

THE KING AS JUDGE IN EARLY IRELAND

PROMINENT scholars have disagreed about the extent of the powers of the early Irish king, and in particular about whether the king was a judge. Eoin MacNeill presented a picture of a well ordered Irish state in which a king was a war leader, president of the assembly and a judge. Rudolf Thurneysen also stated that the king was the 'supreme judge', although he was far less certain that the king's functions in early Irish society were fully understood.¹ D. A. Binchy disagreed with both these scholars and argued that during the historical period the king was primarily a war leader and the *brithem* held the specialized function of judge. He argued that the *brithem*, not the king, gave judgements, as in a major law text on legal procedure, *Cóic Conara Fugill*, where judgement is given at the house of the *brithem*, and in *Gúbretha Caratniad*, where the *brithem*, Caratnia, gives the judgements.² He might also have noted that the legal procedure, distraint, took place without the king's participation.³ Until recently most scholars have accepted his argument that the king was not a judge, so that open objections have been isolated and contrary evidence has been dismissed as a reference to the period before the *brithem* took the function of judge from the king.⁴

The Irish king needed a concrete basis for his power and control over his people; no man could become king unless he had solved the mundane problems of marshalling sufficient support to win the position against numerous rivals.⁵ Once the kingship was secured, the king had to defend his territory against his neighbours' encroachments even if he did not

¹ Eoin MacNeill, *Early Irish Laws and Institutions* (Dublin, 1918) 97-9. Rudolf Thurneysen 'Celtic law', *Celtic Law Papers: Introductory to Welsh Medieval Law and Government* (Aberystwyth, 1971) 68-9. While Thurneysen held that the king was a judge, he also stated that the king was 'above all a leader in battle, a war lord', *ibid.*, 69.

² D. A. Binchy, *Celtic and Anglo-Saxon Kingship* (Oxford, 1970) 16. He refers to Rudolf Thurneysen, *Cóic Conara Fugill: Die fünf wege zum urteil*, *Abhandlungen der Preussischen Akademie der Wissenschaften* (Berlin, 1926) and Thurneysen, 'Aus dem Irischen Recht III. 4. die falschen Urteilssprüche Caratnia's', *ZCP* xv (1925). But note that the latter story introducing these judgements indicates that Caratnia was incapable of judging publicly, and the king brought cases to him seeking his advice. See below 32. See also Kelly's discussion of this text in 'An Old-Irish Text on Court Procedure', *Peritia* v (1988) 71-101, esp. at 77.

³ D. A. Binchy, 'Distraint in Irish law', *Celtica* x (1973) 2-71.

⁴ Proinsias Mac Cana 'The Three languages and the three laws', *Studia Celtica* v (1970) 76-8 followed Binchy in attributing evidence of the king judging to the distant past. Neil McLeod argued that the king was a judge in 'Parallel and paradox: Compensation in the legal systems of celtic Ireland and Anglo-Saxon England', *Studia Celtica* xvi-xvii (1981-2) 36-9, but more recently Richard Sharpe expressed doubts that the king was judge in 'Dispute settlement in medieval Ireland: a preliminary inquiry' in *The Settlement of Disputes in Early Medieval Europe* (ed. Wendy Davis, Cambridge, 1986) 186-7. Fergus Kelly, *op cit.* (see n. 2), discusses evidence that the king was involved in judicial procedures.

⁵ Donnchadh Ó Corráin, 'Irish regnal succession, a reappraisal', *Studia Hibernica* xi (1971) 7-39.

wish to expand his territory and rights at his neighbours' expense, and a powerful king could reap the rewards of wealth and of power over his immediate subjects as well. The Irish king may well have been a sacral figure and his sacral mystique may have assisted him in exercising authority over his people, but surely a more concrete basis for power was required – and was found in his role as lord over his clients.

The political structure of Ireland was to a large extent based on clientship, so that a king of a *túath* had the leading members of a *túath* in clientship to him, and the king of a province had clientship-type ties with his subordinate kings. Although there is some evidence that kings attempted to expand their power beyond personal lordship, the day to day political reality of Irish clientship was that the king was a lord, normally the most powerful lord of a territory; his subjects were either his clients or the clients of his clients.⁶

Imagining how the king, as most powerful lord, could have avoided involvement in the resolution of legal disputes is difficult. Trivial disputes among people of low status would certainly not have required the king's attention, but disputes among the leading nobles within the king's territory and any intractable dispute would have come to the king's attention. If the king could not intervene, his power among his peers would have been seriously weakened; a *túath* torn by dissension was ill-prepared to defend itself against outside attack. Those kings who successfully resolved disputes within their territory would have been far more effective in maintaining power and extending their territories than would kings who sat back idly and let dissension reign.

In fact the king was a judge, in that the office of king included the authority and responsibility to give judgements; an unedited fragmentary law tract clearly states that the king gave judgements and indicates the procedures for taking a dispute to a royal court. The evidence of this law tract is supported by other material in the Irish laws, in the Latin canons, in the mirror of princes texts and in a political tract. There was not, however, a state monopoly of justice as there is today in the sense that the formal legal procedures of proving crime and assigning penalties can occur only in courts established by the state. The Church did not come under royal jurisdiction, but its own priests and bishops judged matters concerning ecclesiastics. Even among the laity cases could be heard independently of the king, and normal procedure may have required all but the most serious cases to be heard by the king only on appeal.

⁶ Marilyn Gerriets, 'Kingship and exchange in pre-Viking Ireland', *Cambridge Medieval Celtic Studies* 13 (1987) 44-52.

Although the king was indeed a judge, most likely few kings possessed sufficient mastery of the laws to judge without assistance from a *brithem*. The old text of the laws indicates that the king supported a judge who was dependent on him for his status and his income and who was his most important companion; this judge was clearly an agent of the king.⁷ Even though the king was advised by a *brithem*, and may even have delegated judging to a *brithem*, judging remained a royal responsibility, just as defence was a royal responsibility even when an elderly king declined to enter the battle field. The laws require that the king have a basic level of judicial competence by exhorting him to be familiar with legal language and the tenets of law. In addition, the authors of the law tracts seem to have considered the personal attributes appropriate to a judge more essential to the ideal king than his ability as a warrior.

This study is based on Irish and Latin legal material and early Irish legends about kings judging are not employed as evidence, but the conclusions drawn here help to demonstrate that these legends accurately portray the king as judge, and therefore are potentially a rich source of information about early Irish society. Donnchadh Ó Corráin has shown that although the tales were not straightforward historical accounts, since they were often manipulated by later kings to provide propaganda supporting their own interests, they nonetheless contain abundant information about political circumstances of the period when they were compiled.⁸ In addition to political history, the stories also contain descriptions of institutions which are of great interest to the social or economic historian. Unfortunately, we cannot be certain that early Irish scholars did not archaize the social framework in their legends and describe institutions long obsolete by the time of compilation. Indeed, Professor Binchy believed that the stories about the king giving judgement reflected a distant past when the king was priest and judge as well as war leader.⁹ Because the material in the legends might reflect the distant past, their evidence is indeed suspect and cannot be used alone to demonstrate the functions of the king in the historical period.

Although our suspicions prevent use of the legends as evidence, in fact the portrayal of the king as judge in the legends will be seen to correspond very closely with the portrayal in the legal material. The king

⁷ The word *brithem* has been variously translated jurist or judge. Although the king was a judge, the *brithem* did give judgements independently of royal authority and so he, too, was a judge.

⁸ Donnchadh Ó Corráin, 'Historical Need and Literary Narrative', *Proceedings of the Seventh International Congress of Celtic Studies* (ed. D. Ellis Evans, John G. Griffith, and E. M. Jope, Oxford, 1986) 141-58.

⁹ See D. A. Binchy, *Celtic and Anglo-Saxon Kingship*, 15-21, for his view of the Irish king's functions and his relationship to the *brithem*.

gives judgements, but only the wisest acts without advice from a learned person, usually from a *brithem*, as the following selections from the legends demonstrate.

At which time there was in Tara a she-hospitaller, Bennaïdh, whose roaming sheep came and ate up the queen's crop of woad. The case was referred to Lughaid (Maccon the king) for judgement, and his award was: the queen to have the sheep in lieu of the woad. 'Nay', Cormac said: 'the shearing of the sheep is a sufficient offset to the cropping of the woad; for both the one and the other will grow again'. 'That is the true judgement', all exclaimed: 'a very prince's son it is that has pronounced it!' . . . Maccon's rule in sooth was not good: the men of Ireland warned him off therefore, and bestowed it on Cormac.¹⁰

Coirpre Lifechair, son of Cormac took that kingship and he used to go to his father to inquire about each difficult judgement that came to him, so that his father said to him 'Son, that you might know . . .'¹¹

The combat was then delayed, but they did not know how long the interval should last, until Conchubur and Sencha passed judgement respecting it. So that Sencha asked 'What is the name of this woman?' 'Cuicthi (five days) is my name', she said. 'Let the combat be delayed', said Sencha 'in the name of the woman, for five days.'¹²

Here follow the false judgements of Caratnia Tescthe. He was one of the Dál Cuinn and the judge of Conn Cétchathach. There was great jealousy about his wealth. His household attacked him and left him afterwards. He went with Conn to his house and he was cured. That Caratnia was erroneous when he spoke before a host; however he was true-judging and he was astute when he was alone. Any judgement that was brought to Conn, Conn put it to him. Conn inquired of him 'What judgement have you given?'¹³

¹⁰ *Silva Gadelica: A Collection of Irish Tales*, II (ed. Standish H. O'Grady, London, 1892), 288.

¹¹ *Corpus Iuris Hibernici* (abbreviated here as *CIH*) 6 vols, (ed. D. A. Binchy, Dublin, 1978) 925. 33-5. The translation of this item and of the two following is mine.

¹² *CIH* 406. 31-4. D. A. Binchy, 'Distrain in Irish law', 40 discusses and partially translates this tale.

¹³ Rudolf Thurneysen, 'Die falschen Urtheilssprüche Caratnia's', 306.

Six sons of Amolngid came before Loíguire for judgement, and opposing them Énde alone and his small son and Patrick before them (i.e. on their behalf), and they examined the case of their inheritance, and Loíguire and Patrick passed judgement that they should divide their inheritance into seven parts.¹⁴

The stories which depict a king giving judgement could easily be multiplied.¹⁵ The evidence from legal materials that will be presented below demonstrates the reliability of the portrait of the king in the legends, at least with respect to his role as judge. The alternative to accepting the validity of the legends is to assume that the Irish and Latin laws were derived from legend, not from the reality of seventh century Ireland – and thus to discredit the entire body of Irish and Latin law as historical evidence for the seventh century, since we cannot assume only part of the laws reflect archaic legends. Just as legends, when interpreted with care, can provide evidence for political history, perhaps in the future they can provide evidence for social history of the time of their compilation.

Judging is an exercise of power and the precise boundaries between royal, ecclesiastical and independent secular judgement must have depended greatly on the particulars of the political situation. The Irish and Latin legal material used here demonstrates what the compilers considered legitimate and sets out the norms for jurisdiction within the society; a powerful king, or powerful church, may have ignored those norms, and over time social practice may have changed in ways not recognized in the law books. To understand fully the role of the king as judge in early Irish society, evidence which reflects contemporary judicial practice is required, but if such evidence can be found, it will be far easier to interpret once the norms presented in the legal sources are understood.

THE EVIDENCE THAT THE KING WAS A JUDGE

The law texts do not simply state that the king is a judge, probably because the king's duties as judge, like his duties as warrior, were too obvious to require simple assertion. Instead, the passages cited below discuss some of the circumstances in which cases might be brought to the king for judgement. The following passages are from a fragmentary law tract on judging.

¹⁴ *The Patrician Texts in the Book of Armagh* (ed. Ludwig Bieler, Dublin, 1979) 134-5.

¹⁵ See Myles Dillon, 'Stories from the law-tracts' *Ériu* xi (1932) 42-65, for a collection of stories taken from the laws, many of which contain examples of judging. Other stories can be found in E. J. Gwynn, 'An Old-Irish tract on the privileges and responsibilities of poets', *Ériu* xiii (1942) 34-5; *CIH* 907. 36 to 908. 6; *CIH* 1532. 1-17.

Breth im guine duine 7 ima fiachaib. Breth tuaithe ime a reir rí (read rí) teit¹⁶

Judgement of the laity is given according to the decision of the king regarding killing of people and fines about that.

Nibi breth breath britheaman co tochta fo soiscele nach bera acht fir do neoch rofestur a cubhus 7 anma (read anim?) dia cuinncestar cuige acht righ no easpoc no sagart no sui no ogsui¹⁷

No judge's judgement is a (valid) judgement until he has sworn an oath on the Gospel that he will judge truly about anything he knows according to conscience and soul, if he is asked (to swear the oath?) except for a king or bishop or priest or scholar or young scholar.

7 Nibi brithemh i tuaith in fer feimas inaoill-sin. 7 teit in breth-sin iarum docom rig no easpuic na tuaithe.¹⁸

The man who rejects that oath is not a judge among the laity, and judgement goes to (i.e. is given by) the king or bishop of the *túath* afterwards.

These passages show that the king judged when a person had been killed and when the lay judge concerned had not sworn an oath on the Gospel. In addition, the king (and clerics) could judge without swearing such an oath. The compiler of this text clearly assumed that the king did serve as judge, although he was not the only person who did so.

Other fragments of this text describe a formal legal procedure by which a party could object to a judgement and cause the case to be heard by the king.

Nach brithem beres breth tuaithe no eccolsa mad fofuasna feichem do maigin dober geall .u. nuingi fri fuaidreadh . . . Mana lamathar an fechem fuaidread na breithe fo cetoir adrimhe dechmaid o lo na breithe fria fuaidre. 7 as e a fuaidre a suidhiugh cros for cuile in breitheman no ara beolu. 7 ni taisic in geall . . . Mana lamathar

¹⁶ *CIH* 1972. 3-4. The translation of this and of the following passages from *CIH* is mine.

¹⁷ *CIH* 1966. 1. Although a compound *óg*, pure or virgin and *sui*, scholar or learned person, is possible the *ócsai* is referred to in *Uraicecht Bec* where he ranks third in a list of four types of scholars. Not only does finding *óc* in place of *óg* indicate that the term means young scholar, but a virgin or pure scholar would presumably have a higher rank than does the *ócsai*.

¹⁸ *CIH* 1966. 13-5.

fuaidre na breithe dia dechmaide taisic a ngell uadha . . . Nach breth nad astaither iter feichemna 'manetar a fuaidread a tigh a muireach fadeisin ardofeith co righ¹⁹

Any judge who gives a judgement of the laity or of the Church; if a party (to the dispute) impugns (the judgement) immediately he gives a pledge of five ounces regarding the objection . . . If the party does not dare to object to the judgement immediately, he counts ten days from the day of the judgement regarding the objection. And his objection is established thus: a cross on the storeroom of the judge, or before him. And he does not restore the pledge . . . If he does not dare to oppose the judgement at the end of ten days he restores the pledge from it . . . An objection (is made) in the house of their own leader who precedes them to the king (about) any judgement that the parties cannot establish among themselves.

These passages indicate that a party to a dispute may object to the decision given by a judge within ten days; the objection is made in the house of a lord of the disputing parties, and the case is then taken to the king.²⁰ The text is stating that cases were often first heard independently of the king, but that an objection could be made to the judgement and the case would be taken to the king.

Although these texts give clear evidence that the king was expected to judge, it is not the sole source of such evidence. *Críth Gablach*, probably the most widely known law tract, includes judging in the king's weekly routine; in fact judging was the only part of the routine which could be described as a royal duty and not a royal indulgence.

Atá dano sechtmonáil i córus rí .i. domnach do ó[u]l chorma, ar ní flaith téchta[e] nád ingella laith ar cach ndomnach; lúan do br(e)ithemnacht, do choccertad túath; máirt o(i)c fidchill; cétaín do déicsiu mílcho(i)n o(i)c tofunn; tar(a)daín do lánamnas; aín díden do retha[i]b ech; satharn do brethaib.²¹

¹⁹ *CIH* 1968. 17, 1968. 37-1969. 2, 1969. 15-6, 1969. 26-7. Note the phrase *Trian de do muire rechtgídodaféit a tegh rí[g]* in 'The Distribution of cró and díbad', *Ériu* i (1904) 215, and in *CIH* 601. 9. Although the *muire* is sometimes given a specific rank, the word is often used in a more general sense. It most likely refers to a *flaith* here, but it could indicate that any person in authority, such as a kinsman, led the disputants to the king. A kinsman may have acted, for example, when disputes among kin over land were difficult to resolve.

²⁰ Since judicial processes usually only involved the king after an initial attempt to secure a judgement had been made, omission of reference to the king in the tract on Distraint and in *Cóic Conara Fuigell* is quite understandable. The procedures described in those tracts would often have been conducted without the presence of the king and the procedure may have been identical and equally valid whether judgement was sought from a lay judge independent of the king or from the king himself.

²¹ *Críth Gablach* (ed. D. A. Binchy, Dublin, 1979) 542-7. The translation is mine.

There is moreover a weekly order in the duties of the king, i.e., Sunday for drinking ale, for he is not a rightful ruler who does not promise liquor for each Sunday; Monday for adjudication, for adjusting disputes between *túatha*; Tuesday for playing chess; Wednesday for watching greyhounds course; Thursday for conjugal duties; Friday for horseracing; Saturday for judgements.

The following passage from *Bretha Nemed* portrays the king giving a judgement in consultation with an *ollam*, presumably an *ollam brithemon*, in a manner very like that depicted in the tales about kings giving judgement.

Cis lir filidh dleghda duasa? filidh fíora forusda, forus teora mbreth, breth Fhéne, breth filedh saoir, breth fuighill. fuighell fria righ, ri go hollamhain, ollamh la righ.²²

How many filid are entitled to rewards? Filid of well founded truth, foundation of three laws, law of the Féni, law of the noble fili, law of submission to judgement. Submission to the king for judgement, the king to the ollam, the ollam with the king.

Further evidence that the king judged is found in a brief and perhaps schematized text which shows that he was present at a court concerned with judging. Fergus Kelly has edited and discussed this text which he interprets as describing one court with six divisions in which a king of overkings either promulgated the judgement or supported a judgement given by another participant.²³

Culairecht didiu, is a suide bit righ 7 espoc 7 sai gacha berlai ollamand, 7 is aire is culairecht fo bith isiat all bis iar gul na nairechta fri breth 7 forus.

Back court then, it is there that there are the king and bishop and the expert in every legal language with the rank of master (= chief poet?). And it is for this reason that it is [called] the back court: because they are the cliff which is behind the courts for judgement and for promulgation.²⁴

²² Gwynn, op. cit. (n. 15) 32. *CIH* 1124. 16-8. The passage was translated by Mac Cana, op. cit. (n. 4) 77. My translation differs somewhat from his. See discussion in McLeod, op. cit. (n. 4) 37 and in Kelly, op. cit. (n. 2) 77.

²³ Kelly, op. cit. 76-7.

²⁴ Kelly, op. cit. 81 §2. *CIH* 601. 22-4. The words in brackets and parentheses are Kelly's insertions.

Fergus Kelly, with some doubts, follows the glossator in interpreting the 'expert of every legal language with the rank of master' as a poet and assumes he was present in order to have some influence over judgements concerning poets.²⁵ While this interpretation is possible he might also have been the highest ranking judge, the *ollam brithemon*, who was required to know *tri mbérta*, 'three languages' or three different categories of law, those of the *Féni*, of the *fili*, and of Latin learning.²⁶ If he was a judge, he may have been present to provide expert legal advice for each case that arose. *Breth* and *forus* are two of the final stages of eight in hearing a case. The stages are the setting of a time for the hearing (*ré*), choosing the proper type of action (*toga*), giving of sureties (*árach*), pleading (*tagra*), rejoinder (*fregra*), judgement (*breth*), pronouncement (*forus*) and the conclusion (*forba*).²⁷ This paragraph apparently describes a court attended by a king, a bishop and either the highest ranking *brithem* or *fili* at which the final stages of hearing a legal case take place.

Another passage in the laws discusses the judgements given by *flaithi*, a term which referred to all lords, from nobles of far lower status than king of a single *túath* to the most powerful overking.²⁸ As noted above, the king's role as judge may not have stemmed from sacral aspects of kingship, but from the political realities of his role as *flaith*, leader and lord of his followers.

Nach breath eaculsa dochuisin is for fir 7 dligead screaptra consuiter. Breath filead immurgu for roscadaib. Breath flatha immurgu consuiter for aib huile; for roscadaib, 7 fassaigib & teisteamnaib firaib.²⁹

Every judgement of the church which exists is established on proof and the law of scripture; the judgement of the poets is established on the basis of the traditional rules of law [in verse]; the judgement

²⁵ Kelly, op. cit. 86.

²⁶ See *CIH* 2278. 15-2279. 11, 2277. 11-5, and Mac Cana, op. cit. The word *bretha* is sometimes substituted for *bérta*.

²⁷ D. A. Binchy, 'Féchem, fethem, aigne', *Celtica* xi (1976) 31. Could *forba* be the verbal noun, *forbbae*, of *for-ben*, 'smites', and refer to the enforcement of the judgement, rather than a concluding statement?

²⁸ See the phrase *Cach marflaith fora tuatha*, 'Each great ruler over his territories' which clearly indicates an overking. *CIH* 526. 21, quoted in Donnchadh Ó Corráin, Liam Breatnach, Aidan Breen, 'The Laws of the Irish' *Peritia* iii (1984) 408. Passages discussed below which refer to a 'false judging lord' may imply that a lord normally passed judgement over his clients.

²⁹ *CIH* 2261. 18-35.

of the lord is based on them all; on traditional rules of law and precedents and true testaments.³⁰

The *flaith*, lord or ruler, is not only shown as responsible for giving judgement, but he bases his judgement on the widest range of legal principles. This passage, like several of those given above, both indicates that the king was a judge and that he had no monopoly on judging.

The Latin text, *Collectio Canonum Hibernensi* sets out regulations based on scripture, on Irish and foreign synods and on the writings of the Church fathers. The relationship of this collection to Irish secular law and society has been the subject of recent study, but much remains to be learned.³¹ In several passages *CCH* explicitly states that the king was a judge, as were clerics and laymen.

Judices sunt XV: I episcopus, II sacerdos, III judex, IV rex, V scriba
 . . .³²

There are 15 judges: I bishop, II priest, III judge, IV king, V scribe
 . . .

Sunt septem, quae omni regi conveniunt: Deum timere,
 haereditatem judicare . . .³³

Seven things that suit all kings: to fear God, to judge inheritance
 . . .

³⁰ All but the last clause of this translation is taken from Ó Corráin et al. 'The laws of the Irish', 386. Although they indicate here that *rosc* referred to traditional rules of law, Liam Breatnach has shown that material reflecting considerable ecclesiastical influence was written in the *rosc* style. See 'The Ecclesiastical Element in *Cáin Fhuithirbe*' *Peritia* v (1988). *Teistimin* often indicates the evidence of scripture. Is it possible that this passage provides some insight into the reasons for the compilation of the *Senchas Mór*? The *Collectio Canonum Hibernensi* provides a body of law based on scripture, either introducing Judeo-Christian practice, or using the Mosaic law to justify native Irish practice. That text could have helped to provide the 'law of scripture' referred to in this passage. The *Senchas Mór* was compiled in the early eighth century, probably after the *Collectio Canonum Hibernensi*, at a time when many law texts were promulgated, such as the *Cáin Fhuithirbe*, proclaimed c. 680, *Cáin Adamnain*, proclaimed in 697 and *Cáin Patraic* proclaimed in 737. The *Senchas Mór* could have provided a codification of traditional rules of law with, as has recently been shown, considerable influence of scripture, and have been intended as an assistance to kings, or perhaps to secular judges in general.

³¹ See Maurice Sheehy, 'Influences of ancient Irish law on the *Collectio Hibernensi*', *Proceedings of the Third International Congress of Medieval canon Law* (ed. Stephan Kuttner, Vatican, 1971). Donnchadh Ó Corráin, 'Irish Law and Canon Law', in *Ireland and Europe: The Early Church* (ed. Próinséas Ní Chatháin and Michael Richter, Stuttgart, 1984).

³² Herrmann Wasserschleben, *Die Irische kanonensammlung* (Leipzig, 1885) (abbreviated here as *CCH*), xxi 2. The remaining ten 'judges' are in fact characteristics appropriate to judges, such as *senex*. Unless the footnotes indicate otherwise, translations from *CCH* are mine.

³³ *CCH* xxv 15.

In the following passage *CCH* describes how a king judges in consultation with an elder and a *juris peritus*, perhaps a *brithem*, and a scribe. The procedure described in this passage seems similar to the one described in the Irish text where the king judges in consultation with the *ollam*. The scribe was probably included because of his familiarity with the scriptures; as we have seen the secular laws stated that kings based judgements on 'true testaments', possibly scripture.

Gregorius Nazianzenus: In negotiis secularibus rex et senex et juris peritus judicent. Rex convocet scribam et scriba statuat iudicium coram rege; senex convocet omnes hos et statuat; juris peritus convocet seniores et conprovinciales, ne temere judicaverint.³⁴

Gregorius Nazianzenus: In worldly business, the king and elder and the expert jurist(?) judge. The king calls on the scribe and the scribe establishes the judgement in the presence of the king; the elder assembles all these and he decrees; the expert jurist(?) assembles elders and co-provincials so that they shall not judge carelessly.³⁵

Statements that the king was a judge were not confined to *CCH* and secular Irish law, but are also found in the mirror of princes literature which, rather than stating rules of law, urges the king to live up to certain standards. Giving true judgements is portrayed as an essential duty of the king.

'A húi Chuind, a Chormaic,' ol Carpre, 'cid as dech do rí?'
 'Ní hansa,' ol Cormac. 'Dech dó . . .
 Fír cen fuillem,
 Trócaire co ndlúthugud rechta, . . .
 Bretha fíra . . .
 Bered fírbretha . . .
 Aisnéided cach réilbreth . . .'

'O grandson of Conn, O Cormac,' said Carbre, 'what is best for a king?' 'Not hard to tell,' said Cormac. 'Best for him . . .
 Truth without addition,
 Mercifulness with consolidation of law . . .
 True judgements . . .
 Let him give true judgements . . .
 Let him make known every clear judgement . . .'³⁶

³⁴ *CCH* xxi 1b.

³⁵ See Ó Corráin et, al, op cit. (n. 28) 398.

³⁶ *The Instructions of King Cormac Mac Airt* (ed. Kuno Meyer, Dublin, 1909), Todd Lecture Series vol. xv, 2-5.

Similar exhortations can be found in other texts of this genre, including the following one from the mirror of princes material in *CCH*.³⁷

Justitia vero regis justii haec est: Neminem injuste judicare . . .³⁸

The justice of the just king is this: to judge no one unjustly . . .

These exhortations to judge truly should not be understood as meaningless archaisms; since the law texts themselves state that kings did give judgements, these passages must be understood as highly relevant to the society in which they were compiled, Ireland of the seventh, eighth and ninth centuries.³⁹ The relevance of the exhortations to judge truly is further emphasized by warnings to kings and lords of the dangers of false judging which can be found in the law texts. The two following passages give examples of these warnings.⁴⁰

Atait .iiii. saba tuaithe nododessruithidar i mbeaib ri gubreathach . . . dlegar do cach rig firinde . . .⁴¹

There are four leaders of the *túath* that are degraded to small people; a false judging king . . . justice is due from each king . . .

Atait .uiii. tobaich a tuaithe nacon dlegat fiachu for neach a neloga nach a nimcim . . . imcim flatha bereas gubreith fora ceile . . .⁴²

Seven exactions in the *túath* do not entail fines from anyone for evading or avoiding (payment of) them . . . avoiding a lord who judges his client falsely.

³⁷ See *Audacht Morainn* (ed. Fergus Kelly, Dublin, 1976) pp. 4-5 §6, pp. 16-7 §55 and R.I. Best 'The Battle of Airtech', *Ériu* viii (1916) 173, 180, for other examples of exhortations to judge truly.

³⁸ *CCH* xxv 4. Fergus Kelly discusses the mirror of princes nature of this passage in *Audacht Morainn* xv-xvi.

³⁹ The latin text from *CCH* reflecting the mirror of princes material has been dated to the mid-seventh century. *Audacht Morainn* is the earliest Irish mirror of princes text and was compiled in the early eighth century, although it contains older material. See *Audacht Morainn*, xiv-xv. Other mirror of princes texts were later, *Tecosca Cormaic* stemming from the early ninth century. See *The Instructions of King Cormac Mac Airt*, xi. Thus these texts are contemporary with or later than the law tracts themselves which were compiled in the seventh and early eighth centuries.

⁴⁰ See Rudolf Thurneysen, 'Aus dem irischen Recht I. 1. Das Unfrei-Lehen', *ZCP* xiv (1923) 389, 391, and *CIH* 499. 12-5, 500, 19-23, for other passages.

⁴¹ *CIH* 234. 4-6. See Rudolf Thurneysen, 'Aus dem irische Recht IV. 6. Zu den bisherigen Ausgaben der irischen Rechtstexte', *ZCP* xvi (1927) 177.

⁴² *CIH* 1890. 32-5.

Finally, a passage from a completely different type of literature, political tracts, asserts that the king is a judge; the Airgialla demand that the king of the Uí Néill serve as a judge whenever disputes are brought to him. Echoing the mirror of princes literature, the passage states that the land will be fertile and the weather fine if he judges truthfully.

Dlegar do rig hUe Néill
rad cobsaid cert
oc digde e nanolc
nert 7 rect

Dleghar do bretha la fir
7 sid saigthech
dleghar hith is blicht 7 mess
maigthech

There is due from the king of the Uí Néill a firm statement of rights with power and authority when he is being besought about any evil.

Judgements in favour of truth are due from him and the pacification of claimants, corn is due and milk and mast and salmon.⁴³

Although political tracts and sagas make free use of mythology and legend, they often do so in order to support political claims and establish rights of one people with respect to another. This tract in general states the rights of the Airgialla with respect to the Uí Néill and not only indicates that overkings were judges, but that judging was a service valued by the subordinates, although such an interpretation does not rule out the possibility that the overking was well rewarded for resolving disputes.⁴⁴

Taken together, all the passages discussed above give ample evidence that the king was indeed a judge, but at the same time they just as clearly indicate that the king had no monopoly on judging; the evidence presented above has shown that he shared the right to judge with both clerics and independent lay judges. Several passages cited above refer to clerics as judges: bishops, priests, and scholars are, like the king, exempt from the requirement of swearing an oath on the Gospel before judging; if another judge refuses the oath, the case can be referred to either a bishop or king; a bishop attends the *airecht* with the king.

⁴³ Máirín Ó Daly, 'A Poem on the Airgialla' *Ériu* xvi (1952) 181, 186, §21 §22. See there for emendations to the text which explain her translation.

⁴⁴ See Gerriets 'Kingship and Exchange' 42-3 for a discussion of this tract.

Evidence for independent lay judges is somewhat more indirect. While cases of killing were referred directly to the king, apparently other cases reached him only after an earlier hearing failed to determine a judgement; the exemption of the king and clerics from swearing an oath on the Gospel indicates that lay jurists must be the judges who were required to take the oath; *CCH* gives the *judex* in its list of judges, and this term may well have referred to lay *brithemoin*.⁴⁵ The passages which indicate that *flaithi* gave judgements may have allowed for nobles of lower status than kings to act as judges, as the king did.

Although a complete understanding of the judicial role of the king requires that the relationship between ecclesiastical, independent and royal jurisdiction be determined, a full discussion of these problems is beyond the scope of this paper.⁴⁶ In particular, defining the limits of independent lay jurisdiction would require extensive treatment of legal procedure and of the status and authority of independent judges which would take us too far from the central issue of the role of the king as judge. However, it is possible to discuss the relationship between royal and ecclesiastical jurisdiction here.

ECCLESIASTICAL JURISDICTION

The Church claimed the right to judge its clerics. The following passage shows that *CCH* describes the bishop judging ecclesiastical cases in very much the same way as it described the king consulting with others to give judgement.

a. Gregorius Nazianzenus: In omnibus causis ecclesiasticis tres personae eligendae sunt ad iudicandum: episcopus, scriba, contemptibilis omnis negotii secularis; episcopus convocet seniores et scribam; scriba interroget scripturam; . . . contemptibilis convocet omnes peritos . . .⁴⁷

Gregorius Nazianzanus: In ecclesiastical cases three people are chosen to judge: the bishop, the scribe, a person who holds all worldly business in contempt; the bishop summons the elders and the scribe, the scribe searches the scriptures; . . . and the unworldly person calls together the learned . . .⁴⁸

⁴⁵ *CCH* xxi 2. Ó Corráin et. al., op. cit. 397 suggest the *judex* was a *brithem*.

⁴⁶ The *fili* may well have had their own body of laws and the right to jurisdiction over issues concerning them as well, and while the relationship of their legal activities to those of the king is also important, it too must be excluded from this paper.

⁴⁷ *CCH* xxi 1a.

Other material in *CCH* explicitly claims ecclesiastical jurisdiction over clerics. A chapter in *CCH* titled 'De eo, quod non iudicandi sunt clerici a laicis, sed laici a clericis iudicandi sunt', 'That clerics are not to be judged by the laity, but the laity are to be judged by clerics' adamantly excludes clerics from the jurisdiction of lay judges, including the king.⁴⁹ Although this passage claims that the Church had the right to judge laymen, the passage from *CCH* cited above as evidence that the king was judge demonstrates that *CCH* accepted the king's jurisdiction among the laity.

The Irish laws also quite explicitly restrict the jurisdiction of the king to the laity and that of the Church to clerics.

A rer rig iman ae bes 'na tuaith no a rer eolsa iman ae bes a neclais

In accordance with the decision of the king concerning the law-suit which is in his *túath* or in accordance with the decision of an ecclesiastic about the law-suit which is in a church⁵⁰

Co astaidter tuatha i mbescna? Adragar cach fria techta. Clerig 7 caillecha fri heclais fo reir anmcarat, co racht 7 riagail, co tarnair co brud, gell iar mbrud, fri corus rachtge ecalsa fo reir abbad 7 anmcarat techta. Laich 7 laichessa 7 aes tuaithe, adragar fri flaith. Fedaitar flaithslehta o iséal co huasal fri corus tuaithe

How are *túatha* controlled in the matter of jurisdiction? Each is bound by what is appropriate. Clerics and nuns by the Church under the authority of a confessor, by law and rule, by a vow until it is broken, by a pledge thereafter, in accordance with the laws of the Church, under the rule of an abbot and a proper confessor. Gentlemen, gentlewomen and the ordinary people of the *túath* are controlled by their lord. Grades of lord from low to high are referred to the legal system of the *túath*⁵¹

The division of society into the laity and clerics leaves the position of the *manaig* undefined; the *manaig* presumably would not be considered as *clérig* or *caillecha*, since most likely they were normally lay dependants of churches, but whether they would be included either among the 'ordinary people of the *túath*' or the 'gentlemen and gentlewomen' is

⁴⁸ See Ó Corráin et. al., op. cit. 398.

⁴⁹ *CCH* xxi 29.

⁵⁰ Ó Corráin et. al., op. cit. note 3, 386-7; *CIH* 1968 31-3.

⁵¹ Ó Corráin et. al., op. cit., 406.

doubtful as well. Evidence that at least one monastery claimed jurisdiction over its *manaig* is found in a text quite different from *CCH* or the secular laws, *Cáin Éimíne*, a late Old Irish or early Middle Irish text which states the privileges which Éimíne's monastery supposedly obtained when a king of Leinster, Bran, received help from Éimíne during a plague.

Is óen didiu ad-roigled i saíri na heclaise, cipé manach doda-goad
ocus cip can a chenél, ach rop áirithe lasin muintir, ógdílmáine do
Éimíne Bán cen fhúasnad, cen indílsi.

One thing then which was promised as (part of) the immunity of the church is whoever the tenant who chose it and whatever his descent, provided that the community be certain, Éimíne will have full licence with regard to him without impugment, without treating it as actionable.⁵²

'Full licence', *ógdílmáine* implies that the monastery would have full control over its *manaig*, control which must have included the right to judge disputes among them or between them and the monastery. However, the right to judge lay dependants is asserted in this text as a privilege which may well imply that it was not the universal right of churches. Since the relative power of particular churches and the secular ruler of a territory depended on the political situation, ecclesiastical or royal jurisdiction over *manaig* may have varied with the power of particular churches and rulers.

The Irish laws also set limits to ecclesiastical jurisdiction. The following passage claims secular jurisdiction even for law which was likely associated with the Church.

Breitheam tuaithe dano fri gleo neich bes techta a tuaithe iter cain 7
brathchae⁵³

A lay judge regarding the determination of anything which is proper to a *túath* including *cáin* law and judgement of Caí.

This passage requires a lay judge to give judgement in cases concerned with *cáin* law and the obscure judgements of Caí. Ecclesiastical jurisdiction over *cáin* law might have been expected, because it was

⁵² Erich Poppe, 'A New Edition of *Cáin Éimíne Bán*', *Celtica* xviii (1986) 46-7 §14.

⁵³ *CIH* 1965. 16-7.

usually promulgated in cooperation with the Church and surviving texts make provision for fines to be directed to a church. *Brathcae* seems to be associated with native Irish law, as opposed to *cáin* law, but references to it do not make its nature clear. A tradition claims that Caí brought the law of Moses from Israel, and Mosaic law was incorporated into Irish law.⁵⁴ The judgements of Caí could refer to elements of Mosaic law incorporated into Irish law texts, and this passage may exclude the Church from jurisdiction it might wish to claim over such law.

Although not all aspects of ecclesiastical jurisdiction are clear, the evidence does show that clerics fell under the jurisdiction of the Church, as they did elsewhere in medieval Europe. Authority over the *manaig* may have depended on the power of the particular church concerned, although the evidence presented here is too sparse to be certain. The Irish laws do seek to limit the jurisdiction of the Church with respect to certain types of law where it might otherwise have been able to claim authority.

THE KING AND HIS *BRITHEM*

The corpus of Irish law was extensive, detailed and technical while penalties for mistakes were heavy, but no unambiguous statement survives demanding that the king be a *brithem*, and it seems improbable that all men with the ability, the inclination, and determination to secure a kingship would also have the studious patience required to master the body of laws fully, even though, as shall be shown, the king was expected to be knowledgeable about the laws. Indeed the legends about kings judging depict only Cormac as routinely giving true judgements without assistance; kings less renowned for their wisdom generally gave judgement in consultation with a *brithem*, and the assumption of the stories – often quite explicit – was that although kings were responsible for judging they needed expert advice to do so competently.⁵⁵ Very likely when cases were referred to the king, he relied on a *brithem* for legal expertise, just as the passage from *Bretha Nemed*, quoted above p. 36, shows that

⁵⁴ See *CIH* 412. 7-9, 871. 1, 1311. 5, for references to *brathcae*. See Whitley Stokes, 'The Irish Ordeals, Cormac's Adventure in the Land of Promise and Decision as to Cormac's Sword', *Irische Texte* III (1881-97) 193, 211, for the tradition that Caí brought the law of Moses from Israel. However Eoin Mac Neill once suggested to D. A. Binchy in conversation that Caí might be a learned invention of pseudo-historians based on the Roman jurist Gaius. D. A. Binchy notes dating problems with this argument. See 'Distraint', 51, note 91. Heinrich Wagner, in 'Studies in the origins of early celtic civilisation', *ZCP* xxxi (1970) 39 states that *-gae*, meaning 'choice, option' may be found in *bráth-chae* 'judgement, sentence', so that the word originally might have meant 'choice [option] of judgement'.

⁵⁵ Thus Conn Cétchathach sought advice from Caratnia and Coirpre Lifechair from Cormac, the exceptional king who had mastered the law.

when a case was taken to a king for judgement, the king consulted with the *ollam* and gave judgements with him. This process of consultation did not absolve the king of responsibility for the 'truth' of the judgements given, but it did provide access to the expertise required to judge competently.

The evidence clearly demonstrates that a judge was attached to a king. *Críth Gablach* states that the judge was the most important member of a king's retinue who stayed with him during the month of sowing when the retinue was reduced to four men: the king, the judge and two men in service.⁵⁶ That same text also gives the judge a seat of honour in the king's household; only the queen could sit between him and the king,⁵⁷ and in the following passage that text seems to require that the king give a judge to the *túath*.

Dligit co ndá brithemain fírión doib.⁵⁸

They [the members of the *túath*] have a right that the [the king] give (?) a true judge to them.

The verb *co nda* is obscure. Eoin Mac Neill translated the phrase as 'that he be a faithful judge to them.'⁵⁹ This translation requires an emendation of the text's *co nda* to *condib* which, according to Binchy, is acceptable. If that is the meaning of the sentence it is the only passage that I know requiring the king to be a *brithem*. Binchy also states that *co nda* could equally well be amended to *condia*, 'that he seek'. However, there are two instances in which *co nda* has been glossed *co tuca*, 'that he give'. This may be an artificial form, but it also may be a survival of an original Irish verb which was afterwards replaced by *do-beir*.⁶⁰ While the text could be translated that the king be a judge, that is a *brithem*, it is better taken to mean he seek a judge or that he give, i.e., provide, a judge. The latter translation would imply that providing a judge was an obligation of the king towards his *túath*.

Other passages from the law texts and the mirror of princes literature confirm the impression created by *Críth Gablach* that the king had a judge in his company and that he gave a judge to the *túath*.

Dlighthir brithem la righ rodbo brithim cadesin

⁵⁶ *Críth Gablach* 535-8.

⁵⁷ *Críth Gablach* 577-96.

⁵⁸ *Críth Gablach* 498.

⁵⁹ Eoin Mac Neill, 'Ancient Irish law: the law of status or franchise', *PRIA* 36 C 16 (1923) 265-316.

⁶⁰ *Críth Gablach*, notes, 36.

A king must have a judge with him or be a judge himself.⁶¹

Apair fris, ní húasligethar nach mbrithemoin mani fasach fírinne fiastar.

Tell him, let him not exalt any judge unless he knows the true legal precedents.⁶²

The following passages which refer to a judge attached to a king and set out that judge's privileges and rights to labour services imply that being judge to a king was an official position. The payment of labour services seems intended to help provide for the judge's support within the *túath*, although the precise mechanism for determining who would in fact perform the labour is not indicated.⁶³

Mad fer tuaithe bid i cetud fri rig no tuiseach oca mbe diam clerech bid i cetu fri aircindech nuasal dligid toircsin taulche do o cach 7 etsecht a airberta a la nair a la mbuana a la nime a la coibdine suire athgabala(?) a faosam .x. it e folad brithemon fogni ri 7 tuath cenmotha ni doformaig a suire ar seota 7 ceile.⁶⁴

If he is a layman, he is seated next to a king or a chief to whom he is attached, if he is a cleric he is seated next to a noble airchinnech. He is entitled to the offering of a hill of assembly from each and hearing of his pleading. The day of plowing, the day of reaping, the day of fencing, the day of military service(?), a privilege of immunity from distraint for ten days are the obligations to a *brithem* who serves king and *túath*, in addition to anything that his nobility adds because of chattles and clients.

⁶¹ D. A. Binchy, 'An archaic legal poem', *Celtica* ix (1971) 152, where he discusses Eoin Mac Neill's translation and interpretation of this passage. Binchy's translation of the word *rodbo* 'or be' is supported by Rudolf Thurneysen's discussion in *Thurn. Gramm.* §886 and by Kuno Meyer in 'Philological notes. Old-Irish rodbo "or" ' *Miscellanea Hibernica* (Urbana, 1917) 21.

⁶² *Audacht Morainn* pp. 8-9 §23. Similar exhortations are found in *Tecosca Cormaic*, pp. 50-1 §34 line 13, and in *Serglige Con Culainn* (ed Myles Dillon, Dublin, 1953) 273.

⁶³ The Rule of Patrick made somewhat similar provisions for the support of a priest. See J. G. O'Keeffe, 'The rule of Patrick', *Ériu* i (1904) 216-24. The clerical judge had identical rights, but he is not our concern here.

⁶⁴ *CIH* 1269. 8-14. *Coibdine* is glossed *fri digail greise ciniuil* 'regarding vengeance of the protection of the kin' and *coibden* means troop of soldiers or a marauding expedition, so that the translation 'a day's military service' is probably best (See *DIL* s.v. *coibden*). However, *coibdine* is a compound of *com* and *fedan* which refers to carrying or carting and a band or company of persons; in this context the reference may be to joint carting, that is a group of people providing a day's service carting produce. *Fogni ri 7 tuath* must be read *fogni rig 7 tuath*.

Suire 7 biathad cacha brithemon in cach tuaith i mbi brithem is innti a chata 7 a suire. Mad ardmaor lasbet iltuatha 7 ilmuire a chata 7 a toichned 7 a sarugud fo cataid a rig oca mbi i coimriadh.⁶⁵

Privilege and food payments of each judge in each *túath* in which he is a judge, that is his dignity and his nobility. If he is an important officer who has many *túatha* and many leaders, his dignity and (the penalty for) his fasting and (the penalty for) his violation according to the dignity of his king to whom he is attached in authority.

The king clearly had a dependent judge, so that even though all men who became kings may not have mastered the body of early Irish law, they would nonetheless have been able to provide competent judgements either by consulting with the *brithem* or by allowing the *brithem* to judge as his agent.

Although the king was not expected to be able to provide a high level of expertise regarding early Irish law, he was expected to be familiar with the law. As is well known, the main theme of the mirror of princes texts which describe the ideals of kingship is that the entire prosperity of the kingdom depends on the *fír*, truth or justice, of the ruler. Whether the king judged from his own knowledge, judged with the advice of a *brithem*, or had a *brithem* give the judgement, he remained responsible for the provision of justice. He could not be ignorant of the law or he could not know when his judge failed to judge truly. The mirror of princes literature contains passages requiring that the king be knowledgeable in the law.

Bat eolai in gech berlae ar narbat ainfis in nnach dan conruidfe a fritacra friut.

Be thou skilled in every tongue, so thou be not ignorant in any art that one will speak in argument with thee.⁶⁶

The most extensive statement that the king should be familiar with law occurs in an archaic poem listing points of law the king should know.

Ma be rí rofesser	If thou be a king thou shouldst know
recht flatho,	the prerogative of a ruler,
fothuth iar miad,	refection according to rank,
mesbada slóg	contentions of hostings,

⁶⁵ *CIH* 1269. 17-9 See Ó Corráin, et. al., op. cit. 419, for a similar use of the word *comriadh*.

⁶⁶ R. I. Best, 'The Battle of Airtech' *Ériu* vii (1916) 173, 180. See also *Tecosca Cormaic* §3 line 41.

sabaid cuirmthige,	sticks (quarrels) in an ale-house
cuir mescae;	contracts made in drunkenness;
mess tíre,	valuation of lands,
tomus forrag,	measurement by poles;
forberta díri,	augmentations of a penalty,
díthle mesraid;	larceny of tree-fruit;
mórmaín mru grechto:	the great substance of land-law:
mrogad coicrích,	marking out [fresh] boundaries,
cor cualne,	planting of stakes,
córus rinde,	the law as to points [of stakes],
rann eter comorbu,	partition among co-heirs, . . . ⁶⁷

Disputes over the control of land were very likely the most common source of difficult legal cases; it is not surprising that this poem emphasizes valuing and measuring land and marking out boundaries as well as the law of neighbours, *Bretha Comaithesca*, and the rights of lords.

The mirror of princes texts also attribute the lawful inheritance of land to the just king's rule. In the passages 'It is through the justice of the ruler that every heir plants his house-post in his fair inheritance'⁶⁸ and 'Let heirs be maintained according to their(?) proper inheritance'⁶⁹ the heirs may inherit during the just king's reign through the same magical forces which cause the crops to flourish.⁷⁰ However the passages 'Let memories be consulted to learn to what heir the land belongs'⁷¹ requires the direct action of the king as does the passage 'There are seven things that suit all kings: . . . to judge inheritance . . .' from *CCH*.⁷² Finally, a passage in the laws refers to a lord dividing the land of his client – perhaps supervising the division of land was a function of lordship.⁷³

Another text which seems to indicate that the king must have the knowledge essential to ensuring that just judgements are given is the 'ad-mester' section of *Audacht Morainn* which requires that the king be

⁶⁷ D. A. Binchy, 'An archaic legal poem', 156-7.

⁶⁸ *Audacht Morainn* p. 7 §16.

⁶⁹ Myles Dillon, *Serglige Con Culainn* 276.

⁷⁰ See *CCH* xxv 4 where 'the inheritance of sons' is said to result from the just king's rule in exactly the same manner as does fine weather.

⁷¹ *Serglige Con Culainn* 270. The translation is from Roland M. Smith 'Briathartheosc Con Culainn' *ZCP* xv (1925) 189 §9. Another passage from that text may also refer to the king ensuring that land was inherited properly. *Gairter bí, beoigter fri óethu airm irro trebsat mairb*, 'Let the dead be made to live by means of oaths sworn in the place where they dwell'. *Serglige Con Culainn*, 275. (See the note to that line regarding the translation.) Smith 'Briathartheosc' translates the passage p. 189 §13.

⁷² *CCH* xxv 15.

⁷³ *CIH* 207. 3-4. *Tir daranda flath iar necuib in cheile*.

able to 'estimate' all types of craft and natural products.⁷⁴ The admonition to estimate goods and services properly seems to go beyond a general requirement to value the fruits of nature and of human labour appropriately, both because of the detail and the type of item to estimate — the fees of every craftsman, the honour-price of every grade, the contract and regulation of every ruler towards all his clients.⁷⁵ The *brithem* was also required to be able to estimate the value of craft goods, implying that this knowledge was part of the basic store of legal knowledge.⁷⁶ The text gives no explicit indication of why the king should be able to estimate these things, but the interpretation that he had to be able to determine a just settlement in a dispute, and he could only do so if he knew the value of produce and obligations seems reasonable in the context of the text.

Possessing knowledge of the law was, of course, important if the king were responsible for judgements, but he also required the temperament to serve as judge. In many places the law texts state the attributes they believe essential in a king.⁷⁷

It é fola(i)d fhírfhlaithemon inso fora thúatha 7 ní(i)s for[r]ge goí ná écin ná forniurt; rop slánetarggairch fírión iter lobru 7 tríuna. Ata at dano a trí aili todacrat do rí; rop fer cach leithe lándligid, rop fer frecmairc fhiss; rop forus [n-]ainmnet.⁷⁸

These are the qualifications of a just ruler with respect to his *túatha* and he does not violate them by falsehood nor force nor superior strength; let him be a just, sound mediator between weak and strong. There are moreover three other things they demand(?) from the king: let him be a man of full righteousness on every side, let him be a man who enquires after knowledge; let him be an abode of patience.

a ua cuinn a cormaic, ol coirpri, cia as ngebthar flaith for tuathaib? ni ansae. a feibh crotha 7 cenoil 7 ceille 7 earngna 7 ordain 7 urlabra, a mait (?) 7 a ngais 7 a nirt 7 a sochraiti 7 imgona gabthair⁷⁹

⁷⁴ *Audacht Morainn*, pp. 10-5, §§32-52.

⁷⁵ *Audacht Morainn*, pp. 14-5, §§50, 51.

⁷⁶ Gwynn, *op. cit.* (n. 15) 41-2. See also *CIH* 2278. 15-8.

⁷⁷ See *Audacht Morainn*, pp. 10-1, §31, pp. 16-7, §55 and 'The Battle of Airtech' p. 173, §3, lines 16-7, for other references to the desirability of impartiality in a king.

⁷⁸ *Críth Gablach*, 525-9.

⁷⁹ *CIH* 1290. 5-7. The nasalization before *gais* is strange. I have taken the second series of attributes as nominatives, with *imgona* a nominative plural of *imguin*, although *a* may be the preposition, not the possessive pronoun. All the forms except *imgona* could be dative singulars.

O grandson of Conn, o Cormac, said Coirpre, how is it that a ruler will be taken on *túatha*? Answer: He is taken according to the excellence of form and kin and intelligence and understanding and dignity and eloquence, his goodness(?) and his wisdom, and his strength and his followers and woundings.

While the king was expected to be a competent warrior – his ability to wound does count – the ability to mediate between parties, impartiality, and the willingness to accept wise advice are stressed; indeed these attributes seem to be more important to the authors of the law texts than those of a war-leader.⁸⁰ Even though the king relied on a *brithem* to supply legal expertise, he was expected to have the temperament and some knowledge suited to a judge, rather as the prime minister is expected to have a basic understanding of a nation's economy, even though he must have highly specialized economic advisors. Of course, the jurists and churchmen who compiled the laws may well have had a bias towards the king as a wise man, not a brave but foolish warrior, while in fact warriors were more successful in taking the kingship than wise men.

CONCLUSION

In the modern West we tend to conceive of law as created by the state and enforced by a system of state controlled police forces and courts, but such a state controlled judicial system was not indigenous to early Ireland. Much law – though not all of it – was customary, and therefore was not created by kings; that law provided workable procedures for enforcement, such as appointing sureties and using distraint, so that it might often have been enforced without the intervention of a king. However, resolving disputes involves the exercise of power, and a king could not avoid playing a role in the legal system. The king, as most powerful leader of a territory, required order among his followers, and as king he had considerable power and authority. It would be very strange indeed if a man with power, authority and a need for order did not participate in the process of resolving disputes. The introduction of Christianity would only have strengthened the king's role as judge; the Church was familiar with systems where judicial authority stemmed from the state and it strongly urged the king to act as judge.⁸¹ While kings were judges, *brithem*

⁸⁰ Of course, the king could not be a coward – if he was wounded in the back he lost his status as a king, unless he had received the wound by going into the midst of the enemy. *Críth Gablach* 538-41.

⁸¹ The Church also encouraged the king to act as legislator and enforcer of law, but these topics fall outside the scope of this paper.

moin were the experts in law, and few kings would have judged without their advice, but a wise king would be well enough informed about the rules of law to detect an incompetent *brithem*.

Legends and mythology of Irish kingship assumed the king gave judgements, usually in consultation with a *brithem*, and portrayed the well-being of the *túath* as dependent on the truth of the king's judgement. Irish kings did not live in the world of myth – they may well have judged falsely without causing the crops to fail. But the legends of the king as judge were not promulgated idly or disinterestedly; they promoted a view of the king relevant to the contemporary society in which the king was a judge.⁸²

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