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Irish and Welsh Law in the European Contexts
Droit irlandais et droit gallois dans le contexte européen

Abstract: This paper traces the relationship of the Roman Empire with Ireland and Wales from roughly the fifth to the seventh centuries and probes the role that Roman and Canon law played there following the events of 410, based on evidence from authors, such as Prosper of Aquitaine, Venantius Fortunatus, Zosimus and Gildas, as well as the vernacular legal traditions. This approach allows us to investigate perceptions of legal identity in Post-Roman Britain and the echoes of Latin learning embraced in Ireland.

Résumé : Cet article suit la relation de l'Empire romain avec l'Irlande et le Pays de Galles du Vᵉ au VIIᵉ siècle environ, et recherche le rôle qu'y jouait le droit romain et canonique après les évènements de l'année 410, fondé sur des témoignages d'auteurs comme Prosper d'Aquitaine, Venantius Fortunatus, Zosimus et Gildas ainsi que des traditions légales vernaculaires. Cette approche nous permet d'étudier les perceptions de l'identité légale dans la période post-romaine des Îles Britanniques ainsi que les échos de l'éducation latine adoptée en Irlande.

Keywords: Dark Ages – Irish Law – Welsh Law – Canon Law – ogham

Mots-clés : Moyen Âge – droit irlandais – droit gallois – droit canonique – ogham

1. The laws of medieval Ireland and Wales are interesting in the context of European legal history because Ireland and Wales lay either side of the Roman frontier in the far north-west, the frontier being the Irish Sea. By the fifth century some Irish were settled in the western fringes of Britain and retained close links with their fellow-countrymen in Ireland. Inscriptions attest the presence of the Irish, of their language, their ogham letter-forms, and their personal names, in Cornwall, in South-West and North-West Wales, and in the Isle of Man.[1] Back in Ireland, the inscriptions of the fifth and sixth centuries were almost always in the ogham alphabet and in the Irish language, imitating Rome but proclaiming their separate identity; in Britain they were more often bilingual or solely in Latin. There ogham and the Irish language were presented side by side with Roman capitals and Latin, with ogham often appearing as complementary to Latin, sometimes representing an abbreviation or modelling thereof.[2] In the epigraphy of Post-Roman Britain we can see that the Irish settlers embraced Rome: the habit of putting up commemorative inscriptions was itself taken from Rome and that was as true for the solely Irish and ogham inscriptions of the island of Ireland as it was for the bilingual or Latin inscriptions of Irish settlers in Britain.[3] What is remarkable about the latter, however, is that the Irish settlers were more prone to commemorate their dead in this Roman manner than were their British neighbours.

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1   T. M. Charles-Edwards, *Wales and the Britons, 350-1064*, Oxford, 2012, p. 116-173: 3. Inscriptions.

2   D. McManus, *A Guide to Ogam*, Maynooth, 1997, p. 63.

3   Regarding the relationship between Latin and the vernacular languages of Ireland and Britain, see: A. Orchard, "Latin and the vernacular languages: the creation of a bilingual textual culture", *After Rome*, T. M. Charles-Edwards (ed.), Oxford, 2003, p. 191-219; T. M. Charles-Edwards, *Early Christian Ireland*, Cambridge, 2000, p. 163-172; language and identity in western Britain, p. 172-176; Ogam inscriptions and the beginnings of literacy.

2. From a legal perspective, it would appear that, on occasion, ogham stones were used to underpin hereditary titles to land. As physical testimony, inscriptions on pillar stones were a useful tool, with a person's entitlement literally being set in stone. Testimony to this authority is an archaic legal poem that forms part of *Bretha Nemed Déidenach* (last judgements of privileged persons), which includes the following passage:

> *ann con-sich marbh for bheo i bfoirgheall oghaim ógh airibh*

> it is then that the dead constrained the living, in the integral testimony of Ogam against them.[4]

3. It stands to reason that ogham stones could complement long-standing procedures and could be used to overturn claims to ownership of land in cases of conflicting testimony by witnesses. To this end, the ancestral name engraved in the stone would have served as an unimpeachable witness. For this reason, on one occasion, ogham stones are even being metaphorically called *caithigthi astado* "fighters who fasten [title]".[5] Especially at land boundaries where burials were undertaken, an ogham tomb stone would have served the purpose of establishing a hereditary title unequivocally. The claimant is thought of as having entered the piece of land to which he laid claim across this grave-mound. This feature might have been particularly important when securing the defence of the territory against claims from outsiders.[6]

4. For Britons, the situation was more complex. In Frankish Gaul, as we can see from *Lex Salica*, Franks then rubbed shoulders with *Romani* not with *Galli*. In the seventh century, in Fredegar's history, Franks, Burgundians, and Romans were the principal peoples of Gaul. No such submersion of British identity into one Roman identity occurred. While it would appear that the inscriptions show that a British Romance was a living language north of the Channel, it never achieved the dominance that Gallo-Romance achieved in Gaul. Part of the reason may be that the earliest English conquests and settlements were in the south-east of Britain, probably the stronghold of spoken Latin evolving into Romance. One might almost dare to say that, but for the English, the inhabitants of Britain might be speaking a language very like French; but, though this may be an enticing thought to entertain, one cannot blame everything on the English. The very fact that Breton, namely, in the terminology of the early Middle Ages, the British language, prevailed in the western half of what is now Brittany, and that the Brittany of Gregory of Tours or of Samson of Dol was divided between Britons and Romans, between British and Romance, shows that Late-Roman Britain was different from Late-Roman Gaul.[7] If one puts the evidence of Gregory and the Life of St Samson together, it seems as if, in the late-sixth century, someone travelling along the south side of the Channel, from west to east, would pass first from *Brittania* into *Romania* and then, perhaps after crossing the Seine, from *Romania* into *Francia*. There is no evidence of a *Romania* north of the Channel.

5. One explanation of this contrast would point to the events of 410. For Procopius, looking from the east, or for Bede, who thought that the English might be more truly Roman than the Britons, 410 was the end of Roman Britain; after that "tyrants" ruled. In the fifth century opinion was divided. For Prosper of Aquitaine, writing in the 430s, Ireland was barbarian, Britain Roman, just as they had been in the fourth century.[8]

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4   *Ibidem*, p. 164; E. J. Gwynn, "An Old-Irish Tract on the Privileges and Responsibilities of Poets", *Ériu*, 13, 1942, p. 34.

5   *Ibidem*, p. 164; D. A. Binchy, "An archaic legal poem", *Celtica*, 9, p. 157.

6   *Ibidem*, p. 165; T. M. Charles-Edwards, "Boundaries in Irish Law", in *Medieval Settlement: Continuity and Change*, P. H. Sawyer (ed.), London, 1976, p. 85; cp. *Gúbretha Caratniad*, ed. & trans. R. Thurneysen, "Aus dem irischen Recht III: Die falschen Urteilssprüche Caratnia's", *Zeitschrift für celtische Philologie*, 15, 1925, § 46, p. 361-362; *Berrad Airechta*, ed. & trans. R. Thurneysen, *Die Bürgschaft im irischen Recht*, Berlin, 1928, § 59, p. 19-20; trans. R. C. Stacey, "Berrad Airechta", in *Lawyers and Laymen*, T. M. Charles-Edwards, M. E. Owen and D. B. Walters (eds.), Cardiff, 1986, § 59, p. 220.

7   Gregory of Tours, *Historia Francorum*, ed. E. Brehaut, *History of the Franks*, New York, 1969; *Vita Sancti Samsoni*, ed. P. Flobert, *La vie ancienne de saint Samson de Dol*, Paris, 1997 (Sources d'histoire médiévale, 17).

8   Prosperus Aquitanus, *Contra Collatorem*, ed. J.-P. Migne, Paris, 1844-1855 (Patrologia Latina), c. 21, li. 271; T. M. Charles-Edwards, *Wales and the Britons: 350-1064*, Oxford, 2012, p. 220-242: *Rome and the Britons*, p. 400-664, 220-242, trans. 227.

Nec uero segniore cura ab hoc eodem morbo Britannias liberauit, quando, quosdam inimicos gratiae solum suae originis occupants etiam ab illo secreto exclusit Oceani, et ordinate Scotis episcopo, dum Romanam insulam studet seruare catholicam, fecit etiam barbaram christianam.

He [Celestine] has been, however, no less energetic in freeing the British provinces from this same disease [the Pelagian heresy]: he removed from that hiding-place in the Ocean certain enemies of grace who had occupied the land of their origin; also, having ordained a bishop for the Irish, while he labours to keep the Roman island catholic, he has also made the barbarian island Christian.

6. Admittedly his phraseology may owe much to a rhetorical love of antithesis, but even later in the century St Patrick, a Briton, assumes that the Britons and the Gallo-Romans were fellow-citizens. At the beginning of the seventh century, Columbanus appears fully aware that the Irish had never been part of the Empire when he contrasts Rome's greatness in the secular sphere with its greatness as the seat of the successors of Peter; the Irish had an allegiance to the latter, not the former.[9]

Nos enim, ut ante dixi, devincti sumus cathedrae sancti Petri; licet enim Roma magna est et vulgata, per istam cathedram tantum apud nos est magna et clara.

For we, as I have said before, are bound to St. Peter's chair; for though Rome be great and famous, among us it is only on that chair that her greatness and her fame depend.

7. Even in the second half of the sixth century and in the poems of a single author, Venantius Fortunatus, we can perceive two conflicting opinions. In his poem in praise of the Emperor Justin II and the Empress Sophia, the Basques and the Britons, who, in this poem are clearly the Britons of Britain not of Brittany, are in the barbarian camp, along with Germans and Batavians.[10]

Currit ad extremas fidei pia fabula gentes et trans Oceanum terra Britanna favet... illinc Romanus, hinc laudes barbarus ipse, Germanus Batavus Vasco Britannus agit.

[On Justin] The happy tale of the faith runs to the furthest nations; and across the Ocean, the British land approves... [on Sophia] On one side the Roman offers praises, on the other even the barbarian – German Batavian, Basque, Briton.

8. But in his poem in praise of Lupus, duke of Champagne and ally of Queen Brunhild, the Britons go with the Romans and the Greeks to be contrasted with the barbarians, who are here clearly speakers of Germanic languages.[11]

Sed pro me reliqui laudes tibi reddere certent,
Et qua quisque valet te prece voce sonet,
Romanusque lyra, plaudat tibi barbarus harpa,
Graecus Achilliaca, crotta Britanna canat...
Nos tibi versiculos, dent barbara carmina leudos:
Sic variante tropo laus sonet una viro.

But let the rest on my behalf compete to render you praises,

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9   *Sancti Columbani Opera*, ed. G. S. M. Walker, Dublin, 1957 (*Scriptores Latini Hiberniae*, vol. II), *Epistula*, 5.11, p. 48-49.

10 V. Fortunatus, *Ad Iustinum et Sophiam Augustos*, ed. F. Leo, Berlin, 1881 (*MGH Auctores antiquissimi*, 4 (i)), p. 275-278; for the translation cp. M. Pisacane, "Il carme ad Iustinum et Sophiam Augustos di Venanzio Fortunato", *Vetera Christianorum*, 39, 2002, p. 303-342; *Venantius Fortunatus: Political Poems*, ed. J. George, Liverpool, 1995, p. 111-115.

11 V. Fortunatus, *Ad eundem*, ed. F. Leo, Berlin, 1881 (*MGH Auctores antiquissimi*, 4 (i)), p. 161-163; for the translation cp. Venantius Fortunatus: *Political Poems*, ed. J. George, Liverpool, 1995, p. 62-64.

And let each celebrate you, with petition, with song, as best he may;
Let the Roman applaud you with the lute, the barbarian with the harp,
The Greek with the lyre of Achilles, the Briton with the crowd…
Let me offer you my humble little verses, let the barbarian songs offer lays:
So, in different modes, may a single praise ring out to a man.

9. On one view, the Penmachno inscription, unfortunately fragmentary, was dated to the period of the successive consulships of the Emperor Justin II, namely to the period 567 to 579 (a comparable dating is found in the chronicle of Marius of Avenches in Frankish Burgundy).[12]

Inscription of the sixth century at Penmachno, North Wales:
Vertical section:] FILI AVITORI
Horizontal section: Nash-Williams: IN TE(m)PO[RE]/IVSTI[NI] CON[SVLIs]

10. Contemporaries, therefore, took different views of the Britons and their relationship to the Roman Empire, past and present; much depended on the occasion and the viewpoint. But one strong long-term influence pushing the Britons away from Rome was the situation in Armorica, with Roman facing Briton. Put very simply, the more the Bretons raided the vineyards around Nantes and Rennes, the less inclined were the Gallo-Romans to think that they and the Britons were, as former subjects of the Empire, fellow-citizens.

11. This, then, was the broad context of the relationship between Roman and Briton in the period from 400 to 600. It remains to ask what part law had in this complex situation, and we may begin with the celebrated passage in the History of Zosimus, composed in part from earlier and contemporary sources, such as the lost History of Olympiodorus.[13]

… Constans was sent back to Spain by his father with Justus as his Magister. Angered at this, Gerontius won over his soldiers and incited the barbarians in Gaul to revolt against Constantine. The latter was not able to oppose them because most of his army was in Spain, which allowed the barbarians over the Rhine to make unrestricted incursions. They reduced the inhabitants of Britain and some of the Gallic peoples to such straits that they revolted from the Roman empire, no longer submitted to Roman law, and reverted to their native customs. The Britons, therefore, armed themselves and ran many risks to ensure their own safety and free their cities from the attacking barbarians. The whole of Armorica and other Gallic provinces, in imitation of the Britons, freed themselves in the same way, by expelling the Roman magistrates and establishing the government they wanted.

12. This cannot be the whole truth: the "other Gallic provinces" would long retain Roman law, as illustrated by the will of Remigius of Rheims.[14] The immediate context was, first, that, since the fall of Stilicho, the Empire no longer had the power to defend Britain. An emperor that encouraged even slaves in Italy to take up arms could not repel barbarian attacks on Britain. Secondly, Constantine III, who had initially been a mere tyrant in the eyes of Honorius had now been legitimated as a co-emperor; and a rebellion against Constantine's failing government was now illegitimate. Moreover, one may presume that the Britons, who had to defend themselves, no longer paid taxes to any emperor: the implicit contract of defence by the emperor in return for taxes from his subjects had been broken. In this way, one might

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12   Penmachno 3, 396/104/Gn-33; J. K. Knight, "Penmachno Revisited: The Consular Inscription and its Context", *Cambrian Medieval Celtic Studies*, 29, Summer 1995, p. 1-10; T. M. Charles-Edwards, *Wales and the Britons, 350-1064*, Oxford, 2012, p. 234-238.

13   For the translation Zosime, *Histoire Nouvelle*, F. Paschoud, Paris, 1971.

14   Testamentum Remigii, ed. B. Krusch, Hannover, 1896 (MGH, Scriptores Rerum Merovingicarium iii.), p. 336-347, and Corpus Christianorum Series Latina, 117/1, p. 473-479; Flodoard of Reims, Historia Remensis ecclesiae, Die Geschichte der Reimser Kirche, ed. M. Stratmann, Hannover, 1998 (MGH, Scriptores 36); A. H. M. Jones, P. Grierson, and J. A. Crook, "The authenticity of the Testamentum S. Remigii", Revue belge de philologie et d'histoire, 35, 1957, p. 356-73; E. Roberts, "Flodoard, the will of St Remigius and the see of Reims in the tenth century", Early Medieval Europe, 22/2, 2014, p. 201-230.

dismiss the evidence of Zosimus, but we suggest that this would be rash. Admittedly the Britons seem to have continued to regard themselves as *cives*, fellow-citizens of the Romans, long after 410, but that does not mean that there was no change to justify Zosimus's phrases about no longer submitting to Roman law and reverting to native customs.

13. Possible support for Zosimus comes from Gildas, a Briton, who probably wrote his *De Excidio Britanniae* in the second quarter of the sixth century. The work is a full-blooded denunciation of the sins of contemporary British kings and clergy set in a historical context: not only are the sins of the Britons crying to Heaven for punishment, but in their sinfulness they are running true to form. Just as their obedience to the edicts of the Romans was superficial, so they received the teaching of Christ *tepide*, without enthusiasm.[15]

> c. 5: [The Britons'] obedience to the edicts of Rome was superficial *(edicta)*
> c. 13: The island was still Roman in name, but not by law and custom *(nec tamen morem legemque tenens)*

14. These two judgements on the Britons form a nicely balanced pair, but there might be something more substantial behind the superficial obedience to the edicts of the Romans than mere reluctance to submit to imperial authority, since Gildas goes on to say, referring to the time of Magnus Maximus in the late fourth century, that Britain was then no longer Roman "by law and custom". It may be noted that he seems to have combined aspects of Constantine III and Magnus Maximus, and this shedding of Roman law and custom could then refer to the former and thus close to the period of which Zosimus was writing.

15. Against this notion that Post-Roman Britain had rid itself of Roman law is the argument of Michael Lapidge that Gildas modelled much of his text on the proceedings of a Roman court of law. He compares the way Gildas marshals the evidence of the prophets with a Roman pleader deploying the jurisconsults, experts in Roman law. As he begins to cite scriptural witness against the wicked British kings, Gildas declares, "Now, as before, therefore, let the holy prophets reply (*respondeant*) in my stead".[16] Lapidge argues that by *respondeant* Gildas meant something more than merely "reply".[17] In Roman law the pleader was an expert in argument but not an authority on the details of the law; he therefore summoned a jurisconsult as an expert witness. Gildas thus put himself into the role of the pleader and invoked his expert witnesses, the prophets. The first of these experts was Samuel, whom Gildas also describes as an *adstipulator*, again a legal term for one who participates in a contract, a *stipulatio*: the *De Excidio* was described by Gildas in his Preface as the discharge of a contractual debt.[18] Two legal parallels thus jostled together in this one passage. Both were from Roman law. His text is itself an expert witness for us, since it was an urgent plea to the elite among the Britons to repent before they suffered a final disaster at the hands of their enemies. It is highly rhetorical, not a text that someone whose Latin was shaky could possibly have understood; and yet its intended readership was lay as well as ecclesiastical. The most wicked of the five kings, Maglocunus, had had as his teacher, as Gildas himself tells us, "the refined master of almost all Britain". "Refined", *elegans*, was a standard term of praise for one who displayed a mastery of rhetoric. About the culture of the others we have no information, but it is a corollary of Lapidge's argument that they were expected to understand this allusion to Roman legal procedure as well as technical terms of Roman law.

16. Whatever the five kings made of Gildas's warning, we do not know, but Irish scholars certainly did pay attention, both to his message and his use of his authorities. They deployed their expert witnesses as did Gildas: the letter of Cummian to Ségéne, abbot of Iona, and Béccán, the hermit of Rhum, deployed the

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15   Gildas, *De Excidio Britanniae*, ed. & trans. M. Winterbottom, Gildas, *The Ruin of Britain, and other Works*, London, 1978.

16   *Ibidem*, 37.3.

17   *Gildas: New Approaches*, M. Lapidge & D. Dumville (eds.), Woodbridge, 1984 (*Studies in Celtic History*, 5), "Gildas's Education", p. 46-47.

18   Gildas, *De Excidio Britanniae*, 39.1; but the word can be used more loosely just for a witness and is so understood by *Thesaurus Linguae Latinae, s.v. astipulator*.

same technique, the same rhetorical urgency, and sometimes even Gildas's phrases; it was written about 632.[19] The culmination of this Irish canon law tradition was the *Collectio Canonum Hibernensis* of 716 x 725, a text that found a ready reception in Brittany and in Francia.[20] On the one hand, Gildas's *modus operandi* looks forward to early Irish canon law, and, on the other, it looks backwards to the law courts and the jurisconsults of the Empire. Similarly, his style and the education that lay behind it look backwards to the schools and the bureaucracy of the late Empire; and yet his style found able imitators among the Irish. For our purposes, his evidence is ambiguous: his statements say one thing; his practice and the presuppositions behind it say another.

17. Irish Canon Law, as exemplified by the *Collectio Canonum Hibernensis* was, as its reception indicates, far from being purely Irish. Among the authorities quoted is the First Council of Orléans, summoned by Clovis after his victory against the Visigoths at Vouillé, near Poitiers. The situation is quite different with the legal texts of the seventh and eighth centuries preserved in the Irish vernacular. The most important is the lawbook called *Senchas Már*, "The Great Collection of Ancient Tradition" and *Senchas Fer nÉrenn*, "The Ancient Tradition of the Men of Ireland". This purported to contain law native to the Irish. During the eighth century a story was developed to explain the relationship of this native law to Christianity: a poet had recited it to St Patrick, apostle of the Irish, and it had been cleansed of anything inimical to the Faith.[21] The early Irish had, therefore, two laws, which they explicitly distinguished: canon law in Latin and native law in Irish; and their patterns of textual transmission were totally different. We do not have a single Irish copy of the *Collectio Canonum Hibernensis* but several from Francia and from Brittany, and even two from Italy. On the other hand, native Irish law was preserved in Ireland and the first surviving copy dates from the twelfth century, Oxford, Bodleian Library, MS Rawlinson B 502.

18. The case of Welsh law is less clear: the texts themselves claimed to derive from a lawbook given its authority by an assembly summoned by Hywel Dda, implicitly from the period when he ruled the whole of Wales (942-950), but the manuscripts come from the twelfth and thirteenth centuries. Here we may contrast the text that our convenor has christened "The Ancient Law of the Armorican Britons", formerly known as *Excerpta de libris Romanorum et Francorum* and even earlier as *Canones Wallici*, a text variously dated to the fifth or sixth century and surviving in two versions.[22] This Ancient Law is a contrast with Welsh law not just in date but in its form. Welsh law is arranged in essentially the same way as Irish law: a book purporting to give a general account of the law, is divided into tracts on particular topics such as the procedure for claiming land by inheritance. The echoes of Rome in Irish law are not of law courts or legal texts but of the schools of the grammarians. The odd item of legal substance may perhaps, as we shall see, have found its way into Irish native law *via* Irish canon law, since each of the two legal traditions of Ireland influenced the other, but the exposition of the law exhibits mannerisms that can be traced directly to Latin grammarians and especially to the *Ars Minor* of Donatus.[23] The form of the Ancient Law of the Armorican Britons is much more closely akin to that of early British penitentials of the sixth century or early Irish conciliar decrees. Native Irish and Welsh law is preserved in legal manuals; but the Ancient Law is in decree style, like the early Germanic laws. It contains such terms as *praecipimus* "we command" (A 3, A 9, etc.), *hoc praecipimus iure permanere* "this we command to stay in force by law". In one or two cases the text contains cross-references: in these it terms its own rules *leges*. The decrees are to be enforced in the courts; for example, *secundum iudicium conponi praecipimus*, "we command that composition be paid according to judgement" (A 50 = P 58). In Irish and Welsh law books, a text may instruct a judge to give a particular judgement; this Breton text does not instruct the judge, it orders him.

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19   Cummian, *De Controversia Paschali*, ed. & trans. M. Walsh and D. Ó Cróinín, Cummian's letter *De Controversia Paschali and the De Ratione Computandi*, Toronto, 1988, p. 1-112.

20   *Die irische Kanonensammlung*, ed. H. Wasserschleben (2nd ed.), Leipzig, 1885; *The Hibernensis*, ed. & trans. R. Flechner, forthcoming.

21   J. Carey, "An Edition of the Pseudo-Historical Prologue to the *Senchas Már*", *Ériu*, 45, 1994, p. 1-32; D. A. Binchy, "The Pseudo-historical Prologue to the *Senchas Már*", *Studia Celtica*, 10-11, 1975-1976, p. 15-28.

22   *Die Bussordnungen der abendländischen Kirche*, ed. H. Wasserschleben, Halle, 1851, p. 124-136; *The Irish Penitentials*, ed. L. Bieler, Dublin, 1963 (Scriptores Latini Hiberniae 5), p. 136-148.

23   A. Donatus, Ars Minor, ed. & trans. A. Schönberger, Die Ars minor des Aelius Donatus: lateinischer Text und kommentierte deutsche Übersetzung einer antiken Elementargrammatik aus dem 4. Jahrhundert nach Christus, Frankfurt am Main, 2008.

19. One possible argument for a return to earlier habits is a rare retro development within the Breton language, that being Mod. Bret. *saout* (cattle, cows) < Latin *solidus.* Zimmer adds that a similar development may underlie the Welsh *ysgrubl* (animal) < Latin *scrupulum.*[24] Older units of value often survive into a period when payment was no longer made in the substance, such as old Irish *cumal,* which originally meant "female slave" and continued to be used to determine the usual value of three milch cows, but the opposite rarely occurs.[25] This has led Fleuriot to the exaggerated claim that in the oldest Breton laws we can see "une résurgence des usages et des traditions de l'époque de la Tène".[26]

20. The nearest thing to the Ancient Law of the Armorican Britons in Ireland is the *cáin* or *lex* promulgated by a king, or king and churchman in combination, or a royal assembly, such as the Law of Adomnán promulgated in 697, or The Law of Sunday, promulgated sometime after 734.[27] These laws have a very different character to the vernacular laws pursuing a prescriptive agenda. Initially, a *cáin* was intended to last for the lifetime of a king, but it could also be renewed, reissued and spread to further territories. When a *cáin* progressively grew in its authority and reached a stage of wide-spread acceptance, those issuing it secured lasting changes in the operation of society. Like the Ancient Law of the Armorican Britons *cánai* command the population to obedience and, in addition, they actively encourage them to take part in the enforcement of the new law as well as the punishment of transgressors, by allotting different participants in the process of enforcement a share of the penalty for violation as a financial incentive. They even urge people to disrupt the integrity of their family unit by restraining members of their own kin to the obedience of the implemented law, the offenders' guilt depriving them of the privilege of kindred loyalty. To achieve this action, some *cánai* make anyone looking on to the offence without interfering liable to the same penalty as the primary transgressor. Although they employed the existing legal organisation of procedure and security, the urgency in expression and the fact that they do also speak of designated enforcers acting on behalf of a kindred raised the breach of a *cáin* to a higher level. That *cáin* is set in opposition to *urradhus* "native law" in the legal texts is testimony to the distinctly different character of the *cánai.*

21. Finally, we shall take two examples of proposed substantial borrowings of Roman law, one from Irish law, the other from Welsh law. The Irish one concerns the law of marriage or rather sexual unions, since there was no division between marriage, on the one hand, and non-marital sexual unions on the other. Instead there is a spectrum of unions from the most highly esteemed to the least. The most highly valued union is one in which the bride's kinsmen, usually represented by her father, have betrothed her to a man and roughly equal contributions to the movable possessions of bride and bridegroom have come from both sides. Some texts suggest that this form of union may be a relatively recent development or, at least, that it has only recently become standard; previously, it could be argued, only the man contributed. Professor Donnchadh Ó Corráin has argued that a ruling by Pope Leo I, in accordance with Roman law, stated that provision of a dowry was one of the conditions that demonstrated the legitimacy of a union; the ruling was quoted in Irish canon law and, in native Irish law, established the high status of a marriage with a dowry.[28] It is particularly noticeable that the primary wife would gain an entitlement to the *coibche* "dowry" that her husband granted to a secondary wife he sought to bring into the joint household, in addition to receiving payment of her *lóg n-énech* (honour-price). The financial disincentive for polygyny of this legal nature was obvious, in Thurneysen words: *Es wird immer mehr auf das Haupt des Sünders gehäuft.*[29] However, we should not neglect the fact that this form of union was characteristic of the Irish nobility, for whom the basis of their nobility was the possession of cattle, which they granted to their

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24   S. Zimmer, "Zu einigen kulturhistorischen Problemwörtern", in *Iran und Turfan. Beiträge Berliner Wissenschaftler Werner Sundermann zum 60. Geburtstag gewidmet,* Wiesbaden 1995, n. 13, p. 282.

25   *Ibidem,* p. 282.

26   L. Fleuriot, *Les Origines de la Bretagne,* Paris, 1980, p. 37.

27   *Cáin Adomnáin: an old-Irish treatise on the law of Adamnan,* ed. K. Meyer, Oxford, 1905; *Cáin Domnaig,* ed. V. Hull, *Ériu,* 20, 1966, p. 151-177; L. Breatnach, *Companion to the Corpus Iuris Hibernici,* Dublin, 2005, p. 211-212: sees *Cáin Domnaig* as ninth-century.

28   D. Ó Corráin, "Marriage in Early Ireland", in *Marriage in Ireland,* A. Cogrove (ed.), Dublin, 1985, p. 5-24; D. Ó Corráin, "Women and the law in early Ireland", in *Chattel, servant or citizen: women's status in church, state and society.* Papers read before the XXIst Irish Conference of Historians, held at Queen's University of Belfast, 27-30 May 1993, M. O'Dowd & S. Wichert (eds.), Belfast, 1995, p. 45-57.

clients. Their interest in acquiring property by means of a dowry, a share of which the woman's guardian would receive, could be a motivation arising from within the Irish system of wealth and status.

22. Our other specimen example is from Welsh land-law, in which there is a sharp distinction between mere possession and outright ownership or proprietorship. The Welsh term for the latter is formed from a Latin base; and the distinction itself is reminiscent of that between *possessio* and *dominium*.[30] Possession merely describes the physical disposition of a thing whereas proprietorship is the effective legal force towards the thing. A thief has the stolen chattel in his possession but he is not its legal proprietor. The awareness of this distinction must be very old and is apparent in a number of crucial procedures. In Irish law, within the procedure of distraint, the full amount of an outstanding debt was taken in pledge by the creditor, but the debt was amortised through progressive forfeiture of livestock. Ownership, thus, shifted in stages from debtor to creditor, while the debtor maintained the right to redeem his entitlement to any livestock not yet forfeited by paying his accumulated debt. More abstract notions of property rights are also apparent. For instance, a chattel pledge could come into legal existence without requiring a physical conveyance. The possessor forfeited the right to make any use of it and his rights of ownership, therefore, were no longer absolute, but he did retain possession of it.[31] The particular way the distinction works in Welsh law is tied to a feature of Welsh kinship and is most unlikely to owe anything to Roman law. But that feature of Welsh kinship is likely to be ancient, for reasons we shall not go into, and therefore the classical Roman distinction between *dominium* and *possessio* could have been attached to an aspect of native British society in Roman Britain.

23. When assessing such suggestions as the two we have mentioned, we need to distinguish between the law of an empire of which the Britons were once part and the underlying principles of a society. The content of Irish and Welsh law is often remarkably similar; and one is tempted to think that, in the law of the ex-Roman Britons the Roman impact was, as Gildas put it, superficial. Once the Roman authorities were gone, native society emerged unshackled by an alien law; and it is for that reason, so one might say, that Welsh law resembled Irish law. Perhaps, however, our suggestion about Welsh proprietorship versus possession does have one minor merit, in that it exemplifies the possibility that a Roman idea might have gained strength by attaching itself to a central aspect of British society.

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29 *Cáin Lánamna*, ed. & trans. R. Thurneysen, et al., '*Cáin Lánamna*', *Studies in Early Irish Law*, Dublin, 1936, p. 51.[30] T. M. Charles-Edwards, *Early Irish and Welsh Kinship*, Oxford, 1993, p. 293-303.

30 D. A. Binchy 'Distraint in Irish Law', *Celtica* 10, 1973, p. 22-71.

31 *Bretha im Fuillemu Gell*, *CIH* 462.19-21; see J. Bemmer, "The Types of Pledge in Medieval Irish Law: Form, Function and Context", A. Ahlqvist & P. O'Neill (eds.), *Medieval Irish law: text and context*, Sydney, 2013, p. 3-23.

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