The early Irish hostage surety and inter-territorial alliances*

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Abstract
This article examines the legal evidence on treaty law in early medieval Ireland, focusing on fragments from the lost law text *Bretha Cairdi* (Treaty Judgements) and the short text *Slán n-aitire caire* (The Immunity of a Hostage-Surety in a Treaty). It aims to examine the ways in which jurists faced cross-border violence and to look at how law was used to forge a political alliance in extending legal allowances and duties beyond the frontier, and so permit designated enforcers from both sides to collaborate in the quest for legal satisfaction and social stability.

The regulation of legal conflicts that occurred in the border between kingdoms, or within a single kingdom where groups with different loyalties resided, consumed considerable effort among early Irish jurists. The border between two or more early medieval Irish kingdoms was not always absolute but can be seen as a dynamic division adjusting itself alongside political power struggles and administrative developments. This complex process of adjustment and consolidation represented a fruitful ground for conflict and legal breaches that the Irish jurists were eminently equipped to discuss. An examination and interpretation of the legal evidence offers a unique insight into how cross-border relationships were fostered and vividly displays the use of law for the purpose of advancing changes in the political landscape of early Ireland. However, the relevant legal evidence is not straightforward and needs to be examined with great diligence. To this end, a brief detour to the textual transmission of the Irish laws will be necessary in order to enable a better evaluation of the place and significance of the source material.

The existing corpus of early medieval Irish law texts can be dated linguistically to the period from 650 to 750 C.E. and looks back on a centuries-old oral transmission process under the auspices of a learned, professional class of legal custodians.1 The surviving manuscripts preserving these ancient laws date from the twelfth to the seventeenth century and were committed to parchment in the Old Irish vernacular. The oldest surviving manuscript containing vernacular legal tracts

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is Oxford, Bodleian Library, MS. Rawlinson B 502, which dates to c.1120.2

Clearly, there is a considerable gap between the original composition of the legal text and the manuscript witness, leaving ample space for textual corruption and revealing the difficulties the copyists had to face when dealing with the older language. Most of the Irish legal texts were subjected to extensive secondary judicial writing, predominantly between the thirteenth and fifteenth centuries, when an upsurge in legal activity can be noticed.3 This process took the form of interlinear and marginal glosses as well as long commentaries.4

The most important collection of Irish vernacular legal texts is the law book known as *Senchas Máır* (lit. great antiquity).5 It is this law book that is believed to have incorporated a now lost legal text that dealt with the subject of *cairde* (inter-territorial, sometimes intra-territorial, alliance or treaty), and which was titled *Bretha Cairdi* (Treaty Judgements).6 We are fortunate, however, because we do have at our disposal two fragments of continuous Old Irish text with interspersed glosses that belong to this text.7 These are preserved in the sixteenth-century Trinity College Dublin, MS. H 3. 18 (now cat. 1337),8 and are edited in *Corpus Iuris Hibernici* (C.I.H.), p. 791, l. 5–p. 792, l. 23 and p. 807, l. 17–p. 809, l. 2.9 Further commentary that is more doubtful but may also derive from the original text is found in Bodleian Library, MS. Rawlinson B 506 (fourteenth century),10 edited in C.I.H., p. 114, l. 8–p. 116, l. 23, and partially translated into German by Rudolf Thurneysen.11 The first set of this material in H 3. 18, which constitutes the primary evidence on treaty relationships, has not yet been translated and analysed. This is surprising because the topic of *cairde* gives us a notion of how law could be used in order to achieve reconciliation between political enemies by legally defining their relationship to each other, and thus merits further scholarly attention. For this reason, this article is presenting evidence from the Irish legal sources on *cairde* and offering the author’s first, tentative interpretation thereof.

The Irish term *cairde* specifically refers to a ‘pact’, ‘covenant’ or ‘peace’ entered into voluntarily by two or more parties and is derived from the term *cara*, ‘friend,

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4 Nevertheless, glossing does occur as early as the 9th century, thus still dating to the Old Irish period.
6 Breatnach notes that ‘the only evidence for its title is the phrase: *ader ann i. bretha cairdi*’ (C.I.H., p. 392, l. 18), which occurs in glosses on another legal text, *Cethairslicht Aithgáélach* (The Four Divisions of Distraint) ‘to identify the authority for a statement’ (Breatnach, ‘On the original extent of the “Senchas Máır”’, p. 31).
7 This was suggested by F. Kelly, *A Guide to Early Irish Law* (Dublin, 1988), p. 279; and confirmed with reasonable certainty by Breatnach, ‘On the original extent of the “Senchas Máır”’, p. 32.
9 Kelly, pp. 244. 279.
kinsman’. In Old Irish glosses it is found in connection with the Latin pactum (agreement), a term that can itself carry several meanings in Roman law, and that may address a peace treaty. However, this term is too elusive to fit truly the range of meaning that cairde carries in Irish legal texts.

In early Irish law texts a cairde is a term used for inter-territorial (and sometimes intra-territorial) alliances or treaties between two or more petty kingdoms, known as tíathra (the elementary territorial units in early Ireland). The number of existing tíathra at any time between the fifth and twelfth centuries has been estimated at 150 petty kingdoms, organized into a loose hierarchy of over-kingdoms. (By way of example, Oxfordshire would presumably consist of several tíathra). Many tíathra agreed on a cairde following a fixed procedure. The kings of two minor kingdoms who sought to establish a treaty relationship with each other pledged their subjects to the cairde at an assembly of one or several tíathra, which was known as the önach (fair, reunion, popular assembly), a meeting held under the authority of the king that served political, social, legal and judicial functions. Such assemblies occurred at regular intervals or at the request of the king, and it was the king who could order his people to the observance of certain public obligations on this occasion, such as a cairde. Thomas Charles-Edwards argues that by 700 C.E. peace treaties were a ‘wide-spread feature of political life’ and that cross-boundary marriages as well as bonds created through fosterage would have been a factor providing for kinship ties to extend beyond the frontier. This social background would have led to a closer association between the kingdoms prior to the conclusion of a treaty. He confirms this argument with reference to peace treaties between the kingdoms of Munster, the Uí Néill and the Connachta. So, for instance, a firm peace treaty had been established at the Shannon frontier between the southern Uí Néill and the Connachta, with ‘virtually no military action during the eighth century’.

In the long term, a cairde was intended to create and maintain a local peace but cross-border violence could not necessarily, or at least not initially, be avoided. Therefore, a cairde also served to secure the payment of compensation when the treaty was violated, absorbing hostilities between the kingdoms into the framework of legal arbitration. The observance and execution of any breaches of cairde were bound through the aithire

12 Royal Irish Academy, Dictionary of the Irish Language: Based Mainly on Old and Middle Irish Materials (Dublin, 1913–76; compact edn., 1983), headwords: cairde, cara; Grith Gablach, ed. D. A. Binchy (Medieval and Modern Irish ser., xi, Dublin, 1941), p. 80; R. C. Stacey, The Road to Judgment: from Custom to Court in Medieval Ireland and Wales (Philadelphia, Pa., 1994), pp. 98–103, discusses the notion that there might have been genealogical reasons for territories to unite in cairde.

13 W. Stokes and J. Strachan, Thesaurus Palaeohibernicus: a Collection of Old-Irish Glosses, Scholia Prose and Verse (repr. Dublin Inst. for Advanced Studies, 2 vols., 1975), i. 5, fo. 56b, Psalm 77, 57, non seruauerunt pactum i. cairde; i. 309, fo. 91c, Psalm 72, credam pacta que nobiscum desoluta fecerat. 7. inna-cairde; i. 353, fo. 104a, Psalm 82, pacta, 2. inna-cairde.


17 Charles-Edwards, Early Christian Ireland, p. 593, notes the siting of churches, e.g. Clonmacnois and Clonfert on the Shannon and the Slieve Bloom churches on or near the Munster-Mide boundary.
(hostage surety, lit. betweenship), one of three types of surety known to early Irish law, and the guarantor who was regularly associated with cross-border dispute resolution.\(^{18}\)

Co ndentar cairde rig; toingthi in rig ’ænur hic 7 fuaslucid naitire; ni hedh tongar and na fonastar acht cid fonastar, a icc.

How is a king’s cairde made? The king swears it on his own, [namely] payment and releasing an aitire [hostage surety]. What is not sworn is that violence may not be committed, but rather, if it is, compensation will be paid.\(^{19}\)

In the absence of a treaty, a person’s rights were limited to his or her own kingdom, and except for high status individuals a person was fair game after crossing the border. But a cairde provided for an extension of legal entitlements and allowed for the enforcement of claims beyond the boundaries of the local kingdom. As a comparison, we may turn to sixth-century Francia and the evidence of a peace treaty, known as Pactus pro Tenore Pacis, preserved in a capitulary thought to have been issued in 524 by the two sons of Clovis, kings Childerich I (511–58) and Chlotar (511–61), in which both permitted the prosecution of robberies across the border, and thus in the territory of the other.\(^{20}\)

Returning to Ireland, there is one illustrative example from the Irish Annals that relates the conclusion of a peace treaty, documented in Annala Uladh (the Annals of Ulster). The entry dates to 859 C.E. and reads as follows:

Righdhal mathe Ereun oc Raith Aedho m. Bricc im Mael Sechnaill rig Temhra, 7 im Fethghna comurba Patraicc, 7 im Suairlech comurba Finnio, ic denum sidha 7 Caincomraicc fer n-Erenu, conidh asin dail-sin du-rat Cerball, ri Osraighi, oghreir samtha Patraic 7 a comurba, 7 conidh and do-dechaidh Osraigi i n-dilsi fri Leth Cuinn, 7 ad-rogaidh Mael Gualai, ri Muman, a dilsí.

A royal meeting of the nobles of Ireland was held at the Ráith of Áed son of Brecc, including Mael Sechnaill, king of Tara, and Fethgna, comarbae [heir, successor] of Patrick, and Suairlech, comarbae of Finnio, in order to establish peace and harmony among the men of Ireland; and, as a result of that meeting, Cerball, king of Osraige, granted full authority to Patrick’s samad [congregation] and to his comarbae; and it was then that Osraige was alienated to Leth Cuinn, and Mael Guala, king of Munster, appointed sureties for its alienation.\(^{21}\)

The assembly took place at what is modern day Rahugh, County Westmeath, lying at the border of Westmeath and Offaly, which meanders along the Silver River. The location was close to the Eiscir Riadh and thus to what was claimed should be the boundary between Leth Cuinn (lit. Conn’s half, to the north) and Leth Moga (lit. Moga’s half, to the south).\(^{22}\) The term used in the passage is sid, sith (peace, state or

\(^{18}\) Compare the aitini cána (hostage-sureties for a cána), enforcing officers who collect penalties for the violation of the cána (a legal term denoting law as a system, regulation, cf. lex, statutory law, given law).

\(^{19}\) C.I.H. , p. 791, II. 35–36. Translations are the author’s own unless specified.


period of peace, peace-offering, compact of peace), and the king of Munster alienated the kingdom of Ossaige (Ossory) to Leth Cuinn and thus to the over-kingdom of Mael Sechnail.

The terms of a peace treaty in Irish law, however, could vary and the extent of legal allowances granted to a neighbouring tuath depended on the form of cairde, for there were three distinct types of treaty. Thus, turning from a general historic discourse to a closer textual interpretation, we inevitably confront the schematized nature of the Irish laws and the pleasure the jurists took in categorizing legal concepts into subdivisions that often strike the historian as legal theorems rather than actual practice. However, as will be argued below, the evidence displays a notion of the continuity of peace treaties and the desire to perpetuate an induced change in legal practice.

Cair, cír cairde docuisin? ní, a trí: cairde hairdide, 7 cairde nim did cruici, 7 cairde feine.

A query: how many [types of] cairde are there? Not difficult: three. Limited cairde, and cairde of mutual forfeiture within the territory, and a cairde of freemen.

The relevant paragraph contains several glosses attempting to explain the underlying meaning of this division. The following analysis will take account of these.

The term employed for the limited cairde is airdide, participle of the verb ar-diben (a) cut off, destroyed; (b) fixed, specified. Cairde n-airdide, thus, may mean ‘a treaty being subject to fixed conditions or a fixed term (¿)’, and hence, a ‘limited cairde’. A glossator adds that it entails ‘restitution or a life for a life’. This would imply that only aithgein (restitution) was to be paid for offences committed by a person belonging to tuath A in the territory of tuath B but no further penalties would have been due.

The second type of cairde addresses mutual forfeiture within a territory. This one seems to imply that a person, or conceivably a fenam (a member of a marauding troop of warriors; explained below) from either tuath united in cairde was not allowed to cross the border and go about in the neighbouring territory. By consequence, if he did enter the other territory and was captured, he was forfeited. The glossator attempts to justify this by explaining the apparent lack of atonement as a circumstantial necessity ‘for fear of theft and plundering’. This view is confirmed by several glosses that make it clear that any killing on the frontier was entirely immune from claim so long as it was committed in the territory of the slayer. However, killing a person in the victim’s own territory was not permitted.

Clearly, there is something odd going on here. If any person crossing the border was forfeited, there was really little point in having a treaty in the first place. The reason for this peculiarity may be the fact that this regulation did not target any freeman, but specifically a member of the fíana. The fíana, according to Sharpe, were ‘bands of roving warriors without the ties of settled community’, and, as Wyatt notes, placed ‘firmly outside the jurisdiction of the community’. They were closely associated with the
pagan period and might appear in the *Vita Prima* of St. Brigit taking an oath to commit slayings and plunder, a lifestyle that particularly bothered monastic settlements and was, by consequence, openly condemned by the church.\(^{30}\) It has been argued that they had ‘no status, rights or kin group’ and therefore also had ‘free license to kill, rape and enslave’.\(^{31}\) Joseph Nagy, when discussing the literary representation of *fennidecht* (being a *fennid*) notes that ‘the “turf” of the fian, located beyond settled, politically defined territory, is in the wilderness of interstitial areas, where its members live by hunting, ravaging surrounding areas, or hiring themselves out as mercenaries’.\(^{32}\) However, there is also some indication that they maintained ties with the community and ‘were often employed by kings or used as [a] mercenary force by nobles’.\(^{33}\) In line with this argument, royal youths are said to have received their military training within the *fiana*.\(^{34}\) Likewise, Kim McCone points to the ‘preponderantly young age’ of the members of a *fian* and ‘the lack of property characteristic’ of them.\(^{35}\) Meyer notes that they were often proclaimed men, namely outlawed offenders who were expelled from their community but at the same time praised in songs and stories for their adventures in warfare.\(^{36}\) Thus, it appears that such mercenary enforcers may have been ‘deemed an essential element of the social fabric whilst paradoxically posing a dramatic internal threat to social order’.\(^{37}\)

The third and final type was the *cairde* of freemen and it appears that both payment of the *corpd* (body-fine, wergild) and *eneclann* (lit. face-cleaning, honour-price) of the victim were claimed in this case.

Cross-border violence and raiding were therefore associated with problematic groups operating outside socio-legal constraints which were firmly in place among the wider population. While the terms of a *cairde* applied to all inhabitants of the respective territories, there is strong indication that there existed specific forces that challenged this provision and motivated the legislative measures. Taking this as our starting premise, we can gather that the legal protection and entitlement of a *fennid* crossing the border of his own territory would have varied depending on the type of treaty to which he was subjected. In what appears to be the highest type of *cairde*, the slaying of a freeman in foreign territory entailed the payment of wergild and honour-price, which was a clear extension to the allied territory of the provisions operating within a single *túath*. However, the wergild was established at a lower rate. The fixed penalty for homicide within one *túath* amounted to seven *cumala*, which equals twenty-one milch-cows (one *cumal* = three milch-cows). The wergild in a *cairde* of freemen was set at twelve cows.\(^{38}\)

\(^{30}\) S. Connolly, ‘*Vita prima sanctae Brigitae*: background and historical value’, *Jour. Royal Society of Antiquaries of Ireland*, cxix (1989), 5–49, at § 67, 33; on the relationship between *fiana* and *díberg* (brigandage), see Sharpe, pp. 84–5.

\(^{31}\) Wyatt, p. 77.


\(^{34}\) Wyatt, p. 77.


\(^{37}\) Wyatt, p. 77; for a recent study of the origins of the *fian*, see McCone.

\(^{38}\) *C.I.H.*, p. 792, ll. 17–19.
There is a parallel to this treatment in the Old English record of an agreement between the Welsh and the English known as the Dunsætan Agreement, probably dating from the late tenth century. Within the territory of the Dunsæte, there was a boundary between the English and Welsh communities that lay on both sides of a river, probably the Wye. An agreement allowed the maintenance of a relative peace and it is here that we find a reduction to half wergild being paid for any slaying across the border. The agreement further included regulations for cattle theft, where the livestock were probably driven upstream in order to obstruct the following of the trail. Enforcers from both sides collaborated in the pursuit.

Returning to the Irish evidence, below this level of atonement we could place the limited cairde where at least restitution was paid and at the minimal level there was mutual forfeiture, where any captured fennd was irretrievably forfeited altogether.

By applying this logic, the three types of cairde may be interpreted as a collection of progressive stages in a treaty relationship between two tíath. The mutual peace commenced with the most elusive type of treaty where a fennd crossing the border could be killed without further legal repercussions. In the second stage, restitution was due. The final and highest degree of cairde would have been reached when the laws operating within one kingdom were extended to the neighbouring tíath. This could explain how over-kingdoms were able to consolidate themselves and how Irish provinces, such as Leinster and Ulster, could be maintained for centuries. For a summary of the types of cairde, see Table 1.

The intent of peace offerings was to solidify the relationship between the treaty territories. However, as can be seen, different degrees of dispute resolution were possible at different times or with different neighbouring kingdoms. This leads us to the question of what types of wrongdoing were prone to be committed in foreign territory before and also subsequent to a treaty that it was designed to eradicate over time? There is evidence for a range of offences committed despite a cairde being in operation and these very clearly hint at a close relation to the previously mentioned fian-bands.

Table 1. Types of cairde

<table>
<thead>
<tr>
<th>Type of cairde</th>
<th>Cairde féiné (treaty of freemen)</th>
<th>Cairde n-airdhide (limited treaty)</th>
<th>Cairde n-imdilsi crichi (treaty of mutual forfeiture within the territory)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment for violation</td>
<td>wergild and honour-price</td>
<td>only restitution, a life for a life</td>
<td>any freeman is forfeit in the foreign territory</td>
</tr>
<tr>
<td>Enforcement</td>
<td>aitire (hostage surety)</td>
<td></td>
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</table>

There is evidence for a range of offences committed despite a cairde being in operation and these very clearly hint at a close relation to the previously mentioned fian-bands.

Cis lir cinaid foicheat hi cairde. Ní ansae, a .uiii.: guin 7 brait 7 gait 7 turorguín, i. taid-orgain i naidche, 7 fonchor ban 7 fochoscad 7 xer.

How many offences do they commit in a cairde? Not difficult, seven: slaying, and taking plunder and stealing and murder (i.e., ‘theft-slaying’ by night), and rape of women, and arson, and satire.40

40 C.I.H., p. 791, l. 6.
There are seven offences enumerated that were committed despite a cairde being in place and which caused face-redening for the insulted kingdom. We are told that all of these offences entailed a full debt payment, and what this involved was dependent on the relevant treaty relationship. Moreover, onlookers to the crime were likewise punished but only liable for a half-debt. Therefore, public engagement in the preservation of justice was invoked, very similarly to the processes of implementing cain-law (secular or ecclesiastical inter-tribal ordinance).41

However, the most interesting cases are those that represented exceptions or immunities and did not require any payments for acts that would usually have entailed them. They shed some light on the operation of cairde and possible concerns that might have arisen. The first item in the list is slaying in self-defence.

Atait gonad duine a cairde ata dílsí i cin eiric. Fer frithgona i tic d’fhr-guin riut, cen cæmachtu inscarr ris; nech segar dia guin l dia marbad esem and-side cen tsluide cin aithne cin cæmachtu fastada.

There are slayings of persons in cairde which are immune, i.e., without paying wergild: a man who slays in self-defence (i.e., he comes to ‘truly slay’ you), without [your] having the ability to separate from him; anyone who is attacked in order to slay him or he is going to kill him without naming, without recognition, without the power to stop [him].42

This case addresses the situation whereby a man from the neighbouring kingdom in cairde came across the border with the intention of making a violent attack and, hence, also failed to identify himself in any form. The killing of such an intruder was immune from claim. The same context is discussed in another law text, known as Gúbretha Caratniad (The False Judgements of Caratnia).43 This text contains an enumeration of exemptions to established legal rules explained by the legendary judge Caratnia, and goes as follows:

Rucus cairde cen ēric. Ba gó. [Ba] deithbir, ar ba frithgúin dó oc gill dia anmain. I judged: [the violation of the] treaty [remains] without ēraic-payment. It was a false judgement. It was fitting (lit. blameless), because it was counter-wounding (attack in retaliation) by him for the sake of his life.44

The second case in which no payment was required represents a direct link to the fíana and refers to an intriguing situation wherein a man in the cairde went to join a fían-band (a warrior troop of plunderers) which was not in the cairde.

Fer futhbibil tethe la hæs nescairde .i. bis for fo-suibal imaille risin lucht na bi isin cairde. fer cairde i mesc fiallæ sairde cin aitne.

A man of secret departure [a man who goes off secretly] who goes with people outside the cairde (i.e., who is engaged in secret travel together with people who are not in the cairde). A man in the cairde who is in the midst of a fían-band without being recognized.45

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41 Stacey, Road to Judgment, pp. 82–111, and particularly pp. 90–111, where the intimate relationship between the aitire for a cairde and the aitire for a cain is discussed.

42 C.I.H., p. 791, ll. 10–12.


45 C.I.H., p. 791, ll. 13–15; a further gloss on this passage implies that the man might have been outlawed for killing someone’s father.
The reference to the *fian*-band is intriguing. What are we to make of our man who joined the *fiana* in the context of *cairde*? As Kelly argues, ‘there is a treaty between two peoples, *tuath* A and *tuath* B. A member of *tuath* A kills a member of *tuath* B. However, the victim is in a war-band (*fíallach*) along with members of *tuath* C, which has no treaty with *tuath* A. The killer is not aware that his victim belongs to *tuath* B, and is therefore exonerated from liability’.46 The context in which this might have occurred is discussed in reversed order in the text, which provides explicit details on the necessities for such an exemption.

The case takes the view of the member of *tuath* B who is in a *fian*-band with members of *tuath* C. They are about to carry out an attack in the territory of *tuath* A which is for them outside the *cairde* but with which he has a *cairde*. They appear to be attacking a house, which reminds one of the early Irish Ulster saga *Togail Bruidne da Derga* (The Destruction of Da Derga’s Hostel).47 In this story Conaire had exiled three of his foster-brothers to Alba (Britain) for their crimes. They had made an alliance with the king of the Britons, Ingcél Cáech, and they were marauding in Ireland with a large band of followers. They attacked Da Derga’s Hostel and attempted to burn it down three times. In the following reference from the *cairde*-text, the group likewise appears to be attacking a house.

*Asbair in fer cairde frísín fer laisin teth: ‘nacham beir co hæs cairde’ .i. re roibe cairde .i. do denam foglar; 7 asbair o rice .i. in baile: ‘in fuil nech do æs cairde? tætsat* 48 as, 7 bid anacol doib*.

The man in the *cairde* says to the man with whom he goes, ‘Do not take me to people within the *cairde* (i.e., in respect of whom there has been [agreed] a *cairde*) to carry out a plundering; and he says, when he reaches (i.e., the place), ‘Is there anyone (here) of the people within the *cairde*? Let him come out, and they shall have protection’.49

In addition to this enquiry he had to utter three calls of protection in order to be in the clear.50 If he did not do so, the customary wergild in force between them was to be paid by him, rendering his action a breach of treaty law. If he made the enquiry but failed to make all three calls of protection, his payment was reduced to half-wergild. This operated on the assumption that he was unaware that the kingdom they were about to attack stood in *cairde* to him. However, if he knew this and on top of that failed fully to make the announcement, he would be guilty and liable to make compensation to the full legal amount.

When things did go wrong, and they must have on occasion, as the examples confirm, how was the enforcement of compensatory payments envisaged and who executed it? We are now moving into the ambit of procedure and it is here where we are about to meet some of the most intriguing figures in Irish law.

It is well known that within a single *tuath*, unatoned killings provoked the kindred of the victim to pursue a legally recognized blood-feud ‘to exact vengeance (*dígal*) on behalf of the dead man’.51 Naturally, incessant vendettas raging between two kingdoms

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46 Kelly, p. 129.
48 Reading *tæt-som*.
50 Three warnings are a common antecedent of legal actions in the middle ages, as a means of definitely demarcating them from violent actions and illegal undertakings.
51 Kelly, p. 127.
were detrimental to both of them and the cairde was meant to avoid inter-territorial feuding by allowing compensation to be exacted from across the border. Similar problems generating conflict occurred at the frontier between the kingdoms of Wessex and Essex, where the latter were harbouring West Saxon exiles who were raiding Wessex, conceivably similar to the Irish fiállach. The letter from Wealdhere, bishop of London, to Brihtwold, archbishop of Canterbury, written in 704 or 705, reports these events and the conclusion of a peace treaty at Brentford, located at the march of Wessex and Essex, to settle the matter. The agreement was implemented in the presence of kings, bishops, abbots and other iudices and envisaged reparation payments for anyone guilty of causing injury to another person belonging to the neighbouring territory.

How is this issue dealt with in Ireland? The legal text Críth Gablach (Branched Purchase), the primary text on status, dating to c.700 C.E., leads us to a very important institution for inter-territorial feuding and peace treaties, the office of the aire échta (lord of slaughter). The aire échta (lord of slaughter) is undoubtedly one of the most interesting figures in Irish law but his only description is found in the most obscure section of Críth Gablach. Different translations of the passage exist but they generally follow MacNeill’s original interpretation, with the exception of Neil McLeod who recently overturned this traditionally accepted reading and offered an innovative approach. McCones’s translation, which largely follows MacNeill but provides a better reading, and McLeod’s are both given below.


The aire échta, why is he so called? Because he is the lord of a band of five (aire cócir) that is left to perform slaughter in allied territory (i cairddiu) until the end of a month to avenge the dishonour of a kingdom (tíath) against whom recent homicide is committed. If they have not accomplished it by the end of a month, they enter upon an agreement that their protection will not adhere any longer. Though the same band of five have slaughtered men from the allied territory, the aire échta can pay on their behalf that neither land nor bronze cauldron is forfeit for it but only vessels to the value of a cow. He then brings them out to the end of the allied territory for their reception according to the extent of his and his friends’ protection.

53 Binchy, Críth Gablach, pp. 70–2, offers a description of the aire échta and a concise survey of the different translations for the respective paragaph.
55 McCones, p. 17. MacNeil gives: ‘The aire échta, why is he so called? Because he is a leader of five who is left to do feats of arms in a neighbouring territory under] treaty-law for the space of a month, to avenge an offence against the honour of the tíath, one of whose men has lately been slain. If they do not (avenge this) within a month, they come under treaty-law, so that their beds do not follow him from without. If they kill men within treaty-law, the same five, the aire échta must pay on their behalf, provided that land or bronze of a cauldron be not paid for it, but vessels to the value of a cow. He brings them out then to be . . . till the expiration of treaty-law, (taking them) on the number of his protection and (that) of his friends’ (E. MacNeill, ‘Ancient Irish law: the Law of Status or Franchise’., Proc. Royal Irish Academy, xxxvi C (1923), 265–316, at pp. 297–8).
The *aire échta*, why is he so called? Because he is the leader of a ‘group of five’ [i.e., of a kin-group] which is excluded from committing slaughter under a treaty until the end of a month, to avenge the dishonouring of a kingdom from which a person has recently been slain. Provided they do not do so before the end of the month, they go [to wreak vengeance] on the treaty-kingdom and their protection does not lie with him there. If the same five should kill a person covered by the treaty, the *aire échta* pays on their behalf. Neither land nor copper objects go for it [but] vessels of a cow’s value. However, he brings them out [with him] on their way to the border of the treaty-kingdom as the lawful number of his protection and his retinue [i.e., while they are within his own kingdom].

The two interpretations are broadly as follows. In version 1, a treaty is concluded and comes into effect on one specific day. After this, there is a period of one month during which any outstanding claims are pursued by the lord of slaughter on behalf of the victim’s kindred, before the treaty becomes effective. In version 2, a treaty is concluded. The slayer is protected by the king who swore the treaty for the period of one month, during which he has to forward compensation. If he does not do so, he loses protection and can be slain by the *aire échta*. McLeod presents a wide range of convincing evidence that the *cairde* established a changed legal pattern of enforcement and that the blood-feud would only have been pursued in those cases where compensation under treaty law was refused for the period of a month, after which the injured kindred invoked their right of exacting vengeance, executed by the *aire échta*. Nevertheless, as has been indicated, the relevant passage is linguistically complex, and further discussion would not serve the purpose of this article. It will suffice to remark that the *aire échta* was a person of noble rank whose profession it was to exact vengeance in respect of violations of *cairde* against members belonging to his own kingdom and at the request of the victim’s kindred. The *aire échta* crossed the border and pursued a blood-feud jointly with five kinsmen, an avenging expedition which, according to McLeod, was said to have been undertaken at night time.

He should avenge, i.e., vengeance, as in ‘the Lord of Slaughter, it is the latter who should jointly-avenge attacks against it, without resting’, i.e., so that he may be certain to avenge the dishonouring attack which is inflicted on the kindred, without resting or without delaying.

The notion of a narrow time frame for the *aire échta*’s operation is evident and the reference in our text to ‘a life for a life’ in a limited *cairde* may hint at the option that the kindred, in the absence of sufficient means to pay the compensation, could have chosen to hand over the slayer and thereby avoid the blood-feud, the offender himself counting as restitution. It is evident that the *aire échta* ensured a type of vengeance in contained form for the slaying of a kinsman, but what of the other offences committed that would

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not have been remedied through vengeance and their compensation? Moreover, how was restitution collected if payment was offered?

As indicated previously, the caibre (hostage surety), one of the three early Irish sureties, the other two being the ráth (property, paying surety) and the naidhm (binding, enforcing surety). While the paying and enforcing surety often appear as collaborators in the legal texts, the aitire is never mentioned in conjunction with them but acts on his own. This has led to the suggestion that he was not employed for private obligations at all. His role was closely connected with and sometimes hard to distinguish from the giall (hostage, human pledge). The term aitire literally means ‘betweenship’, and the surety was one who stood in-between the two contracting parties, showing that this metaphor was a living one. He was the first port of call when a breach of the agreement had taken place and could often be of very high status, such as the heir-apparent of a kingdom. The authority and effectiveness of the hostage surety derived from the fact that he vouched his own body as guarantee and that he was entitled to exceptionally high compensation payments if he was forced to act in full capacity. His compensation was, indeed, so significant that a separate law text discusses his entitlements: Slán n-aitire caibre (The Immunity of a Hostage Surety in a Treaty).

Most of it has been edited and translated into German by Rudolf Thurneysen. Moreover, unlike other sureties the aitire had to swear to his office. The formula to which he had to agree is provided in another legal text, known as Berrad Airechta (The Shearing of the Court). It is very long and also includes the provisions for his capture and imprisonment if the farthest extent of his suretyship became necessary:

Toing to dia, benai foria aurlithe to chuise hi nglas, to braghat hi slabraith co tumidiu cip no carcræ, conut-faolchter as fiachaib no con-ruigle (i. coro-gella) dit fadein iar ndithim.

Swear to God that you will be ready [and] willing [to put] your foot in a fetter [and] your neck in a chain, [and] to remain in the stocks or in prison until you are released from it by debt-payments [by the debtor], or until you can give a gage for yourself after the forfeiture [period].

Stacey has suggested that the aitire acted like a standing surety on behalf of his whole kingdom and that he had to be ready to execute any unexpected claims. This includes the possibility that he might have been summoned on several consecutive occasions. These types of aitire also appear in Cán Adomnáin, also known as Lex Innocentium, which deals with the protection of women, clerics and children, promulgated at the synod of Birr in 697 C.E. It features a long list of guarantors who lent their authority to the enforcement of this law and who are interpreted as being aitiri for a cáin, a law prescribed by the king or the church and in this sense very similar to a caibre.

59 Stacey, Road to Judgment, pp. 82–111.
64 Stacey, Road to Judgment, p. 89.
It is in the text *Slán n-aitire cairde* where we find the most explicit information about how cross-border enforcement operated. Much of the following discussion is owed to the pioneering work on this text by Rudolf Thurneysen.\(^67\) It addresses, in detail, the procedural aspects of the enforcement of such a treaty and the exacting of debts arising from violation of the *cairde*. How did this proceed and how was a hostage surety indemnified after performing his duty?

It is said that another obscure figure, known as *muiredach*, from the victim’s *túath* came across the border to demand the debt (see below). First, he looked for the *aitire* of the other *túath* and upon finding him, stated the following formula: ‘Rombid-sa fíach lat’ (‘Let me have what is owed from you’).\(^68\) Upon this demand, the *aitire* answered: ‘“Roga”, ol inn aitire, “dochum na fine fodruich”’ (‘“I shall go”, says the *aitire*, “to the kindred that has committed violence against you”

\(^69\)). Both went to the kindred and when they reached them they asked: ‘in mbiat feich? Manim bet-ni, iadfaimme for naitire’ (‘Shall we have what is owed from you? If we do not, we shall close in on your guarantor’).\(^70\) If the procedure followed the ideal norm, the kindred would have been ready to make the agreed payment and answered the following: ‘ni ricfaid a less, rodbia feich’ (‘You will not need to: you shall have what is owed’).\(^71\) The next step would have been to forward payment, and perhaps to offer adequate hospitality to the *cairde* friends. However, if the kindred refused to pay even after the *aitire* prompted them, the *muiredach* took the hostage surety with the statement: ‘dlegar duit-si dul lium-sa’ (‘You are obliged to go with me’).\(^72\)

The procedure, then, followed the normal standard for his suretyship. The *aitire* was bound to go with the *muiredach* and was taken into captivity, usually for a period of ten days, after which he became forfeited. At any point during this period the kindred for whom he functioned as surety could have redeemed him by paying what was due. If they did not release him, he became forfeited. Following forfeiture, the *aitire* himself offered a *gell* (pledge, gage) worth seven *cumala*, which was the fixed penalty for killing a freeman, in order to redeem himself.\(^73\) It is important to note that the *aitire* could not avoid his imprisonment but might only free himself after the lawful period. In the following, the *aitire* was entitled to bring a claim against the kindred to compensate him for his involvement and expenses, which he could also execute by distraint if other means were to fail. The *aitire*’s reimbursement in general law was significant and contained:

> Caite a slán na aitire? i.e. a fomeilt 7 a inluath 7 a gnim, 7 log uiii. cumal niath iar ndithmáin i. logh cimedha, ar is cimídh ind aitin iar ndithmáin fúirr. ascomræ, ar atrean-si huile don cach frístét, amail rongab aitire, ar is i cairde citroibi aitire luigi.\(^74\)

What is the compensation of the *aitire*-surety? i.e., [the price of] his maintenance and [of] his disturbance and [of] his [missed] work, and the price of the seven *cumals* of a warrior after forfeiture, i.e., the [ransom] price of a captive, for the *aitire*-surety is a captive after falling forfeit, [and double of?] what he has paid, for he pays all to each person against whom he acts as surety, as

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\(^67\) Translated into German in Thurneysen, *Die Bürgschaft im irischen Recht*, pp. 32–3.

\(^68\) *C.I.H.*, p. 892, l. 41.

\(^69\) *C.I.H.*, p. 892, l. 41.

\(^70\) *C.I.H.*, p. 893, l. 1, reading: *manin bet-ni*.

\(^71\) *C.I.H.*, p. 893, ll. 1–2.

\(^72\) *C.I.H.*, p. 893, ll. 7–8.


\(^74\) *C.I.H.*, p. 597, ll. 26–9.
it is with an aitire-surety of a peace treaty, for it is in respect of a peace treaty that there first was an aitire-suretyship of an oath.75

However, there may have been envisaged an alternative scenario for his compensation in relation to cairde. An Old Irish glossator illustrates the possibility that those who cause a guarantor, who is explicitly named as the heir-apparent, to pay the debts of a peace treaty on their behalf became the clients of the aitire, and the kindred’s debts became ‘a fief which is not returned’.76

Slan cairde. i. ma dollece nech forsinn aitair fiachu cairdi do er[aic] (?) dia chinn, is rath cin atchor sin forsan fine mana errither fo cétóir cona meth coir, nibi rath for ceile a meth-sin ond flaith.

The compensation of a cairde – i.e., if anyone should cause the aitire to pay the fines [for a breach of] a cairde on his behalf, that [becomes] a fief [for which food rent is due from] the kindred that is not (cannot be) returned unless [the fines are] paid immediately with their proper doubling-fine; that doubling-fine [itself] is not [considered as] a fief on a client from the lord.77

A fief in Irish law consisted of a grant of livestock forwarded from the lord to his client, who, in turn, owed annual food-renders. The type of clientship that could not be terminated, and which is envisaged here, is base-clientship, the far less favourable form.78

This reference illustrates the inherent pressure deriving from a high status aitire and allows us to entertain the possibility that individuals who did not abide by the cairde would have been forced into submission and perpetually moved under the direct dependence of the heir-apparent in clientship.79

A further scenario discussed is the one whereby the aitire himself failed to fulfil his office as surety and did not respond to the calls from the muiredach. Apparently, the surety was warned two to three times and did not perform. How he was warned is not clear but there must have been a means in place to summon him officially or seek him out. Whatever the reason might have been, if the aitire for the cairde was not there even after the third summons, the muiredach increased the pressure on him by taking the aitire’s cattle in distraint in order to force his appearance.80

The way in which this might have been done was to separate the mother cows from the young so that their udders swelled and the calves could not suckle, which posed a threat to the surety’s livestock and directly attacked his economic survival.81 It was only after the aitire finally appeared that they both approached the kindred. It is telling that the muiredach is never said to have interacted with the slayer’s kindred directly until the aitire took him there. The muiredach occupied a position with extended allowances in the neighbouring kingdom.

77 C.I.H., p. 919, ii. 6–8; Stacey, *Road to Judgment*, p. 91.
80 It is important to note that a person of elevated status cannot normally be compelled by distraint in early Irish law.
but they did not go as far as permitting him directly to enforce against the defaulting kindred. This was done exclusively in the company of the \aitire of the relevant kingdom.

The situation was now slightly more complicated. The \aitire demanded to be released from his suretyship but the kindred responded: ‘ni atamnais fris, nit fuaslaicfem-ne, ar is it cinig fadein rogabad; fanuasailc-siu fein, ragami-nni frisna fiachu’; tet 7 fafuasailcci.

‘We are not required to do so. We will not free you.’ [Then turning to the guarantor] ‘It is on account of your own offence that you have been taken. Free yourself. We shall deal with the (original) debts (but will not pay for the neglect of the guarantor).’ He goes and frees himself.82

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82 C.I.H., p. 893, ll. 5–7; Thurneysen, \Die Bürgschaft im irischen Recht\, § 2, pp. 32–3.
Thurneysen rightly notes that the kindred, while paying their original debt, did not have to pay for the aitire’s failure to perform his duty. It was a principle of Irish law that a person could not refuse to fulfil what he had promised on the grounds that the other party failed to as well. An opponent’s failure did not excuse the other from abiding by the law himself. Therefore, the aitire had to pay for the release of his distrained cattle. The three scenarios described are summarized for convenience in Figure 1.

The muiredach is yet another difficult figure who is very poorly attested. Thurneysen regarded the muiredach as nearly synonymous with the muire and they appear in the same contexts in the few extant sources. Unfortunately, the precise sense of muire itself is uncertain. When used as a technical legal term it appears to denote a ‘specific social grade, probably headman of a district or kindred’. The activities envisaged for the muiredach are reminiscent of those for the aire échta. He, too, crossed the border into a neighbouring cairde kingdom to enforce entitlements on behalf of his own people, and he was probably also accompanied by a troop. However, the muiredach did so in a more diplomatic fashion. The fact that he closed in on the surety and had the option to force the latter’s appearance by distraint confirms his authoritative but non-violent force of compulsion to redress compensation. This behaviour strikes a close parallel with the naidm (enforcing surety) who enforced payment of contractual debts within a single kingdom, and who also employed distraint but, additionally, was permitted to use physical violence where he faced a reluctant debtor. Nevertheless, there appears to have existed an overlap in their functions or an adaptation of the naidm’s legal privileges to inter-territorial enforcement in the form of the muiredach. At least the muire’s office carries the distinct flavour of a ‘military leader or officer in command of a division’, which brings us right back to the aire échta.

In conclusion, the regulations pertaining to cairde allowed for three different types or degrees of legal entitlement in a neighbouring treaty territory. The impression the sources give is that the ultimate goal and superior alliance between two kingdoms would be the treaty of freemen in which both wergild and honour-price were paid for the slaying of a person in cairde. This relationship posed a stable unity in which obstructive forces, such as the fian-bands, had been subdued more or less successfully; and it extended the legal mechanisms to maintain order and peace, which usually only operated within a single túath, to the neighbouring kingdom, legally uniting it with one’s own. There were several official actors and enforcers at play who held an inter-territorial treaty together, the aire échta, the muiredach and the aitire. Each type of cairde reflected a degree of peace operating between kingdom A and kingdom B. The enforcers, in a similar fashion, stood for a degree of permitted violence or enforcement duties between the two kingdoms. The muiredach and the aitire collected compensation payments from the kindred. If they refused payment, the aitire paid in their stead. However, where this system was not in operation or failed to lead to the satisfaction of the terms of the treaty, the aire échta entered the scene and enforced in the name of the slain victim’s family. The lord of slaughter maintained the feud in controlled form but he already represented a weakened version of the full blood-feud in which the whole

83 Thurneysen, *Die Bürsgchaft im irischen Recht*, p. 61; *Dictionary of the Irish Language*: muire, muiredach. It happens also to be a common male personal name.
84 Thurneysen, *Die Bürsgchaft im irischen Recht*, p. 61.
kindred, including male and female descendants, had to join. His office was to decline if the importance of the feud itself diminished. The hostage surety formed a potent alternative once the legal mechanisms that facilitated his authority were fully integrated into the legal operation and political life of the treaty kingdoms. If the aitire was the heir-apparent of the kingdom, this procedure allowed the ruling nobles to subdue those who breached the treaty and were not able to pay by making them their base-clients. Thus, it gave them the means of bringing disobedient subjects under direct authority, combining economic and political control.

This article has offered an insight into the legal framework within which cairde was discussed and has demonstrated how designated enforcers were employed in an attempt progressively to substitute violent, inter-territorial retribution with the collection of compensation payments beyond the border, facilitating a consolidation of treaty territories. Attention has been brought to the historical significance of the legal evidence by demonstrating the use of law to achieve a political goal, as employed by the early Irish kings. It is hoped that a first step has been made towards the nurturing of interest in the legal regulations pertaining to inter-territorial alliances and the enforcement of treaty law, and that a further avenue to understanding the complex political landscape of early medieval Ireland has thereby been opened.