Patrilineal Kinship in Early Irish society: the evidence from the Irish law texts*

The Gaelic social systems of Ireland and Scotland are widely regarded as rare survivals into the early modern period of European societies based on kinship organisation and, specifically, on agnatic clans.\footnote{Kenneth Nicholls, Gaelic and Gaelicised Ireland (Dublin, 1972), pp. 6-12.} For this reason, the formal aspects of Gaelic kinship would seem to hold a key to the understanding of the basic structure of insular Celtic societies, and even, some have suggested, to pre-Norman Roman European social structure.\footnote{T. M. Charles-Edwards, ‘Kinship, Status and the Origins of the Hare’, Past and Present, 56 (1972), 3-33.} The most illuminating information, moreover, should come from pre-Norman Ireland, where vernacular literature and scholarship flourished before feudalising influences affected indigenous society. Of these sources, the most promising for social history are the law-tracts,\footnote{See Fergal Kelly, A Guide to Early Irish Law (Dublin, 1988).} which according to such major scholars in the field as Edín Mac Néill and D. A. Binyon, were unique in the context of literate early medieval Europe, in the degree to which they were unaffected by Roman law.\footnote{See D. A. Binyon, ‘De Funtibus Iuris Romani’, Celtica, 15 (1983), 13.}

It is perplexing, therefore, that although they make many references to the social functions of kin relationships, the law tracts shed little light on the structure of kinship groups, while the scant information that they do provide is fraught with inconsistencies.\footnote{The discussion in this paper concerns terms that were used specifically to classify kin, not terms of address used between kin, some of which are themselves labelled ‘classificatory’ by anthropologists. Irish appellations for kin are described by R. T. Anderson in ‘Changing Kinship in Europe’, Papers of the Kinship Anthropological Society, 28 (1963), 1-49.} The principal problem in this regard is that the law tracts refer to kinmen by means of a cryptic set of terms for genealogical categories, *geolh, dérfhe, lárfe, trándfhe* (the equivalent, roughly speaking, of first, second, third and fourth cousins), which were subdivisions of a patrilineal descent group, the *finn*.\footnote{The term is tautologizing, because, as T. M. Charles-Edwards and earlier scholars have argued, they seem to suggest that the *finn* was a structured descent system, such as a segmentary patrilinage, in which descent served to establish not just degrees of social distance but also, perhaps, class or status.} These terms are tautologizing because, as T. M. Charles-Edwards and earlier scholars have argued, they seem to suggest that the *finn* was a structured descent system, such as a segmentary patrilinage, in which descent served to establish not just degrees of social distance

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3 R. B. Pugh, *Ministers* Accounts of Northermshire and Islandshire, 1261-2*, Northern History, XI (1975), 17-26; Public Record Office, D.L. 30/128/1919 and D.L. 30/128/1920. This cony warrant must have been quite substantial for, according to a survey of 1631, printed in Raine, op. cit., Appendix, p. 155, it was worth fractionally more than the borough of Holy Island.
between individuals, but also, perhaps, a hierarchy of social functions associated with different levels of group aggregation.¹

Nevertheless, these terms do not have the clarity of meaning expected of the nomenclature of legally important social institutions, for they are used in elliptic, vague, or even conflicting ways. Faced with this enigma, historians have tended to argue that the confused representation of kinship in the law tracts was the result of two historical forces: (i) actual breakdown of a prehistoric tribal lineage structure at the beginning of the Christian era; (ii) partial preservation of obsolete prehistoric terms in the law tracts by the highly conservative Irish learned class.²

In this paper, for reasons that are amplified below, I shall refer to this hypothesis as the theory of kinship contraction.

These two arguments are undeniably well-founded. Late antiquity and the sub-Roman period saw massive changes in Irish society attendant on the general disturbance of Europe as the Roman Empire disintegrated.¹ In Ireland, this was a period characterised by the rise of a new religion and new dynasties,³ by linguistic changes and the spread of literacy,⁴ and by colonial expansion to the west coast of Britain.⁵ It is also true that the Irish scholastic tradition, even when faced with major changes, tended to absorb new cultural influences and recast new information within the framework of established traditional forms.⁶ The later legal scribes retained several Old Irish terms for kin, but used these in ways that make it very difficult for the historian to pin down the meaning of the terms in a given context. Moreover, they overlaid these classifications with number symbolism,⁷ so that the differences between the various terms for kin appear to dissolve into inexplicable variations.

But although founded on established historical phenomena, the explanation of the confusing representation of early Irish kinship structure in terms of the paradox of social change and cultural conservatism is nevertheless flawed by conceptual weakness regarding kinship as a social phenomenon. The theory of prehistoric collapse, followed by 'fossilisation' of kinship categories in the law tracts, is not based on a critical assessment of the relationship between words for categories of kin, and the functions and modes of social organisation of people on the basis of these categories. Instead it is simply assumed, as Charles-Edwards affirms, that, 'the language of kinship is an excellent guide to the structure of the kindred. The ways in which people talk of their relatives, the methods by which they classify them, are expressions of the customs by which they regulate their behaviour towards their kinsmen'.¹

But anthropological studies show that the relationship between terms and social organisation is potentially so fluid that terms per se indicate nothing about social arrangements beyond very crude and basic features of social organisation;² certainly it would not be expected that the slight modifications proposed in the theory of kinship contraction (see below) would cause the degree of confusion that is found in the law-tracts' kinship taxonomy. Charles-Edwards concedes that terms carry no clear social implications in latter-day usage, but nevertheless maintains that the far more opaque prehistoric social significance of terms is ascertainable.³ Without a rich context of associations, however, a set of terms may be interpreted in totally contradictory ways. Goody has shown, for example, that the 'linguistic evidence' for Indo-European patriliney could as well be interpreted as showing Indo-European matriliney.⁴ Since substantive evidence for the linkage between terms and institutions is lacking for prehistoric Celtic kinship terms, there is no basis from which to mount a contrast between the 'tribal' kinship system of pre-Christian Ireland and the subsequent system, and no means, therefore, of specifying particular changes which could then be used to explain inconsistencies in the later use of kinship categories in the law-tracts.

A further problem regarding conceptualisation of kinship as a variable in the theory of kinship contraction is that no attention has been given in the secondary literature to the implications of the use of the kinship terms as ego-focused terms, as against their use to indicate one group that were a permanent element in the structure of local society. There is a difference between the use of a term to signify 'my second-cousins' and 'the second-cousins', for the former implies only a personal circle of kin, while the latter usage implies an organised group with permanent social significance, a social identity and special functions.⁵ The Irish law-tracts generally use the terms for the degrees of fine relations in the context of ego-focused rules and, where they do refer to groups, the genealogical structure is not clearly indicated.⁶ These degrees of patrilineal relationship were in fact only one element, albeit a very important one, in the formation of the larger, composite groups, (clans, or ceml), groups which were named, adopting the spouse's terms for them, show that terminology alone would imply that it was the man who joined his wife's kin among the Indo-Europeans, since it was he who lacked the special terminology. Since other evidence shows that Indo-European tended to stress patrilineal ties, the example shows the inadequacy of terminology as independent evidence for social structure. See Jack Goody, Comparative Studies in Kinship (Stanford, 1965), pp. 235-9.

³ Charles-Edwards, 'Some Celtic Kinship Terms', 105.
⁴ Analyses with recent kinship systems, where in-marrying spouses lack special terms for affines, merely
interpretation of the individual than more distant ones, that the outer range of collateral kin was not extensive (third or fourth cousins), and that inheritance was usually lineal and patrilineal (from father to sons). D. A. Binchy and Liam O’Buachalla considered Mac Néill and O’Buachalla’s models to be incompatible with each other.\footnote{On the mixed composition of the soil, see Field Finé (O’Field’s corné na tuaiscint), Corpus Iuris Hibernici (Hereafter CIH.), 6 vols., ed. D. A. Binchy (Dublin, 1978), 429-20 ff. See also Citrus Bisnard (CIH., 524.7-9). The former includes various dependants of a chief in his soil, while the latter refers to divisions of fine land between the kinship of the fine, adapted members, and others who have been taken into the group. Patrilineality was a strict rule only as regards denial of rights to sons of outsiders who had fathered offspring on women of the fine, the rule prevented the disruption of the kinship group by the competing loyalties of sons who lived with their mother’s people but maintained ties to their father’s. The situation is well expressed in the characterization of Bres in Cath Maige Tuired (see E. Gray, ‘Cath Maige Tuired: Myth and Structure’, Éigse, 18 (1981), 103-209; 19 (1982-3), 1-55, 230-262).}

However, it is not the text but the secondary sources that have been very specific on this point. Notwithstanding the virtual unanimity of opinion, no published survey of the sources or impartial assessment of the theory of kinship contraction is available.\footnote{Charles Edwards, ‘Some Clitic Kinship Terms’, 107; ‘Note from Dr. Charles Edwards on Common Farming’ in Kathleen Hughes, Early Christian Ireland: Introduction to the Source (Ib vacc.), 61; ‘Kinship, Status and the Origins of the Hiberno-Latin’ (1983, ed. T. M. Charles-Edwards and Fergus Kelly (Dublin, 1983), p. 111 (Notes to p. 18).}

Binchy set out the theory as part of a general discussion of the features of the early Irish law-tracts and did not subsequently return to the subject to examine in detail its textual basis. Charles-Edward’s has focused on explaining the causes of the proposed collapse of the pre-Christian kinship system, hypothesising that contraction in the structure of incorporated kin groups came about as a result of a seventh-century growth in population.\footnote{D. A. Bullough, ‘Early Medieval Social Groupings: the Terminology of Kinship’, Past and Present, 45 (Nov., 1969), 13.}

assumption, he has used the theory of kinship contraction as a chronological criterion which, in turn, is taken as part of the evidence for the antiquity of different passages in the legal tracts. Charles-Edwards has furnished further evidence regarding early kinship terms, which shows that the Irish term which Mac Néill took to include second cousins (derbh shine) is etymologically related to a descriptive term that was already associated with first and second-cousins at a period prior to the linguistic divergence of Welsh and Irish. This is an important finding, for it establishes one of the few reference points from which the meaning of the terms may be reconstructed, but its significance as evidence for the theory of kinship contraction needs to be examined.

A pronounced lack of specificity is in fact an outstanding aspect of the references to kinship that appear in the Old Irish law-tracts and their later glosses. These are in most cases brief and cryptic. In contrast to the systematic treatment of rank and status in several different tracts, there is no detailed treatment of kinship relations per se to be found anywhere in the Corpus Iuris Hibernici. References to kinship are phrased in terms of systems of classifying kin which none of the surviving law-tracts explains adequately, so that earlier historians had great difficulty in identifying the social categories to which the terms of the classificatory system apply. The terms, gelfhine, derbh shine, tariane, indhiane, ingen or mètraí, may be translated literally, as follows: 'obvious' or 'bright' kin, 'true' kin, 'after' kin, 'end' kin, and 'nail kin'. There were, in addition, other kin terms, who, though genealogically related, were severed from full kinship relations. Such were the 780/800 (red kin), those who had committed bloodshed, possibly within the kin-group, and the glasshine (blue kin), descendants of a woman of the group by a níl, i.e. a father from overseas; a man without land in Ireland; an unmarried man. While translation sheds light on these marginal categories, it is not helpful in deciding the genealogical composition of the first four categories, which comprised the fully franchised membership of a kin group. Both the early texts and later commentaries often refer to the entire classification of kinsmen as 'the four far'. When they did so, they generally had in mind the gelfhine, derbh shine, tariane, and indhiane, but they might also refer to these groups in terms of a sequence of numbers. The gelfhine was described as 'five men', the derbh shine as 'nine men', the tariane as 'thirteen men', and the indhiane as 'seventeen men'.

A 'Note on Common Farming', pp. 61-64. See also Bohk, op. cit., pp. 110-11.


The bizarre and speculative interpretations of early Irish kinship put forward by Sir Henry Maine, J. McIntyre, and others were surveyed by A. G. Ritchie in Ancient Laws of Ireland, 6 vols. (Dublin, 1879), IV, 66x-cxxxii. See Mac Néill, Celtic Ireland, pp. 170-73.

1 Kelly, Early Irish law, p. 512, 'five'.

Dictionaryof the Irish Language (hereafter DIL), ed. E. G. Quin (Dublin, 1983 ed.), 2 vols. Legal. On the basis of Ad 282 x (C1TH. 429.27), DIL states that ingen ar mètraí signified the 'ninth degree of kindred', but in fact in this passage it was only the ninth area in a list which included non-genealogical relationships (such as sons of women of the group by foreigners) before the 'nail kin'. The 'Old Irish Periphrast' equates nail kin with descendants beyond the son of the great grand, i.e. collateral kin beyond the third cousins. See below, pp. 145-6.

1 CTH. 429.25-7; 2016.4-2018.14. See further discussion, below, p. 152.

The decoding of these terms began with the realisation that the numbers might represent the numbers of different categories of relative a person would have in each class of relatives. (It is conventional to refer to the person who is the point of reference in the system as ego.) Mac Néill argued that the gelfhine class consisted of five categories of patrilineal relatives: ego's father, his grandfather, his brother, his uncle, and his cousins. Although the derbh shine simply consisted of an extra degree of kindship beyond the gelfhine (i.e. second-cousins), this extra degree added four more categories of kin, giving 'nine men'. The other two categories were numbered in the same way, as shown below. Mac Néill did not support his interpretation by extensive evidence from the law-tracts (his only citation was the tract on wergeld, CTH 7 Dibal, discussed below), but many references to kinship can quite readily be interpreted in terms of the framework he proposed.

Fig 1: Old Irish terms and numbers describing patrilineal descent group structure.

Apical Ancestor

- Deceased or retired

Great-grandfather 6

Grandfather 3

Father 1

ego

gelhine
derbh, larv, indhiane, ingen or mètraí

(Adapted from Mac Néill's Celtic Ireland, p. 172. Note that each * represents a type of relative, e.g. an uncle; ego would probably have had several relatives at 4*, 17*)

Mac Néill's model was simple and therefore persuasive, but a number of problems nevertheless remain. One of these is that his model cannot explain the presence of many references in the law-tracts that represent kindship rather differently, other than by attributing these to scribal confusion as to the 'original' system. This matter is further discussed later. The most basic problem, however, is the ambiguity that attaches to the terms 'derbh shine' and 'gelfhine', where these are referred to in isolation, without the framework supplied by reference to the whole 'four far' set of terms. In the text on which Mac Néill based his scheme the term 'derbh shine' seems to refer to a group of greater extent than second-cousins, for it extends to ingen ar mètraí, 'nail kin', relations who, according to other sources, lay several degrees beyond the

1 Mac Néill, Celtic Ireland, pp. 117-76, esp. 170-77. A similar scheme was proposed, however, by H. d'Arbois de Jubainville, in Suesse sur le droit celtique, 2 vols (Paris, 1895), 1, 190. This differed from Mac Néill's only in

defining each circle of kin one degree closer than did the later.

second-cousins: Ocuu an trian rough in derf.f., cinnu ruantaí? ní., r. ótha athair 7 mac co sonathair for culu, 7 fighurach a fighruit comain ingen ar menabh... (CHI. 600-37-38 II.) And the third that the derf'heine has attained, how is it divided? The answer is certain. It is divided from father and son (of the deceased) backwards to grandfather, and in the opposite direction back again to ingen-ar-menabh. 7

The tract thus specifies a four-generation descent line (from ego’s son to ego’s grandfather), but continues with further subdivision of the shares, referring to each category of recipient simply as those who are ‘next’, until it terminates with the distant ‘nail kin’. Although we cannot be sure what exactly the author of this passage had in mind when he mentioned ‘nail kin’, its usual association with kin beyond the infínhe and the rule, which is discussed later, that wergeld went to the same people who inherited heirless land in the fine, which included infínhe, strongly suggests that the group implied in this passage considerably exceeded the second cousins, even though it was referred to as ‘derf’heine’.

Another version of this material on wergeld likewise treats the wergeld group as extending to the ‘nail kin’: CES CÍR LOR CORANDAT CRO 7 DIBUD NI A CHETHAIR ATHAIR 7 MAC BRATHAIR E INE E RÁNDAR CRO ETURRU NI ATHAIR 7 NAM NAIIN-MHÉIRI MÁTH DIB DAINASC BRATHAIR TRIAN DO SUIDIU ASIN LETH. II. ATHAIR 7 MAC AITHRRAUNNAT CO LETH ANEIICH DOURTIET AND A LETH NAIL RANDA FINE CÍA AIRET NORANNAT NÍ O AITHAIR CO HINGIN AR MERUIG CO RUICEN SENATHAIR FOR CULU. (CHI. 742-4-9) ‘How many divide wergeld (cóir) and inheritable property (dibdá)? Four: father and son, brother and fine. How is cóir divided among them? Father and son, first, and a half to them exclusively; a brother, a third to him from the other half. The father and son again, they divide as far as a half of what remains there; the other half, the fine divide it. How far do they divide it? From father to ‘nail at the end of the fingers’; from ‘nail at the end of the fingers’ back to grandfather.’

This usage of derf’heine to denote patrilineal ‘kin’ in a general sense, and not any particular genealogical degree of relationship, is not confined to CHI. 600. 37-38 but is found in several earlier passages, where the entire descent group is referred to as the ‘derf’heine’, without any mention of any other degree of kin. An example is the following passage, translated by Theobald von Malthanus and Florentine versus (in Cícra 121 in early 17th-century Irish law books): ‘Fine der 7 infínhe, the groups which ‘large deeds’ (that is, perhaps: ‘as though the naimd handles or manages’) without their having been appointed (?), like the surety of the livestock/chattels of a woman; these may be driven by the ‘derb’ kin and kin who are not derb, and so forth.’

Commenting on a similar use of the term in Dire # 36, Thurneysen observed that derf’heine seems in such cases to have comprised the whole consanguineal ‘sipe’ or relatives, who come into consideration in the cases in question; thus (the expression) ‘derf’heine 7 anfín ‘(derf’heine and non-kin)’ is used in Cícra Adamnaín # 47 exactly like the bare ‘fine or anfín in Bersgycg # 44.

1 Trans. Mac NÉill, Céilí Iarraidh p. 119.
2 Below, p. 159ff.

1 For example, the actress of a woman included her fregon (‘man of derb’), the head of her church (chirce), and her husband (cít) as CHI. 795-30-1.
4 The best comparative survey in English is still Philpott, Kindred and Clan.
meant, quite precisely, patrilineal kin as far as second cousins. The vagueness of some of the early references to ‘derbhine’, however, casts doubt not only on the notion of elaborate patrilineages, but also on the theory of kinship contraction, for if later scholiasts tended to avoid this term, it may be that their reason for doing so was its ambiguity, not a desire to reflect supposed changes in social structure. (Their possible wish to avoid ambiguity, and their choice of gelfine as the preferred substitute for derbhine are other matters, to which we return later.) Given this possibility, we should review the evidence that has been offered in support of the theory of kinship contraction.

Bínch’s argument regarding the ‘collapse of the derbhine’ supposes that it was an actual historical social formation that changed, not simply that words acquired new meanings. Not only does derbhine lack the required precision and stability of meaning, however, but gelfine appears in some of the oldest sources. Bínch tended to dismiss these references as later interpolations into the text—notwithstanding the absence of firm chronological criteria, independent of the theory itself. Thus the reference to gelfine in Fola Fina was not considered as evidence against the theory, while the reference to groups of ‘five men’ (the number symbol for gelfine) in the archaic poem that begins with the words, ‘Me be ri refeser’, was interpreted as showing that derbhine ‘collapsed’ at an even earlier historical period than that of the oldest legal writing in Ireland. But how much earlier, and where, if not in such sources as the poem on comaitheacs, is the evidence for the corporateness of the group of second-cousins and the non-recognition of the gelfine?

Just as damaging to the theory of kinship contraction as this chronological elasticity are arguments that actually read references to the derbhine into passages that neither refer to this category by name, nor allude to it by means of the number symbols. One example of this problem occurs in Bínch’s notes to his edition of the poem on comaitheacs, where he distinguishes between the ‘inner circle’ of kin, and inheritance when the latter had died out, leaving only the more distant fine. Bínch stated that line 15 (vom er comibraries, ‘partition among co-heirs’) refers to inheritance within the inner kindred, and identifies this as the derbhine, giving as evidence the rules governing ‘the normal division between members of the same fine on the death of the pater familias, as outlined in BC (IV. 68-72).’ But in the portion of Bretha Caimaitheacs to which he here refers (CII. 64.65-65.18; 575.4-19) there is no reference to any named degree of relationship in the fine.

In the light of the theory of kinship contraction is Bínch’s interpretation of evidence from Di Cletharchlucht Abhagail (CII. 352.25-422.36 etc.). The passages in question distinguish between the rights of a man to a ‘stay’ during the process of distraint (i.e. an interlude between the initiation of a legal act and its execution), according to the closeness of the social connection between himself, as the liable kinsman, and the defaulting individual. A

3 CII. 570.34-5 = ‘An Archaic Legal Poem’, ed. D. A. Bínch, Colics, 9 (1971), 156. The words in question are: corus in case soilat, which Bínch translated as ‘right up to the sixth man, in moveables and land.’

Bínch commented that these lines seem to mean, as Thurneysen suggested, ‘the law up to (exclusive of) a sixth man’, and is thus to be equated with the corus fine, ‘...since the phrase corus, the narrowest kin unit, is stated to have consisted of ‘five men’.’ He then added that this would mean that the replacement of the derbhine by the gelfine as the basic property owning unit must have developed earlier than he had suggested (ibid., 161 n. 21).


stay of three days applied where the culprit was taimini or inda: CIN DO INDIU CIN DO IARMAI CIN CACHA COMOCAI GS CO A. VII. DEC IRT GEITHEI FOR. U. VII. (CII. 388.33-4) ‘The offence of your ‘india’ the offence of your ‘irmia’, the offence of every relative up to seventeen is to be settled on the fifth day.’

Bínch interprets this passage as showing the solidarity of the derbhine, on the grounds that ear here meant not only grandson, but great-grandson. Not only is this an over-precise reading of the unconventional use of kinship terms in this passage, but, further in the same tract, members of all four circles of the fine are named as liable to be compelled to act as an involuntary surety, inninag, starting with the culprit’s gelfine (CII. 411.22-23).

This evidence was not brought into consideration.

More substantive in the nature of its support for the argument that the derbhine played a defined role, and thus represented an organised social group, was the analysis of heritable status and liabilities presented by Bínch in his study of the legal phrase ‘e go ndu mín (nì).’ This expression, meaning ‘until the ninth man’, appears in the law-tracts in conjunction with the extension of legal liabilities to kinsmen in matters other than wergeld.

Earlier scholars interpreted the phrase as referring to liability until the ninth generation. Bínch sought to establish the meaning to be the ‘nine men’ of ego derbhine, but the phrase is inherently ambiguous and Bínch’s refutation of the alternative interpretation, ‘the ninth generation’, rests only upon an assertion that legal liabilities could scarcely be transmitted over such a long period of time (notwithstanding ‘the surprisingly remote memory of an literate lineage’), and that therefore the provisions in question could only refer to the ‘nine men’ of the derbhine. There are several objections to such a priori argument. One is that elsewhere both Bínch and Charles-Edwards have in fact argued in favour of the early existence of deeper lines; if these existed at all they had to be based on a communal identity—shared resources, rights and obligations—extending down over the several generations beyond the four generations of the derbhine. In fact, Fox has documented the existence amongst the Tori Islanders of cognatic clans (not patrilineages) in which the flow of land, rights and duties for


2 In some passages, groups are referred to as ‘the grandsons’ (ius er in pg.), i.e. the eldest son, and so on. It is obvious that the ‘four fine’ scheme springs from the same conceptual framework as these terms because two terms for descendancy match terms for collaterals (irmia > inferne; inda > gelfine). The problem is that when the terms for descendents and those for collaterals (four fine) terms are aligned, the result is inappropriate, for ‘nine’ (nine), which would have to be the concomitant of gelfine, seems incongruous as a reference for a group of grandsons. Bínch proposed that haois granndson, should be regarded as doing double-duty from members of the gelfine and of the derbhine, but Francis J. Byrne suggests that what we have here is simply an alternative application of the ‘four

4 Gábháchagh, ed. D. A. Bínch (Dublin, 1941), 928-9.
liability'. They also looked back to a time before the introduction of Christianity and the writing of the Laws when 'the world had been in equality', an exaggeration, no doubt, but not one that is 'directly contradicted', as Bithney maintained, 'by everything we know about legal history'. To the contrary, it is now known that kinship grows more complex under certain conditions of political and economic development (for example, an increase in sedentarisation of the population and growth in the importance of control of land), and that there is no simple evolutionary direction of development from kinship-based society to civil society. Putting it simply, I suggest that kinship became more, not less, 'important' during the development of early medieval Irish society.

Irish and canonical systems of kinship classification

Writing came to Ireland through Christians channels, but it is only recently that historians have shown precisely the very large influence of Christian texts on the Old Irish texts of the Laws. A matter on which the early medieval Church had a lot to say to secular society was sex, marriage and kinship, and so our examination of the representation of kinship in the Irish Laws will begin by looking at the relationship between the models of kinship suggested by the Laws and canonical models of kinship. Although this is a matter which would repay more specialised research, it is possible to sketch the basic relationship between the 'native' models and the canonical ones.

The establishment of canonical methods for calculating kinship was motivated by the Church's wish to control secular kinship relations, and especially to prevent marriage between close kin, which tended to support the solidarity of kinship groups and their conservation of property. The rationale of the prohibited degrees of marriage was that an individual could not marry someone from whom he or she might inherit, which in Roman law consisted of kin within the seventh degree of consanguinity. In its earliest attempts to regulate European marital customs the Church employed the Roman method of calculating degrees of relationship though it did not at first prohibit marriage within seven degrees of kinship. This system numbered each act of generation in the relationship between two people, counting each one a 'degree'. (For example, from ego to father, was one 'degree', from ego to grandfather, was two degrees, to aunt three degrees, and so on.) According to this scheme the seventh degree extended linearly up to the ancestor in the seventh generation, or down to the seventh generation descendant, and across to no one beyond the child of a second cousin. The Roman method of calculating kinship was known in Ireland, for a reference to the seventh 'man' (of degree of kinship) is found in a passage from 'The Old Irish Penitential', dated by

1 Cited and discussed by Bithney, 'Distract in Irish Law', 62-3.

Kelly (Dublin, 1983), note to # 18, p. 111. The editors remark that it is 'highly probable' that the reference to gelfhine in # 18 is 'due to a later scribe', though they acknowledge that a gloss on this passage shows that this supposed interpolation was made during the Old Irish period.
Bischy to the later eighth century: ‘Anyone who kills his brother or sister, or the sister of his mother or father, or the brother of his father or mother, does penance ten years: and this rule is followed to the seventh man both of the mother’s and father’s kin—to the grandson and great-grandson and great-great-grandson and the sons of the great-great-grandson, as far as the finger nail.’ (The seven ‘men’ extended from ‘father’ through to ‘nail kin’.)

In the seventh-century source, the ‘Second Synod of St. Patrick’, the Romanists, that faction of the Irish clergy advocating greater conformity to Roman Catholic practices, are found propounding Chruchlaw, i.e., de marriage, namely, ‘what is observed among us, that they be separated by four degrees’, i.e., that men should not marry their first cousins (the fourth degree of kinswoman), a rule the Irish claimed ‘they have never seen nor read.’ In all probability, Irish rejection of this rule was based on Leviticus, whose great influence on Old Irish law has been demonstrated by O Corrind, Breantach and Breen. In its long list of prohibited sexual relationships Leviticus only prohibits full and half sisters from amongst coeval kin. Hence the Romanists found it necessary to insist that the first cousin was under the incest prohibition, and in making their point they evidently counted in the Roman manner—as we would expect of Roman law.

Traces of this method of reckoning kin, and its association with the prohibited degrees, survive in the recent Irish terms for close kin: the first cousin was not only mac brathair, brother’s son, (etc.), but also col eathar, which literally means ‘the prohibited fourth’ (col = sin, infringement), while col seirr, the ‘sixth prohibition’ indicates second cousin, calculated in the Roman method. In Ireland, it is most unlikely that knowledge of the prohibited degrees (and similarly the canonical/Roman method of computing degrees of kinship) was more than a matter of scholarly interest until the post-classical period of the Laws (shortly after the tenth century), for neither the Penitentials, the Laws, nor dynastic marriage patterns, reflect much concern with this matter. The Penitentials treated sexual contact with kin in the context of condemnation of sexual licence, and not in the context of impediments to marriage. The ‘Old Irish Penitential’ stipulated four years of penance and overseas pilgrimage for incest with incestuous mother, daughter, sister or brother, and three and a half years’ penance for incest with other consanguineal kin (propter etrus consanguinam), without attempting to specify the prohibited degrees.

Irish scholars were not alone in their vagueness about the prohibited degrees; there was a high degree of artificiality about the Roman model which secular society, not only in Ireland but throughout Northern Europe, found confusing and hard to apply. All the canonical figures were bilateral and based on a central trunk which included mother’s and father’s lines,


argument on the question, and awareness that the rest of the world differed on this matter as well as other doctrinal issues, leaves little room for doubt that Irish scholars knew full well that Roman Christians were supposed to avoid marriage in the derfhine.

With the Church’s rise to international social and political power towards the end of the first millennium, dissatisfaction became acute within the hierarchy regarding the laxity of secular social practices, including marriage and family relations. English legal sources from the reign of Aethelred show that already clerical lawyers were adopting the so-called Germanic method of calculating kinship. According to this method, an individual’s circle of kin was divided into ‘knees’ or ‘joints’, with kin in each ‘knee’ related through common descent from one of the ‘men’ in their line of ancestry; one Germanic degree thus equaled two Roman ones. This method was adopted both because it was more familiar to the laity than the Roman method and therefore offered no possibility of excusing lapses on grounds of misunderstanding, and because it had the effect of extending the incest taboo from the second to the fourth cousin. The following diagram shows how kin were traced, though since Anglo-Saxon kinship was cognatic, tracing kinship through all male and female kin, an actual kindred group cannot be depicted on paper (there should be ‘knees’ in all directions).

![Diagram of kinship](image)

The correspondences between this model and Mac Ñéill’s reconstruction (Fig. 1, above), show that geltfine kin were reckoned very much like the Germanic ‘first knee’, and that, in both models, kinship ceased to be legally acknowledged beyond the fourth cousins. The differences are also clear: Germanic kinship gave more recognition to connections traced through females than did Irish law; Irish did not refer to ‘knees’, but used native terms for the classes of relationship; finally, the Irish numbers associated with these classes have no known parallel in Germanic reckoning. As Figs. 1 and 2 show, the application of the ‘Germanic’ style of reckoning

1 This is the conventional term for a type of kinship reckoning that was widespread in northern Europe, though this ethnic designation may well be misleading.


kin would have resulted in Ireland in the extension of the marriage prohibition from the derfhine (6th Roman degree) to the entire ‘four fìn’ ending with inen-ar-ar-mèmbh (6th German degree). Since the ‘four fìn’ system is clearly closely aligned to the ‘Germanic’ system, and since derfhine seems originally to have meant only a vaguely defined and perhaps not very extensive ‘kindred’ (as Mac Ñéill proposed), it is possible that the ‘four fìn’ system was an elaboration of pre-existing native kinship concepts, developed in Ireland during a period when Irish clergy were attempting to bring Irish law into line with the rest of northern Europe as to the canonical regulation of secular life. This hypothesis would explain the otherwise baffling equation of ‘derfhine’ with ‘all kin’, including third and further cousins, for derfhine, as noted previously, would have been the long-recognized limit of the incest taboo according to the Roman method of reckoning degrees.

It may be objected at this point that clerics could not impose upon people a different kinship system, but in fact all that is being proposed here is that extant actual relationships were being represented in a somewhat altered way (more rigid and clear-cut), so as to legitimise the attempted imposition of new restraints upon the laity by an increasingly ambitious church. Moreover, we should not assume that it was hard to stretch the meaning of derfhine, for we have no decisive evidence as to how the term, though meaning first and second ‘cousins’, was applied in pre-Christian culture. The fact that it was associated in Ireland with agnates, but in Wales with bilateral kin,7 shows that we cannot postulate one strict and diacritical ‘original’ meaning to the term, any more than we can for its later applications. The scope of derfhine could, for instance, have included the relationship of cousinship between the elders of related branches of a wider lineage, as O’Ruadhalla argues. (Charles-Edwards has made a similar suggestion regarding the application of geltfine, viewing it as referring not only to the youngest generations of cousins, but also to the middle generation, fathers of men who were derfhine to each other.) Applied in this way to the collateral relationships of a (Roman) ‘seven-degree’ line of descendants derfhine could denote this whole group, for the ‘middle’ generation is, in Irish terms, a derfhine, and is also the founding father of other derfhine groups—the youngest generation of collaterals within a lineage. It is not hard, then, to understand how in some early sources the term derfhine was used without specific genealogical implications to indicate any and all ‘real kin’, as against other social relations who were pseudo-kin (clerics, sponsors, foster-kin, etc.) and how, even where the ‘four fìn’ classification was known to the writer, he might still refer to the group that ended with the ‘nail kin’ as derfhine, in order to ‘imprint the truth more on the minds of men’ as regards the extension of kinship obligations to the fourth and fifth cousins.

The consequent confusion may have provided the stimulus for the development of a nomenclature for the degrees of kindred (geltfine etc.), whereby the ‘four fìn’ became the standard way of denoting gene-focused degrees of kinship beyond the range of a person’s normal social contacts. This clarification must have taken place at an early date for a number of Old Irish references to geltfine, derfhine, etc. are found, as was noted above in objection to Binchy’s theory of the ‘collapse of the derfhine’. Since, however, both the dating of the traditions reflected in the law-tracts and the pattern of cultural influences between Irish and continental

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centres of learning are difficult to determine, no arguments as to the relative priority of the references in the law-tracts to Roman and 'Germanic' canon models will be offered here; suffice it to say that we have found parallels to both models in Old Irish sources, and that the presence of at least two models of kinship in scholarly culture accounts adequately for the ambiguity of references to 'derfhian', while the absence of detailed treatment of kinship classification in a legal literature which delighted in expounding and expanding typologies of all sorts, further reinforces the impression that the 'four fini' system lacked deep and vigorous roots in ecclesiastic native tradition.2

Church influence on the Anglo-Saxon laws pertaining to kin is evident from such clauses as VI Aethelred: 'Let it not happen that a Christian man should marry his own kin in the degree of kinship of six men, that is within the fourth knee.3 But no such direct evidence exists for Ireland, for the Irish parallel to the 'Germanic' system—the 'four fini' classification—is not involved in the law-tracts for the prohibition of incest, which is known from other sources to have largely failed in pre-Norman Irelan. Instead, this method of reckoning was used chiefly to regulate participation by kin in the payment or receipt of wer geld or collateral inheritance. Obviously, neither the lex talionis nor collateral inheritance were inventions of any historical period or scholarly class. But the medieval Church took a great interest in these aspects of secular family functions, as well as in marriage alliances ('incest'). This concern was motivated in part by desire to detach property bequeathed to the Church from collateral claims, but also by the Church's growing involvement, following the Viking invasions, in the pacification of society and the subjection of strong military leaders to the rule of law.4 In the following discussion I shall outline the provisions for collateral inheritance and distribution of wer geld as they appear in the Irish legal sources, and then proceed to consider features of these provisions which suggest clerical influence upon their formulation.

The basic maxim of Irish law on the obligation to pay wer geld was: Confegiugther cion iar nIbhud 7 crouth: confoldaether dibud 7 croudih iar crounth. . . . (CH1. 1142.1-2; 1315.20-1; 1926.3-4).5 'Fines are shared after the manner (of receipt) of inheritance and wer geld. Inheritance and wer geld are divided after (the manner of) sharing fines.' The interdependence of these claims, while 'fair', was by no means 'natural' behaviour: it took compensation from higher powers to enforce collective responsibility for wer geld, and also to forestall seizure of dibud.

1 The possibility that canon law sources continued to influence Irish law during the thirteenth and fourteenth centuries (a period of intense interest in the prohibited degrees of kinship) is suggested by a number of quotations in the Irish law-tracts from a Canonical decree of 1298, in the Liber Statutorum, 15, n.1: 'What shows that the destruction of sources has obscured the extent to which new developments in canon law were received in Ireland (John Wyard, The Church in Medieval Ireland, Dublin, 1972, pp. 131-7). But it is reasonable to suppose that interest in the prohibited degrees was a matter of acute interest to Irish churchmen in view of the political significance of Landfrau's charge that Irish marital practices were un-Christian.

2 A similar argument was offered by M. Gwyn Jenkins, 'Rhiu Cernywedd yby Nghlyffryd Rheidyn, yr Ewpygu a Chymru', eno 20 (1964), 348-73, regarding variations in the representation of kinship in the Welsh law-tracts. This was rejected by Dafydd Jenkins in 'Cymru'n Adside F. W. Maitland; V. Genell Albanus yng Nghlyffryd Hywel', ibid., 22 (1967), 229-336, on grounds that the argument was based on Maitland's misconstruction of the Welsh kin group involved in wer geld and feud. Welsh law had, indeed, been as well edited by later medieval lawyers that whatever influence had gone into its development are almost undetectable. The disparity in the Irish law-tracts, on the other hand, offers opportunities for dissecting various currents of influence.


5 Keating says that 'fraudulent partnership in land' was permitted by the lords because the cost of mercenaries to defend the area would normally exceed the rent of the district (voir n'ach), but if everyone had a share of ownership 'the kinman (buthait) who had the least share of it would be as ready in its defence, to the best of his ability, as the tribal chief (quem-folda) who was over them would be': The History of Ireland, Four Fascia or Eironies, 4 vols., ed. David Conyn (London, 1902), 69. Keating's remarks illuminate CIIH. 2017.14-41, which shows how deprivation of a share in dibud was used as a sanction against lawless behaviour.

6 CIIH. 2011.21, 38.

7 Studies in Early Irish Law, ed. D. A. Binyon (Dublin, 1936), 150-60.

8 CIIH. 429.15-432.15; 1809.6-1881.8, 2016. 4-2017.41.

9 Charles-Edwards, 'Corpus Juris Hibernicus', 154-5. The antiquity of these sources is not in dispute, but the difficulties of such precise dating on grounds of linguistic features are stressed by Laois Breandain, 'Cenon Law and Secular Law in Early Ireland', 439-59, and Kim McCone, 'Notes on the Text and Authorship of the Early Irish Bre Breis', Cambridge Medieval Celtic Studies, 8 (1986), 46.
referred to as the 'five men', the senior of whom took security from the heirees as to the reversion of the land after her usufruct: Acrema non si dixit dixit manque (no go the), 'He died out, further kin had claims to collateral inheritance, claims that were tied to their di cuicie terrae. Imma rin cum confucion sani don tellach dertach. An outside branch holds fast be for a deserted hearth.' The land was then divided amongst three subdivisions of the five: Trench five flogante. It is distributed to the thirds of the five, 
Evidently we have here the doctrine of the 'four funs', i.e. the extinct 'five men' and three nach duthach define. From seventeen it is separated off, so that it is not inheritable by the subdivision; it does not name the derfhine or any of the further circles of the kin, referring only three grades of kinsmen, for all that is said on this in: Acht cetirion do findufine. Except the fourth thirds of the five', plus the 'five-man' group this passage implies that one category must be mentioned above that of the lartene and indifine together and that the text did not bother interpreting text be borne out by the other source that outlines the same provisions, Foda Fine. 
(b) Foda Fine (CHI. 429.13-432.20). This tract lists the various sub-cATEGORIES within that comprised a chief's group of dependents. It gives prominence to the gelfine: CAIR CUIS LIR FINE TUAITHRE. GEELINE DEIRBINE IARFINE INDFINE DEIRGINE PITHNUDEBAI (CHI. 429.25) 'Question: how many are the five of a birth and how do the five of each birth divide the gelfine, derfhine, inifine, indifine, derfhine, duthine, fine taccuir, gelfine, ingin an mearab. Duathine is where heritage ceases.' This source speaks what is only implied by the poem on inheritance, namely that when GELFINE CO CUIucer. IS-AIDE GIBAR DIBAR CAIN CAND COMACUR. DI NEICH inheritance of each equally close kinsman (- each propertied adult) who dies heirless, 'The gelfine extends up to five', it is this which takes the heritage within and beyond and the gelfine is underscored by the next statement: DEIRBINE CO MONBOR NI DABA HUAIDE ROIGNARD FO LIR CENN

Comocuir (CHI. 430.5) 'derfhine to nine men. Their dibh is not divided according to the number of equally close kinsmen'. In the gelfine, then, property was divided according to the number of men who were in the same relationship to the deceased. For example, if his nearest kin were his three brothers they would divide the land in three, regardless of how many sons each had; this is division per stirpes, or descent line. But beyond this inner circle of kin, property was shared per capita. This contrast is also noted in a passage of commentary to the poem discussed above: is fa comhara teit gael delfhine 7 fa in ngnab. Fo ron cem immerro la derfhine, ar is comhara deith ithib dibh na gelfine, 'it goes by proximity and the number of branches in the gelfine, but by the number of individuals in the derfhine, for the inheritance of the gelfine is equally near to all of them'. This rubric appears yet again in a gloss to iv. Following the rendition of the heritage, dibh, to the kin beyond the gelfine, it was divided amongst men as far as the indifine (CHI. 430.10-1, 15-7).

This source, therefore, resembles the poem on inheritance in the following ways: (i) It shows that there were three grades of agnatic heirs beyond the inner circle of kin; the poem refers to the 'three funs', whereas FF names them. (ii) It indicates that partition was based on a ratio of three-quarters to the nearest heirs and one-quarter to the next grade. (iii) It confirms the evidence of the glosses on the poem that the distinction between inheritance per stirpes, in the immediate kin, the gelfine, and per capita, in the derfhine and further circles of kin, was an old-established norm. (iv) It omits to spell out the relative proportions of the more distant categories of kin, but instead telescopes two grades into one category; as in the poem, it is lartene and indifine which are merged, making it clear that the derfhine got three-quarters of the heritage. But FF is clearer that the poem, for it distinguishes both grades by name, specifying the lartene's quarter share and leaving the indifine's part of this to be inferred. Dillon shows that his reconstruction of the four fins system of collective inheritance in these two early sources is corroborated by later legal commentaries which are entirely consistent with these earliest references to kinship. 

(ii) Wergeld.

In the passage on wergeld translated by Mac Néill (partially cited already), the distribution of wergeld was set out thus: asthai 7 mac cemains, leith doth dinast. brathrath: asthair 7 mac roinn tharath ar leith in doth derathrann ann; a doth doethrann ann samr manu tr tr; trian do brathrath (i). 7 ronau a mbs ar bheu a triu tr tri; tri an dion ban i samn dar don cednes, (oacs) i i len cemin ngab clo 7 ni i lenc comorbrach; 7 a dordhenn ann fo doath ladyn treithl. i in roaghan semathar for cula, a mbs duithtrann ann for rousttib i ti lenc comorbrach cum ari i frithtr iveth gorth 7 mac, 7 tigoid iad annal eal buit eacq diche (CAH. 600.39-601.6) Mac Néill translates as follows: 'Father

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1 See, pp. 137 lii-138. See also O’Buachalla, ‘Some Researches...’ (1947), p. 139, n. 11. 
2 In the late tracts on kin liabilities found in RIA MS 25 Q 6 the rule seems to have been forgotten, and both derfhine (general fines) were alloted per stirpes in the nearest descent line (C. 142. 15-30). 
3 Mac Néill to dibh ann; aon cetirion dibh gelfine do derfhine, 7 robhainn do derfhine 7 do robhainn: ni aon cetirion na robhainn do derfhine in order do robhainn. 'A gelfine is extinct, three-quarters of the heritage of the gelfine falls to the derfhine and one quarter to the derfhine and the indifine (that is) three-quarters of the quarter to the indifine and the other quarter to the derfhine.' Cíc Cearaigh Fèisill, ed. Rudolph Thurneysen, Abhandlung der preussischen Akademie der Wissenschaften, Jg. 1925, 44, # 10, (CHI. 744-4, 8-10; 298-5-299 19, 2016, 5-29, 103-114, 102-105.3). See also Dillon’s citation of C. 3.5, 42 a 38, SEI. 147 (= CHI. 298-5-299). 
4 Above, pp. 139-40.
and son, in the first place, a half to them exclusively. Father’s brother (and his) son, they make a fresh division again to the extent of a half, as long as anything remains. What remains over... is then divided in three. One third to a brother, and what is still left is again divided in three. One third to the person that is nearest (of kin) to him (the deceased), except that it goes by the number of ‘heads of taking’, and not by the number of heads of heirs [my emphasis]. And what remains over the thirds, that is when it has reached the grandfather backwards, however little remains finally over the shares, goes according to the number of heads of heirs [my emphasis] up again in the opposite direction as far as father and son, and they come in, one like another, however small each man’s share of it may be.¹

The first step in the distribution, therefore, was that the wergeld was halved, then the remaining half halved again. Looked at from the point of view of the first category of heirs, as a whole, the victim/homicide’s own gelshelf (father and ego’s son, and father’s brother and his son), took three quarters. The remaining heirs got a quarter. Both this tract and CIIH 742, 4-9⁵ then provide for the brothers of the deceased out of the quarter assigned to further kin. (This reflects the greater claims of the procreative line as against their nearest of kin in the derfshelf. The rest of the wergeld was divided into three for kin beyond the gelshelf. No details are given of the shares to the kin beyond ego’s father’s brother and his son, i.e. ego’s gelshelf, except that the division was no longer per stirpes but per capita. The rules for wergeld thus generally correspond to those for dibad; ego’s nearest kin (his gelshelf in this case) took three quarters, distributing this per stirpes. Then the remaining quarter was subdivided, with the next class of collaterals taking the biggest share, dividing this one on a per capita basis, as was done in the case of dibad. The need to provide for brothers (who were assumed to be alive in a case of wergeld settlement but dead where dibad was involved), complicates the division of the last quarter, but yet it was divided into four (not quite even parts), and then distributed. The shares on wergeld and on inheritance thus complement each other. But despite the centrality of this distributive formula to basic Irish legal rules, several aspects of the sources discussed above suggest that they were not all purely indigenous secular customs. In addition to the reference to the ‘nal kin’, which we already noted in a canonical context, and which was a common feature of ‘Germanic’ kinship reckoning, the distinction between per stirpes and per capita distribution reflects a fundamental, if imprecise, similarity between these Irish provisions and Roman laws of intestate succession. A basic principle of these, surviving from the Twelve Tables until the Empire, was ‘Si intestatus maritus cuius uxor aequo non existit, adnatus proximus familias habet. Si adnatus nec uxor, gentiles familiae habet’. If a man dies intestate to whom there is no  uxor aequo, let the nearest agnate have the property. If there is no agnate, let the members of the gens have the property.¹

The first grade of heirs in the old law of the Twelve Tables, the sui heredes, was the person or persons (usually unemanculated sons) who inherited the whole social position of the deceased; these took aliquot shares per stirpes. In the absence of these, the proximus adnatus succeeded; but if there were more than one, e.g. two brothers, or uncles and nephews, they shared per capita. The rights of the gens, the further kin, were vague. This basic distinction survived the many changes in the Roman law of inheritance to emerge, modified, in the sixteenth-century Novels of Justinian (A.D. 543-548). In this, the first class of heirs were descendants, but they were followed by a second class who also shared per stirpes, namely brothers and sisters of the deceased, and their children. Apart from the cognatic composition of this class of heirs, it corresponds to the Irish gelshelf, particularly with regard to the implication in the Irish sources that on failure of heirs the heritage would revert to ascendants in the gelshelf.² Beyond this group, inheritance was per capita within the nearest grade of collateral.

Irish law clung to this distinction between per stirpes inheritance within the gelshelf, but per capita distribution among other kin,³ while rejecting both the cognatic element in Justinian’s Novels, and the exclusion of distant collaterals by the nearest grade of kin. Obviously, then, this was no simple borrowing that took place, or an evolution of law, based upon the incorporation of some foreign elements and the modification of native customs. The intention of the Irish law is evident; it sought to implicate the largest number of individuals in the misadventures of ego, and it could only do this by vesting residual heirship rights in them, also as individuals. The difference between a per stirpes and a per capita distribution boils down to the difference between letting the uncertainties of reproduction determine rights and duties, or considering everyone within quite even parts, even the same kinship division had the same kind of division. An example would be the wergeld obligation of the grandsons of two grandfathers in the derfshelf division; one old man might have only one grandson, the other many. Sharing per stirpes would unduly enrich the former where dibad was being shared, but unduly tax him where wergeld payment was concerned. The per stirpes rule was very helpful in mobilising kinship payments for effective wergeld settlements.

The presence of the Roman distinction between per stirpes and per capita shares suggests that some native rule had been displaced in the formulation of the doctrines on wergeld and dibad, for example, that inheritance had hitherto been all per stirpes. This arrangement is found in the provision: OS DİBAD NAIČME CIA NODBEIR-SEOMH. BEIRTH THE CENEL... 7 RANDAT EATARRU I LION CEANN INGABUL, (CIIH. 2017:1-3) ‘the dibad of an asime, who

¹ Mac Neill gives this translation for lien ong ngadh, which corresponds to lien ngadh in SEH; p. 157 lit al, lines 5-9, translated by Dillon as ‘number of branches’. The latter translation is preferable, since ‘heads of taking’ makes little sense in the context of descent group relations.

² Mac Neill’s translation, Celtic Ireland, pp. 119-20. The distinction between division per capita and per stirpes is expressed differently in these sources. PF does not have a term for per capita, but simply says division was fi in cin ama nei the gelshelf, but not so in the outer circle of kin. The commentary to the poem states that in the gelshelf division, the gelshelf was according to nearest of kinship (fi compera) and the number of branches (fi lin ngadh), but beyond the gelshelf it was simply fi in cin (per capita). Col 7 Dibad agrees that in the gelshelf, division was per stirpes, according to the number of branches (fi lin ngadh), but describes per capita sharing in the outer circle of kin as fi in cin comaer—‘the number of heads of heirs’, according to Mac Neill. Perhaps this term reflects participation by adult men, rather than a strict per capita division that included immature children, but nevertheless the distinction between the ‘branches’ of the gelshelf (per stirpes) division, and per capita division amongst the rest of the kin, is manifest in this source.

³ Above, p. 190.

⁴ Nicholas, An Introduction to Roman Law, p. 247.

⁵ The rights of ascendants were emphasised in later Irish law, as in this commentary: Maia ni suas agus doin is marh an, is a dibbad dh beirthe elo; ma or buil, is a beirthe elo as ai; ma or marub uin, is a beirthe be do shuairar, etc. (CIIH. 2018:9 E.) ‘If the deceased has a son, the dibbad is taken by him; if he has not it is taken by his father; if he is not alive it is taken by his brother. If he is not alive it is taken by his grandfather’ etc. This is commentary to a dictum which shows that individuals normally inherited land (sdir) directly from their fathers (CIIH. 2018:3-4). The commentary shows that in the view of the scriber only sons took precedence as heirs over members of the older generation in the same line as the deceased—a nephew, then, did not preclude a great-uncle. The outcome of failure of heirs would thus be that the deceased’s land would go ‘back’ to his father, or other ascendants. This is a late commentary, but it complements the poem on inheritance discussed above.

⁶ Both Dillon and Rushby identified the Roman origin of the Irish distinction between per stirpes and per capita inheritance, but did not consider its significance (SEH p. 138, n. 2).
gets it? The *cumul* gets it, and they share between themselves per stirpes'. An *aice* was a local group, distinguished from the *fine*, and not necessarily patrilinage. It clearly articulated with the rest of society differently from the *fine*, and it suggests the existence of an alternative type of kinship organisation that may have prior to the development of the 'four fine' system, or alternatively it may represent kinship in areas or amongst sectors of society that were less focused on the military and political functions implied by a strong link between kinship and wergeld organisation. Nevertheless, both the 'four fine' classification and *per capita* sharing amongst the distant grades of kin became entrenched as a legal device for enforcing fraternal loyalty amongst kinsmen who might otherwise have had little wish to be implicated in each other's affairs. Its introduction may have taken place between the writing of the poem on inheritance and of FF, for it appears only in the glosses to the former, whereas it is in the text of the latter.

Other signs of innovation are also found in some of these sources. Thurneysen showed that the language of the sources in wergeld is later than that of the classical Old Irish law-tracts,1 in other words later than the eighth century, dating to some point between the arrival of the Vikings and of the Normans. *Crí* was stipulated in *CfH* 742 25-31 as seven *cumuls*, the penalty so often cited in Irish ecclesiastical sources as the fine for homicide, but in older sources a variable fine based on the rank of the victim, was employed.2 Moreover, the actual term *crí* is itself unusual, the normal Irish word associated with composition payments by or for kinmen being *féitich*.3 *CfH*. 600.1-8 describes *crí* as the customs of the 'Gaill', implying perhaps a contrast with the *galld* (foreigners/Norse). Moreover, the authorities for the rules of *crí* are listed as beginning with Patrick, but ending with Cormac mac Cuilennáin, bishop-king of Cashel (ob. 908, 4 U.).

Another sign that these rules for wergeld and collateral inheritance were not derived purely from ancient native tradition is the considerable resemblance between the rules for sharing *crí* and the Norse and Anglo-Saxon provisions for payment of wergeld in the viking invader's closest kin. As regards Norse wergelds, it is in the rules governing the shares of the close kin that similarities with the Irish sources are found. (Provisions for further collaterals were different; the total range of Norse recipients extended only to the descendants of common great-grandparents, but these were reckoned bilaterally, in contrast to the patrilinage organisation of the Irish *fine*.) The Irish scheme for quartering the *crí* is paralleled in *Guthlac* 223,4 where it is shown that as in *Crí* 7 *Dibhad* there were three main heirs who shared the major part of the reparations (the *baugd*); the deceased's father and/or son, the father's brother's son, and the deceased's brother—the equivalent of coevals in the Irish *gélhine*. The division uses the same proportions as found in *crí*: the Norse father/son received a half of the total, father's brother's son a half of the other half (though he forfeited 1:20 to female kin), the remainder passing to the brother. Together then, as in Ireland, ego's father, son and cousin took three-quarters, while the next grade took a quarter.

The early Norse wergelds were not unusual in their provisions. Phillpotts noted that across the spectrum of 'Germanic' societies in the middle ages 'far more widespread is the reckoning

1 Thurneysen, Jr. R. 14-6.
3 See Green, *Crí*, *Crí* and *Similard Noses*, pp. 8-9.

which gives to each further degree of kinship half the amount accorded to the degree nearer. It is obvious in the North Frisian wergeld, and in the minor local schemes from both East and West Friesland . . . And it appears in all Dutch wergelds. If we abstract the classes of relatives of unequal degrees we find that it forms the basis of three more schemes: those from Lille and from Hunsingo (West Friesland), and that of the obolauty (Norwegian) Baugatal. The principle is most clearly stated in the Swedish and Danish laws, which apply it consciously and consistently.5 Since the later Irish sources on *crí* show a system of compensation well aligned to other medieval systems, it is possible that old rules, that gave three-quarters of *dibhad* to the next of kin, were pressed into service to fit in with the general rule amongst other ethnic groups that divided wergeld into halves, quarters, eights, etc.

Another parallel between Irish and other contemporary wergeld rules is found in Anglo-Saxon law. This concerns a divergence as to the composition of the inner group of kin. The unknown text that provided a source of the *Laws Henrici Primi* restricted this group to the father, son and brother of the victim,5 but the Anglo-Saxon tract *Wer*, which dates to the late tenth or early eleventh century, included the father's brother and his son as recipients of the inner group's compensation, *hæflafing*. Irish law reflects exactly this divergence; *CfH*. 742 4-9 mentions only father, son and brother as heirs of the deceased,6 while *CfH*. 600.37-39 includes the father's brother.

In view of these similarities and the signs of innovation in the Irish sources on wergeld, it is worth considering whether there was a context in the later pre-Norman period in which developments regarding the organisation of wergeld payments might have occurred in Ireland, under the influence of the Church, as they evidently did in Anglo-Saxon England and elsewhere. First it should be stressed, however, that the Irish sources on wergeld, being consistent with the sources on *dibhad* that are thought to date from the seventh century, do not represent a sharp break with native traditions, and also that even prior to the developments at the end of the millennium, which we shall now consider in relation to Irish law, Irish law had been strongly associated with opposition to the cattle-raiding lifestyle of the Irish lay nobility that had been strongly associated with opposition to the cattle-raiding lifestyle of the Irish lay nobility.
York, had close connections with Dublin.¹ Wulfstan II, archbishop of Cork, was an active law-writer for both King Aethelred and his Danish successor Canute, converted the latter to Christianity, and wrote the famous Sermo Lupi ad Anglos (c. A.D. 1014), whichiggered secular society for impiety, sexual disorder, violence, and the enslavement of the innocent.² Wulfstan’s interests included the Collectio canonum Hibernensis,³ which he used, it is thought, for the writing of his treatise, The Institutes of Polity. He played a role in inter-ethnic legislation, modifying Anglo-Saxon and Scandinavian laws so as to produce a viable mutual system.⁴ His contribution to Aethelred VI, the source in which the resemblance between the Anglo-Saxon and Irish models of kinship is so strong,⁵ raises the question of whether during this period attempts were made through the offices of influential clerics to align Irish, Viking and English wergeld provisions also.

On the Irish side, clerical interest in bringing into effect mutually acceptable instruments for resolving conflicts with the Norse may have sharpened after the fall of Brian Boru at Clontarf (in the year when Wulfstan is thought to have written the Sermo Lupi), and the acceptance of Christianity by the Norse towns in Ireland. The Irish Church’s interest in social regulation was both of a general ethical nature, and one of direct self-interest, for Irish monasteries were often victims of slave-raids, as for example in 1013, when a son of Brian Boru took ‘innumerable captives’ from Kilmarnham and Glendalough.⁶ In this context it is apparent that the archaic-seeming stipulation of slave-women (umalla) as part of the wergeld payment, was highly appropriate to the conditions of this period, which saw a great upsurge in slavery, and where payment in slaves may have resulted in restitution of captives seized in a previous bout of conflict.⁷ Highly suggestive that the Church was in a position to facilitate Norse-Irish agreements about the regulation of their interaction are the surviving records of the joint pilgrimage to Rome in 1028 of Flannagan ua Cellaig and Sitric, the Viking king of Dublin.⁸ The political and international significance of the Irish wergeld regulations in Cre 7 Dhad, is manifested by the fact that this source outlines the shares of kin in wergeld only after concluding its far longer treatment of the shares taken by the lord, and by the company of soldiers who enforced the payment (CHI. 600-2-26). This material is itself preceded by regulations referring to the relative rights in cre 6 of the high king, provincial king, and leaders of lesser levels of political organisation, down to the lord of the fine. Cre 7 then, was viewed as an indemnity which helped to establish peace at the highest levels of society. Archaeological evidence supports the view that Norse and Irish kings were making monetary settlements at this time to effect truce. ‘A remarkable concentration of wealth’ in Viking silver was found at a cluster of sites around Lough Ennis which were associated with the early eleventh-century paramountcy of the Ua Guthrains, ibid., IX; Wulfstan and the Laws of Cnut’, ibid., XII, ‘Wulfstan’s Authorship of Cnut’s Laws’, ibid., XIII.

³ ‘Ibid., xiv, 51.
⁴ ‘Wulfstan and the Anglo-Saxon Law’, ibid., V; ‘Wulfstan and the So-Called Laws of Edward and
Hans a Chýfrazth

Máirseachlaí na kings. It is also suggested that a lost hoard of mixed Anglo-Saxon and Hiberno-Norse coins dating to the second quarter of the eleventh century, found near Mullingar, was originally associated with one of the Lough Eanell royal sites. The possibility that these deposits reflect not merely booty, but indemnities, is supported historically by an entry for 1029 in AU noting that the king of Brega was paid a ransom for the release of Olaf, son of Sitric, Viking king of Dublin, that included sixty ingots of gold and sixty of silver. It is interesting that the settlement that redeemed Olaf followed the joint pilgrimage in the previous year by his father and the former king of Brega to Rome, mentioned above. Clearly, there had to be ground rules regarding acceptable impositions where settlement was sought, for payment of indemnities in lieu of the slaughtering of the enemy was contingent not only upon political advantage and will, but upon the existence of instruments of diplomacy. It is suggested here that Crí 7 Díbhad represents a modification of Irish customary law during the post-classical period in order to accommodate the demands of a more cosmopolitan environment in which Church censure of reckless bloodshed carried growing political implications for rulers.

It is beyond the scope of this paper to support further this historical argument, which is advanced here only to draw attention to the kind of context in which the features of the Irish wergeld provisions might become intelligible. It is hoped that additional and more specialised research into such aspects of the Laws will provide more evidence on this point. But notwithstanding uncertainty about the background of Crí 7 Díbhad, there is nevertheless enough evidence to justify us in regarding the ‘four fini’ system as a medieval conceptual structure, designed to cast a wide net for wergeld-paying kinsmen (whose rewards were per capita shares in incoming díbhad or wergeld, and who were punished for non-solidarity by deprivation of collateral inheritance). Evidence that this system was tinged with Roman law, and that the oldest references to derfhíne do not distinguish grades of kin, reinforces the impression that this system was elaborated in the early middle ages by scholars with a clerical background, whose interests coincided with those of the military élite in extending social control through communities by means of an expansion of kinship obligations and rights. The seemingly late provenance of Crí 7 Díbhad, furthermore, suggests additional elaboration and modification towards the end of the Viking age. Finally, the presence of parallels to canon-law methods of reckoning kinship in the law-tracts, heightens the impression of clerical influence on the reckoning of kinship. All these considerations, taken together, offer an alternative to the theory of fossilised prehistoric survivals that underlies the theory of kinship contraction, while the latter, as we have seen, has not been persuasively documented by its proponents.

There remains, however, a final terminological mystery posed by the theory of kinship contraction, namely the emergence of gélfinn as a substitute for díbhfinn in later commentaries and glosses. This, too, may be explained by an extension of the preceding argument concerning the influence of canonical kinship models. For some time after the beginning of the Church reform movement, there existed an overlap between the ‘Germanic model’ and the old canonical model based on the Roman method, but, in 1063, Peter Damian established the

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2 Ibid., pp. 136-7.

3 Ibid., pp. 136-46.

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1 M. Ryan, R. Ó Flainn, N. Lowick, M. Kenny and P. Czader, Six Silver Finds of the Viking Period from the Vicinity of Lough Eanell, Co Westmeath, Æsthetica, 3 (1984), 363.

2 Ibid., pp. 364; Annales of Ulster 1, 360-1.

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1 Goody, Development of the Family, pp. 136-7.

2 Ibid., pp. 136-7.

3 Ibid., p. 144.
on individual lines of descent (the trunca established the line, or stirps, of individual descent) with the Germanic gradus, based on fraternal groupings. There is abundant evidence that the emergence of the trunca model in the Irish laws coincided with a new meaning for gelfhine. The evidence was gathered by Liam Ó Buachalla, who, although he did not identify the canonical basis for the model that he recognised in the tracts, made a valuable contribution to the analysis of Irish kinship by collating and correctly interpreting the meaning of a number of passages which other scholars have ignored because of their late provenance.

An example of his citations is the following commentary upon the old text of the tract on fosterage, Cúl Larmhach: in gelfhine iar mbelach, amail ata abhair 7 mac 7 na 7 iar mac 7 inna co. u. e. r. 7 gelfhine iar culach i. brathair th' u. abhair 7 mac co. u. e. b. e. s. (CHL. 1762.25-27) "the gelfhine in the direct line, as the father and son and grandson and great-grandson and great-great-grandson extending to five persons; and the gelfhine in the back line, that is, the father's brother and his son, to five persons again."

On this model, the 'four fins' terms were applied not only (as Mac Néill maintained) by both father and son to their respective collateral, etc., but by any person on ego's line of ancestry. The terms for 'cousins' (derbhfience) would then refer to ego's cousins, and to his father's cousins, his grandfather's, etc., so that the '17 men' would simply be ego, plus four collateral relationships in four generations. On the basis of the passage cited above and others of a similar kind, Ó Buachalla concluded: 'that the much discussed terms—gelfhine, derbhfience, larfine and inffhine—simply denote, respectively, the first four degrees of kindred, viz., brothers, first cousins, second cousins, and third cousins (or groups of kinsmen extending respectively up to those degrees of kin).'

As is seen by comparing Ó Buachalla's model of Irish kinship (below), with Fig. 3 (above), Irish sources that use gelfhine to signify ego's procreative line were based on a trunca model like that depicted by Champeaux: in both cases a procreative line 'five men' was reckoned, while Collins are acknowledged as far as the third cousin.

ancstral line, and their brothers, but the brothers' descent lines belonged to further classes of kinship. As on Mac Néill's model, each ' beyond his ancestral line represents a number of individuals.

O' Buachalla also drew attention to the existence of alternatives to the terms that have been discussed in this paper. One variation is a 'four fins' classification in which the closest kin were called derbhfience (instead of gelfhine), the second grade was called tainbfhine ('side-kin'), while the remaining grades were known as in the other 'four fins' system as inffhine and inffhine. Sometimes, however, tainbfhine appears as the second class of kin following gelfhine (see CHL. 721.37-792.1 ff.). This diversity suggests that the canonical models identified previously only some of the 'inconsistencies' in the law-tracts; the existence of other ways of representing kinship, including a variety of 'folk models' is obviously a possibility.

Just as derbhfience in some early sources denoted a large and genealogically vague descent group, so gelfhine could signify the whole descent group in the context of a trunca model (as in the passages cited above), because the collaterals descended from the upper man of the gelfhine extended to 'five men' (ego, brother, first, second and third cousins). The adage, 'as gelfhine each fine innti fadadhin' (CHL. 2418.25): 'every fine is a gelfhine in itself', shows that medieval lawyers understood the fine to consist of a number of gelfhine lines, each springing from the 'upper man of the gelfhine', the 'grandfather's grandfather'.

The substitution of gelfhine for derbhfience, can now be accounted for as follows: both the early and later use of derbhfience was ambiguous, being sometimes extended to the fourth cousin, sometimes restricted to the descendants of a common great-grandfather in the context of the 'four fins' classification, and sometimes used without any implied genealogical scope, merely to distinguish 'real kin' (patrilinial kin) in general opposition to other social relationships. When yet another canonical model of kinship (the one that emphasised a central line of descent), came to the fore, derbhfience, already burdened with two old-fashioned associations was replaced by another term that signified an individual's close kin for purposes of inheritance, the gelfhine, and also the collaterals of this line (the other gelfhine descended from the common ancestor), who fell within the prohibited degrees.

Conclusion
The problematic term, 'derbhfience', seems at a very early point to have been a popular word that went out of style for referring to groups of kin, but its meaning is too unstable to permit its firm definition as the patrilinial descendants of a great-grandfather. There are therefore no grounds for affirming that a rigidly defined and delimited kinship group (second-cousins) played a pivotal role in early medieval Irish society, much less than derbhfience refers to a constitutive segment of a lineage, and no reason to believe that it was replaced by first cousins. As to the gelfhine, this word appears just as early as the derbhfience, but became more popular with legal scribes by the Middle Irish period. When it did so, however, it did not mean only 'first cousins', but often referred to a procreative line, from ego to an ancestor. The various numbers associated with the classes of the fine were almost infinitely malleable, and one can configure the 'five men' of the gelfhine in ways that are compatible with practically any of the references in the tracts.
If the superimposition of canonical models of kinship produced some of the usage patterns found in the Irish law-tracts, the manipulation of these models reveals something about the social organisation that they so obliquely represented. It is striking that the two main terms for kin both functioned within two frames of reference: derbhine and gelbhine at different periods came to represent the ‘whole descent group’, even though both were also terms that signified grades of relationship to ego, grades that had a strict genealogical content, either in the ‘Germanic’ type of application (after Mac Néill), or the trancus scheme (after O’Buachalla). It is likely that the Irish tendency to apply a term for a ‘grade’ of relationship to the whole ill-defined kin-group reflects a feature of native kinship organisation. If this is so, it can only mean that kinship groups were not meaningfully subdivided into segments on the basis of genealogical division, and also, as Mac Néill originally maintained, that close kin (siblings, first and/or second cousins) were the only kin of mutual importance. It is the later sources that furnish most examples of the ‘four feni’, and always, insistently, to make the point that inheritance of dhrad was contingent upon payment of wergeld shares or the other obligations of a defaulting kinsman.

It is probable, then, that in early Irish society, patrilineal descent—though supremely important for personal identity, establishing membership in the fine and ceml or clan—was less important for the structure of social relations within these groups than the combined effect of other relations that were not discussed in this paper: matrilateral kinship, clientism, adoption and fosterage, and affinal relationships, all of which served to shape the composition of groups and the pattern of relationships within them. What historians have shown regarding the fluidity of social relations at the political level, and what the laws reveal regarding the multiple bases of social relations, should be taken seriously as evidence that genealogical degrees of kinship (not to be confused with pedigree) were of concern only in the specialised social circumstances of distribution of wergeld and collateral inheritance, and as a result of some tampering with secular methods of self-help by clerical or highly clerically influenced lawyers. In all probability, the early Irish were like the average twentieth-century ‘native informant’ who could not tell the anthropologist exactly how kinship was reckoned, while the law-tracts resemble the authoritative native, believed by all to ‘know it all’, even though he kept getting ‘it’ wrong.

It is important that we take the fragmentary and conflicting state of kinship representation as a feature of social reality (as it is in most documented societies), and not as something to be explained away in favour of a putative underlying, coherent, correct and original kinship model.

The emphasis in this paper has been upon the light that may be thrown on the Irish Laws as sources for social history by consideration of the international and contemporary context of different strata in the Irish law-tracts. Nevertheless, such exogenous influences must be seen as just that—influences upon a rich and flexible native tradition. The value, however, of a consideration of context is that parallels or connections between Irish and other contemporary legal systems suggest purposive borrowing, and this in turn suggests that the Laws stood in a positive relationship to society, a relationship in which the element of obsolescence may be far less than is usually taken to be the case. It is hoped that by focusing attention upon the

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