

The Poetic Brehon Lawyers Of Early Sixteenth Century Ireland

For the year 1529 the *Annals of Loch C e*<sup>1</sup> record the deaths of four Irish brehons, or traditional lawyers. Three of them are said to be learned in poetry as well. The longest entry concerns An Cosnamhach Mac Aodhag ain, or MacEgan, the most eminent man in the lands of the Gaoidhel in Irish customary law [*f enechas*], and in poetry [*filidhecht*], with secular jurisprudence [*breithemnus tuaithe*]. (This latter phrase is understood by the editor to refer to a knowledge of Roman civil law, certainly a possible interpretation.) These poetic lawyers of 1529 are by no means unusual. The two most influential families of hereditary Irish lawyers during the fifteenth and early sixteenth centuries, the MacEgans of Connacht and Tipperary and the MacClancy (Mac Fhlannchadha) judges to the OBriens in Co. Clare, each produced experts in poetry and general Irish literature, generation after generation,<sup>2</sup> and the MacEgans also cultivated music.<sup>3</sup> We are told the ideal *ollamh* or master of the legal profession should be expert in every art,<sup>4</sup> that is in all branches of vernacular Irish learning: customary law, bardic poetry, music, medicine,

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<sup>1</sup> Edited W.M. Hennessy, 2 vols, London 1871, reprinted Dublin 1939 [A.L.C.], ii, pp. 268–71; see also *Annals of the kingdom of Ireland by the Four Masters* ed. J. ODonovan, 7 vols, Dublin 1851 [A.F.M.], v, pp. 1396–7.

<sup>2</sup> *Ann ala Uladh: Annals of Ulster* ed. W.M. Hennessy and B. MacCarthy, 4 vols, Dublin 1887–1901 [A.U.], ii, pp. 412–13, *Ann ala Connacht: Annals of Connacht* ed. A. M. Freeman, Dublin 1944 [A.C.], pp. 218–19; A.F.M., iv, pp. 880–1, 908–9, 930–1, 1126–7, v, 1682–3.

<sup>3</sup> A.F.M. iii, pp. 648–9; iv, pp. 766–7.

<sup>4</sup> M. N Dhonnchadha, An address to a student of law in *Sages, Saints and Storytellers, Celtic Studies in Honour of Professor James Carney* ed. D.  O Corr ain, L. Breatnach and K. McCone, Maynooth 1989, p. 170.

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and traditional history (including genealogy). More practical accomplishments such as architecture, manuscript illumination, metal-working, even originally military training, were also counted among the privileged arts.<sup>5</sup>

The medieval Irish used two words interchangeably for these arts or professions: *dán* which meant primarily a talent, a gift from God, and *cerd* which meant rather a craft, an acquired skill, used particularly of ornamental metal-workers, but also of poets.<sup>6</sup> Unlike ancient Romans, the Irish did not distinguish between aristocratic liberal arts, which exercised the mind only, and the slavish mechanical arts of hand and eye, since they considered that each sort required both a god-given talent and years of formal training or apprenticeship. In this way one could say that they anticipated by many centuries the higher social status which became generally accorded to artists, sculptors and goldsmiths during the Renaissance.

We should ask ourselves then, why it was so important for Irish lawyers to be expert in every art, and especially in poetry? It seems from the literature that there were two kinds of reasons involved, on the one hand practical, modern explanations, on the other traditional, mythic ones.

To begin with those considerations that had a direct bearing on the training of lawyers: the law-schools studied poetics or *filidheacht*, that is, a theoretical knowledge about the content, metrics and language of poetry, rather than professional poetry or *dán*, that is, the actual composition of elegies and panegyrics addressed to aristocratic patrons in return for payment. Both the written form of Old Irish (c. 600–900 A.D.) and Classical Early Modern Irish (c. 1200–1650 A.D.) were artificially standardised literary dialects. They had a fixed vocabulary and grammar which were employed without variation not only throughout Ireland, but in the Gaelic-speaking regions of Scotland as well.

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<sup>5</sup> *Cath Maige Tuired: The Second Bttle of Mag Tuired* ed. E.A. Gray (Naas, 1982), pp. 38–41.

<sup>6</sup> *Dictionary of the Irish Language Based Mainly on Old and Middle Irish Materials* ed. E. G. Quin et al., Dublin 1983, sub verb.

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The earliest vernacular grammar, *Auraicept na nÉces* or the *Poets Primer*, was originally composed not later than the first half of the eighth century, by taking principles of grammatical analysis learned in the study of Latin and applying them to the Irish language.<sup>7</sup> The work thus begun was continued by later native grammarians, who produced textbooks for the instruction of poets until the end of the seventeenth century.<sup>8</sup> In 1700 A.D., we find a native Irish antiquarian, Tadhg O'Roddy, distinguishing between five kinds of Irish: the colloquial common Irish of his own day, the Old Irish in which the corpus of the law texts had first been written down, which he called law, or lawyers dialect, and literary Early Modern Irish, described as the poetic dialect, together with two further arcane dialects: the abstractive and separative dialects, one of which was presumably the poets learned jargon language, *Béarla na bhFileadh*.<sup>9</sup> Law students needed to familiarise themselves with both the Old and Classical literary standards, the Old Irish in order to decipher the ancient texts of customary law written down between the seventh and the ninth centuries, and the Classical Early Modern standard, because this was the literary Irish they used when pleading their case in the courts, as can be seen from the few fragments of written pleadings we still have preserved from the late fifteenth and early sixteenth centuries.<sup>10</sup> Verses composed by a poetic brehon about the year 1300 advise the young law student:

The literary language whose thrust is not self-evident or superficial and the noble reading aloud—for ardent judges and bards, they are the keys which release locks.<sup>11</sup>

In the sixteenth century Seaán Ó Cearnaigh, author of a protestant catechism in Irish, advised those who wished to perfect themselves in the literary dialect to study with the poets, for intellectual and

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<sup>7</sup> A. Ahlqvist, *The Early Irish Linguist, Commentationes Humanarum Litterarum* lxxiii, Helsinki 1983, p. 30.

<sup>8</sup> D. McManus, "Classical Modern Irish" in *Progress in Medieval Irish Studies* ed. K. McCone and K. Simms, Maynooth 1996, pp. 165–187.

<sup>9</sup> J.H. Todd, "Autograph Letter of Thady O'Roddy" in *Miscellany of the Irish Archaeological Society* i, Dublin 1846, p. 123.

<sup>10</sup> G. Mac Niocaill, "Notes on litigation in late Irish law" in the *Irish Jurist* ii, 299–307.

<sup>11</sup> N Dhonnchadha, An address to a student of law, p. 168.

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knowledgeable discussion of that (language) belongs to their craft.<sup>12</sup>

However the lawyers did not confine themselves to studying the poets' grammatical tracts. They also learned the complex metres used for bardic composition, which were the subject of a separate series of treatises, some of them in prose, some in verse.<sup>13</sup> There were three levels of professionalism in bardic verse. One could compose in *glachas*, the simple, crude metres of the amateur, or one could use *brúilingeacht*, where all the rules of the most elaborate metres were followed as regards alliteration, syllable count and rhyme scheme, but the rhymes themselves did not correspond perfectly. Only the most highly educated and trained of the professional praise-poets composed in *dán dreach*, or straight verse, where the elaborate pattern of rhymes corresponded fully, as regards both vowels and consonant class, while alliteration and syllable count remained strictly regular.<sup>14</sup> This was a standard very difficult for a non-specialist to attain, and even the legal poems of the early MacEgan judge, Giolla na Naomh mac Duinnshléibhe Mhic Aodhagáin (d. 1309), though intended for *dán dreach*, contain more flaws than would be expected of a court poet.<sup>15</sup> The same can be said of a versified list of the honour-prices attached to each rank in society, *Einecland na tr secht ngrád*<sup>16</sup> by Muirghius ODavoren (Ó Duibh-dá-bhoireann), from a legal family in north Co. Clare.

Such poems had practical rather than aesthetic purposes, they served as mnemonics which would fix in the law-students mind the varying amount of the honour-prices, or the procedures to be followed when distraining the property of an accused person. However, those poems which were composed in elaborate *dán dreach* metres also served to advertise the cultivation and literary skill of the law professor who wrote them. It was a principal of Old Irish law that the honour-price and legal

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<sup>12</sup> Aibidil Gaoidheilge & Caiticiosma (Seaán Ó Cearnaighs Irish Primer of Religion Published in 1571), ed. B. Ó Cuv, Dublin 1994, p. 67.

<sup>13</sup> R. Thurneysen, *Mittelirische Verslehren in Irische Texte* ed. W. Stokes and E. Windisch, ser. iii, 1er Heft, Leipzig 1891, pp. 1–182; see G. Murphy, *Early Irish Metrics*, Dublin 1961.

<sup>14</sup> E. Knott, *An Introduction to Irish Syllabic Poetry of the Period 1200–1600*, 2nd ed. Dublin 1974, p. 2.

<sup>15</sup> N Dhonnchadha, "An Address to a Student of Law," pp. 160, 163; D.A. Binchy ed., *Corpus Iuris Hibernici*, 6 vols, Dublin 1978 [C.I.H.], iii, pp. 871–74.

<sup>16</sup> K. Meyer, *Mitteilungen aus irischen Handschriften—Das Wergeld des Klerus und der Laien in Zeitschrift für Celtische Philologie* ix (1913), 171–72.

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capacity of a judge and the honour-price and legal capacity of a poet were added together for a man who combined both qualifications, to give him a doubly high status in society—as an Old Irish law tract explained it increases nobility.<sup>17</sup> The same applied to anybody who practised more than one trade or profession, for example a churchman who was also an architect or manuscript illuminator.

The study of poetic knowledge or *filidheacht*, however, did not stop with grammar and metrics. The fully-trained court poet had to be familiar with the sagas and the legendary history of the Irish race. Traditionally the *ollamh*, or master poet, was supposed to be familiar with three hundred and fifty tales, while even the *mac fuirmid*, the title of a lower rank of poet, held by one of the three brehons who died in 1529, was expected to know forty tales.<sup>18</sup>

Again there was a practical purpose for lawyers in acquiring an encyclopedic knowledge of ancient Irish mythology. Irish judges were aware of the concept of legal precedents and case law as grounds for a decision. The introduction to the Old Irish tract, *Uraicecht Becc*, whose title may be translated as the *Little Primer* for law students, begins in a manner similar to the *Institutes of Gaius*, or of Justinian<sup>19</sup> by defining the bases of law, in this case as maxims and precedents and true scriptural testimonies.<sup>20</sup> Just as Gaius referred to the opinion of Roman jurisconsults in past times as having the force of law, if they were in agreement with each other,<sup>21</sup> so the Old Irish law tracts cite the opinion of ancient judges on past disputes. However the disputes in question are almost always taken from mythology rather than recent history, and the judges named are mythological personages, such as Brg Ambue, or Brg the propertyless,

<sup>17</sup> *Ancient laws of Ireland*, ed. W. Hancock et al., 6 vols. Dublin 1865–1901 [A.L.I.], v, p. 109; C.I.H., vi, p. 2333.30-2.

<sup>18</sup> P. Mac Cána, *The Learned Tales of Medieval Ireland*, Dublin 1980, p. 120.

<sup>19</sup> The *Uraicecht Becc* which was originally composed in the Old Irish period (c. 900 A.D. or earlier) could have been most readily influenced by the *Institutes* of the Roman law-teacher Gaius, a contemporary of Marcus Aurelius, whose work was long familiar to Latin scholars in Western Europe, while knowledge of the *Corpus Iuris Civilis* of Justinian was only revived in the West from the late eleventh century onwards. However Italy remained aware of the full text of *Justinians Institutes* throughout the early medieval period; see C. Donahue Jr entry on Law, Civil in *Dictionary of the Middle Ages* ed. J. R. Strayer, vii, New York 1986, p.418.

<sup>20</sup> K. McCone, *Pagan Past and Christian Present in Early Irish Literature*, Maynooth 1990, p. 24.

<sup>21</sup> *The Institutes of Gaius and the Rules of Ulpian*, ed. J. Muirhead, Edinburgh 1880, p. 4, §7.

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the female expert of the men of Ireland in wisdom and prudence, and her father Sencha mac Ailella, or Sen mac Áige, sometimes represented as characters in the heroic Ulster cycle, of which the *Táin Bó Cúailnge* forms the chief tale.<sup>22</sup> Another very important mythical judge was Morann of the Magic Collar, whose collar was used as a lie-detector, choking witnesses who gave false testimony. Maxims attributed to this fictional character run through the texts of the Munster law-school which produced the Old Irish Bretha Nemed tracts and related works.<sup>23</sup>

Apart from a possibly genuine reference to the one-eyed Congal Cáech, a seventh-century king of Ulster who is said to have lost his right to be highking of Tara when he became half-blind as a result of a bee-sting,<sup>24</sup> the doubtful cases and disputes cited in the law-tracts are drawn from the plots of literary myths and sagas.<sup>25</sup> In contrast to Congal Cáech who lost his title to kingship because of a physical defect, they also recite the tale of Fergus mac Léti, a legendary king of Ulster who defied the orders of the king of the leprechauns by diving under the waters of Loch Rudraige, where he met a terrible sea-monster, an experience which permanently distorted his face with terror. But the wise men of Ulster decided he should be allowed to keep his kingship, as long as nobody let him know how ugly he looked.<sup>26</sup>

We may find it absurd that such legends were used as justification for various points of law, but the practice is not so very different from the ancient Roman schools of rhetoric, which used the plots of well-known stories, or incidents from Greek history, as imaginary law-suits to train students in disputation.<sup>27</sup> It is important to realise that Irish medieval scholars considered their own language and traditions to have an equal academic status with those of ancient Greece and Rome. In this way we can see that the study of *filidheacht*, of the grammar, metrics and literature of the Irish poets, served the other Irish schools of law, medicine

<sup>22</sup> McCone, *Pagan Past*, p. 162–3; C.I.H. i, p. 209; ii, p. 356; iii, pp. 883, 908, v, p. 1654. See also W. Stokes, “The Irish Ordeals” in *Irische Texte* iii ed. W. Stokes and E. Windisch, Leipzig 1891, pp. 187, 191, 205, 209.

<sup>23</sup> *Audacht Morainn*, ed. F. Kelly, Dublin 1976, pp. xiii–xix.

<sup>24</sup> *Bechbretha: an Old Irish Law-tract on Beekeeping*, ed. T. Charles-Edwards and F. Kelly, Dublin 1983, pp. 68–73; see F.J. Byrne, *Irish Kings and Highkings*, London 1973, p. 113.

<sup>25</sup> “Stories from the Law-tracts” ed. M. Dillon in *Ériu* xi (1930), 42–65.

<sup>26</sup> “The Saga of Fergus mac Léti,” ed. D.A. Binchy in *Ériu* xvi (1952), 33–48.

<sup>27</sup> A. Gwynn, *Roman Education from Cicero to Quintilian*, Oxford 1926, pp. 158–166.

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and history as a kind of necessary intellectual training prior to studying their own professions, like the Latin studies of the trivium in medieval universities. We can also compare the ollamh of law, who wrote *dán dreach* poems of advice and instruction to his pupils in classical Irish, with a university doctor *utriusque iuris* composing legal maxims for his students in elegant Latin hexameters.

The end result was that the medieval Irish master of customary law was a very cultured and broadly educated man. On occasion he could display his learning with a sense of humour. A light-hearted poetic disputation arose, probably in the mid-fourteenth century, though the date is uncertain, as to whether the river Shannon should be described as belonging to Connacht or Munster. Two poems had already been written in support of each side of the argument when a poetic brehon, Tadhg an Ghadraigh Mac Aodhagáin entered the exchange to give his official judgement, also in verse. This comprises a fascinating parody of an Irish brehons summing-up at the end of a law-case. He states at the outset:

as a good chief-judge is bound to expound the statements of  
each party, correct false information, and maintain justice in  
its rightful place, I shall state with professional skill my  
findings about the ownership of the Shannon.

He then rehearses the primary cause of dispute, the arguments of each party, he discusses the political history of the region, he compares the contention over the provenance of the Shannon to a law-suit to determine the true paternity of a child, he compares the river system of the Shannon to the arteries of the human body, showing he has some medical knowledge, and finally he decides the argument in favour of the province of Connacht, sending a message in the last verse to his old teacher, the Munster judge MacClancy of Thomond. It was from his teachers library, he says, that he acquired the learning to write the poem and the judgment it contains.<sup>28</sup>

So far one might argue that these broadly-educated lawyers had much in common with Renaissance humanists, except that the classical

<sup>28</sup> B. Ó Cúv, "The Poetic Contention about the River Shannon" in *Ériu* xix (1962), 89–110; and see O. Bergin, *Irish Bardic Poetry* ed. D. Greene and F. Kelly, Dublin 1970, pp. 60-3, 238-9.

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language and literature that they studied to train their minds was the old written vernacular of their own country. Indeed some of them were qualified as public notaries, and did know a smattering of Latin also, though as Richard Stanihurst observed in the later sixteenth century, they spoke it like a vulgar language, without eyther preceptes or obseruation of congruitie.<sup>29</sup>

Within the culture of medieval Ireland, however, there lay hidden quite a different set of reasons for combining law with poetry, and we know that this older tradition had still some force in the sixteenth century when we hear that the brehons held their courts and delivered their judgements sitting on a grassy bank in the open-air, by some venerated rock or under a hallowed tree or thorn bush.<sup>30</sup>

According to ancient legend, before Christianity came to Ireland it was originally the poets who had authority to pronounce judgement, because they were inspired with a supernatural power to see and understand truth. This power is explained in two ways by later Christian writers. One school of thought believed that the poets of pagan Ireland, like the prophets of the Old Testament, were inspired by Gods holy spirit to proclaim the natural law, or rather *ius gentium*, the sense of right and wrong which is felt by just men of all nations, regardless of what their religion or their written texts may be.<sup>31</sup> If the poets used their supernatural power of versifying to pronounce a judgement contrary to Gods will, they would be swallowed up by the earth, like the false Levites Dathan and Abiram, or God would strike them with facial disfigurement, with black and green and purple blisters. The process of announcing a judgement in verse amounted to an act of truth, a ceremonial invocation of God as witness, so that when such a poetic judgement was not punished with a natural disaster, it was accepted as a truth proved in Gods sight, and could be used as a precedent for later judgements on similar points of

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<sup>29</sup> *Holinshed's Irish Chronicle* 1577, ed. L. Miller and E. Power, Dublin 1979, p. 114. See K. Simms, "The Brehons of Later Medieval Ireland" in *Brehons, Serjeants and Attorneys* ed. D. Hogan and W. N. Osborough, Blackrock, Co. Dublin 1990, pp. 69–71.

<sup>30</sup> *Holinshed's Irish Chronicle*, p. 115; G.B. OConnor, *Elizabethan Ireland: Native and English* (Dublin [1896]), p. 98.

<sup>31</sup> K. R. McCone, "Dubthach maccu Lugair and a Matter of Life and Death in the Pseudo-historical Prologue to the *Senchas Már*" in *Peritia* v (1986), 9; idem, *Pagan Past and Christian Present in Early Irish Literature* (Maynooth 1990), pp. 25, 96–7.

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law.<sup>32</sup> Another viewpoint was that the poets obtained their supernatural knowledge by performing magic rituals to gain *imbas forosna*, the knowledge that enlightens, by chanting incantations and by eating the raw flesh of an animal, a dog, a white bull or a salmon, or consuming the nine hazel-nuts of wisdom which floated upstream on the waters of the river Boyne once in every seven years.<sup>33</sup>

Those scholars of Early Christian Ireland who believed the poets visionary power derived from pagan magic assured their readers that Saint Patrick had forbidden most of these rites when he converted the island to Christianity, but he still permitted poets to prophesy through chanting extemporary verses. However a strange legend, the *Colloquy of the Two Sages* explained that the poets of ancient times when they delivered judgements, did so in such an arcane and unintelligible language that the legendary Ulster King Conchobar mac Nessa decreed that poets henceforth should only be judges of their own affairs, just as other master craftsmen could judge matters pertaining to their own trade, and the nobles and kings of Ireland were to judge those under their authority.<sup>34</sup>

The pagan belief that the moment when a judge issued his verdict was an encounter between the human and the divine, and that the will of the gods was outraged by an unjust decision, while just judgements drew down divine blessings, is already testified among the Celts of Gaul in the first century B.C. where Strabo remarks that the druids were chiefly trusted to try cases of homicide, and that when there is an abundance of these they consider that there is also abundance of the land,<sup>35</sup> presumably because their many just judgements drew down the gods blessing on the crops. In Ireland the connection of good or bad weather and fertility of crops with the pronouncing of just judgements was particularly associated with the reign of good and bad kings, and the theme was adapted to Christian teaching by speaking of Gods blessing on the people

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<sup>32</sup> N. McLeod, "The Concept of Law in Ancient Irish Jurisprudence" in the *Irish Jurist* new series xvii (1982), 359–60; for Dathan and Abiram see Numbers 16: 25–34.

<sup>33</sup> L. Breatnach, "The Cauldron of Poesy" in *Eriu* xxxii (1981), 66–7; R. Thurneysen, "Imbas for osndai" in *Zeitschrift für Celtische Philologie* xix (1933), 163–4.

<sup>34</sup> McCone, "Dubthach maccu Lugair," pp. 9–10; "Imacallam in dá Thuarad" ed. W. Stokes, *Revue Celtique* xxvi (1905), 4–64.

<sup>35</sup> Strabo IV iv 4; see J.J. Tierney, *The Celtic Ethnography of Posidonius in Proceedings of the Royal Irish Academy* lx (1960), 189–275.

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and kingdom of the just king, or his curse on the subjects of an unjust one. This was a theme that subsequently influenced the whole European literary genre of admonition to princes, the *Speculum Principum* tracts.<sup>36</sup> However in Irish teaching the ordinary professional judge who gave false judgements also brought a curse on the surrounding population, a failure of grain and of milk and of mast . . . diseases and difficulties.<sup>37</sup>

It was commonplace throughout medieval Europe to involve God in deciding the guilt or innocence of an accused person when there was any doubt, either by ordeals, where the accused had to plunge his hand into boiling water, or take hold of a red-hot object, or by fighting a judicial duel.<sup>38</sup> However in Ireland, as was so often the case, the pagan origins of such appeals for divine intervention are more explicit. In the Latin Life of St Berach of the church of Cloonbarry in Co. Roscommon, we are told that St Berach built his church on land which belonged by hereditary right to a local druid who brought him to trial before a host of important judges, including Aed Dub, the king of Breifne. The druid objected to the location of the trial, because he wanted it to be held at Rathin, where there was a tall tree, described in the Irish version of the Life as a whitethorn tree, in which a demon resided, which would deliver answers to his worshippers, and he hoped for demonic support if the trial took place there. However the judges refused to move, and the saint solved the problem after almost four hours of strenuous prayer by bringing the tree flying through the air to take root beside them, while the voice of an angel spoke from the clouds above, declaring Gods verdict in favour of the saint.<sup>39</sup> Dr A.T. Lucas has examined the whole question of sacred trees in Ireland, and shown that they survived after the pagan period to mark hills of assembly where kings were inaugurated, holy wells and places of pilgrimage, with the whitethorn or hawthorn tree being by far the most

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<sup>36</sup> R.M. Smith, "The *Speculum Principum* in Early Irish Literature" in *Speculum* ii (1927), 411–45; *Audacht Morainn*, ed. Kelly, pp. xiii–xix; H.H. Anton, "Pseudo-Cyprian: De duodecim abusivis saeculi und sein Einfluß auf den Kontinent, insbesondere auf die Karolingischen Fürstenspiegel" in *Die Iren und Europa im Früheren Mittelalter*, ed. H. Löwe, 2 vols, Tübingen 1982, ii, pp. 568–617.

<sup>37</sup> McLeod, The concept of law, 359–60.

<sup>38</sup> See W. Davies and P. Fouracre, *The Settlement of Disputes in Early Medieval Europe*, Cambridge 1986, pp. 18–19, 87, 113, 214, 222.

<sup>39</sup> *Vitae Sanctorum Hiberniae* ed. C. Plummer, 2 vols, Oxford 1910 repr. 1968, ii, pp. 80–4; *Bethada Náem nÉrenn* ed. C. Plummer, 2 vols, Oxford 1922 repr. 1968, i, 36, ii, 35.

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frequently venerated species in later times.<sup>40</sup> A bardic poem of the early seventeenth century laments the decision of the English conquerors to cut down such an ancient tree on an Irish hill of assembly, and in this case too the tree was a whitethorn tree:

The thorn of acclamation . . . I used to see as a place of  
assembly . . . My heart in my breast is sad for thy ancient tree,  
O hill yonder . . . Never do I see the hill of the fruitful stems but  
that the ruin of the thorn stirs my sorrow.

This chopping down of the thorn tree was probably not simply an act of unthinking vandalism by the new English landowner but an official decision, because these popular courts held on the hill-tops were sternly discouraged by the government.<sup>41</sup> The Irish judges or brehons were also criticised by an English observer in 1561, who accused them of sheltering rebels, and of being in a manner all rimers, or bardic poets.<sup>42</sup>

According to the Old Irish law tracts, there were three types of law and three kinds of judge in the early period: there was the judge of ordinary customary law, or *fénechas*, there was the judge of two speeches, that is, of customary law and poetry, *fénechas* and *filidecht*, and there was the highest judge of all, the judge of three speeches, *fénechus*, *filidecht*, and the language of the the *Beati*, or Latin.<sup>43</sup> Customary law is defined for us in the Old Irish law tracts, and the Latin law of the church is contained in the *Collectio Canonum Hibernensis*, but what we may ask was the function of a judge of poetic speech?

Just as a passage of commentary on the Old Irish law-tract *Uraicecht Becc* permitted masters of the medical profession, and indeed chief carpenters, braziers and blacksmiths, to judge cases involving prices and standards in their own profession, providing they had sufficient legal

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<sup>40</sup> A.T. Lucas, "The Sacred Trees of Ireland" *Journal of the Cork Historical and Archaeological Society* lxxviii (1963), 42.

<sup>41</sup> K. Simms, *From Kings to Warlords: The Changing Political Structure of Gaelic Ireland in the Later Middle Ages*, Woodbridge, Suffolk, 1987, pp. 74–5.

<sup>42</sup> H.F. Hore, "Irish Bardism in 1561" in *Ulster Journal of Archaeology* 1st series, vi (1858), 166.

<sup>43</sup> L. Breatnach, *Lawyers in early Ireland in Brehons, Serjeants and Attorneys: Studies in the History of the Irish Legal Profession* ed. D. Hogan and W.N. Osborough, Dublin 1990, pp. 1–13.

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knowledge,<sup>44</sup> so we have tracts dealing with the grades of poets and the prices different ranks of poet may charge their patrons for compositions in various metres, although it is specified that such charges are only fixed for the hereditary learned poets composing in the ancient metres, while the half-educated oral bards using new metres were paid according to the whim of their patron.<sup>45</sup> A judge of poetic speech, then, might be one who was qualified to preside over a court exclusively designed to regulate the poetic profession. Indeed one of the qualifications of an *ollamh* or master poet was that he should be knowledgeable in the jurisprudence of Irish law.<sup>46</sup> There is even a clause in the first reforming synod of the Irish church held at Cashel in 1101, in which poets appear to be exempted from the operations of secular law courts.<sup>47</sup> However by 1200 the *filid*, or learned poets of the early Christian period in Ireland had become merged with the ordinary praise-poets, or bards,<sup>48</sup> and there is no record of a separate system of law-courts for poets in the high middle ages.

In the fourteenth and again in the early seventeenth century there are references to a different kind of judge of the schools (*breitheamh sgoil*). In the fourteenth century we are informed that customarily this person was a member of a learned profession, one who had himself composed poetry, who invites all the poetic schools of Ireland to gather at his house for a banquet. In the seventeenth century, the eminent Aonghus Fionn Ó Dalaigh, a Munster *ollamh* or master poet, is described as a poetic judge, and his function is specifically to assess the merit of a poetic composition, just as his patron, the chief of Duhallow is described as a judge of military exploits.

Evidence that this was no mere metaphor comes in another early seventeenth century poem addressed to the Catholic Archbishop of

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<sup>44</sup> *Anc. laws Ire.* v, p. 99; *C.I.H.* v, p. 1614, vi, pp. 2330–1

<sup>45</sup> Thurneysen, *Mittelirische Verslehren*, 23, 107; D. Ó hAodha, “The first Middle Irish Metrical Tract” in *Metrik und Medienwechsel: Metrics and Media*, ed. H.L.C. Tristram, Tübingen 1991, pp. 214–15; *Uraicecht na Rar: the Poetic Grades in Early Irish Law*, ed. L. Breatnach, Dublin 1987.

<sup>46</sup> *Uraicecht na Rar*, ed. Breatnach, pp. 102–3.

<sup>47</sup> A. Gwynn, *The Irish Church in the 11th and 12th Centuries*, ed. G. O'Brien, Blackrock, Co. Dublin 1992, p. 167.

<sup>48</sup> G. Murphy, “Bards and Filidh” in *Éigse* ii (1940), pp. 200–7; K. Simms, “An Eaglais agus Fil na Scol” in *An Dán Dreach* ed. and transl. P. Ó Fiannachta, Léachta Cholm Cille xxiv, Maigh Nuad 1994, pp. 22–5; eadem, “Literacy and the Irish Bards” in *Literacy in Medieval Celtic Societies* ed. H. Pryce, Cambridge 1998, 240–1.

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Tuam, Flaithr Ó Maolchonaire, by the exiled poet Fearghal Óg Mac an Bhaird. In this the poet recalls that the archbishop's grandfather, Muirghius Ó Maolchonaire, who was already an eminent hereditary historian, set his heart upon being recognised as a fully qualified poet also, but encountered embarrassing opposition to this claim, presumably from the poetic profession. However Fearghal Óg's ancestors, the Donegal poetic school of the Mac an Bhaird family, attended an assembly in Connacht in which they gave judgement in favour of Muirghius Ó Maolchonaire, thus establishing his reputation.<sup>49</sup> When Muirghius died in 1543, the annals say of him:

... a man learned in history and poetry, a man of wealth and affluence, a learned scribe, by whom many books had been transcribed, and by whom many poems and lays had been composed, and who had kept many schools, superintending and learning, several of which he had constantly kept in his own house.<sup>50</sup>

Clearly the judgement of the poetic school in his favour had been of economic value to this man's career.

One would like to imagine, of course, that Thomas More would have enjoyed attending one of these courts of poetry held in the first half of the sixteenth century in Ireland, and feeling that as a lawyer broadly educated in the humanities he would not have been considered out of place there. Interestingly, we do have one piece of evidence linking a North European humanist with the Irish poetic schools and their courts of poetry, and this is found in the papers of Sir Matthew de Renzy, who liked his Irish friends to call him Mathghamhain Ó Rensi. Sir Matthew had been a German cloth-merchant based in London, who became bankrupt in 1606 and then successfully recovered his fortunes by becoming a planter on the confiscated estates of an Irish chieftain in Westmeath. He already knew English, Spanish, Italian and German, and decided to learn Irish by attending the poetic school of Tadhg mac Dáire Mhic Bhruaideadha, court poet to Donnchadh O'Brien, fourth Earl of

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<sup>49</sup> *Dioghluim Dána* ed. L. Mac Cionnaith, Dublin 1938 repr. 1969, p. 295.

<sup>50</sup> A.F.M. v, p. 1483; and see A.C., pp. 730–1

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Thomond, and then toured a number of other bardic schools, ending by writing a grammar of the Irish language.<sup>51</sup> In 1616-17 Tadhg mac Dáire became involved in a poetic contention with the learned poets and historians of the north of Ireland as to whether the O'Brien or the O'Donnell lineage had best right to consider themselves heirs to the high kingship of Ireland. A letter survives written by Tadhg to his principal northern opponent, Lughaidh Ó Cléirigh, and witnessed by the German, Mathghamhain de Renzi, suggesting that to terminate the dispute, both sides should meet at Gort, Co. Galway to hold a court of poetry, in which two neutral judges would be chosen to examine all poems generated by the contention for their historical truth and to delete from them all statements found to be unverifiable.<sup>52</sup> It does not seem that the invitation was ever accepted, as the manuscript tradition for this Contention of the Bards divides into two schools, a predominantly Munster anthology and a separate Ulster one,<sup>53</sup> but there seems no reason to doubt that the offer was made in good faith. Another kind of judgement of the schools was issued in favour of Matthew himself in 1631 by Conchobhar Mac Bruaideadha, kinsman of Tadhg mac Dáire, and head at that time of the Mac Bruaideadha school of history and poetry. It may well resemble the support given by the Mac an Bhaird school to Muirghius Ó Maolchonaire almost a century earlier. It is a formal prose eulogy of Matthew, setting forth the nobility of his ancestry and his academic accomplishments, landed property and knighthood. It ends with a little poem of praise.

A blessing from me to Ó Renzi give before you return to us, the  
gentle scholar with hair of many tresses, may a cross of the  
Lord protect him.

. . . Devout loved one, pleasant company, even a great poet  
can scarcely list his qualities, bring from me to him my  
affection in abundance.<sup>54</sup>

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<sup>51</sup> B. Mac Cuarta, "A Planters Interaction with Gaelic Culture: Sir Matthew de Renzy (1577-1634)" in *Irish Economic and Social History* xx (1993), 1-17.

<sup>52</sup> P. A. Breatnach, "Litir Thadhg Mac Bruaideadha" in *Éigse* xxviii (1994-5), 97-9.

<sup>53</sup> *Iomarbhágh na bhFileadh: the Contention of the Bards* ed. L. McKenna, 2 vols, Dublin 1920, i, pp. xv-xvi.

<sup>54</sup> B. Mac Cuarta, "Conchobhar Mac Bruaideadha and Sir Matthew de Renzy (1577-1634)" in *Éigse* xxvii (1993), 122-6.

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This is in imperfect metre, since Conchobhar Mac Bruaideadha was trained as a historian rather than a poet, but it bears witness to the possibility of friendship between a traditional Irish scholar and one educated in the European tradition, something today's session at this conference is also designed to demonstrate.

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