jewelry worn by Celtic warriors into battle. The statute is currently located at the Capitoline Museums in Rome, and is one of the most popular items in the museum. See: Cahill, T. (1995), *How the Irish Saved Civilization*, Anchor, Harpswell, p. 150.

9   Webster, G. (2003), *The Roman Invasion of Britain*, Routledge, London, p. 13.

10 Ibid.

11 Ibid.

12 Thurneysen, R. (2003), *A Grammar of Old Irish, transl.*, Dublin Institute for Advanced Studies, Dublin, pp. 1-3.

The Irish Celts never directly encountered the Roman invaders. No attempt to take Ireland was ever made by Roman forces. The inability, or sheer unwillingness, of the Roman army to take Ireland allowed the Irish culture to develop without any substantial interference from the Classical world. In some ways, this left Ireland at a disadvantage. Ireland did not benefit from Roman infrastructure, a fact that is still evident today in Ireland's notoriously bad roads. Ireland never tapped into the massive trade network within the Roman Empire, keeping many new inventions and ideas out of Irish hands. Furthermore, no codified writing system was brought to Ireland at this time, nor would one arrive until the coming of Christianity in 500 AD.[13] However, the lack of Roman influence also benefitted Ireland. Irish culture was able to develop independently, giving rise to a legal code, social structure, and political life that reflected a different set of values than those imposed by Rome on the rest of Europe.

Ireland's unique position in Western Europe lends itself to a case study. Instead of a legal code that embodies or reflects Roman values, Heroic Ireland

developed a set of laws based in its own ancient indigenous value system. These codes offer a new perspective on the place and function of law in early societies.

Sources

Pre-historical societies offer a unique challenge. Though the archaeological record can offer evidence as to the structures and objects used by these societies, without contemporary written sources it is difficult to draw substantive conclusions about the culture and practices of these early peoples. Often scholars are left to form conclusions based on speculation or later written sources. In the case of Early Ireland two main sources have proven useful: Monastic gospel manuscripts, and medieval manuscripts of the Irish epic *Táin Bó Cúailnge*.[14]

Christian Sources

It is generally accepted that Christianity arrived in Ireland in 500 AD with

13 de Paor, M., de Paor, L. (1958), *Early Christian Ireland*, Thames & Hudson, London, p. 25.

14 *The Táin Bó Cúailnge* (pronounces Toyne-Beau-Cooley) translates to "The Cattle Raid of Cooley". The story recounts a cattle raid led by the Queen of one Irish province against another King's province. The story centers around the exploits of the famous Irish Hero Cú Chulainn. This tale has been used as a window into several important aspects of Irish Culture of the time period in which it is set, the heroic age, not all of which will be discussed in this article.

the coming of St. Patrick.[15] In his efforts to convert the Irish, Patrick melded many Christian values into existing Irish practices.[16] For example, the Irish religion grouped gods and goddesses into threes. These trios were generally worshipped together. Patrick adapted this practice in his famous Shamrock illustration of the trinity.[17] This and other creative conversion stories are credited with making the transition from paganism to Christianity in Ireland one of the smoothest in Europe.[18]

One result of the seamless transition was the preservation of Irish culture. As Irish men became monks and entered monasteries, they were tasked with copying manuscripts. Generally, these were restricted to copying the Gospels as illuminated manuscripts. This practice created some of the most stunning works of art to come out of Ireland, including the famous Book of Kells.[19] The less acknowledged, but arguably more important, feature of these manuscripts is the commentary written in the margins. Often when copying the Latin text, the monks would comment on the stories in their native tongue between lines or within margins.[20] This practice has preserved written forms of both Old Irish and Old English for later study.[21] It has also allowed myths and legends of Ancient Ireland to be recorded and preserved. Some monks also would record myths within hagiographies they were tasked with writing or copying.[22] Though this meant that the stories were preserved

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15 Ibid. P. 28. "The story of early Christian Ireland is… one of… An unsubdued Celtic community, who yielded, not to Roman arms, but to Roman letters and religion." Ibid. P. 25.

16 Ibid. P.29.

17 Several other Irish practices, including worship of water sources, and the sacred and unique ability of druids to understand the gods were easily transferable to the new Christian religion. The result was two-fold: the conversion of Ireland was swift and peaceful, and a new version of Christianity, later known as Irish Catholicism, in which the elements of nature took on a more sacred role developed. For details, see: McCourt, M. (2004), *History of Ireland*, Running Press, Philadelphia, 432 p.

18 Duckett, E.S. (1988), *The Gateway to the Middle Ages: Monasticism*, University of Michigan Press, Ann Arbor, p. 68.

19 The Book of Kells is a manuscript of the Gospels currently located at Trinity College, Dublin. The Book is an example of exceptional artistic work and features some of the most brightly colored illustrations of all the manuscripts produced by monks throughout Europe. Cahill, T. (1995), *How the Irish Saved Civilization*, Anchor, Harpswell, p. 164.

20 Thurneysen, R. (2003), *A Grammar of Old Irish, transl.*, Dublin Institute for Advanced Studies, Dublin, p. 11.

21 McWhorter, J. (2009), *Our Magnificent Bastard Tongue*, Gotham, New York, 256 p.

22 Cahill, T. (1995), *How the Irish Saved Civilization*, Anchor, Harpswell, p. 164.

through a Christian lens, it is often easy to see through the Christian commentary into the roots of the stories.

An example of the use for these recorded myths lies within a popular tale about St. Patrick challenging druids. The story tells of how St. Patrick challenged druid priests who served the High King of Ireland to a contest in which each party would attempt to keep a fire burning. St. Patrick's fire burned brighter and for longer. As a result of this, and other small miracles Patrick performed, the High King of Ireland converted to Christianity, and the lesser kings followed suit. [23] There are several lessons to be drawn from this seemingly simple and short story. First, the Irish had a reverence for fire, and must have had gods that were strongly connected to the elements. Second, The Irish responded to challenges rather than negotiations, and could be won over through victory. Third, the High King was the leader of Ireland, and exercised a certain amount of dominion over the other lesser Kings of Ireland. It is through stories like this that scholars have pieced together the cultural values and political systems that existed in pre-historic Ireland.

Mythological Sources

Although the Christian sources are useful, their worth pales in comparison to the manuscripts of the Irish epic *Táin Bó Cúailnge* and the other myths those manuscripts contain. The *Táin* is considered akin to a founding epic, such as the *Aeneid*.[24] *The Táin* is the main story in a cycle of mythology called the Ulster Cycle.[25] The Ulster cycle revolves around stories of heroes, war and glory, and recounts many stories of the gods and their interactions with humans, as well as each other. The most important figure in all of the Ulster Cycle is the hero, Cú Chulainn. Historians have been able to rely on three intact manuscripts of the story: The Book of Leinster, The Book of the Dun Cow, and the Yellow book of Lecan.[26]

The Book of the Dun Cow is the oldest manuscript of the Táin, dating to the beginning of the twelfth century. In addition to the fragmented version of the *Táin* it contains, it also holds over fifteen other stories from the Ulster cycle, all in varying states of completeness.[27]

23 Morris, W.B. (1878), *The Life of St. Patrick, Apostle of Ireland*, Burns & Oates, London, p. 102.

24 Squire, C. (2003), *Celtic Myths and Legends*, Dover, Mineola, p. 153.

25 Ibid. P. 154

26 Strachan, J. (1944), *Stories from the Táin*, Royal Irish Academy, Dublin, 108 p.

27 Squire, C. (2003), *Celtic Myths and Legends*, Dover, Mineola, p. 10.

The Book of Leinster, composed in the second half of the twelfth century,[28] contains several important texts in addition to the *Táin*, such as *Lebor Gabála Érenn*, the Book of Invasions, which records the early mythological wars for control of Ireland.[29] The Book of Leinster contains the most complete version of the *Táin*, making it the most useful source for scholars studying the story. Scholars believe that although the manuscript was composed in the same century as the Book of the Dun Cow, the author would not have come into contact with the earlier manuscript.[30] When one considers the astounding amount of consistency between the fragments of the Book of the Dun Cow, and their corresponding passages in the Book of Leinster, it becomes clear that the oral culture within Ireland was robust, allowing two unrelated parties to record virtually identical versions of the same story.

The Yellow Book of Lecan is the youngest of the manuscripts and dates back to the sixteenth century.[31] It contains a partial version of the *Táin* that many believe was based on the version recorded in the Book of the Dun Cow.[32] It also records the whole of the Ulster Cycle myths, including some that were not previously recorded in any earlier form.

These three manuscripts have served to preserve these early stories for modern scholars. From the stories historians have been able to investigate many aspects of Irish culture, including the cattle-based system of wealth, the practice of inter-tribe fostering of children, and the codes of war.[33] When studying Irish law, most historians have overlooked these tales in favor of a body of texts called "The Brehon Laws"[34]

The Brehon laws

The Brehon laws are the collected law codes of early Ireland. Even though it has been concluded that "many of the essentials of the early Irish legal system go back as far as the Common Celtic period (c.1000 BC)", the codes were not recorded until the eighth century AD.[35] A conse-

28 Ibid. P. 10.

29 Rollenston, T.W. (1911), *Celtic Myths and Legends*, T.Y. Crowell, New York, p. 27.

30 Squire, C. (2003), *Celtic Myths and Legends*, Dover, Mineola, p. 10.

31 Ibid.

32 Ibid.

33 Rees, A. (1978), *Celtic Heritage*, Thames & Hudson, London, p. 16.

34 Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, 256 p.

35 Duggan, C. (2013), *The Lost Laws of Ireland*, Glasnevin Publishing, Dublin, p.6.

quence of this delay is that the recorded codes contain ecclesiastical Christian law in addition to the original Irish laws. Some commentators remain adamant that this fact alone cannot discredit these texts as containing true Irish law.[36] Laurence Ginnell, a native Irish scholar of Irish law, wrote that "Roman law is hardly traceable to them" and that "good or bad, creditable or otherwise to our race, they are essentially, substantially, and characteristically Irish".[37] It is nonetheless important to approach these texts with caution, for it is clear that the late date of their recording left the original law codes susceptible to foreign influence.

The most famous manuscript is the *Senchas Már*. The *Senchas Már* may have been recorded as early as the 9th century, but was not compiled until the early 12th century.[38] The Text was divided into three sections. The first addressed legal procedures for bringing complaints against a fellow clansman. The second dealt with hostages and surety. The last contained law relating to marriage, fosterage and social rights.[39]

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36 Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, 256 p, p. 229.

37 Ibid.

38 Duggan, C. (2013), *The Lost Laws of Ireland*, Glasnevin Publishing, Dublin, p. 13.

39 Ibid.

Scholars have generally compared different versions of the various recorded laws in order to establish the accuracy of any one of them. However, because these texts were recorded so long after the coming of a new legal system to Ireland through the Church, this method may not be entirely reliable. With so many manuscripts of ancient myths, it seems prudent to instead look for instances of overlap between the law dictated by the recorded codes, and the actions of those in the early myths. Where practices espoused in the codes are reflected in the myths, one may reasonably conclude that they were part of the lives of early Irish peoples. This is perhaps most useful in the examination of the legal rights of travel embedded social structure of early Ireland. By cross referencing the rights of legendary characters with the descriptions found in the Brehon laws, it is possible to validate these later recorded texts as accurately reflecting early Irish law.

Legal status of Irish peoples

Irish society was divided into several classes, each of which had its own rights and privileges. Although a scaled social system was common in this time period across the globe, Ireland differ-

entiated itself by having a meritocracy. Regardless of one's birth, an Irishman could rise or fall within society based on his actions.[40] The most common ways to rise were through gaining the skills of a profession, winning glory in battle, making some contribution to the community, or simply gaining wealth.[41]

As Ireland was isolated and rarely faced major threats from beyond its borders, there is no specific provision of the law code that deals with treatment of foreigners. However, the code does address rights and privileges in regard to travel within Ireland of persons of different social rank. In this early tribal society, in which territory was sacred and entry upon another's was confined to raiding and warring, the ability to travel between tribes was a rare privilege only granted to the highest-ranking members of society.

Early Ireland had upwards of 100 *túaths*, or tribes, all of which competed for land and livestock.[42] *Túaths* would often raid each other, either for the acquisition of land, or to steal valuable livestock and crops.[43] This warring climate is reflected in the rights ascribed to different classes to travel between *túaths*.

Kings

The highest-ranking members of Irish society were the kings. Each *túath* had a single man chosen to lead. The position of king was not hereditary, but was also not truly an elected position. All free members of the *túath* had some say in the election of the king, but the candidates were confined to a select group of people, all of whom were generally related the king in some way.[44] The only additional requirements for a king to be elected were that he was mentally and physically whole, in order to properly lead his *túath*. The king's duties included waging war when necessary, conducting raids, and giving final judgment on legal matters.[45]

Eventually structures of high kingship emerged. These systems were not feudal systems, but systems of clientship.[46] High-ranking kings would "provide military protection, legal support and livestock in return for the client's becoming part of the lord's reti-

40 Ibid. P. 60.

41 Ibid. P. 47.

42 de Paor, M., de Paor, L. (1958), *Early Christian Ireland*, Thames & Hudson, London, p. 31.

43 Duggan, C. (2013), *The Lost Laws of Ireland*, Glasnevin Publishing, Dublin, p. 50.

44 Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, p. 67.

45 Ibid. P. 68.

46 Duggan, C. (2013), *The Lost Laws of Ireland*, Glasnevin Publishing, Dublin, p. 51.

nue, or war band, and providing certain goods and services".[47] A new king was not bound by the clientship relationships maintained by his predecessor.

Kings and their clientship relationships were incredibly important to the protection of the *túath*. Without a strong military leader, a *túath* would quickly find itself prey to the aspirations of its neighboring tribe and would lose its livestock or land. It is not surprising that kings, despite being the highest members of Irish society, were restricted in their ability to travel between *túaths*. Once a king passed beyond his boundaries, he needed to be on official business with another *túath* in order to survive or avoid enslavement. This generally required the king to have official evidence of his intentions in traveling, either in the form of a gift, or the presence of one of his legal experts, called *brehons*.

In the *Táin*, Queen Madb of Connaught leads a raid against her neighboring territory of Ulster in order to steal a prized bull. In the story, her messengers pass freely into Ulster on her business in order to negotiate for the purchase of the bull.[48] After negotiations fail, Madb herself enters Ulster, an act that is perceived as a declaration of war against Ulster even before it is clear that she intends to raid the kingdom and steal the bull.[49] The reaction of the Ulstermen to Medb's appearance supports the assertions in the recorded codes that kings could not travel without a clearly distinguished purpose.

Brehons

Brehons were the law givers, or legal experts of the *túath*.[50] *Brehons* memorized the law codes and were deferred to by kings to pass judgment on legal matters brought before the king. Each king chose a *brehon* to occupy the position of his official legal advisor. However, several unofficial *brehons*, who shared the same legal status as the official *brehon*, would be present in any *túath*.[51]

Brehons were highly respected for the essential role they played in preserving order in the *túath*. Any person, regardless of birth, could aspire to attain the learning necessary to become a *brehon*.[52] Over time the position became hereditary, through custom rather

47 Ibid. P. 45.

48 Squire, C. (2003), *Celtic Myths and Legends*, Dover, Mineola, p. 164.

49 Kinsella, T. (2002), *The Táin, transl.,* Oxford University Press, Oxford, 320 p.

50 Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, p. 71.

51 Ibid. P. 68.

52 Ibid. P. 81.

than law.[53] The status of being a *brehon* brought with it immense wealth making it unsurprising that practicing *brehons* would venture to bring their children into the profession.[54]

Unlike kings, *brehons* were unrestricted in their rights to travel between *túaths*. Though an official *brehon* would rarely leave his native territory without the company of the king, he was not legally bound to remain in a specific jurisdiction. Neither were the unofficial *brehons*. The result of this was that any *brehon,* regardless of his affiliation with a specific *túath,* could give legal advice or hear a complaint. In the words of Irish scholar Laurence Ginnel, "The scope of a *brehon's* jurisdiction is not laid down in the law, simply because no *brehon* had exclusive jurisdiction anywhere".[55] Many have concluded that *brehons* must have borne some identifying marker of their status in their appearance in order to travel freely between tribes, possibly a specific manner of dress, as the druids did, or other accessory.[56] Regardless, it is clear that these most important

and respected members of society enjoyed some of the most extensive rights of all Irish citizens.

In the legend of Ollav Fōla, a king of Ireland who supposedly reigned around 1000 BC, an extensive description of the duties of a *brehon* is presented. The legend states that *brehons* would meet at the seat of the High King in Tara in order to "make up the genealogical records of the clan chieftanships, to enact laws, hear disputed cases, settled successions, and so forth".[57] This legend's description of *brehons* as keepers of law and knowledge matches the later recorded legal records. It is also consistent in its acknowledgement that *brehons* would travel to fulfill their duties, such as in they must in the legend to Tara.

Druids

Druids have survived in the popular imagination as elemental sorcerers. In truth the druids were much more, and far more important. The magical element people often associate with druids is not entirely untrue. Druids were distinguished by their ability to read sings from the gods, and to predict weather, famines, and other catastrophes. Thus, what some saw as

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53   Ibid. P. 82.

54   Ibid.

55   Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, p. 86.

56   Hutton, R. (2009), *Blood and Mistletoe: The History of the Druids in Britain*, Yale University Press, New Haven, p. 46.

57   Rollenston, T.W. (1911), *Celtic Myths and Legends*, T.Y. Crowell, New York, p. 107.

magic was actually "superior knowledge in times of general simplicity".[58]

Druids were the keepers of more than just knowledge of the weather. Their ability to communicate and understand the gods gave them an enhanced understanding of morality, philosophy, astronomy, medicine, and mythology.[59] Druids guarded an extensive knowledge base that was passed down within the profession. Some druids were also *brehons*, and had great authority in both spiritual and legal matters. Children gained the necessary knowledge to become a druid from their parents, so generally the profession was restricted within family groups.

As with *brehons*, kings would have an official druid, and each *túath* could be the home to several druids at once. This is consistent with in *Táin*. In the story Queen Madb consults a wandering druid in the woods before deciding to invade Ulster. She seeks advice on her chances of victory, the placement of the stars and the blessings of the gods before making her final decision.[60]

The high respect in which druids were held allowed them free passage. Often druids who were not appointed as an official druid by a king would be perpetual wanderers, traveling from *túath* to *túath*.[61] This way of life translated easily into Christianity, when many druids adopted the life of an isolated monk in remote parts of Ireland such as Skellig Michael.[62] It is the druid's reputation as "the most learned, the most sage, and the most virtuous men of the nation"[63] that afforded them their free rights of travel between tribes.

Flaiths

The landholding freemen of the tribe were known as *flaiths*. The *flaiths* were the unofficial aristocrats of Irish society, for their position depended on their landholdings and wealth, not their birth. A lower born freeman could become a

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58   Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, p. 73.

59   Hutton, R. (2009), *Blood and Mistletoe: The History of the Druids in Britain*, Yale University Press, New Haven, p. 49.

60   Rollenston, T.W. (1911), *Celtic Myths and Legends*, T.Y. Crowell, New York, p. 152.

61   Hutton, R. (2009), *Blood and Mistletoe: The History of the Druids in Britain*, Yale University Press, New Haven, p. 46.

62   Skellig Michael is a small rocky island off the southwestern coast of Ireland. In the early years of Irish Christianity a group of hermetic monks made their home on the island. See McCaffrey, C. (2002), *In Search of Ancient Ireland*, Ivan R. Dee, Lanham, p. 6.

63   Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, p. 73.

flaith if he amassed enough wealth, either through the acquisition of land or cattle.[64] Despite this possibility, most *flaiths* were the products of families that had long held their social status, and had inherited land and livestock from their forebearers.

Few travel rights were available to these landholders. However, they were allowed to travel in order to facilitate the practice of fostering. Fostering was a common practice in ancient Ireland.[65] *Túaths* would trade their young children to other tribes. It is generally thought that this was done out of recognition that small insular groups needed genetic diversification. This practice is illustrated in the *Táin*. Cú Chulainn often mentions his foster parents, and refers to them with a different title from, but as much respect as, his true mother.[66]

Non-Free Men

The non-free members of Irish society had few to no rights under the law. They were a class of slaves made up of captured enemies and wanderers.[67]

It is perhaps in this class of people that the importance of travel rights is most evident. When a man was found in outside of the boundaries of his *túath* by the member of another *túath*, he was taken in as a slave. This practice was based on the assumption that wandering outside of your *túath* meant you were either already a slave, or had been stripped of your rights. Non-free men were seen as having forfeited all rights, and were therefore the lowest members of society with no rights to travel.

In an early scene of the *Táin*, a young boy named Setanta was lagging behind his travel party. In the course of his solitary wandering, he was set on by a ferocious guard dog as he approached a settlement. He successfully killed the dog, then offered the owner, Cullen, to replace the dog as his protector for a year. This is how the boy Setanta became the hero known as Cú Chulainn, a name which translates to "the hound of Cullen".[68] In this tale it is not the ferocious dog attacking a young boy that is unjust, but the slaughter of the hound by the boy. The boy, wandering alone between tribal lands, should have expected such treatment. He has to repay a debt to Cullen for the slaying of his dog, support-

64 Ibid. P. 93.

65 Duggan, C. (2013), *The Lost Laws of Ireland*, Glasnevin Publishing, Dublin, p. 42.

66 Kinsella, T. (2002), *The Táin, transl.,* Oxford University Press, Oxford, 320 p.

67 Ibid. P. 146

68 Rollenston, T.W. (1911), *Celtic Myths and Legends*, T.Y. Crowell, New York, p. 136.

ing the premise of the codes that death or enslavement was the proper punishment for anyone wandering in the unclaimed lands between *túaths*.

Criminal Law Code

The importance of travel rights is embodied in the criminal law code of Ireland. The code is considered to be more of a civil than a criminal code as it centers around the concept of repayment for wrongs. Most punishments available for wrongdoing were through repayment of a head or honor price.[69] One's honor price was a measurement in cattle that reflected your status in your family, as well as in the tribe.[70] For example, if a member of the *túath* was slain, his killer would pay the family the value of his head price in compensation for the wrong as his only punishment.

The importance of travel rights is outlined in the consequences for not paying an honor price. If a wrongdoer refuses to pay the honor price of his victim, or cannot pay the honor price, he must leave the *túath*, forfeiting his land

and his status.[71] This acts as an incentive for the honor prices to be paid quickly. It also allows for the assumption that any wandering person in Ireland has committed some egregious or dishonorable act, justifying his enslavement.

Conclusion

The early medieval manuscripts of the ancient Irish legal codes are useful tools in understanding early Irish society. However, in order to utilize them properly it is important to compare them with other sources that claim to record information about the same era. Although all the manuscripts available detailing any aspect of early Irish life were composed in roughly the same period, they contain different clues about everyday life and must be studied in tandem to form a cohesive understanding of this early civilization and its unique way of life. Without the use of many types of sources, it is easy to take some of the later Christian edits to the myths and legal codes as accurate. Only through careful study of many texts is it possible to ferret out what existed before the coming of the Church to Ireland.

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69 Ginnell, L. (1923), *The Brehon Laws: A Legal Handbook – Primary Source Edition*, T. F. Unwin, London, pp. 192-193.

70 Duggan, C. (2013), *The Lost Laws of Ireland*, Glasnevin Publishing, Dublin, p. 34.

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Flack Hilary

Those who study pre-historic societies are always faced with the task of piecing together unrecorded histories with a series of small clues. Ireland presents a particular challenge because literacy came late to the island. By trusting in the strength of the Irish oral culture, and carefully analyzing all available sources, it is possible to paint a somewhat accurate picture of life and the law in ancient Ireland.

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Мифология и право: использование мифологии в понимании доисторического ирландского законодательства

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Аннотация

Данная статья рассматривает практическую значимость древнеирландской мифологии в изучении доисторического ирландского законодательства. Исследование фокусируется на мифах ирландского эпоса «Угон быка из Куалнге» в том виде, как он был записан первыми ирландскими монахами, а также ранние кодифицированные версии традиционного ирландского права. Большинство предыдущих исследований раннего ирландского законодательства сосредотачивается исключительно на кодифицированных законах и архео-

логических данных. Подход, используемый в данном исследовании, не признает важную роль хорошо сохранившихся данных об ирландской устной культуре, служащих в помощь современным ученым для понимания древнеирландского общества. Статья показывает совпадения в мифологических и правовых записях, сравнение которых дает понимание раннеирландской правовой традиции.

Ключевые слова

Ирландия, мифология, право, брегон, проезд.

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