# Studies in Medieval Irish Inter-territorial law: The Structure of Legal Agreements Between Kingdoms

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I, Andrew Ó Donnghaile, hereby declare that all the work presented in this thesis is my original work, and no degree has previously been obtained on the basis of this work.

Andrew Ó Donnghaile

# Summary of contents

This study investigates and explains types of inter-territorial dispute settlement and how they functioned within inter-territorial relationships that characterise the dynamic of the political and legal administration of overkingdoms in medieval Ireland, focusing on the late seventh to tenth centuries. One chapter examines an array of aspects of *cairde*, including enactment, liability, fine structure, and enforcement and legal procedure. Another chapter explores aspects of the seventh-, eighth- and ninth-century ecclesiastical *cánai* relating to inter-territorial dispute settlement. The final chapter analyses the dispute settlement methods in the early tenth-century tract on *cró* and *díbad*, drawing comparisons with the previous two chapters and suggesting possible shifts in inter-territorial dispute settlement.

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# Abbreviations

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| *ACP* | *Airgíalla* Charter Poem, ed. Edel Bhreathnach and Kevin Murray (Dublin 2005). |
| *AFM* | *Annals of the Kingdom of Ireland by the Four Masters* i-vii, ed. and trans. J. O'Donovan, (Dublin 1848-51). |
| *AI* | *The Annals of Inisfallen*, ed. Seán Mac Airt (Dublin 1951). |
| *AU* | *The Annals of Ulster (to A.D. 1131)*, *Part I: Text and translation*, ed. and trans. Seán Mac Airt and Gearóid Mac Niocaill (Dublin 1983). |
| *$C_7D$* | Tract on the distribution of *cró* and *díbad* (ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', pp. 251–260). |
| *CA* | *Cáin Adomnáin*, eds. and trans. David Dumville and Pádraig Ó Néill, Basic Texts in Gaelic History 2 (Cambridge 2003). |
| *CB* | *Córus Bésgnai: an Old Irish law tract on the church and society*, ed. and trans. Liam Breatnach, Early Irish Law Series 7 (Dublin 2017). |
| *CCH* | *Collectio Canonum Hibernensis*, ed. and trans. Roy Flechner (Washington, D. C. 2019). |
| *CD* | *Cáin Domnaig*, ed. Hull, 'Cáin Domnaig', *Ériu* 20 (1966), pp. 151–77. |
| *CG* | *Críth Gablach,* ed. D.A. Binchy (Dublin 1941). |
| *CGH* | *Corpus genealogiarum Hiberniae*, ed. M.A. O'Brien (Dublin 1962). |
| *CGSH* | *Corpus genealogiarum sanctorum Hiberniae*, ed. Pádraig Ó Riain (Dublin 1985). |
| *CIH* | *Corpus Iuris Hibernici*, ed. D.A. Binchy, (Dublin 1978). |
| *CO* | *Church Organisation in Ireland AD 650-1000*. C. Etchingham (Maynooth 1999). |
| *CS* | *Chronicum Scotorum: a chronicle of Irish affairs from the earliest times to A.D. 1135*, ed. and trans. William Hennessy (London 1866). |
| *eDIL* | *Electronic Dictionary of the Irish Language*, digitised and updated from *Dictionary of the Irish Language*, compact edition (Royal Irish Academy: Dublin, 1983). |
| *ECI* | *Early Christian Ireland*. T.M. Charles-Edwards (Cambridge 2000). |
| *EICL* | *Early Irish Contract Law*, ed. Neil McLeod (Sydney 1992). |
| *EIF* | *Early Irish Farming*, F. Kelly (Dublin 1998). |
| *EIWK* | *Early Irish and Welsh Kinship*, T.M. Charles-Edwards (Oxford 1993). |
| *EMGL* | *The Early Medieval Gaelic Lawyer*, T.M. Charles-Edwards (Cambridge 1999). |
| *FCTM* | *Frithḟolad Caisil fri Túatha Muman*. ed. J.G. O'Keeffe, 'Dál Caladbuig and Reciprocal Services between the Kings of Cashel and Various Munster States', *Irish Texts* 1 (London 1931), pp. 19–21. |
| *GEIL* | *A Guide to Early Irish Law*, Fergus Kelly (Dublin 1988). |
| *OGSM* | *Old Irish Glossing of the Senchas Már*. |
| *TBC1* | *Táin Bó Cúailnge,* Recension I, ed. Cecile O'Rahilly (Dublin 1976). |
| *TBCLL* | *Táin Bó Cúailnge from the Book of Leinster*, Cecile O'Rahilly (Dublin 1961). |
| *TBDD* | *Togail Bruidne Da Derga*, ed. Eleanor Knott, Mediaeval and Modern Irish Series 8 (Dublin 2010). |
| *VSC* | *Vita Sancti Columbae:* Adomnan's Life of Columba*,* ed. A.D. and M.O. Anderson (London 1961). |
| *VT* | *Bethu Phátraic, The Tripartite Life of Patrick*, ed. and trans. Kathleen Mulchrone (Dublin 1939). |
| *ZCP* | *Zeitschrift für celtische Philologie,* Halle, Tübingen 1897-. |

# 1. Introduction

## 1.1. Outline of study

The purpose of this study is to investigate and explain inter-territorial dispute settlement and how it functioned in inter-territorial relationships within the dynamic of the political and legal administration of overkingdoms in medieval Ireland, focusing on the late seventh to tenth centuries. In the localised socio-political framework of early Irish kingdoms, legal rights, for the majority of people, were limited to the bounds of their own kingdoms, where they were governed by the ordinary law of that kingdom. However, this changed when a kingdom had some kind of relationship with another. In addition, the mobile elite could traveling through kingdoms with various relationships to their native one. These relationships between kingdoms were the fabric that tied overkingdoms together. They determined legal interaction between kingdoms, including how to handle disputes involving people from different kingdoms. If a dispute occurred between members of different kingdoms, a complex system of inter-territorial protocols determined the legal procedure for resolving the dispute. The main drive of this study is to analyse and reconstruct various models of inter-territorial dispute settlement in their full complexities, from various time periods. The goal here is to explain how this understudied aspect of the early Irish legal system was intended to work in practice. Aspects of the models will be used, alongside some political contexts, to infer shifts in dispute settlement, inter-territorial relationships and legal authority over time, ultimately furthering our understanding of politico-legal authority and administration in the study period. With such a framework, we can begin piecing together legal administration in overkingdoms, which can be used to explain political and social dynamics more fully. The focus of the study period is the late seventh to tenth centuries, occasionally referring to later periods where relevant and where necessitated by certain sources.

*Cairde* has remained a less explored concept in the already understudied area of early Irish law and as such reconstructing this concept lies at the core of this study, which is treated in Chapter Two. This chapter comprehensively deals with the enactment, liability, enforcement and legal procedure of *cairde*. Chapter Three covers the same aspects of certain texts of ecclesiastical *cánai*, legislation that represents a significant milestone in the development of inter-territorial law. Here the scope is limited to aspects of those texts relevant to the discussion of this kind of law. Chapter Four provides a detailed analysis of cross-border legal protocols and their relevance to inter-territorial relationships in the early tenth-century tract on *cró* and *díbad*, drawing comparisons with

*cairde* and ecclesiastical *cánai* to illustrate shifts in inter-territorial dispute settlement. As a side note, unless noted otherwise, all translations are my own.

### 1.2. Previous scholarship

#### 1.2.1. Previous scholarship: clientship and economic, legal, and political relationships

Over the years, many scholars have examined the concept of clientship in some level of detail. Rudolf Thurneysen presented editions of two of the *Senchas Már* texts on base and free clientship, *Cáin Aicillne* (*SM1*, *6*) and *Cáin Ṡóerraith* (*SM1*, *5*).[1] Some scholars have examined clientship specifically in terms of how the basic models were extrapolated to relationships between kingdoms and overlordship exercised by kings. From the models of base and free clientship emerged the *sóerthúath* ('free client-kingdom') and *aithechthúath* ('base client-kingdom'), which are concepts attested from the seventh century (but may well be earlier).[2] Gerriets has also suggested the possibility of a further degree of inter-territorial subordination distinct from a base client-kingdom and based on relationship of a lord with a *fuidir* ('semi-freeman').[3] Colmán Etchingham and Thomas Charles-Edwards have examined parallel developments of clientship and overlordship within an ecclesiastical context.[4] The roles of sureties, which are linked to these relationships between kingdoms, have been examined in some depth, though many questions about their precise

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[1] R. Thurneysen, 'Aus dem irischen Recht I', *ZCP* 14 (1923), pp. 338–94; *idem.*, 'Aus dem irischen Recht II', ZCP 15 (1925), pp. 239–53; *Di Dligiud Raith 7 Somaíne la Flaith* (*SM2*, *18*), still without critical edition, is to be found in *CIH* 432.21–436.32, 918.1–919.24, 1904.17–1912.23. All texts in the *Senchas Már* are numbered according to the section of the legal compilation (first, second, third) and overall number within the compilation. So for example, *SM1*, *6*, the categorisation applied to *Cáin Aicillne*, indicates that it is the sixth text in the *Senchas Már* and that it is situated within the first third of the *Senchas Már*.

[2] For example, D.A. Binchy, *CG*, pp. 80, 95–8, 107; F. Kelly, *GEIL*, pp. 29–36; M. Gerriets, *The place of the economy in society: clientship in early Christian Ireland according to the ancient Irish laws* (unpublished PhD thesis, Wilfrid Laurier University, 1979); *eadem.*, 'Economy and society. Clientship according to the Irish laws', *Cambridge Medieval Celtic Studies* 6 (1983), pp. 43–61; *idem.*, 'Kingship and Exchange in Pre-Viking Ireland', *Cambridge Medieval Celtic Studies* 13 (Summer 1987), pp. 39–72; N. McLeod, 'Interpreting early Irish law: status and currency, Part 1', *ZCP* 41 (1986), pp. 46–65.; *idem.*, 'Interpreting early Irish law: status and currency, Part 2', *Zeitschrift für celtische Philologie* 42 (1987) pp. 41–115; T.M. Charles-Edwards, *EIWK*, pp. 337–63; *idem.*, '*Críth Gablach* and the law of status', *Peritia* 5 (1986), pp. 53–73; *idem.*, *ECI*, pp. 68–80, 530–48; *idem.*, '*Lebor na Cert* and clientship', in K. Murray (ed.), *Lebor na Cert: Reassessments*, Irish Texts Society: Subsidiary Series 25 (London, 2013), pp. 13-33. R. Chapman Stacey, *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (Philadelphia 1994), pp. 82–111; B. Jaski, *Early Irish kingship and succession* (Dublin 2000), pp. 47, 105–12.

[3] Gerriets, 'Kingship and Exchange', pp. 39–72.

[4] C. Etchingham, 'The implications of *paruchia*', *Ériu* 44 (1993), pp. 139–162; *idem.*, 'Bishops in the early Irish church: a reassessment', *Studia Hibernica* 28 (1994), pp. 35–62; *idem.*, *CO*; T.M. Charles-Edwards, *ECI*, pp. 117–23, 241–81, 416–40; *idem.*, 'Irish Saints' Cults and their Constituencies', *Ériu* 54 (2004), pp. 79–102.

functions in inter-territorial affairs still linger.[5] Polemic texts that illustrate these relationships such as *Frithfolad Caisil fri túatha Muman* and the political tract in the Laud genealogical material (sometimes termed the 'West Munster Synod') have been explored to some extent.[6] Significantly more work, including a current edition and translation, introductory material, and prosopography, has been done on the polemic text currently termed *The Airgíalla Charter Poem*.[7] However, deeper analyses of the full legal workings and implications of inter-territorial relationships can be done on all of these texts to illustrate the full complexity of the legal administration of overkingdoms. The general legal underpinnings of early medieval overkingship have been investigated in certain ways, but this has often (with some notable exceptions) been done in a fashion subsidiary to other purposes, usually stating in brief the legal obligations that comprised such relationships, rather than comprehensively explaining the details of legal relationships under the authority of an overking.[8]

### 1.2.2. Previous scholarship: *cairde*, *cáin*, and inter-territorial dispute settlement

The concept of *cairde* and inter-territorial dispute settlement in general (as part of these aforementioned inter-territorial legal relationships) have been rather neglected. Richard Sharpe has conducted a 'preliminary inquiry', as he calls it, into dispute settlement in medieval Ireland, including some comments on the early medieval period, but he makes little mention of inter-

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[5] R. Thurneysen, *Die Bürgschaft im irischen Recht* (Berlin 1928), pp. 61–83; Binchy, *CG*, pp. 74–5, 95–6, 100–4; Kelly, *GEIL*, pp. 167–76; Stacey, *The Road to Judgment*, pp. 82–111, J. Bemmer, 'The early Irish hostage surety and inter-territorial alliances', *Historical Research* 89:244 (May 2016), pp. 191–207.

[6] L. Ó Buachalla, 'Contributions towards the political history of Munster, 450–800 A.D.', *Journal of the Cork Historical and Archaeological Society* 57 (1952), pp. 78–86; D. Ó Corráin, 'Dál Calathbuig', *Éigse* 14 (1971-2), pp. 13-16; Stacey, *The Road to Judgment*, pp. 92–3, 99, 106; Charles-Edwards, *ECI*, pp. 522, 534–50; A recent but less than satisfactory translation with regards to legal and political idiom has been produced in D.B. Gibson, 'The Cíarraige Chiefdom Alliance', *Eolas: The Journal of the American Society of Irish Medieval Studies* 10 (2017), pp. 16-32.

[7] E. Bhreathnach, '*The Airgíalla Charter Poem*: the political context', in Edel Bhreathnach (ed.), *The kingship and landscape of Tara* (2005), pp. 95–99.; T. M. Charles-Edwards, '*The Airgíalla Charter Poem*: the legal content', in Edel Bhreathnach (ed.), *The kingship and landscape of Tara* (2005), pp. 100–123; E. Bhreathnach and K. Murray, '*The Airgíalla Charter Poem*: edition', in Edel Bhreathnach (ed.), *The kingship and landscape of Tara* (2005), pp. 124–158; Gerriets 'kingship and exchange', pp. 39–72; Stacey, *The Road to Judgment*, pp. 92–3, 98–9; Charles-Edwards, *ECI*, pp. 464, 511–30; Jaski, *Early Irish kingship and succession*, pp. 204–8.

[8] T.M. Charles-Edwards, '*Críth Gablach* and the law of status', *Peritia* 5 (1986): 53–73; Kelly, *GEIL*, pp. 17–26; T.M. Charles-Edwards, 'A Contract between King and People in Early Medieval Ireland? *Críth Gablach* on Kingship', *Peritia* 8 (1994), pp. 107–19; E. Bhreathnach, 'Temoria: caput Scotorum?', *Ériu* 47 (1996), pp. 67–88; B. Jaski, 'Early medieval Irish kingship and the Old Testament', *Early Medieval Europe* 7 (1998), pp. 329–344; Charles-Edwards, *ECI*, pp. 469–585; E. Bhreathnach (ed.), *The kingship and landscape of Tara* (Dublin, 2005); L. Breatnach, 'The King in the Old Irish Law Text Senchas Már', in *Celtic Language, Law and Letters. Proceedings of the Tenth Symposium of Societas Celtologica Nordica*, ed. Folke Josephson (Göteborg, 2010), pp. 107-28.

territorial affairs.[9] Binchy provided a short entry for the term in his glossary to *Críth Gablach*, a text which includes some important evidence for *cairde*, as does (to a lesser degree) the status text *Míadṡlechtae*, edited by Gerard Manning.[10] In his most recent monograph, Charles-Edwards only makes a few brief mentions of it, as does Bart Jaski, who both refer to the work of Robin Chapman Stacey, who produced the first extensive treatment of *cairde* of any depth (since Thurneysen's commentary) in her elucidating analysis of hostage-sureties.[11] Here she discusses the differences between the *gíall* and *aitire*, which with a deeper analysis, contra aspects of arguments proffered by Thurneysen and Binchy, she illustrates how both function as guarantors of inter-territorial contracts, with the *gíall* associated with *cáin*, a contract involving an overking's authority over a base client-kingdom, and with the *aitire* connected with *cairde*, a legal agreement associated with free clientship between kingdoms. Both might function publicly for claims of an unexpected nature, such as accidental or intentional inter-territorial offences, as opposed to planned private contracts and obligations for which the *ráth* and *naidm* jointly act. She elaborates on the functions of the *aitire* and other legal officials involved in *cairde* (such as the *muiredach*) by explaining procedural aspects of the legal texts *Berrad Airechta* and tract currently termed *Slán nAitire Cairde*, as well as using *Di Gnimaib Gíall* (*SM1, 3*) and aforementioned texts on clientship to discuss the *gíall* and the inter-territorial relationship of *cáin*. These first two texts, important for information on *cairde*, originally (partially) edited by Thurneysen and given further commentary (and in the case of *Berrad Airechta*, a more recent translation) by Stacey, receive further explication by Jaqueline Bemmer.[12] In doing so, Bemmer investigated the concept of *cairde* further, also making pioneering steps by translating and interpreting a few passages from the difficult *Senchas Már* text on *cairde* (*SM3, 31*), currently bearing the name *Bretha Cairdi*, from which Liam Breatnach had previously translated a citation.[13] Breatnach has adequately identified and catalogued all the surviving extracts from *Bretha Cairdi* in the *Corpus Iuris Hibernici* and situated it within the organisation of the *Senchas Már*.[14] He has also provided analyses of important passages from *Bretha Nemed* concerning a role of poets

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[9] R. Sharpe, 'Dispute settlement in medieval Ireland: a preliminary inquiry', in Wendy Davies and Paul Fouracre (eds.), *The settlement of disputes in early medieval Europe* (Cambridge 1986), pp. 169–189.

[10] D.A. Binchy, *CG*, p. 80; G. Manning, *Miadṡlechtae: An Old Irish Law Text on Status* (unpublished PhD thesis, Trinity College Dublin, 2004).

[11] Charles-Edwards, *ECI*, pp. 104, 113, 530, 567, 584, 593; Jaski, *Early Irish kingship and succession*, pp. 98–9, 103–4; Stacey, *The Road to Judgment*, pp. 82–111; R. Thurneysen, 'Aus dem irischen Recht III', *ZCP* 15 (1925), pp. 326–7, 374–5; R. Thurneysen, 'Aus dem irischen Recht V', *ZCP* 18 (1930), pp. 381–5.

[12] Thurneysen *Bürgschaft*, pp. 6–33; Bemmer, 'Inter-territorial alliances', pp. 191–207.

[13] Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 117.

[14] L. Breatnach, *A Companion to the Corpus Iuris Hibernici* (Dublin 2005), pp. 302–3.

in inter-territorial dispute settlement.[15] Notably, however, the material concerning *cairde* in the aforementioned analyses has not been considered alongside that in *Críth Gablach* and *Míadṡlechtae*. Neil McLeod has produced important work concerning the blood-feud in inter-territorial relations and the role of the *aire échta* ('lord of blood-vengeance') in *cairde*, while also explicating concepts relating to inter-territorial affairs contained in a legal narrative, *Echtra Fergusa maic Léti*.[16] Kevin Murray has recently provided a welcome new edition (with accompanying translation and interpretation) of the tract on *cró* and *díbad*, including notable improvements upon that of Kuno Meyer, an early Middle Irish text which illustrates inter-territorial dispute settlement protocols.[17]

### 1.2.3. Previous scholarship: ecclesiastical *cánai*

The ecclesiastical *cánai*, a series of ordinances issued from leading ecclesiastical institutions and enacted at assemblies with joint cooperation between clerical and lay rulers from the late seventh century, have been examined in certain ways over the last several decades. Thurneysen offered an edition and translation of the short Middle Irish tract *Rith na cánann* ('the extent of the *cánai*') as well as a discussion concerning the *cánai* as a legal phenomenon.[18] In the aforementioned work concerning concepts of *cáin* and *cairde*, Stacey also discusses various ecclesiastical *cánai*, offering some deeper insights to their workings.[19] Etchingham has examined the ecclesiastical *cánai* within the context of ecclesiastical authority and politics, discussing an array of their features as well as suggesting reasons why they cease being mentioned in the annals.[20] F.J. Byrne has mentioned the enactment of *cánai* with regards to contemporary political events.[21] Charles-Edwards has also analysed the ecclesiastical *cánai* as a group, considering chronicle entries noting promulgations of

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[15] L. Breatnach, 'Satire and the Poet's Circuit', in Ó Háinle, Cathal G., and Meek, Donald (eds.), *Unity in Diversity. Studies in Irish and Scottish Gaelic Language, Literature and History* (Dublin 2004), pp. 25–35.

[16] N. McLeod, 'The blood-feud in medieval Ireland', in O'Neill Pamela (ed.), *Between intrusions: Britain and Ireland between the Romans and the Normans*, Sydney Series in Celtic Studies 7 (Sydney 2004), pp. 114–133; *idem.*., 'Fergus mac Léti and the law', *Ériu* 61 (2011), pp. 1–28; *idem.*, 'The lord of slaughter', in O'Neill, Pamela (ed.), *The land beneath the sea: essays in honour of Anders Ahlqvist's contribution to Celtic studies in Australia*, Sydney Series in Celtic Studies 14 (Sydney 2013), pp. 101–114.

[17] K. Meyer, 'A Collation of Críth Gablach, and a Treatise on *Cró* and *Díbad*', *Ériu* 1 (1904), pp. 209–15; K. Murray, 'A Middle Irish tract on "cró" and "díbad"', in Alfred P. Smyth (ed), *Seanchas: studies in early and medieval Irish archaeology, history, and literature in honour of Francis J. Byrne* (Dublin 2000), pp. 251–260.

[18] Thurneysen, 'Aus dem irischen Recht V', pp. 382–96.

[19] Stacey, *Road to Judgment*, esp. pp. 94–6.

[20] Etchingham, *CO*, pp. 194–223.

[21] F.J. Byrne, *Irish Kings and High Kings* (London 1973), pp. 209–23, 250–3.

*cánai* alongside surviving texts.[22] He has also considered them within the context of royal power.[23] His perceptive conclusions concerning the *cánai* include: 'the ecclesiastical *cáin* was evidently an attempt to regulate the lives of the laity', 'one thing that the *cáin* did, therefore, was to replace the ordinary processes of feud with its own means of enforcing compensation', and 'the framework may have been temporary, but it was clearly intended to effect permanent change'.[24] These concepts will be taken into account when considering the functions of the ecclesiastical *cánai* in inter-territorial law. Most recently, Breatnach has comprehensively discussed the *cánai* in terms of the surviving texts in legal manuscripts, elucidating textual features of *cánai*, as well as identifying and translating many unnoticed fragments of *cánai* that were previously thought to be lost in their entirety.[25]

Regarding individual texts, *Cáin Adomnáin* was first edited and translated by Meyer, with Gilbert Markus and Máirín Ní Dhonnchadha supplying updated translations, followed by a new edition and translation by Pádraig Ó Néill and David Dumville.[26] Ní Dhonnchadha's long-awaited full critical edition is forthcoming. Ní Dhonnchadha has also published a prosopography of the guarantor list of *Cáin Adomnáin*.[27] More recently, Jim Houlihan has examined *Cáin Adomnáin* within the context of the history of the laws of war.[28] *Cáin Domnaig* consists of three parts, edited separately by Hull, Meyer, and O'Keeffe.[29] *Cáin Ḟuithirbe*, while notably distinct from what is defined below as 'saintly' *cánai*, was enacted not long before *Cáin Adomnáin* and most likely played some role in the subsequent promulgated of ecclesiastical *cánai*. It has extracts edited and translated by Breatnach and an edition (without translation) has been produced by Jaski, while Ó Coileáin identified the location of the assembly at which it was promulgated.[30]

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[22] Charles-Edwards, *EMGL*, pp. 43–62; *idem.*, *ECI*, pp. 559–69.

[23] Charles-Edwards, *ECI*, pp. 524–5, 539.

[24] Charles-Edwards, *EMGL*, pp. 53; *idem., ECI*, pp. 568–9

[25] Breatnach, *Companion*, pp. 191–227.

[26] K. Meyer, *Cáin Adamnáin. An Old-Irish Treatise on the Law of Adamnan* (Oxford 1905); G. Markus, *Adomnán's 'Law of the Innocents'* (Glasgow 1997); D. Dumville and P. Ó Néill (eds. and trans.), *Cáin Adomnáin and Canones Adomnani*, Basic Texts in Gaelic History 2 (Cambridge 2003); M. Ní Dhonnchadha, 'The Law of Adomnán: a Translation', in Thomas O'Loughlin (ed.) Adomnán at Birr, AD 697: Essays in Commemoration of the Law of the Innocents (Dublin 2001), pp. 53–68.

[27] M. Ní Dhonnchadha, 'The guarantor list of *Cáin Adomnáin*, 697', *Peritia* 1 (1982), pp. 178–215.

[28] J. Houlihan, *Adomnán's Lex innocentium and the laws of war* (Dublin 2020).

[29] V. Hull, 'Cáin Domnaig', *Ériu* 20 (1966), pp. 151–77; K. Meyer, 'Mitteilungen aus irischen Handschriften', *ZCP* 3 (1901), pp. 226–63; J. G. O'Keeffe, 'Cáin Domnaig', *Ériu* 2 (1905), pp. 189–214.

[30] L. Breatnach, 'The Ecclesiastical Element in the Old Irish Legal Tract *Cáin Fhuithirbe*', *Peritia* 5 (1986), pp. 35–50; B. Jaski (2017, June 28). *Reconstructing Cáin Fhuithirbe*. Retrieved from https://www.academia.edu/33681893/Reconstructing_Cáin_Fhuithirbe; S. Ó Coileáin, 'Mag Fuithirbe revisited', *Éigse* 23 (1989), pp. 16–26.

Aspects of various *cánai* have received attention as well. Contexts for *Cáin Adomnáin* were provided in commemorative essays on the thirteen-hundredth anniversary of the first promulgation of *Lex Innocentium* (the Latin name of *Cáin Adomnáin*) by Thomas O'Loughlin, Maire Herbert, and Máirín Ní Dhonnchadha.[31] Julianna Grigg provides an overview of *Cáin Adomnáin* (with some mention of the significance of *Cáin Phátraic*), with a view to highlighting some of its potential effects.[32] Neil McLeod discusses in detail the rhetorical connections between *Vita sancti Columbae* and *Cáin Adomnáin*, notably suggesting that *Cáin Adomnáin* §33 was the original introduction to the text (which he suggests Adomnán himself may have authored), and he uncovers additional political context neatly veiled in that passage. He also provides an overview of the political context leading to the enactment of the ordinance and explains potential legal bases for the *forbaig* ('superlevies') in *Cáin Adomnáin* and, in doing so, draws parallels with Lombard law.[33] In a different publication, he analyses some aspects of fine structure in *Cáin Adomnáin* and *Cáin Phátraic*.[34] In addition, elsewhere he has edited, translated and analysed material from *Cáin Phátraic* concerning attempted offences.[35] Charlene Eska has examined parallels between culpable onlookers in *Cáin Domnaig* and the Anglo-Saxon laws of Wihtred, exploring possible antecedents from which the concepts in both may derive.[36] Elizabeth Boyle has explicated uses of eschatological rhetoric in *Cáin Domnaig*, further illustrating how all three parts of the text are meant to be read as one.[37] Pádraig Ó Riain has made some notable remarks regarding aspects of *Cáin Dar Í*, including the Connacht connections of the female saint for which *Cáin Dar Í* was named.[38] David Dumville and Patrick Gleeson have also provided some useful observations

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[31] T. O'Loughlin (ed.): *Adomnán at Birr, AD 697: essays in commemoration of the law of the innocents* (Dublin 2001).

[32] J. Grigg, 'Aspects of the Cáin: Adomnán's *Lex Innocentium*', *Journal of the Australian Early Medieval Association* 1 (2005), pp. 41–50.

[33] N. McLeod, '*Cáin Adomnáin* and the Lombards', in Anders Ahlqvist and Pamela O'Neill (eds.), *Language and power in the Celtic world: papers from the seventh Australian Conference of Celtic Studies*, Sydney Series in Celtic Studies 10 (Sydney 2011), pp. 241–65.

[34] N. McLeod, 'Di ércib fola', *Ériu* 52 (2002), pp. 125–38.

[35] N. McLeod, 'Assault and attempted murder in Brehon law', *Irish Jurist* 33 (1998), pp. 351–391.

[36] C. Eska, 'Rewarding Informers in *Cáin Domnaig* and the Laws of Wihtred', *Cambrian Medieval Celtic Studies* 52 (Winter 2006). pp. 1–11.

[37] E. Boyle, 'Eschatology and reform in early Irish law: the evidence of Sunday legislation', in Matthew Gabriele and James Palmer (eds), *Apocalypse and Reform from Late Antiquity to the Middle Ages* (Abingdon 2018), pp. 121–38.

[38] P. Ó Riain, 'A Misunderstood Annal and a Hitherto Unnoticed *Cáin*', *Celtica* 21 (1990), pp. 561–566.

concerning the assemblies at which such legislation was enacted.[39] Patrick Wadden similarly mentions *cánai* briefly within the context of royal legislation and the compilation of the *Senchas Már*.[40] Despite all of this scholarship, little work has been done on how this kind of enacted law functioned as inter-territorial dispute settlement protocol, what influence it had on inter-territorial dispute settlement, or what detailed effects it may have had on the authority of overkings.

### 1.2.4. Previous scholarship: compensation for physical and non-physical injury

Aside from Fergus Kelly's overview, recent relevant scholarship for compensation for injury includes a series of articles published by Neil McLeod, in addition to those mentioned above in which inter-territorial law receives some attention.[41] Liam Breatnach and Roisín McLaughlin have published on aspects of injury to honour by means of satire.[42] These provide a useful framework for analysing fine structure and compensation more generally. Breatnach has discussed various aspects of the lord's share of compensation for a client, including in inter-territorial dynamics.[43] In addition, he has explicated finer details of payment in compensation with an examination of different forms of payment used in legal texts.[44] Jaqueline Bemmer has provided a recent comparison of punishment and compensation in canon law and vernacular law.[45]

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[39] D. Dumville, *Councils and Synods of the Gaelic Early and Central Middle Ages* (Cambridge, 1997); P. Gleeson, 'Kingdoms, Communities, and *Óenaig*: Irish Assembly Practices in their Northwest European Context', *Journal of the North Atlantic* 8 (2015), pp. 33–51; *idem.,* 'Converting Kingship in Early Ireland: Redefining Practices, Ideologies, and Identities' *Transforming Landscapes of Belief in the Early Medieval Insular World and Beyond: Converting the Isles II* (Turnhout 2017), pp. 287–317; *idem.,* 'Gathering communities: locality, governance and rulership in early medieval Ireland', *World Archaeology* 50:1 (2018), pp. 100-120.

[40] P. Wadden, 'The Pseudo-Historical Origins of the *Senchas Már* and Royal Legislation in Early Ireland', Peritia 27 (2016), pp. 141–57.

[41] Kelly, *GEIL*, pp. 125–57; N. McLeod, *Bloodshed and compensation in ancient Ireland*, (Perth 1999); *idem.,* 'The not-so-exotic law of Dian Cécht', in Geraint Evans, Bernard Martin, and Jonathan Wooding (eds.), *Origins and revivals: proceedings of the First Australian Conference of Celtic Studies*, Sydney Series in Celtic Studies 3 (Sydney 2000), pp. 381–393; *idem.,* 'Compensation for Fingers and Teeth in Early Irish Law', *Peritia* 16 (2002), pp. 344–59; *idem.,* 'Crólige mbáis', *Ériu* 59 (2009) pp. 25–36; *idem.*, 'Distribution of body-fine: AD 650–1150', in Anders Ahlqvist and Pamela O'Neill (eds.), *Medieval Irish law: text and context*, Sydney Series in Celtic Studies 12 (Sydney 2013), pp. 65–109.

[42] L. Breatnach, 'Satire, Praise and the Early Irish Poet', *Ériu* 56 (2006), pp. 63-84; *idem.*, 'Satire and the Poet's Circuit', pp. 25–35; *idem.*, 'Araile felmac féig don mumain: unruly pupils and the limitations of satire', *Ériu* 59 (2009), pp. 111-137; R. McLaughlin, *Early Irish Satire* (Dublin 2008).

[43] L. Breatnach, 'The lord's share in the profits of justice and a passage in *Cath Maige Tuired*', *Celtica* 27 (2013), pp. 1–17.

[44] L. Breatnach, 'Forms of payment in the early Irish laws', *Cambrian Medieval Celtic Studies* 68 (Winter 2014), pp. 1–20.

[45] J. Bemmer, 'The Duality of Sin and Delict–Penance to God, Penalty to Man–A Legal Perspective', *Peritia* 29 (2018), pp. 11–29.

### 1.2.5. Previous scholarship: legal procedure

A fair amount of work has been done on legal procedure. Besides providing the still most recent overview, including sections on law cases, court structure, oaths, and ordeals, Kelly has edited a text on court structure and procedure, currently termed the *Airecht*-text.[46] Stacey has provided a wealth of insightful perspectives on a variety of aspects of legal procedure in her two monographs.[47] Richard Sharpe discusses certain aspects of procedure that relate to dispute settlement.[48] Some work by Neil McLeod explains some numerical series used in legal procedure.[49] In various publications, Bemmer has examined aspects of *dligid* and *cert* in *Cóic Conara Fugill*, types of pledges, and how negligence relates to legal procedure.[50] In addition, Christophe Archan has provided a detailed interpretation of aspects relating to judges in *Cóic Conara Fugill*.[51] Aspects of legal procedure within *cairde* and the ecclesiastical *cánai* have been investigated in no great detail, and as such the present study will contribute to this area.

## 1.3. Legal Introduction

### 1.3.1. Compilation of legal material: Legislation and lawbooks

Early Irish legal material can be divided into two categories: legislative and non-legislative. The former include decisions of assemblies, resulting in texts codifying formal royal and ecclesiastical ordinances, made at a specific time within a specified jurisdiction. The other category includes material that may be described 'as legal manuals rather than as primary law being directed at a general population'.[52] These are often significant compilations of legal material, such as the

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[46] Kelly, *GEIL*, pp. 190–213; *idem.*, 'An Old-Irish text on court procedure', *Peritia* 5 (1986), pp. 74–106.

[47] Stacey, The Road to Judgment; *eadem.*, *Dark Speech: The Performance of Law in Early Ireland* (Pennsylvania 2007).

[48] Sharpe, 'Dispute settlement in medieval Ireland: a preliminary inquiry', pp. 174–89.

[49] N. McLeod, 'Irish law: significant numbers and the law of status', *Peritia* 9 (1995), pp. 156–66.

[50] J. Bemmer, 'Validity and equality in early Irish contract law: *dliged* and *cert* in the light of *Cóic conara fugill*', *Studia Celtica Fennica* 8 (2011), pp. 5–18; *eadem.*, 'The types of pledges in medieval Irish law: form, function and context', in *Medieval Irish law: text and context*, Sydney Series in Celtic Studies 12 (Sydney 2013), pp. 3–23; *eadem.*, 'Culpability and Negligence in Early Irish Law', in *Fír Fesso: A Festschrift for Neil McLeod*, Sydney Series in Celtic Studies 17 (Sydney 2018), pp. 45–51.

[51] C. Archan, *Les chemins du jugement: procédure et science du droit dans l'Irlande médiévale* (Paris 2007); *idem.*, 'The five paths to a judge: an interpretation of *Cóic conara fugill* (*Five paths to judgement*)', *Clio@Themis* 10 (2016), pp. 1–16.

[52] Charles-Edwards, *EMGL*, p. 9.

vernacular *Senchas Már* and the Latin *Collectio Canonum Hibernensis*.[53] The character of the material in these two categories is quite different, yet both are treated as authoritative sources of law. The nature of the difference between law tracts and lawbooks on the one hand and legislation on the other complicates matters when attempting to trace shifts in law. While legislation illustrates regulations that often can be pinpointed to a specific time and region, material in lawbooks can often have a more nebulous provenance. In such legal compilations, a given law tract may represent a blend of antiquated traditions and more contemporary material so neatly woven together that separating the threads constitutes quite a task. However, Thomas Charles-Edwards has distinguished threads of *fénechas* (passages of legal tradition), plain prose, and 'textbook' prose in such material, and other recent commentary on this area exists.[54] The region within which the tracts held legal authority and were used can also prove difficult to pinpoint, with the absence of promulgations at specific assemblies that accompanies legislation. Despite admirable work that has furthered our knowledge in grounding legal tracts in certain times, places, or at least 'law schools', many difficulties remain.[55] Unraveling these layers of law will be dealt with to some degree in the present study, as material concerning inter-territorial dispute settlement derives from a mix of sources from lawbooks and legislation.

### 1.3.2. The legal order of society

A kingdom, or *túath*, was a political unit consisting of a given region of territory and the people who collectively lived within that region. The people may be seen as a collection of kindreds,

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[53] On connections between canon law and vernacular law, and the now outdated, false dichotomy between 'secular' law and canon law, see L. Breatnach, A. Breen, and D. Ó Corráin, 'The laws of the Irish', *Peritia* 3 (1984), pp. 382–438; L. Breatnach, 'Canon law and secular law in early Ireland: the significance of *Bretha Nemed*', *Peritia* 3 (1984), pp. 439–459; *idem.*, 'The Ecclesiastical Element in the Old Irish Legal Tract *Cáin Fhuithirbe*', *Peritia* 5 (1986), pp. 35–50.

[54] T.M. Charles-Edwards, 'The *Corpus iuris Hibernici*', *Studia Hibernica* 20 (1980), pp. 141–162; Stacey, *Dark Speech*, pp. 172–203, 281–7, 301–2; N. McLeod, 'The concept of law in ancient Irish jurisprudence', *Irish Jurist* 17 (1982), pp. 2–4; F. Qiu, *Narratives in early Irish law tracts* (unpublished PhD thesis, University College Cork, 2014); *idem.*, 'Narratives in early Irish law: a typological study', in Anders Ahlqvist and Pamela O'Neill (eds.), *Medieval Irish law: text and context*, Sydney Series in Celtic Studies 12 (Sydney 2013), pp. 111–14. With this scholarship in mind, it can be posed that a longer but more descriptive translation of the very common phrase *la Féniu* (or variants thereof) would be 'in the legal tradition of the *Féni*', with *Féni* viewed as the dominant legal and political authority in force in Ireland (which is often portrayed in opposition to the Ulaid and Laigen). The phrase is usually translated 'in Irish law', which is rather general and unsatisfactory, especially in light of the aforementioned scholarship, which provides more specific connotations of the word *Féni.*

[55] For example, L. Breatnach, 'On the Original Extent of the *Senchas Már*', *Ériu* 47 (1996), pp. 1–43; *idem.*, *The early Irish law text Senchas Már and the question of its date*, E. C. Quiggin Memorial Lectures 13 (Cambridge 2011); T.M. Charles-Edwards, 'Early Irish law', in Dáibhí Ó Cróinín (ed.), *Prehistoric and early Ireland*, *A new history of Ireland* 1 (Oxford 2005), pp. 331–370.

including commoner kindreds, noble kindreds, and royal kindreds.[56] For all practical purposes, the royal kindred was simply the ruling noble kindred of the time, but in socio-political perception, royal kindreds were often viewed as having some ancestral right to the kingship, either recently or in the distant past, and the privilege of certain noble kindreds (or 'past royal kindreds') was constructed on such concepts. Such kindreds within a kingdom were bound together by the interwoven ties of the four pillars of basic legal relationships in early Irish society: free and base clientship, marriage, and fosterage.[57] The heads of both noble and commoner kindreds served administrative functions within the kingdom, including legal and sometimes military purposes. These would include the heads (termed *ágae*/*cenn*/*aire fine*) of the more immediate, smaller unit of kindred, the *derbfine* (or the *gelfine*, when it became significant in legal sources), which is often detailed in legal and genealogical texts as *aicme* or simply *fine*. They would also include the head (termed *prímagae fine*) of a wider kin-group (*íarfine* or *indfine*), sometimes termed *cenél* in our sources. Some of these figures, who were of a certain level of privileged status (*nemed*), had legal privileges by virtue of their relatively high honour-price. These privileges included mobility between kingdoms, which was normally not granted to commoners, who instead only retained legal capacity within their own kingdom. As such, some of these higher status figures served diplomatic functions involving external kingdoms within an overkingdom, which were comprised of ruling kindreds (i.e. dynasties) bound together with social, political and economic ties, whether clientship, marriage, fosterage, or ties to ecclesiastical centres and networks.[58] This was the social and political framework within which inter-territorial relationships operated.

#### 1.3.2.1. Legal capacity

Legal differences in rank and status were a widespread facet of early Irish society. Within every class of person, whether king, noble, commoner, poet or ecclesiastic, was a hierarchy of grades, some of which were categorised by the dichotomy of *sáer* ('free') and *dáer* ('unfree, base') so often

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[56] McLeod, 'Interpreting early Irish law: status and currency. Part 1', pp. 46–65.; *idem.*, 'Interpreting early Irish law: status and currency, Part 2', pp. 41–115, has convincingly shown how a model of these three hierarchies can be reconstructed from the surviving legal texts on status, and that the various types of king, noble, and commoner described therein can be interpreted as sub-grades serving specific function purposes in this social structure.

[57] Indeed, *Cáin Iarraith*, *Cáin Ṡóerraith*, *Cáin Aicillne*, and *Cáin Lánamna* are described as *na cethéora cánai* 'the four *cánai*' in the introduction to the *Senchas Már* (*SM1, 1*), and there is evidence to suggest that all four tracts were written by the same author, for which see Breatnach, *Senchas Már and the Question of its Date*, pp. 4–5; Breatnach, *Companion*, p. 310.

[58] For comprehensive overviews of all these concepts, see Kelly, *GEIL*, pp. 3–97; Charles-Edwards, *EIWK* pp. 89–165; *idem.*, *ECI*, pp. 80–123.

used in early Irish law. These grades were numerically distinguished by a stratified difference reflected in the amount of honour-price. All males were born into a certain status and received a certain honour-price based on that of their father, as a youth. Once attaining adulthood as a full member of society, a full honour-price would be given, and depending on increasing levels of wealth, clients, professional skill, or a combination of these, a higher honour-price might be acquired. Conversely, committing certain offences or other transgressions of social order or custom might result in a loss or decrease of honour-price. Honour-price essentially determined, in a gradient sense, the relative level of dependence or independence someone might have in society. A cornerstone of this was the legal capacity or incapacity one might have as a result of high or low honour-price. The value and legal force of contracts, oaths, legal evidence, and other facets of litigation relied upon honour-price. Significantly, a proclaimed person or someone who had lost all honour-price was unable to make contracts nor had any legal capacity in court, and so could easily become dependent on someone who would support them. Honour-price would also determine the total amount of compensation paid to someone. Legal capacity varied greatly from those with full legal entitlements, such as noble grades and free commoners, to semi-free figures like the *fuidir* or *bothach*, to those at the bottom of the hierarchery, such as slaves or captives. Semi-free persons had limited contractual capacity and a far greater (sometimes complete) share of compensation for offences against them is paid to their lord, who would, in turn, also bear an equal proportion of liability for offences committed by them. In contradistinction to a freeman client, a *fuidir* lives on a lord's land and has no such limits on labour owed as a freeman client would, but the lord maintains a *fuidir* in return. Unlike a completely unfree person such as a slave or captive, a *fuidir*, under certain conditions, may still leave his lord's land. If a kindred of a *fuidir* or *bothach* occupy the same land for three generations, they are reckoned as *senchléithe*, perhaps best translated 'longstanding tenancy', which may increase his status and thereby legal capacity. In general, a lord will represent his clients and other dependents in legal affairs, regardless of their precise rank.[59] This legal role includes situations concerning inter-territorial dispute settlement.

#### 1.3.2.2. Territorial units

##### 1.3.2.2.1 *Túath*

As stated above, the term *túath* denotes a socio-political unit consisting of a geographical area comprised of kindreds, each of which had their own *fintiu* ('kin-land'), collectively forming a

[59] See Kelly, *GEIL*, pp. 7–12, 26–36, 95–8.

kingdom.[60] This basic unit is the general sense of this term, a kingdom ruled by its *rí túaithe*.[61] However, in certain contexts it may refer more specifically to the people of such a kingdom, such as in opposition to its king, as we see expressed in contractual terms in *Críth Gablach*, for example.[62] More specifically, it can refer to the lay community in a kingdom when used in opposition to *eclais* ('church, ecclesiastic') or in the context of ecclesiastical jurisdiction.[63] More powerful kings, such as the *rí túath* ('king of [multiple] *túatha*') or *rí ruirech* ('king of overkings'), often understood to be a provincial king, would rule over his own *túath* in addition to other *túatha* under his power, his client-kingdoms. An overking's own *túath* might be considered a *prímthúath*, or even a *mórthúath* consolidated from several *túatha*.[64] As stated above, the legal rights of commoners was generally limited to the bounds of their own *túath*, while poets and clergy had privileges of mobility between kingdoms, and under certain circumstances different kinds of nobles had varying degrees of rights in other kingdoms. Generally, however, a person from an external kingdom would be considered a *deorad* ('outsider') and would be treated differently from an *urrad* ('local freeman') in legal situations, the degree of difference relying on the legal relationship with the kingdom in question.[65]

#### 1.3.2.2.2. *Crích*

Another territorial unit relevant to inter-territorial law is *crích*. In Old Irish, the term has a number of meanings in various contexts. In a legal context, one of the most common is a border, often between two kingdoms, as in the very common phrase *tar crích*. It can also indicate a boundary between lay and ecclesiastical jurisdictions, such as in the phrase *imthecht a crích n-ecailsi hi crích túathi* ('wandering from the boundary of the church into the boundary of the lay community').[66] In a more precise sense, it can mean a border zone in the sense of a frontier between kingdoms, which is sometimes expressed in the phrase *or críche* ('the edge of the frontier').[67] It can also refer to the

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[60] See Kelly, *EIF*, pp. 398–402; Charles-Edwards, *ECI*, pp. 100–6.

[61] The outdated translation of 'tribe' for the term *túath* is inadequate for many reasons, which are explained in F.J. Byrne, 'Tribes and Tribalism in early Ireland', *Ériu* 22 (1971), pp. 128–166.

[62] *CG* ll. 492–501; T.M. Charles-Edwards, 'A contract between king and people', pp. 107–119.

[63] Etchingham, *CO*, pp. 141–8; Charles-Edwards, *EIWK*, pp. 143–7, noting in particular the similar use of Latin *gens*, *populus*, and *plebs*.

[64] Etchingham, *CO*, pp. 143–4. See K. Simms, *Gaelic Ulster in the Middle Ages* (Dublin 2020), p. 29, for the idea of a *mórthúatha* being a cluster of four to seven *túatha*.

[65] Kelly, *GEIL*, pp. 4–6.

[66] In the Y manuscript of *Epistil Ísu* §17, O'Keeffe, 'Cáin Domnaig', p. 202.

[67] See *CG* ll. 496, 511. For a translation of the full passages, see sections 2.1 and 2.2.1 below.

area bounded by a border, similar to its equivalent in Latin, *fines*.[68] In this way, it may sometimes mean the territory of a kingdom, its physical land and area of jurisdiction as opposed to the people or collective political unit of a kingdom, as *túath* can indicate.[69] More often, it indicates a territory in a general sense, which can be used of regions encompassing one or more kingdoms, but that usually have some common jurisdiction.[70] This is mirrored in Irish chronicles, where *crích* is used for kingdoms (and overkingdoms) of various size and even of a province.[71]

### 1.3.3. Types of dispute settlement protocol

Within a single kingdom, different types of sanction were appropriate for various classes of people. An Old Irish commentary on *Cethairślicht Athgabálae* describes the appropriate kind of sanction each class of person should use for offences committed against them when compensation was not forthcoming: *clocc ⁊ salm d'eclais, gēll do flathaib, trifocflad do filedaib, aithgabāil do fēinib* ('bell and psalm for the church, hostages for lords, "three utterances" for poets, distraint for commoners').[72] However, between kingdoms, specific protocols for inter-territorial dispute settlement were in place, which involved slightly different (albeit sometimes interrelated) processes

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[68] See Etchingham, *CO*, p. 140. Note, for example, a citation from *Cáin Dar Í*, which uses both senses in relative proximity: *intí fofich, is é téit tar crích... go rucar breth fair a nemid críchi cáich frisi fuachar* ('he who commits an offence, it is he who goes across the boundary, so that judgement may be passed on him at the dignitary's place of the territory of him against whom an offence is committed'), *CIH* 1973.1–3; trans. Breatnach, *Companion*, p. 208. Note also the phrase *combeart dá crích* ('joint adjudication of [matters which involve] two territories'), *CIH* 1932.6–7; trans. Breatnach, 'Lawyers in early Ireland', in Daire Hogan and W. N. Osborough (eds.), *Brehons, serjeants and attorneys: studies in the history of the Irish legal profession* (Dublin 1990), p. 9.

[69] Note the Old Irish citation from a section of a *cáin* text titled *Cethramtha na Túarastal*, which contains both *túath* and *crích*, stating *in indeall i forus túaithe i crích i nacarar; in críoch i ndenann a cor nó a cunnra no fogail, meas ⁊ folach ⁊ inichus na críche-sin uadha* ('the contract in an enactment of [i.e. pertaining to] a *túath* in a territory in which [cases] are prosecuted; the territory in which [a case] is held by right or by contract or testimony, the opinions and considerations and fulfilment [come] from that territory'), *CIH* 1981.25–6, see Breatnach, *Companion*, p. 231. While it is slightly unclear whether the adjacent use of *crích* and *túath* indicate different aspects of the same place, or different terms for jurisdictions of various size, it would seem that here *túath* is used to indicate a political unit and *crích* used to indicate an area of territorial jurisdiction. That the two terms might sometimes be interchangeable may be indicated, as Breatnach translates, in the following passage concerning a difficult judgement: *téit i réir n-aicneda is gaithe isin crích co triur ara-bídh a túaith* ('it goes for decision to the most skilled advocate in the kingdom together with the three people who are at the head of the kingdom'), *CIH* 1932.12–13; trans. Breatnach, 'Lawyers', p. 10. However, it is also possible that regions of difference size are meant instead.

[70] In *Cáin Adomnáin* (*CA* §38), there are pledges taken *fo mes cacha críchiu* ('according to the estimation of each territory'), and *Bretha Cairdi* denotes the jurisdiction of a *crích cairdi*, which is discussed below, and definitively attested in Old Irish at *CIH* 868.6–7.

[71] *AU* 764.15; *AU* 795.2; *AU* 816.8; *AU* 879.1. The provincial sense of *crích* is attested in *AU* 787.5: *Dubh Da Bhairenn, abbas Cluana Iraird adusitauit paruchiam crichae Muman* ('Dub Da Bhairenn, abbot of Clonard, made a visitation of his *paruchia* in the territory of Munster').

[72] *CIH* 884.1–4; Breatnach, 'On satire and the poet's circuit', p. 26.

than the above types of sanction. These protocols comprised part of the aforementioned overall inter-territorial politico-legal relationships that delineated the obligations of client-kingdoms or more generally the legal administration of overkingdoms. Specifically, they provided a legal means for resolving legal claims and paying compensation across the borders of kingdoms.

#### 1.3.3.1. *Bésgnae*

The term *bésgnae* has the general sense of 'discipline, legal order'. We see this meaning in the titles of *Senchas Már* law texts such as *Córus Bésgnai* ('The Arrangement of Discipline') and *Bésgnae Ráithe* ('The Discipline of Suretyship'). In certain contexts, *bésgnae* can have a more specific sense of 'legal protocol', indicating the specific aspect of dispute settlement mechanism of the type of law, as opposed to any other aspects of that type of law.[73] This particular sense definitely appears in several examples of later commentary.[74] Early examples of this sense are difficult to pinpoint but, as discussed further below, there may be an example in the eighth-century pseudo-historical introduction to the *Senchas Már*, referring to legal agreements passed at an assembly presented as being presided over by Patrick and the king of Tara, Lóegaire, a sense which is perhaps echoed in an allusion to the same assembly in a citation from *Bésgnae Ráithe* (*SM3, 39*).[75] The basis of interpreting the term in this sense lies in its use in the introductory passage to the tract on *cró* and *díbad*, which is clearly used in this sense and again uses the term in allusion to the same assembly with Patrick and Lóegaire.[76]

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[73] eDIL, s.v. *bésgnae*; see McLeod, 'Blood-feud', p. 131.

[74] See *CIH* 2125.34–5 (see section 2.2.3.1.2.1. below) for general use to indicate any type of legal dispute settlement protocol, be it that in *urradus*, *cairde*, *cáin*, *dliged dígona*, etc. The term, as well as the negative *nembésgnae* ('absence of legal protocol, without legal protocol'), appears also in *CIH* 115.1–10; 118.35–119.36; 272.34–273.14; 1212.3–5.

[75] See the end of section 2.1. The passage from the pseudo-historical introduction reads *asrochongrad iarom ó Loegaire formna fer nÉrenn do thudecht i n-oenmagin fri hoentaid n-immacallma im chórus a mbéscnai ¬ a rechtgai. Docuas uadib co Pátraic co tudchised don dáil*, which I would tentatively translate as 'then the best of the men of Ireland were commanded by Loegaire to assemble for a conference regarding the proper ordering of their legal agreements/protocols and enacted laws. A message was sent by them to Patrick, that he should come to the assembly', cf. J. Carey, 'An edition of the pseudo-historical prologue to the *Senchas Már*', *Ériu* 45 (1994) pp. 11, 17. The citation from *Bésgnae Ráithe* (*CIH* 2103.33) reads: *Con-amus la Pātraic i flaith in rīg Lāegairi bēscna aitiri cāich fō mīad*, the translation of which I would modify as such: 'the protocol of hostage-suretyship of everyone in accordance with his rank has been determined by Patrick in the reign of the king Lóegaire', cf. Breatnach, *Companion*, p. 306.

[76] The passage is as follows: *Ro ordaighset íaram ⁊ imma-deisidh leo a buith a mbéscna isind inis-se ó t[h]osogh co forcenn ⁊ ad-rodamnatar Pátraic ⁊ fir Érenn olcena a buith samla[id]*, which I would translate rather as 'They arranged [it] then and it was settled by them what was to be their protocol in this island from the beginning to the end, and Patrick and the men of Ireland besides acknowledged that it should be so', cf. Murray, 'A Middle Irish tract on "cró" and "díbad"', pp. 252. For further discussion, see section 4 below.

#### 1.3.3.2. *Urradus*

*(A)urradus* has often been translated as 'customary law' or 'native law'. These rather vague definitions do not adequately convey the actual sense of the word and further illustrate how one- or two-word translations are often insufficient to convey the technical sense of many legal terms. Firstly, it is formed from the term *aurrae*/*aurrad*, meaning 'local freeman', someone who has full legal entitlements within the bounds of a kingdom. Thus *urradus* is the ordinary legal protocol between *urraid*, generally members of the same kingdom.[77] In such a way, 'ordinary law' is the most adequate short translation that may be used for the word in this sense, but generally in this study the term will be used in its original form, since it has been defined in its full legal complexity here. It is often presented in contradistinction to inter-territorial legal protocols, such as *cáin* and *cairde*.[78] It can also be used more generally in the sense of 'liability, legal protocol' as in the following passage from *Cetharślicht Áthgabalae*: *Ocus arindí it .iiii. urrathas do-cuisin: urradhtus brātha Caī 7 urrathas cāna 7 aurrathas cairdi 7 urrathas fri neimtiu…Ocus arindīit .iiii. ārag fris tobngiter na ceithri aurrathas: aithgabāil fri brāta Caī, gīall fri cāin, aitire fri cairddi, gell fri neimthiu* ('And because it is four kinds of liability that exist: liability under *Bráth Caí*, liability under promulgated law, liability under treaty, liability towards dignitaries…and it is because four kind of constraint by which the four kinds of liability are enforced: distraint in the case of *Bráth Caí*, hostage[-taking] in the case of promulgated law, hostage-surety in the case of treaty, a pledge in the case of dignitaries').[79] In this case, since *urradus* is used in this more general sense, the term *Bráth Caí* is used to refer to the normal judicial process or dispute settlement method between members of the same kingdom, enforced by distraint when necessary.[80]

#### 1.3.3.3. *Cáin*

The term *cáin* has several distinct meanings in medieval Irish law. In one sense, *cáin* can refer to a general regulation of law and order, in essence a system of law. In this way, it is used in the names of a few adjacent *Senchus Már* texts, such as *Cáin Íarraith* (*SM1*, *4*), *Cáin Ṡóerraith* (*SM1*, *5*), *Cáin*

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[77] D.A. Binchy, 'Bretha Crólige', *Ériu* 12 (1938), p. 69, defines it as 'the "common law" obtaining between members of the same *tuath*'.

[78] E.g. *CIH* 4.23–8; 1552.30–4; 1712.23; 2145.8-14; see Binchy, 'Bretha Crólige', p. 69.

[79] *CIH* 412.7–8, 412.13–15; trans. Breatnach, *Companion*, p. 171.

[80] For example, see *CB* §16, where Breatnach translates *bráthchae* as 'judicial process', and his overall discussion of the difficult term in Breatnach, *Companion*, pp. 170–4. Additional support for this equivalency can be in the tract on *cró* and *díbad*, where the term *urradus* in the sense of 'ordinary law' is mentioned as being enforced by distraint, for which see Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 253.

*Aicillne* (*SM1*, *6*), and *Cáin Lánamna* (*SM1*, *7*).[81] In another sense, it can refer to the contractual relationship between an overking and a base client-kingdom (sometimes termed an *aithechthúath*) under him.[82] A passage from the *Díre*-tract (*SM2*, *19*) illustrates that this type of relationship could exist both in lay and ecclesiastical contexts, referring to *cáin flatha ocus a céli* ('a contract of base clientship of a lay ruler and his base client') and to *cáin n-eclaise ocus a manach* ('a contract of base clientship of a church and its [unfree] monastic client').[83] It can also refer to legislation, for example an agreement or ordinance enacted at an assembly, which might sometimes be a joint meeting of ecclesiastical and lay lords.[84]

Charles-Edwards has parsed the paradigms in the chronicles for promulgations of the so-called 'ecclesiastical *cánai*', separating out components in chronicle entries that mention a *cáin*. These components, which may appear in various combinations in any given chronicle entry, include: 1) saint named as the 'patron' of the *cáin*, 2) promulgator of the *cáin*, lay or ecclesiastical (or both), 3) beneficiaries (e.g. 'innocents' or 'cattle'), 4) region of jurisdiction, either over a province specifically or by implication over the region ruled by that dynasty, 5) place of promulgation, 6) initial or subsequent instances of the *cáin* being promulgated, 7) relics and insignia associated with promulgation of the *cáin*.[85] He also details, with knowledge of these components, how we can piece together very abbreviated chronicle entries concerning *cánai*. He additionally distinguishes categories of *cánai*: 1) those which were promulgated at a *rígdál* and immediately enacted throughout the island, 2) those that were promulgated at stages at provincial assemblies and by overkingdoms (extending over multiple provinces) until they achieved enactment throughout the island, either at a) a *rígdál*, or b) at provincial assemblies, and 3) a *cáin* enacted only in a single province.[86] While he states, 'it is enough for a "law" to be an ecclesiastical *cáin* if it is promulgated by a churchman, with or without the co-operation of a king or if it is "of" a saint or churchman', nevertheless this kind of *cáin* can be further divided into more precise subcategories.

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[81] Charles-Edwards, 'Early Irish law', p. 341. As mentioned above, these tracts are described as *na cethéora cánai* 'the four *cánai*' in the introduction to the *Senchas Már* (*SM1, 1*), for which see Breatnach, *Senchas Már and the Question of its Date*, pp. 4–5.

[82] This is what Charles-Edwards, '*The Airgialla Charter Poem*: The Legal Content', p. 110, defines as 'penal authority'.

[83] *CIH* 440.16–17; Stacey, *The Road to Judgment*, pp. 103, 106. See also *CG* l.340 and Binchy, *CG*, p. 79.

[84] Wadden, 'Royal Legislation', pp. 153–4.

[85] Charles-Edwards, *EMGL*, pp. 43–9.

[86] Charles-Edwards, *EMGL*, pp. 50–2.

How *cánai* are named in the chronicles is important, but we must also consider practical purpose of each text as well, as much as is realistic for the evidence that is available. With such a view, I would make a distinction between the 'saintly' *cánai* and other ecclesiastical ordinances or agreements made at an assembly. Firstly, there are those that were specifically made by an ecclesiastical network and which utilised a key patron saint of that network as the central authority for the *cáin*. In this group are *Cáin Adomnáin*, *Cáin Phátraic*, *Cáin Dar Í*, and possibly *Cáin Chormaic*, for which we have at least partial texts, and *Cáin Ailbe*, *Cáin Chommáin*, *Cáin Choluimb Cille*, and *Cáin Chíaráin*, for which we have no texts, but only mentions of promulgations in the annals and general knowledge of what ecclesiastical centres promulgated them.. Next, there are other obviously ecclesiastical ordinances that are not overtly (or cannot be verified as) being connected to a patron saint and thus not promulgated with quite the same kind of purpose. I would tentatively place in this group *Lex aui Suanaich*, the law connected with Inmesach and the Peace of God, and *Cáin Domnaig* (though this text has close connections to the 'saintly *cánai*', based on similar methods of enforcement and legal procedure). Lastly, there are agreements that are conducted between lay and ecclesiastical entities at a meeting. Examples of this type include the seventh-century *Cáin Ḟuithirbe* and the seventh-century assembly and agreement that the late Old Irish/early Middle Irish composition *Cáin Ḗimíne Báin* purports to describe.[87] While these texts advocate for some ecclesiastical privileges and lay control, their precise purpose and structure is rather different from that in *Cáin Domnaig* and the 'saintly *cánai*'.

#### 1.3.3.4. *Cairde*

*Cairde* (pl. *cairde*), literally 'friendship', was defined by Binchy as 'a solemn compact concluded on behalf of two or more *túath*s by their respective kings, each of whom pledges his subjects to it at an *óenach*…There are varying degrees of *cairde*, from a simple armistice to far-reaching arrangements for mutual recognition and enforcement of legal claims'.[88] Most subsequent treatments of *cairde* have scarcely gone to greater lengths to define or explain the term, and many not so far, simply translating it as 'treaty'. This is a classic example of how single-word translations prove inadequate to encapsulate the full essence of technical legal terms. As further investigated and explained below, *cairde* is a political and legal relationship of free clientship with an external

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[87] On *Cáin Ḟuithirbe*, see Breatnach, 'The Ecclesiastical Element in the Old Irish Legal Tract *Cáin Fhuithirbe*', *Peritia* 5 (1986), pp. 35–50; B. Jaski, *Reconstructing Cáin Fhuithirbe*, pp. 1–15. On *Cáin Ḗimíne Báin*, see E. Poppe, 'A new edition of *Cáin Ḗimíne Báin*', *Celtica* 18 (1986), pp. 35–52; D. Casey, *Studies in the Exercise of Royal Power in Ireland, c.650–c.1200AD* (unpublished PhD thesis, University of Cambridge 2009), pp. 67–100.

[88] Binchy, *CG*, p. 80.

kingdom. It comes with a complex weave of reciprocal obligations, which vary depending on the specific type of *cairde* agreed. These may include the particular obligations of political clientship between the kings who make the *cairde*, obligations of military service, and a protocol for inter-territorial dispute settlement. With such a definition, it becomes quite clear that the single word 'treaty' is far too restrictive and inadequate to convey the complete and variegated sense of *cairde*. Consequently, it is left in its original form in this study.

#### 1.3.3.5. *Rechtge*

*Rechtge* is a term that has a fairly wide semantic range. It can have the quite general sense of 'law', but in legal texts, it often takes on a more specific meaning. In *Críth Gablach*, it is used, as Binchy describes it 'as a general term for all the law in force within a given jurisdiction'.[89] There it is clearly enacted by an overking, typically at an assembly.[90] The sense of legal administration within an overkingdom is clearly seen in the *rechtga[e] ríg Ca[i]sil la Mumain* ('*rechtge* of the king of Cashel in Munster').[91] In this way, it would represent a broader category of inter-territorial law, involving an overking's various legal relationships with different types of his clients, and thus include legal agreements of *cáin*, *cairde*, and others within an overkingdom. That it sometimes refers to enacted law besides (or in addition to) *cáin* and *cairde* is attested as well.[92] It is also contrasted with *urradus*, thereby indicating regulations of an overkingdom versus local protocol.[93] In these ways, it can refer to legislation applied generally throughout an overkingdom regardless of base or free client-kingdom status. It can also have a more specific sense of a particular ordinance, such as *Cáin Adomnáin*.[94]

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[89] Binchy, *CG*, p. 104, a sense which has been incorporated into *eDIL*, s.v. *rechtge*.

[90] *CG*, ll. 502–8. Note also its use in a passage in *Sanas Cormaic* (*CormY* 144), for which see Breatnach, *Companion*, pp. 171–2.

[91] *CG*, ll. 520–1.

[92] See *CB* §26 and *CIH* 428.33–5 (*Fuidir*-tract, *SM 2, 16*), where *rechtge* is mentioned alongside *cáin* and *cairde* in a way that indicates distinct entities in certain contexts.

[93] *CIH* 2123.30–2, which, as Breatnach, *Companion*, p. 87 notes, is part of *Córus Bésgnai*.

[94] *CG*, l. 524. *CB* §13 uses the term *rechtge ecalso* ('ecclesiastical ordinance').

### 1.3.4. Sureties

Sureties functioned to guarantee various kinds of contracts. The type of contract, whether arranged privately between individuals or publicly within or between kingdoms, constituted one factor in determining in general what type of surety was invoked.

#### 1.3.4.1. *Ráth* and *Naidm*

The *ráth*, often translated as 'paying surety', usually is a superior of the principal and is able to secure a contract up to the value of his honour-price. At the making of a specific contract, in the presence of a witness, he guarantees that in the event of default by the principal, he will cover the payment of financial obligations, afterwards claiming reimbursement and other dues from the principal. The *naidm* (or *macc*) is usually translated as 'enforcing surety'.[95] Two of these sureties for each contracting party are understood to be present as well at the making of a contract, one to compel the principal to fulfill his obligations and another to compel the *ráth* to pay should the principal default. In the event of default, a *naidm* could forcibly compel the principal or *ráth* to pay, such that a *naidm* performing his duties has legal immunity from paying fines typically associated with physical violence. In such a way, *ráth* and *naidm* are understood to work as a pair to guarantee private contracts usually involving some kind of service, for example clientship, fosterage, education, or that of doctors, poets, lawyers, craftsmen, or messengers.[96]

#### 1.3.4.2. *Aitire* and *Gíall*

The current view, offered by Stacey and modifying the views of Thurneysen and Binchy, is that the *aitire* and *gíall* functioned for fundamentally different kinds of contract than did the *ráth* and *naidm*. Her analysis indicates that the *aitire* and *gíall* both functioned as standing sureties for unexpected claims between a number of people, rather than for a specific contract between two individuals. An *aitire* representing a given group of people, normally a kindred of whom he was head (and perhaps his clients), would be nominated in advance. If an unexpected claim emerged, such as for accidental or intentional wounding, and compensation was not forthcoming within a given timeframe, then the *aitire* representing the offender would be taken into custody to pressure the offender to pay compensation for the legal claim. The *aitire* is clearly connected to contracts of *cairde* and ecclesiastical *cáin*, but may have also (at least early on) functioned for unexpected legal claims

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[95] Though note, as does Stacey, *The Road to Judgment*, p. 260n28, 'the word *naidm* can be used to refer to anyone involved in enforcing any type of claim.'

[96] For more comprehensive discussion of these sureties, see Binchy, *CG*, pp. 100–4; Kelly, *GEIL*, pp. 167–72; McLeod, *EICL*, pp. 16–21; Stacey, *The Road to Judgment*, pp. 87–90, 97–8.

arising between kindreds within the same kingdom.[97] The *gíall*, on the other hand, is associated with political subordination and an overking's contract of *cáin* with a base client-kingdom. He would appear to serve similar functions in the event of unexpected legal claims between the two kingdoms. A key difference from the *aitire*, however, is that the *gíall* was held from the start of the contract of base clientship between kingdoms in the overking's court. He served as the guarantor of all the legal obligations of that contract of political clientship, not just for the functions of inter-territorial dispute settlement. However, like the *gíall*, the *aitire* could be held in custody and later forfeited, though the timescales for these differed.[98]

### 1.3.5. Compensation: *éraic, díre*, *lóg n-enech*

The amount of compensation paid for an offence depended on a few parameters, namely the nature of the offence and the status of the victim.[99] Compensation for offences against one's honour, certain offences like unjust satire that, while not necessarily causing physical harm, might nonetheless cause a visible blemish by making the victim's cheeks red, were repaid by *lóg n-enech*/*eneclann* ('honour-price')[100], the amount of which varied according to the status of the victim. Compensation for physical injury in early Irish law was normally comprised of three parts, as following citation from *Bretha Éitgid* ('Judgements concerning Irresponsible Acts') states: *Cia dlig duine duil di cach fogail indeithbir fo-fechar fris? Teora eirci airliter:* ***aithgein*** *ogh i n-aragar, sceo coir* ***coirpdiri*** *comindraic,* 7 ***enechlog*** ('What is a person entitled to for each preventable injury which is inflicted upon him? Three payments are decreed: complete restitution in regard to that which is injured, and proper body-fine equally fitting, and honour-price').[101] Two key verbs used for indicating compensatory payment, *do-ren* and *as-ren*, also provide two verbal nouns significant for compensation, *díre* and *éraic*. Either can simply mean compensation in a general sense. In a more specialised sense, *éraic* comprises the aforementioned components of *corpdíre* ('body-fine') and

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[97] On this particular possibility, see *CG*, ll. 52–62; McLeod 'Blood-feud', p. 118. For the *aitire*'s connection to *cairde* and ecclesiastical *cáin*, see sections 2.2.4 and 3.2.1.

[98] For an overview of the particularities of these sureties, see Thurneysen, *Bürgschaft*, pp. 61–83; Binchy, *CG*, pp. 74–5, 95–6; Kelly, *GEIL*, pp. 172–6; Stacey, *Road to Judgment*, pp. 82–111.

[99] When speaking about early Irish law, I prefer the term 'offence', 'wrong', or 'delict' to 'crime'. An offence was not a crime, and committing an offence did not make one a criminal with a criminal record in the modern sense. This remained the case as long as an offender could and did make redress for the offence caused, usually done through monetary compensation. It was only in the event of an offender absconding from legal process that one became a proclaimed fugitive and lost all legal rights. This was the closest thing to a 'criminal'.

[100] See Binchy, *CG*, pp. 84–5; Kelly, *GEIL*, pp. 137–9.

[101] *CIH* 336.23–9, 1266.2–4.

*aithgein* (‘restitution’), which are fixed amounts for a person of any status, only varying in amount according to the severity of the injury.[102] *Díre* can often refer to honour-price, but sometimes the term clearly refers to payment aside from honour-price.[103] As such, *díre* requires careful interpretation within the context that it appears.

[102] Binchy, *CG*, pp. 86–7; McLeod, ‘The distribution of body-fine’, p. 65.

[103] e.g. *CIH* 15.10.

## 2. Inter-territorial Law: Legislation and Legal Agreements

### 2.1. Introduction

A brief overview was given in Chapter One concerning clientship and contracts of legal authority used within and among kingdoms. More precisely how these contracts might be expressed across borders is examined more fully here. Both the seventh-century *Senchas Már* and eighth-century *Críth Gablach* include an overview of various kinds of legal affairs, which include sections on inter-territorial law. This is done in various ways, and it will be useful to examine how this is done to begin to understand how inter-territorial law was situated within the body of early Irish law. In our introduction here we may, fittingly, start with the Introduction to the *Senchas Már* (*SM1*, *1*), which contains much explication of the process of codification of law from different strata. In part, it seeks to explain the legal order of the world and society more particularly, a theme that the later pseudo-historical prologue to the *Senchas Már* expands upon.[104] This is to be expected, given its placement at the outset of a vast lawbook, likely compiled in Armagh. One particularly significant passage for our purposes appears both in the introduction to the *Senchas Már* and in *Córus Bésgnai* (*SM1*, *8*); it is nearly identical in both. Below is the passage as in the Introduction to the *Senchas Már*:

> (§7) Ataat téora aimsera imbi bailethach in bith: réchuaird duinebath, túarathliae coctho fúaslucud cor mbél.
> (§8) Ataat a trí noda ícat dechmada 7 prímiti 7 almsona ara-gairet réchuaird duinebath: tráethad cairde la ríg 7 túaith ara-gair túarathliae coctho; astud cáich inna ṡochur 7 inna dochur ara-gair bailiuth in betho.

> (§7) There are three occasions when the world becomes chaotic: an epidemic of plagues, a deluge of warfare, dissolution of contracts.
> (§8) There are three things which remedy them, tithes and first-fruits and alms which prevent an epidemic of plagues; the imposition of treaties by king and people which prevents a deluge of

[104] For some recent work on this, see Breatnach, *Senchas Már and the question of its date*, pp. 1–48; Wadden 'Royal Legislation', pp. 141–57. For the more recent dating of the pseudo-historical prologue to the *Senchas Már* as part of the Old Irish glossing of the *Senchas Már*, see Carey, 'An edition of the pseudo-historical prologue to the *Senchas Már*', pp. 1–32; Breatnach, *Companion*, p. 344.

warfare; holding everyone to their advantageous contract and their disadvantageous contract which prevents the chaos of the world.[105]

To the lawyer here, the pillars of societal order consist of divine affairs, inter-territorial affairs, and local affairs. Mitigating each of these in the proper way (endowing churches, inter-territorial dispute settlement, maintaining legal order within a kingdom) can prevent (divinely-caused) natural disasters, military conflict ensuing from otherwise unresolvable cross-border disputes, and general societal disorder resulting from dissolving contracts (which, besides affairs within a kingdom, may also include contracts of overkingship over client-kings). Ultimately, the basis of political, social and economic interactions is rooted in legal contracts, either within a single kingdom, with external kingdoms, or with churches. Just before this passage, in the Introduction to the *Senchas Már*, two of the four pillars of basic legal relationships in society are described as *Cáin Śóerraith* ('Regulation of Noble Fief'] and *Cáin Aicillne* ('Regulation of Base-clientship').[106] As noted in the last chapter, inter-territorial affairs may be seen as extensions of these basic types of contracts. Later on in *Córus Bésgnai*, we have a tripartite layout of the legal affairs in a kingdom (*córus túaithe*): those concerning 1) freemen commoners (*córus féne*), 'which all participate in' (*con-tethgatar uili*), 2) the kindred (*córus fine*), and 3) lords (*córus flatho*).[107] The first category is expanded as encompassing the basic contractual interactions in a kingdom (recalling the basic types of contracts mentioned in §8 of *SM1, 1*): *comaithchesae* ('neighbourhood relationships'), *lánamnasae* ('marital unions'), *aithne* ('deposit'), *ón* ('[private] loan'), *airliciud* ('lending'), *commoíni* ('mutual exchanges'), *crecca* ('purchases'), *cunderthae* ('contracts'), *congillne* ('mutual pledging'), othrusae ('sick-maintenances'), *athgabála* ('distraints'), *éircea* ('*éraic*-payments'), *bráthchae* ('judicial process').[108] As *Córus Bésgnai* notes, it is an area *con-tethgatar uili* ('which all participate in'), regardless of commoner or lordly status. The *córus flatho* consists of matters *fri aicillni, fri fleda, fri manchaini, fri fócrae, fri gella, fri rechtu ₇ sobésu* ('with regard to base clients, to feasts, to personal

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[105] Introduction to the *Senchas Már* §§7–8 (*CIH* 350.26–7, 351.8–10, 351.19); ed. and trans. Breatnach, *Senchas Már and the question of its date*, pp. 6–7. Cf. *CB* §§11–12. *Di Astud Chirt ₇ Dligid* (*SM1*, *14*) presents a passage with similar sentiment and structure, though differing slightly from the other two, for which see *CIH* 231.15–31; ed. and trans. Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 114.

[106] Introduction to the *Senchas Már* §6 (*CIH* 350.26–7, 351.8–10, 351.19); ed. and trans. Breatnach, *Senchas Már and the question of its date*, pp. 4–5.

[107] *CB* §§14–15.

[108] *CB* §16.

service; with regard to proclaiming and pledging laws and good conduct').[109] Further detail on each of these is given in subsequent passages, and here we have a small glimpse into inter-territorial affairs. For example, in a section describing the particulars of various kinds of feasts, we see *bíathad congbálae fri sochraiti túaithe* ('providing food for a billeting for allies of the kingdom'), an aspect of military legal obligations.[110] In a subsequent section providing more detail on lordly pledging, within the context of obligations to churches, we see inter-territorial authority cast, as we often see, within the framework and as an extension of the models of clientship within a single kingdom:

> Dlegait flaithi fo-n-úaslaicter a ngella. Gellait dechmada 7 primiti 7 almsana fora fini 7 foran-aicillni; cach márḟlaith fora túatha. Troíthaitir ainbthini di dagbésaib cáno 7 rechtge 7 dagbésgnu 7 chairdiu.
>
> It is the right of lords that their pledges be redeemed. They give pledges that tithes and first-fruits and alms will be rendered by their kin and vassalage; every overlord [gives a pledge that they will be rendered] by his kingdoms. Storms are abated by the good practices of *cáin* and (royal) promulgation and by good discipline and by *cairde*.[111]

As Breatnach has noted, the language here echoes that in passage §12: storms (interpreted either as natural disasters or outbreaks of conflict) are prevented by observance of these contractual agreements involving lordship, overlordship, and pastoral dues.[112] It is no surprise that we see the mention of *cáin*, *rechtge*, and *cairde* immediately following that of a *márḟlaith*'s authority over his client-kingdoms.[113] Rather, these are precisely the inter-territorial legal contracts such an overlord would use to consolidate and stabilise his overkingdom, whether a contract for a base client-

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[109] *CB* §18.

[110] *CB* §22.

[111] *CB* §26. Here I diverge from Breatnach's translation by leaving the terms *cáin* and *cairde* untranslated, for reasons stated in the legal introduction. It is notable that the pledge is mentioned here as the constraining measure against overkings, which is stated as the appropriate constraining mechanism against high status people in a passage in *Cethairślicht Athgabálae*: *aithgabāil fri brāta Caī, gīall fri cāin, aitire fri cairddi, gell fri neimthiu* ('distraint in the case of [customary] judicial process, hostage[-taking] in the case of *cáin*, hostage-surety in the case of *cairde*, a pledge in the case of dignitaries') *CIH* 412.13–15; Breatnach, *Companion*, p. 171.

[112] Breatnach, *CB*, p. 71.

[113] Cf. a similar use of *márḟlaith* in *Di Gnímaib Gíall* (*CIH* 901.14–15); see Stacey, *The Road to Judgment*, p. 85. *CG* l.426 notes an *aire forgaill* receives his fore-grant from a *márḟlaith*, while the next level of lord down, the *aire tuísea*, receives his fore-grant from a *rí*. Given this apparent distinction (one would hardly expect the different terms to be used synonymously in such a context), one does wonder whether an *aire forgaill* might only be a grade of person whose lord is a king of sufficient rank to be an overking.

kingdom through *cáin*, a free client-kingdom (which could easily be called a political alliance of sorts) through *cairde*, or enacted legislation throughout the entire overkingdom through *rechtge*.[114] In addition, all of these enacted agreements would be made by the overking for a set period, which might extend for the length of that king's rule.[115] The overking is the contracting figure who initiates the contract, thus any contract, whatever kind it may be, would need to be renewed after his rule ends (either his abdication or death) for it to continue. So while the rhetorical purpose of *Córus Bésgnai* here is to emphasise obligations of all levels of society to ecclesiastical entities, in doing so it provides us with underlying detail on the layout of various levels of authority.

*Críth Gablach* includes a section (given in full below) concerning the 'contract between king and people', as Thomas Charles-Edwards calls it, where the author similarly foregrounds the overking in a rather more detailed exposition of inter-territorial affairs than in *Córus Bésgnai*.[116] One difficulty throughout this passage is the disputed interpretation of grammatical number in various instances of the word *túath*; the ambiguity here may be the result of later scribal errors or misreading. This presents quite a significant issue in the passage, since it might sometimes differentiate between the legal powers of a king of a single *túath* and an overking of multiple *túatha*, and which would also affect whether or not we are talking about affairs within a single kingdom or among kingdoms of an overkingdom.[117] As a result, scholars have differed somewhat on the interpretation of various aspects of this oft examined passage.[118] One glaring discrepency between the original text and the views of some scholars is the extent of the legislative powers accorded to certain types of early Irish kings in *Críth Gablach*. For example, David Dumville boldly stated, 'one of the very few circumstances in which a Gaelic king had any legislative power over his *tuath* was in an emergency', Thomas Charles-Edwards contended that *Críth Gablach* 'envisages any king, small or great, promulgating a *rechtge*, about mundane and temporary emergencies, such as the prospect of harvest failure, as much as about general rules of law', and

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[114] Note the similar separation of *cáin*, *cairde*, and *rechtge* in an Old Irish citation from the *Fuidir*-tract (*SM2*, *16*) at *CIH* 428.33–5. The exceptional circumstances potentially applying in contracts of *cáin* or *cairde* described in *Bretha Crólige* §43 (Binchy, 'Bretha Crólige', pp. 35–6) additionally situates them as external, inter-territorial legal agreements.

[115] For some discussion of the set period of enacted law, see Charles-Edwards, *ECI*, p. 569; *idem.*, *EMGL*, pp. 55–6; Stacey, *The Road to Judgment*, p. 94.

[116] *CG* ll. 492–524.

[117] On this matter, see in particular Charles-Edwards, *ECI*, p. 560; Charles-Edwards, 'A contract between king and people', p. 115.

[118] McLeod, 'Jurisprudence', pp. 356–7; Charles-Edwards, 'A contract between king and people', pp. 112–16; Dumville, *Councils and synods*, pp. 29–30; Charles-Edwards, *ECI*, pp. 559–61; Etchingham, *CO*, p. 208; Jaski, *Early Irish Kingship and Sucession*, pp. 97–8.

Neil McLeod suggested that these legislative powers only had 'local effect'.[119] Upon further examination and interpretation of the text, we may correct these problematic ideas, asserting instead that the *rechtge* was 1) the prerogative only of an overking,[120] and while it could be used in emergency situations, whether natural or military, 2) it could also be used in more normal situations to support the legal administration of an overking,[121] and thus 3) its jurisdiction would reach throughout much, if not all, his overkingdom.[122] Part of the problem here, as mentioned above, is that the author of *Críth Gablach* almost seamlessly transitions from discussing functions that even the lowest grade of king (the *rí túaithe*) might perform to discussing functions only behooving a king with authority over multiple *túatha*. But already in various parts of *Críth Gablach* we see hints that the only real *rí* is in fact an overking, and that even in the early eighth century, the *rí túaithe* was more a figure of the past, in less consolidated political dynamics.[123]

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[119] Dumville, *Councils and synods*, pp. 29–30; McLeod, 'Jurisprudence', pp. 356–7; Charles-Edwards, *ECI*, p. 561.

[120] *Críth Gablach* only mentions the *rechtge* when referring to a king of multiple *túatha*.

[121] The *rechtge ríg* in *CG* §38 being a prime example. On this point, it may be additionally noted that the examples of various types of an overking's *rechtgi* in *CG* §38 are just that: examples, rather than an exhaustive list. That the *rechtge* is a fundamental power of overkings rather as a very limited emergency power is emphasised by its appearance in *CB* §26 in conjunction with a *márfláith*.

[122] Note especially the remarks of Etchingham, *CO*, pp. 164, 208, who not only notes that the relevant passages of *Críth Gablach* refer *only* to an king of several *túatha*, but also points to the *rí rechtaid* ('law-giving king') in another text, concluding, 'the over-king, in short, was the quintessential legislating king'.

[123] This outlook even accords with the passage of textbook prose in *CG* ll. 444–5 that introduces the rank of king (*Rí, cid ara n-eperr? Arindí riges cumachtu(i) chun[d]rig fora thúatha(i)* 'The king, why is he so called? Because he rules with coercive power over his [client-]kingdoms.'). This resembles the language used of the *rí ruirech* in *CG* ll. 472–3 (*Ar indí as fo chumachtu a chundrig bíid cech cenn nád timmairgg a choimdiu* 'Since it is under the power of his coercion that every head is whom his lord does not constrain') and *CG* ll. 476–7: (*húaire mbíte rí[g] ⁊ túatha(i) fó chumachtu ⁊ a chundriug* 'because kings and kingdoms are under his power and coercion'). As we can see, the words *cundrech* ('coercion, correction') and *cumachtae* ('power') appear throughout, usually paired together, as terms denoting the military and political might of a king to maintain authority over his client-kingdoms, and thus referring to an overking. However, it is worth noting *cumachtae* is also just used on a more localised level of a king retaining power over his clients within his own kingdom (*CG* ll. 450–1) and an assembly may be summoned within a kingdom for the purpose of *cundrech* (*CG* l. 503); while these two instances of these terms could theoretically even refer to a *rí túaithe*, the overall use of these terms throughout the text is otherwise. Indeed, the prerogative of the *rí ruirech* is further emphasised by the phrase *dochundrig la cách* ('he is not coercible by anyone') in *CG* ll. 479–80: such a king exercises powers of coercion but is not subject to them himself, since he is the highest grade of king. One might note the contrast with the sentiment in *Córus Bésgnai* §26, which emphasises the obligations laypeople, even someone as elevated as a *márfláith* ('overlord'), have to a church. An example from the late seventh-century *Recholl Breth* (*SM 2, 13*) additionally gives a very clear statement of the minimum requirements of someone endowed with the title of *rí*: *Ní rí lasná biat géill i nglasaib, doná tabarr cís flatha, doná éirenetar féich cána. In tan gaibes in rí inna máma-so is and do-renar díriu ríg cen goí, cen esmrath, cen eisinracus fria thúatha* ('He is no king who does not have hostages in fetters, to whom no sovereign's tribute is given, to whom are not paid the fines of (viz., incurred under) promulgated law [from a base client-kingdom]. When the king assumes these functions, it is then that he is compensated as a king, without falsehood, without betrayal, without unworthiness towards his kingdoms'), *CIH* 219.5–19, Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 113.

Therefore, to clarify these matters as well as to explicate *Críth Gablach*'s layout of inter-territorial law, I provide below my own retranslation and interpretation of the passage, including the point where the original author would seem to cease discussing functions that even the lowest grade of king (the *rí tuaithe*) would perform, and where he continues on to discuss functions only of a king with authority over multiple *túatha* (i.e. the *ruirech*/*rí túath* or the *rí ruirech*/*rí cóicid*). In this passage, I follow Binchy's interpretation of the ambiguous singular or plural accusative instances of *túath*. I also provide my own interpretation of how the author seems to categorise various types of *rechtge*:[124]

> Teora tomalta ata chórai do ríg fora thúaith(a): óenach 7 dál do chundriug 7 tochomrac do chrích. Is túaithe cammae comarggud óenaig; is ríg ni gell*as* for óenach, acht rop coir ní gellas.
>
> [author switches to discussing only an overking]
>
> Cair: cis lir ata chóra[i] do ríg do giull fora thúatha? A trí. Cateat? Gell slógad, gell rechtge, gell cairddi; ar it l(i)essa túaithe huli insin.
>
> Cis lir slóga[i]d ata chóorai do ríg do giull fora thúa(i)tha? A trí. Cateat? Slógad hi crích i medón fri indnaide slógid tairse; slógad co hor críche fri forcsin fír 7 dligid conid roib cath nó chairdde; slógad tar crích fri túa[i]th asidluí.
>
> Ataat dano cetheoir rechtgi gellas rí(g) fora thúatha(i). Cateat? Rechtge fénechais cét*amus*–it túatha dodegúiset, is ríg(g) nodedlútha(i); na teoir rechtgai aili is rí dode(n)immairg: rechtga[e] íar cath do madmmaim forru co rodlútha(t) a thúatha íarom arná 'mmacomba doib; occus rechtga[e] íar ndu[i]nebad; 7 rechtga[e] ríg am*ail* rongab rechtga[e] ríg Ca[i]sil la Mumain. At ataat teoir rechtgai ata chórai do ríg do giull fora thúatha: rechtge do indarbbu ectharchiníuil .i. fri Saxanu, 7 rechtge fri tuar toraid, 7 recht(t) crettme adannai, am*ail* ron(n)gab recht Adomnáin.

There are three requisitions that are proper for a king to levy on his kingdom:

1) an *óenach* {assembly for political affairs, involving either one or many kingdoms}
2) a meeting for enforcing order {restoring social/political order when in disarray}
3) and a muster to the frontier {military defence, probably of a single kingdom's border}

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[124] Here I follow McLeod, 'Jurisprudence', p. 357, and Jaski, *Early Irish Kingship and Sucession*, p. 98, regarding the material at *CG* ll. 516–21 paralleling that at *CG* ll. 522–4, such that the second series of three *rechtgi* provide additional examples of military crises, natural emergency, or a provincial overking's legal administration (sometimes in conjunction with ecclesiastical authority) where a *rechtge* may be used, just as they are topically arranged in the first series of three *rechtgi* imposed by an overking. Cf. Charles-Edwards, *ECI*, p. 560, who suggests the second triad of *rechtgi* may be examples of a *rechtge ríg*.

The joint holding of an *óenach*, however, belongs to the kingdom. What a king binds by pledge for an *óenach* is his, provided that what he binds by pledge is proper.

How many things are proper for an [over]king to pledge upon his [client-]kingdoms? Three. What are they? A pledge for hosting, a pledge for *rechtge*, and a pledge for *cairde*; for all these are benefits to a [client-]kingdom.

How many hostings are proper for a[n over]king to pledge upon his [client-]kingdoms? Three. What are they?

1) A hosting within [the kingdom's own side of] the frontier to withstand an [external] hosting across it {a defensive action}
2) a hosting to the edge of the frontier [i.e. on the neighbouring kingdom's side of the frontier] to secure prerogative and entitlement [to a legal obligation], that he may have battle or *cairde* {an offensive standoff}
3) a hosting across a frontier against a kingdom that evades [a legal obligation to] him {an offensive manoeuvre}

There are, then, four *rechtgi* that a[n over-]king binds by pledge upon his [client-]kingdoms. What are they?

1) The *rechtge* of *fénechas* first–[client-]kingdoms adopt it, it is a[n over-]king who confirms it [throughout his overkingdom].

The three other *rechgi* are enforced by a[n over]king:

2) a *rechtge* after a battle has been won against them, so that he brings together his [client-]kingdoms that there be no mutual fighting among them;
3) and a *rechtge* after pestilence;
4) and a *rechtge ríg* (i.e. a *rechtge* of a provincial over-king?), such as the *rechtge* of the king of Cashel in Munster.

For [in this sense] there are [other examples of these] three [kinds of] *rechtgi* which are proper for a[n over]king to pledge upon his [client-]kingdoms:

1) a *rechtge* to repel a foreign race, that is, against the English;
2) and a *rechtge* for the manuring of crops;
3) and a *recht* of faith that kindles [piety], such as the *recht* of Adomnán.[125]

So as we can see, in the early eighth century, the author of *Críth Gablach* envisages inter-territorial affairs as involving certain kinds of actions for specific situations, including military activity (*tochomrac* or *slógad*),[126] either as defensive or punitive, a inter-territorial agreement (*cairde*), or

[125] *CG* ll. 502–24.

[126] If the word *túath* in *CG* l. 502 is indeed meant to be singular, as Binchy edits, then I would interpret *tochomrac* as being a hosting of a single kingdom to defend its own borders. The *slógaid* mentioned here would seem to be military troops within an overkingdom, in order to defend the borders of that overkingdom, whichever specific kingdom(s) within that overkingdom might be involved.

various kinds of legislation enacted (seemingly at an *óenach*)[127] by an overking upon his overkingdom (*rechtge*), some of which viewed as appropriate only for a provincial overking to enact. As in the aforementioned passage on inter-territorial affairs in *Córus Bésgnai* §26, any *rechtge* would have a set period of enforcement, which, since the overking is the contracting figure who initiates a *rechtge*, could extend (or be periodically renewed) for the duration of his rule. The *rechtge ríg* certainly gives the appearance of being such a regular kind of enacted law upon a provincial overkingdom. It is additionally notable that the practical functions of the *rechtge* detailed in *Críth Gablach* all serve as solutions to the potentially chaotic situations detailed above in the relevant passages of *Córus Bésgnai* and the Introduction to the *Senchus Már*, and these functions of the *rechtge* also nicely align with the triad of remedies to the chaotic situations presented in the same passages. Therefore, the *rechtge* can be viewed as an overarching stabilising tool in the legal adminstration of an overking. With these overviews of inter-territorial affairs as a starting point, we may examine each of these facets in turn, to illustrate how inter-territorial law worked in different situations and for different purposes.

### 2.2. *Cairde*

Thomas Charles-Edwards has stated that, by 700 AD, the *cairde* was a 'widespread feature of political life', facilitated in part by cross-boundary marriages and fosterage.[128] For reconstructing the concept of *cairde* from this period onwards, quite a breadth of material will be used, as there are so few and fragmentary sources that survive concerning it. These sources are outlined as follows: 1) Old Irish legal texts whose main focus is *cairde*, sometimes with pertinent later gloss and

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[127] On the underlying implication that *rechtgi* were pledged specifically at an *óenach*, see Charles-Edwards, *ECI*, p. 560–1; Charles-Edwards, 'A contract between king and people', pp. 115–16. Cf. the underlying connection between *rechtgi* and an assembly envisaged in the pseudo-historical prologue to the *Senchus Már*: *asrochongrad iarom ó Loegaire formna fer nÉrenn do thudecht i n-oenmagin fri hoentaid n-immacallma im chórus a mbéscnai ⁊ a rechtgai. Docuas uadib co Pátraic co tudchised don dáil*, 'then the best of the men of Ireland were commanded by Loegaire to assemble for a conference regarding the proper ordering of their usages and laws. A message was sent by them to Patrick, that he should come to the assembly', Carey, 'An edition of the pseudo-historical prologue to the *Senchas Már*', pp. 11, 17; Wadden, 'Royal legislation', p. 145. Given the paradigm of *cáin* and *cairde* and *rechtge* as prerogatives of an overlord that we have seen in *Córus Bésgnai* and elsewhere, and given the context here of laws proclaimed at an assembly by an overking (Loegaire), it may well be likely that the word *bésgnae* here is used in the sense of 'legal agreement, protocol' as shorthand for agreements including either *cáin* or *cairde*. If this is so, a more precise translation of *im chórus a mbéscnai ⁊ a rechtgai* might be 'regarding the proper ordering of their legal agreements/protocols and their enacted laws', thus mirroring the sense of *rechtgi* promulgated at an assembly as in *Críth Gablach*. This certainly seems to be the sense of *bésgnae* used in the introductory passage to the tract on distribution of *cró* and *díbad*, where the term is used to denote legal protocols for dispute settlement, either local or inter-territorial, and it may be further noted that this passage refers to an assembly between Patrick and the 'men of Ireland' as one of its authorities, which suggests an allusion to material also in the pseudo-historical prologue to the *Senchus Már*. See Murray, 'A Middle Irish tract on "cró" and "díbad"', pp. 252–3.

[128] Charles-Edwards, *ECI*, pp. 104, 113.

commentary, 2) other legal texts that have passages revealing detailed aspects of *cairde*, 3) fragmentary citations with accompanying gloss or commentary from various legal texts, of which some are unidentified, that have detailed information about aspects of *cairde*, and 4) brief references to *cairde* mentioned in passing in various legal texts (often in the inter-territorial formula *cáin 7 cairde*, usually in counterdistinction to *urradus* 'ordinary law'), which reveal legal topics dealt with in *cairde*, sometimes providing detail that other texts do not. In type 1), we have a short Old Irish text currently called *Slán nAitire Cairde* ('The compensation of a hostage-surety in a *cairde*'),[129] which gives a rough model for procedure in *cairde*, and the fragmentary *Senchas Már* text on *cairde* (*SM3*, *31*), accorded the name *Bretha Cairdi* ('Judgements concerning *cairde*') in Breatnach's *Companion to the Corpus Iuris Hibernici*.[130] Type 2) consists of the well-known texts *Críth Gablach* and *Berrad Airechta*. Type 3) contains a variety of passages from certain and uncertain provenance, the uncertain provoking questions of whether the material derives from some passage of *Bretha Cairdi* that cannot be now corroborated as such, or instead indicative of another text on *cairde* that we are not currently aware existed.

While it is quite clear there is indeed a *Senchas Már* text concerning *cairde*, it should be emphasised that the basis of the name *Bretha Cairdi* is only attested in a gloss on material in *Cethairślicht Athgabálae* (*SM1*, *2*), thus not even being directly connected to the material on *cairde* itself (though referring to material that is corroborated in extracts from *Bretha Cairdi*).[131] Furthermore, under the heading *.vii. ngabala arafognad brethamhnacht an betha* ('seven divisions which serve the judgement of the world'), which lists several *Senchas Már* texts (providing both old and contemporary names for those texts), is listed *.c*[*áin*]*. cairdi .i. riagail in cairde*, which reveals either another possible name for *SM3, 31* or the name of another text concerning *cairde*.[132] As such, the name for the *Senchas Már* text on *cairde* is still a very open question. However, as the name

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[129] K. Meyer (ed.), 'Mitteilungen aus irischen Handschrften: Slán Aitiri Cairddi', *ZCP* 13 (1921), pp. 24-5; Thurneysen (ed. and trans.), *Bürgschaft*, pp. 32–3. *CIH* 574.18–30; *CIH* 892.39-893.10. While it has been suggested in Breatnach, *Companion*, pp. 26–7, that the text extends to *CIH* 574.35 (893.16), I argue below in section 2.2.4 that these few lines comprise a separate passage from the text of *Slán nAitire Cairde*.

[130] Breatnach, *Companion*, pp. 302–3.

[131] And the word *bretha* is even expanded hesitantly by Binchy as such from *br-,* for which see *CIH* 392.18.

[132] *CIH* 1378.5–11; cf. *CIH* 1931.35–40. It is to be wondered whether one of these texts might be the actual title of the Old Irish text which Meyer (followed by Thurneysen) named *Slán nAitire Cairde* from its opening words (*CIH* 574.30, 892.39). One version of this short text exists in the Old Irish glossing of the *Senchas Már* (hereafter *OGSM*), on a lemma originally from *Cethairślicht Athgabálae* (*SM1*, *2*), *CIH* 401.13. So in essence this represents an excerpt likely from a text on *cairde*, and thus there appear to be two named texts focused on *cairde*, *Bretha Cairdi* and this *Cáin Chairdi*/*Ríagail an Cairdi*.

*Bretha Cairdi* does have some backing and is used in the *Companion to the Corpus Iuris Hibernici*, it will be used here for consistency.

*Bretha Cairdi* is in a fragmentary state with a significant body of gloss and commentary, in extracts from TCD MS H 3.17 (1336), H 3.18 (1337), and Oxford Bodleian Rawlinson B 506. Most of this material is written in the same size hand, with larger initial letters indicating separate paragraphs, which, however, may be used either for subsequent citations or subsequent sections of commentary. Thus, what survives has many layers, and it is sometimes unclear to what layer some material belongs. This is in large part due to the transmission process, resulting in a complex weave of citation and gloss (integrated together), extended sections of text (some of which may be commentary, while others may be fairly close to the original), or sections with overlapping material and phrasing, such that one gets the impression that certain similar material was independently quoted in different later copies of a text, then a later scribe had those copies to hand and quoted indiscriminately all the relevant passages on *cairde* while compiling his work. Despite such complexities, I attempt here to provide a foundation for the legal concept of *cairde* from which we may work to answer further questions concerning diversity in practice over time or in different regions. While many glosses and commentaries therein are often difficult to date precisely because of inadequate or insufficient material, some of them can be valuable in helping us to understand those fragmentary citations that remain. Where a glossator cites the source of material he has just written, normally one can take this as a textual citation or summary of material from the original (Old Irish) text.[133] In addition, other gloss or commentary that attempts to explain the original citation may also be useful, especially since it has been recognised that many of these later scribes had complete copies of many more original texts than we do today and were trying to understand it and apply the legal principles therein just as we are. This is reflected in the kind of commentary that often appears here, which is the type consisting of 'treatment of a statement in the original text in a far more detailed way by giving all imaginable attendant circumstances and showing how they affect the basic legal principle', as Breatnach describes it.[134] While it is hardly possible to establish with absolute certainty to what extent the later commentators understood the older material they are seeking to explain, there are sometimes hints that can help illuminate their degree of

[133] One such example is given in Breatnach, 'Forms of payment in the early Irish laws', p. 13.

[134] Breatnach, 'Lawyers', p. 6.

understanding.[135] There may also be hints indicating that certain material had a contemporary focus rather than being primarily engaged with the material in the copy of the Old Irish text that many later scribes had to hand. Of course, our approach should not be shaped by gloss and commentary that cannot be verified as early or referring to early material, but by using it judiciously to assist in the interpretation of the Old Irish core can sometimes illuminate a logical legal model that complements, rather than contradicts, material in the earliest language. Naturally, it is acknowledged that there not only might be a wide chronological gap between pieces of this legal material but also that such a reality could inherently mean that this material might embody differences in legal practice over time. But where it can be reasonably established that a commentator's explanations engage with legal concepts and reasoning in Old Irish legal texts or else gives the appearance of summarising material or working from legal principles that were in his exemplar, we have less reason to discount such material simply because it is linguistically later. Naturally, though, it is acknowledged that such material must be used judiciously when it is not corroborated by confirmed Old Irish material.

The core purpose here is to attempt to reconstruct the legal model(s) of *cairde* (some of which may, admittedly, represent more of the 'legal tradition' of *cairde*) as much as possible, in line with a statement by Jaqueline Bemmer, concerning her approach to legal sources: 'to compare [the lawyers'] legal reasoning in different contexts and show that it follows a logical pattern from which we can carve out a coherent structure'.[136] While doing so we may identify various pieces of material (normally from different textual sources) which either complement each other or differ with regards to legal reasoning. Where different we may then at least ask, if not also try to answer, what kind of

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[135] For recent scholarship on the organisation and use of gloss and commentary, see K. Simms, 'The Contents of Later Commentaries on the Brehon Law Tracts', *Ériu* 49 (1998), pp. 23-40; R. Finnane, *Late Medieval Irish Law Manuscripts: A Reappraisal of Methodology and Context*, Sydney Series in Celtic Studies 13 (Sydney, 2013); T.M. Charles-Edwards, 'The Manuscript Transmission of *Bretha Comaithchesa*', in Elizabeth Boyle and Deborah Hayden (eds.), *Authorities and adaptations: the reworking and transmission of textual sources in medieval Ireland* (Dublin 2014), pp. 95–120; L. Breatnach, 'The glossing of the early Irish law tracts', in Deborah Hayden, Paul Russell (eds.), *Grammatica, gramadach and gramadeg: vernacular grammar and grammarians in medieval Ireland and Wales* (Amsterdam 2016), pp. 113–32; R. Doolan, 'Marginalia, Incorporated Commentaries or Reference Commentaries: The Terminology of Later Legal Sources', in Anders Ahlqvist and Pamela O'Neill (eds.), *Fír fesso: a festschrift for Neil McLeod*, Sydney Series in Celtic Studies 17 (Sydney 2018), pp. 87–96.

[136] Bemmer, 'Culpability and Negligence', p. 45. Also significant here are the remarks regarding legal commentaries of McLeod, 'Kinship', p. 21n53: 'There are, of course, many instances where medieval commentators present a distorted view of the law. Sometimes this may result from the deliberate use of generalisation, synchronisation or metaphor. Sometimes it may be because medieval scholars too were human, fallible, and in command of varying levels of skill and learning. Sometimes it may be due to the fact that our medieval manuscripts have been subject to a process of copying, miscopying and mutilation. Before we discount a particular commentary, we ought to try to satisfy ourselves that we have identified the purpose of the distortion or the basis of the error. Vellum was expensive, scholarly work was arduous, the rewards for idle fantasy were limited.'

differences these might be, whether chronological, regional, or that different legal procedures were used in different situations. The following evidence and analysis of material relating to *cairde* is organised by legal topic, to facilitate presentation of an overarching legal model, while acknowledging differences where they exist.

### 2.2.1. Enactment

Enactment was the first stage of two kingdoms formalising a *cairde* agreement. A few sources detail various aspects of enacting a *cairde*. First, we may turn to a citation from *Bretha Cairdi*:

> Co ndentar cairde ríg? toingthi in ríg ’ænur híc 7 fuaslucud n-aitire; ní h-ed tongar and na foruastar acht cid foruastar, a icc.
>
> How is a king’s *cairde* made? The king on his own swears that hostage-sureties will be paid for and released. It is not that it is sworn there that will be no transgression, but that if there is, it will be paid for.[137]

The idea here is the king swears, presumably jointly with another king, that payment will be made between the two kingdoms for any of the specified offences and that an *aitire* (or *aitiri*) representing the offender will be provided as security for that payment.[138] Indeed, this situation would seem to be the understood context of a passage in *Críth Gablach*, described as a joint oath-swearing between two kings, symbolically on the edge of the frontier between their kingdoms:

> Cateat fola(i)d ríg do thúaith nodno[i]rdnith*er*? No(a)ill tara cenn fri ríg oc ur chríche..
>
> What is the consideration of a king to the kingdom which dignifies him? Making an oath on their behalf with [another] king at the edge of the frontier…[139]

This precise situation is explained shortly thereafter, describing the same location at which a king with his hosting might make a *cairde*:

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[137] Ed. and trans. Breatnach, ‘The King in the Old Irish Law Text *Senchas Már*’, pp. 113–14; *CIH* 791.35–6.

[138] It is probably at this time that the individuals who would be acting as *aitiri chairdi* for every possible offender in the kingdom would be formally nominated, and that each would swear the oath of an *aitire* as given in detail in *Berrad Airechta* §65 (ed. and trans. Thurneysen, *Bürgschaft*, pp. 22–3); trans. Stacey, ‘*Berrad Airechta*’, pp. 221–3; *CIH* 597.6–25.

[139] *CG* ll. 494–6.

> slógad co hor críche fri forcsin fír 7 dligid conid roib cath nó chairdde…
>
> a hosting to the edge of the frontier to secure prerogative and entitlement [to a legal obligation], that he may have battle or *cairde*…[140]

This situation might easily take place after an offence had occurred between a victim in one king's kingdom and an offender from the kingdom across the frontier. The idea would seem to be that either the king of the victim's kingdom would make a *cairde* so that compensation for the offence could be paid across the border or that, if the offender's kingdom is not willing to agree to a *cairde*, and if no redress is made for the offence, the king is prepared to obtain compensation by military force for the outrage against his kingdom and thus against his own honour. Indeed, the next type of *slógad* described in *Críth Gablach* is just that: *slógad tar crích fri túa[i]th asidluí* ('a hosting across a frontier against a kingdom that evades [a legal obligation to] him').[141] This accords with the implication in the eighth-century legalistic narrative *Echtrae Ferguso maic Léti*, where, following a legal offence between two (over)kingdoms where there was no inter-territorial protocol, Fergus, king of Ulster, led a hosting against the Féni to obtain redress for the violation of his protection, upon which *ógcórae* ('full peace') was agreed to facilitate inter-territorial dispute settlement thereafter.[142]

It should be noted that the two kings involved might be of relatively similar status, having roughly the same number of client-kingdoms, or they might instead be comprised of a king of a powerful independent overkingdom (i.e. having no subservient contract of base clientship under a more powerful overking) and a provincial king, or a similar dynamic among lesser kings than these.[143] However, part of an Old Irish passage in *Bretha Nemed Dédenach* prescribes the basic level of what still might constitute a kingdom: *Níba túath túath cen ecnae cen eclais cen fîlid cen*

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[140] *CG* ll. 511–12.

[141] *CG* 512–13. This type of hosting is alluded to in a later passage: *e(i)rrech ar thúaith asidluí oco[a] n-indriud* ('a requisition when he is harrying them on a [client-]kingdom that evades [obligations to] him'), *CG* ll. 559–60. Note also the statement in *CG* ll. 563 (trans. Charles-Edwards, *ECI*, p. 527) that the hosting should have just cause: *adgainethar húad do chách besa chethrae in dá n-e(i)rrech ndédenach, nád aithgainethar a toísech a ht mad indred n-indligthech* ('He pays compensation for the last two requisitions to everyone who owns the livestock; he does not pay compensation for the first unless it be an unlawful invasion').

[142] See D.A. Binchy, 'The Saga of Fergus mac Léti,' *Ériu* 16 (1952), pp. 37, 40; McLeod, 'Fergus mac Léti', p. 5.

[143] One example of this would be how the Osraige are portrayed as free clients to the king of Munster in *FCTM* §16. See Charles-Edwards, *ECI*, pp. 541–2.

*ríg ara-coratar cuir ⁊ cairde do thúathaib* ('a kingdom without a Latin scholar, without an ecclesiastic, without a poet, without a king by whom contracts and treaties are extended to other kingdoms is no kingdom').[144] A *cor* ('contract') extended by a king to another kingdom, if it is not a *cairde*, would then most likely be a contract of base clientship; indeed, the phrase then makes sense as essentially describing a king who makes contracts of base and free clientship with other kingdoms. Ultimately, then, the author of *Bretha Nemed Dédenach* implies that a true kingdom (which is able to enact a *cairde* with another kingdom) is actually an overkingdom, though by this definition it still may be one of any size. A more overt statement of this appears in an Old Irish passage from *Recholl Breth* (*SM 2, 13*):

> Ní rí lasná biat géill i nglasaib, doná tabarr cís flatha, doná éirenetar féich cána. In tan gaibes in rí inna máma-so is and do-renar díriu ríg cen goí, cen esmrath, cen eisinracus fria thúatha.
>
> He is no king who does not have hostages in fetters, to whom no sovereign's tribute is given, to whom are not paid the fines of (viz., incurred under) promulgated law [from a base client-kingdom]. When the king assumes these functions, it is then that he is compensated as a king, without falsehood, without betrayal, without unworthiness towards his kingdoms.[145]

These sentiments match neatly with the phenomenon of eighth- and ninth-century overkingdoms becoming increasingly consolidated, resulting in some smaller kingdoms becoming subsumed or territories ruled by a *dux*, *toísech*, or *tigerna* (all of which may be translated as 'leader, lord').[146] Within the context of an overking securing a contract of free clientship with another kingdom, *Críth Gablach* states that an overking may bind his free client-kingdoms by pledge to a *cairde*, perhaps at an *óenach*.[147] How precisely this relates to the aforementioned swearing of an oath at the border

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[144] *CIH* 1123.32–3; ed. and trans. Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 111. Cf. a similar extract from *Bretha Nemed Toísech*, (normalised from *CIH* 2225.7): *ní túath cen trí sáornemthib samuidter: eclais, flaith, file* ('No *túath* is established without three noble privileged ones: a churchman, a ruler, a poet').

[145] *CIH* 219.5–7. Edited and translated (with my own addition in square brackets) in Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 113. Cf. *Tecosca Cormaic* §1 (ed. and trans. K. Meyer, *The instructions of King Cormac mac Airt*, Todd Lecture Series 15 (Dublin 1909), p. 2), which also mentions *géill i nglassaib* as an answer to the question *cid as dech do ríg* ('what is best for a king?').

[146] See especially D. Ó Corráin, 'Nationality and Kingship in Pre-Norman Ireland', in T. W. Moody (ed.), *Historical Studies XI: Nationality and the pursuit of national independence, papers read before the Conference held at Trinity College, Dublin, 26–31 May 1975* (Belfast 1978), pp. 8–11; for a slightly different view, see Etchingham, *CO*, pp. 147–8. See also K. Simms, *From kings to warlords: the changing political structure of Gaelic Ireland in the later Middle Ages* (Woodbridge 2000), pp. 96–115.

[147] *CG* ll. 505–7.

between kings is not entirely clear. Many possibilities abound, including distinguishing initial enactment and periodic renewal of a *cairde* (e.g. oath for enactment and pledge for renewal), or distinguishing between types of *cairde* and between whom they are made (e.g. an oath for a lesser degree of *cairde* involving an armistice-like agreement to cease hostilities, and a pledge for an overking to secure a free-client kingdom), or even regional diversity in practice. However, if presuming oath and pledge are both within the enactment of a given *cairde*, one might postulate an oath for nominating the *aitiri* at the enactment of a *cairde*, which serves as the core of its dispute settlement mechanism, and the pledge confirming the agreement of the other legal obligations for free-clientship. Another possible situation for an overking binding a *cairde* upon his free client-kingdoms may be that he is in fact binding such an agreement *among* some of his free client-kingdoms, as a sort of joint resolution, with himself in some sort of arbitration role, at least for the enactment phase.[148] However, without further evidence and further investigation (beyond the scope of the current study), it is scarcely possible to postulate any of these as more than speculative.

Sometimes an overking's contract of free or base clientship with another kingdom might change under exceptional circumstances. A passage of later commentary from *Bretha Cairdi* elaborates on this topic within the context of enacting a *cairde*:

1. O dagena a thescaire re da chairdi no a tri is eraic deoraid*h* bescna na c*r*ichi ind risi*n* re-sei*n* 7 o sein a*m*ach manir hescaired risi*n* re-sei*n* eit*ir* he islan can ni ind risin re-sein 7 a beith am*al* in deor*ad* tinoil o sei*n* i*m*mach gingu der*n*ad*h* a escairi.

2. Ma rabai cairdi accu ar dus 7 tai*n*ic cain chucu *acht* mas *ed* raachtaig*h*set ‘tuillium*h*’ ar siat ‘re heraicc ar cairdi, d’eraicc ar cana. gurab*h* eraicc chana. and 7 in tan rachas ar cain uai*n*d biaid ar cairdi acaind’ is a beith amlaid-sei*n* acht masa co*mh*aittitiu uil accu fein i*m*mi-sei*n* *nó* ma tat fiad*h*ain accu is a beith aml*aid*-si*n* mai*n*e uil ni dib-sei*n* accu is a ṡena dunti dari*n*ni in fogail na fuil i*n*t achtugud*h*-sein an*n* 7 beith can ic *nó* cu nd*er*ntar besgna eile accu.

1. When he announces [that his presence is] based on two or three [types of] *cairde*, compensation for an outsider is the [established] protocol of the territory for it during that time; and from then on, if it has not been announced during that time at all, he [i.e. his death] is excluded from liability, with

[148] And having his free client-kingdoms (who are not in a relationship of *comurradus*) not only in a relationship of *cairde* with himself but also having means of dispute settlement among themselves would join his overkingdom more tightly together, thus embodying the concluding phrase of *Críth Gablach*’s passage on types of pledging appropriate for an overking (including *slógad*, *rechtge*, and *cairde*): *ar it lessa túaithe huli insin* (‘for all these are benefits to a [subject] kingdom’), *CG* ll. 507–8.

nothing [to be paid] for [killing] him during that time, and he is like the outsider of an armed hosting from then on if his announcement has not been made.

2. If they had a *cairde* to begin with and *cáin* were established [subsequently] with them, provided that they decreed the following conversation: 'A supplement' say they, '[is to be added] to the *éraic* under *cairde* from the [higher] *éraic* under *cáin*, so that there be the *éraic* [which equals that] of the *cáin* for it. And when we will lose our *cáin*, we will have our *cairde* instead of it'. It is to be thus if there is complete agreement between them about that [modification],[149] or if they have witnesses with them [who can swear to it having been agreed]. [Whereas] it is to be thus if they have neither of those: the one who committed the offence is to deny on oath that there is that modification present, and [if it is successfully denied] it is to be without payment until another protocol is made with them.[150]

The section 2) of this passage, despite its difficulties, clearly echoes the sentiments in the citation from *Bretha Cairdi* (*CIH* 791.35–6) above: that there can be no compensation across a territorial border unless there is a *bésgnae* in place, either a *cairde* or *cáin*. Furthermore, if elements of the legal agreement are not put in place properly and the type of *bésgnae* is not precisely established, then there can be no compensation made until it has been agreed according to proper legal procedure. Section 1) involves the public announcement of a *cairde* after it is agreed and enacted, so everyone is aware of it and can therefore be conscious of determining what outsiders are or are not covered by the *cairde*, as examined in a passage below. Initially, one would expect this announcement to travel internally throughout a kingdom. Another part of this public announcing is detailed here. When an outsider comes of his own accord (and thus unaccompanied by a person local to the kingdom, an *urrad*) into a kingdom with which there is some arrangement of *cairde* (a *crích cairde*), he must announce that he comes peacefully and is under the protection of certain types of *cairde*, which entail their own privileges and entitlements.[151] The term *éraic deoraid* uses the sense of *éraic* as 'payment in compensation for an offence', rather than the more specific sense of 'compensation for murder consisting of body-fine (*corpdíre*) and restitution (*aithgein*)', as the types of compensation due may vary depending on the type of *cairde*.[152] The topic of compensation

[149] Cf. the cross-reference at *CIH* 2152.40 for *achtugud* referred to here, indicating the agreement to pay a supplement due to an applicable *cáin*.

[150] *CIH* 115.1–10. I am indebted to Clodagh Downey and Neil McLeod for assistance with the translation here.

[151] I am indebted to Neil McLeod for assistance with the precise interpretation of this passage.

[152] Breatnach, 'Lord's share', p. 2. See section 2.2.2.1.

for an outsider is further investigated below.[153] It is not entirely clear what the *deorad tinoil* refers to, but if it is indeed, as I translate, an outsider in a raiding band crossing a territorial boundary with ill intent, then we can then understand the section to mean that if an unaccompanied outsider fails to announce his identity as someone coming peacefully and from a *crích cairde*, then that offender is to be treated as an outsider with hostile intent. We see the legally accepted treatment of such a person detailed in *cairde n-imdílsi críchi* ('*cairde* of mutual forfeiture in a territory') which, as discussed below in section 2.2.2 (along with different types of *cairde* that may be simultaneously or progressively enacted),[154] would involve forfeiture for anyone in a *fiallach* (a raiding party) slain after they cross the border into the external territory. If all of this is what is meant here, it would also explain the *slán* ('immunity from legal claim') mentioned in section 1), which would refer to the inability of the offender's kingdom to claim compensation for him.

Interestingly, section 2) of the passage seems to refer to a situation where a free client-kingdom has become reduced to a base client-kingdom, which might happen for various reasons, including evading their obligations to their overking.[155] Intertwined with this process is what appears to be a formal public statement performed in legal procedure, such as we see elsewhere in *Bretha Cairdi*.[156] The critical difference between *éraic* in *cáin* and *éraic* in *cairde* is to whom portions of the lords' share goes in certain situations. Just as a lord receives a share of the *éraic* for offences occurring between his clients, an overking would receive a share of compensation in inter-territorial disputes between his base client-kingdoms by virtue of having a relationship of *cáin* with them, as we see in the tract on the distribution of *cró* and *díbad*.[157] The same tract describes an overking receiving a share of the *éraic* even in disputes within a single base client-kingdom within his overkingdom. In both these situations (normally), a greater share would go to the overking than

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[153] See below, section 2.2.3.1.4.

[154] Thus explaining the translation of 'two or three [types of] *cairde*'.

[155] *CG* ll. 512–13, 559–60. Note the discussion of Stacey, *The Road to Judgment*, pp. 91n54, 92n55, concerning where evading a legal obligation can lead to a *rath cin athchor*, a grant of base-clientship, which if extrapolated to the inter-territorial situation of the king of a free client-kingdom and his overking, could explain such a reduction in status of the client-kingdom. For example, note the dispute in *Echtrae Ferguso maic Léti* that was seemingly unresolvable until a new king of Ulster was selected to replace Fergus, for which see *CIH* 883.24–6, trans. McLeod, 'Fergus mac Léti', pp. 6–7. Another potential situation might be when a king dies and another is not selected for a while, which would result in the dissolving of the oath of *cairde* between those two kings without the potential to make another. It also might cause that kingdom to temporarily lose its status as a free client-kingdom (or to lose its status as a kingdom, according to the aforementioned passages from *Bretha Nemed Dédenach* and *Bretha Nemed Toísech*) until it regains it upon selecting a king. See *CIH* 1123.32–3 and 2225.7.

[156] e.g. *CIH* 791.17–36. For a discussion of these statements, see section 2.2.3.1.1. below.

[157] Murray, 'A Middle Irish tract on "*cró*" and "*díbad*"', pp. 252–3.

to the king of the victim's kingdom, at least according to the tract on the distribution of *cró* and *díbad*.[158] This additional portion that would go to the overking arbitrating between two base client-kingdoms may be this *tuillium* ('supplement') referred to in the above passage. In *cairde*, however, the king of the victim's kingdom would receive a greater portion of compensation since he would be arbitrating the dispute settlement without any role or influence from his overking; thus, the king of the victim's kingdom would receive his normal share of the enforcing third, without any of it going to an overking above him. Thus, with this context in mind, we can see why the precise type of protocol, or *bésgnae*, needs to be established in the passage from *Bretha Cairdi* above, with legal conditions of mutual acknowledgement or witnesses, especially if it is to change.

An extensive passage of Middle Irish commentary[159] on a citation from *Bretha Éitgid* ('Judgements concerning Irresponsible Acts') provides some additional detail concerning the enactment of *cairde*. In general, this legal text focuses on extenuating circumstances of an offence, whether irresponsibility, negligence, or mistake, which may change the degree of culpability. Here it explains principles of liability in *Bretha Éitgid* by exploring various situations concerning proclamation periods of *cairde*:

A MEIC ARA FEISER CIN RIG FOR TUAITH[160]

1) .i. Rig escaires cai*n* ₇ cairde do g*r*es, ₇ tuath is menche uachtnaighus;

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[158] See Charles-Edwards, *ECI*, p. 530; Breatnach, 'Lord's share', p. 12. The tract on the distribution of *cró* and *díbad* offers a detailed description of the methods and apportioning of distribution for at least as early as the early tenth century, but it is likely that this or a similar model were used as early as the eighth century, as aspects of it still fit quite neatly with the political and legal models of overkingdoms during that period. In addition, the *trian tobaig* ('enforcing third') going to kings, lords, or other enforcers is well attested in the Old Irish period (e.g. *CG* ll.85–6, *Berrad Airechta* §4, *CIH* 591.23–4; trans. Stacey, '*Berrad Airechta*, an Old Irish tract on suretyship', in T.M. Charles-Edwards, Morfydd E. Owen, & D.B. Walters (eds.), *Lawyers and laymen: studies in the history of law presented to professor Dafydd Jenkins on his seventy-fifth birthday* (Gŵyl Ddewi 1986), p. 211), and there is some evidence in Old Irish legal texts, such as in *Di Brethaib Gaire* ('Concerning Judgements on Maintenance'; *SM3 42*) to suggest that the king had a role in receiving *éraic* and distributing accordingly to the kindred, for which see *GEIL*, p. 126, and Breatnach, 'Lord's share', p. 10. The only situation in the tract on *cró* and *díbad* where the king of the victim's kingdom might receive a greater share of compensation for murder than the highest overking would be in an instance of *cró ó inn* ('[division of] *cró* from the top'), where the king of the victim's kingdom is a client of a *rí mórthúaithe*, who in turn is under a *rí cóicid*, who is himself under a *rí Érenn*, who is the highest overking. In this case, the king of the victim's kingdom (assuming the lord immediately below him is the lord of the victim's kindred) would receive $^{9}/_{81}$ of the enforcing third and the *rí Érenn* would receive $^{8}/_{81}$). Such a situation, while perhaps uncommon, was not impossible: the victim's kingdom being a base client-kingdom of the Ulaid or Laigin when they were under Uí Néill overlordship would present one such situation, interpreting the *rí Érenn* as just a name for the king of Tara, the Uí Néill overking. For detailed analysis and explanation of these amounts, see section 4.2 below.

[159] However, the concept of *anfes* ('ignorance') did of course exist as an extenuating circumstance of homicide in the Old Irish period, as detailed in *Bretha Éitgid* §14, for which see *CIH* 1260.28–32; trans. McLeod, *Bloodshed and compensation*, pp. 7–8.

[160] See *CIH* 1067.27 for the other half of this citation: *₇ cin tuaithi for righ*.

a) isi aithne i*n* cairde: lanfiach i*n*d re ndech*maid* ina fis ⁊ lethfiach i*n*a nanfis, lanfiach i*n*d iar ndech*maid* cid fis cid anfis;
b) i*n*ti o nailen*n* in fis iss e icas i*n* lanfiach no in lethfiach,
c) ⁊ *no*can uil arra amach iar ndech*maid* ⁊ *no*con uil arra do rig *nó* co digbait*er* a lam.

2) Dech*mad* re hescaire i*n* cairde ⁊ mi rei*m*gleod; ⁊ cairde bliadna si*n*, ⁊ damad cairde bud luga na si*n*, i*n*t ain*m*rai*n*di gabus i*n* dech*mad* no in *m*i isi*n* bliad*ain* corab e int ain*m*rai*n*di-sin gabus isi*n* cairdi bic; i*n*ni [leg. *in mi* ?][161] bias re hescaire, ⁊ aile dec re i*m*gleod; *nó* coma dech*mad* re hescaire ca*ch*a cairde ⁊ aile dec re i*m*gleod.
3) Mas a rig rodail in fis amach ⁊ ni thuc i*n* fis amach, ⁊ tuath rouachtnaig re ndech*maid*, leth o rig amach ⁊ letharra o tuaith amach ⁊ leth on tuaith don rig.
4) Mas o tuaith rodail fis amach re ndech*maid*, leithfiach ⁊ letharra o tuaith amach, ⁊ *no*con uil arra do rig uair nar digbad a lam.
5) a da cobais maraen conad ceth*ramad* fiach o cechtar de amach, is letharra o tuaith amach ⁊ letharra o tuaith don rig
   a) Cid fo*dera* in bail is ceth*ramad* fiach nach ceth*ramthu* arra nabiad and? is e fa*th* fo*dera*:[162] is e lanarra na cairdi dias, is e a letharra aenfer, ⁊ *no*co feta*r* i*n*dsci an aenfir do roi*n*d; ⁊ da feta, am*ail* is ceth*ramthu* feich, robad ceth*ramthu* arra.
6) Mas o rig rodal fis amach iar ndech*maid*, ⁊ tuath rouachtnaig iar ndech*maid*, lanfiach o rig amach, is lanarra o thuaith don rig, ł [leg. ⁊?] is bith cen arra amach.[163]
7) Mas o tuaith rodail fis amach iar ndech*maid*, lanfiach o tuaith amach, ⁊ is bith cen arra.
8) A da comais maraen *con*ad narithi iar ndech*maid*, lethfiach o checht*ar* de amach, ⁊ is letharra o tuaith do rig, ⁊ is bith cen arra amach

SON [I WILL INSTRUCT YOU] SO THAT YOU MAY KNOW [THE LAW REGARDING RESPONSIBILITY FOR] AN OFFENCE OF THE KING ON A KINGDOM

1) i.e. [it is] a king who proclaims *cáin* and *cairde* normally, and a kingdom that most often incurs offences;
   a) this is the character of the *cairde*: full fines for it before the ten-day period [ended] in case of knowledge [i.e. when the offender knows the *cairde* has been proclaimed] and half fines in case of ignorance, and full fines for it after the ten-day period whether with knowledge or ignorance;

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[161] Cf. the variant passage at *CIH* 1186.36.

[162] A variant passage from RIA MS 23 Q 6, *CIH* 1187.8 inserts the following phrase here: *cethri haitiri do chuir crainn, dias dib dia lugha* ('four *aitiri* for lot-casting, and two of them for the oath'). The same phrase appears in a gloss on a citation likely from *Bretha Cairdi* (*CIH* 2033.36–7) which concerns an onlooker who swears an oath that he was not able to protect the victim of the offence he witnessed and thus obtains exemption from liability, another kind of exceptional situation. The origin of this legal phrase cited in these two places is uncertain. The passage in which this citation from *Bretha Cairdi* comes is discussed in section 2.2.3.1.5. below.

[163] The scribe of the variant version in RIA MS 23 Q 6 (*CIH* 1187.13–14) has *ocus* instead of *nó*: ⁊ *nochan fuil arra amach* ('and there is no *arrae* out'). Also cf. the parallel phrase in section 7) (*CIH* 259.9–10): ⁊ *is bith cen arra*. It seems likely that *ocus* is indeed what is meant as this correlates with the conditions of *arrae* not being sent out to the victim's kingdom as stipulated in section 1).

b) the one who is bound to provide the information is he who pays the full fines or half fines,[164]
c) and there is no *arra* out [to the victim's kingdom] after the ten-day period, and there is no *arra* to the king until his hand has been emptied

2) There are ten days for proclaiming the *cairde* and a month for settling [cross-border claims]; and this *cairde* [is] for a year, and if it is a *cairde* for a shorter time than that, the proportion that the ten days or the month bears to the year is the same proportion which it bears in the shorter duration of the *cairde*; the month [?] which is for proclaiming, and twelve days for settling [cross-border claims]; or, there are ten days for proclaiming every *cairde* [of whatever duration] and twelve days for settling [cross-border claims].
3) If word [of the proclamation] was to be sent out from the king, and he did not send out word, and the kingdom incurred an offence before the ten-day period [ended], half the fine from the king out [to the victim's kingdom] and *letharra* from [the relevant people in] the kingdom out [to the victim's kingdom], and half fine from [the irresponsible person in] the kingdom to the king.
4) If word [of the proclamation] was to be sent out from the kingdom before the ten-day period [ended], half fines and *letharra* from [the relevant people in] the kingdom out [to the victim's kingdom], there is no *arra* to the king since his hand was not emptied.
5) If they were both equally at fault, a quarter fine from each of them out [to the victim's kingdom], it is *letharra* from [the relevant people in] the kingdom out [to the victim's kingdom] and *letharra* from [the irresponsible person in] the kingdom to the king.
   a) What is the reason that when it is a quarter fine, it is not a quarter *arra* for it? This is the reason: Two people comprise *lanarra* in *cairde*, one man is its *letharra*, but the statement of one man cannot be divided, and if it could, just as the quarter fine, it would be a quarter *arra*.
6) If word [of the proclamation] was to be sent out from the king after the ten-day period [and he did not send word out], and the kingdom incurred an offence after the ten-day period, full fines from the king out [to the victim's kingdom], it is *lanarra* from [the relevant people in] the kingdom to the king, or [leg. 'and'?] it is without *arra* out [to the victim's kingdom].
7) If word [of the proclamation] was to be sent out from the kingdom after the ten-day period [and word was not sent out, and the kingdom incurred an offence after the ten-day period], full fines from the [the relevant people in] kingdom out [to the victim's kingdom], it is without *arra.*
8) If they were both equally at fault [and delayed in sending word out] after the ten-day period, half fines from each of them out [to the victim's kingdom], and it is *letharra* from [the relevant people in] the kingdom to the king, and it is without *arra* [sent] out [to the victim's kingdom].[165]

This passage seeks to explain exceptions to full liability in various situations in which someone committed an offence against someone covered by the *cairde* (a *fer cairdi*), based on how soon after the *cairde* was made and if adequate notice of the *cairde* was given. Section 1) details the general

[164] It would seem that the person who failed to provide notice of the cairde assumes liability for anyone who consequently is ignorant of it and causes an offence against a *fer cairdi*, before or after the ten-period (thus paying full or half fines).

[165] *CIH* 258.27–259.12. My own translation, numbering, and subdivisions.

rule of liability along with the exceptions for negligence, the parameters being the ten-day proclamation period and the presence or absence of *fis* ('knowledge') concerning the enactment of the *cairde*. Halving the liable fines only occurred if an offence occurred within the initial ten-day proclamation period *and* the offender was unaware there was a *cairde* in place. Sections 3), 4) and 5) explore various ways in which this situation involving excusable irresponsibility might occur and consequently be handled. However, after the ten-day proclamation period, everyone in the kingdom was expected to know that a *cairde* was in place. Nevertheless, inadvertence on someone's part might still result in someone being unaware of the enactment of the *cairde*, and so sections 6), 7), and 8) provide relevant detail in the event of this inexcusable irresponsibility happening, parallel to sections 3), 4) and 5). Section 2) details the significant time periods for aspects of procedure in *cairde* (and possible variants of these), including proclamation (during which notice is given), the period for resolving claims made according to the terms of the *cairde*, and the overall duration of the *cairde* (after which it presumably could be renewed).

The core concept here concerns whether notice was given adequately to the population of a kingdom after a *cairde* was made between kingdoms, the irresponsible act being the absence of notice given. If not everyone in a kingdom was aware that a *cairde* had been agreed, then they might inadvertently assault someone covered by the *cairde*, thinking them to be an intruding outsider. Naturally, since they did not have *fis* of the *cairde*, liability is handled slightly differently. The ten-day proclamation period functions as an initial transition period during which word is expected to be sent out to all those in the kingdom.[166] From our passage in *Bretha Éitgid*, there appears to be two phases of giving notice: one from the king to certain people with legal functions within the kingdom, and then another from those people to those for whom they are responsible. While it is not certain precisely who such people would be, *Críth Gablach* for one accords legal functions in *cairde* to the *aire désa*, *aire ard*, and *aire tuísea*, as discussed further below.[167] If my assertions there are correct, namely that the *aire désa* and *aire ard* function as *aitiri chairdi* for their kindred and clients, and if this practice of giving notice of *cairde* extends back to the Old Irish period (one would wonder why such a fundamental element of Irish legal practice *would not* be present in the Old Irish period), one would presume they would be the ones responsible for giving notice that a *cairde* has been proclaimed. Since they would be the ones going surety for those for

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[166] Cf. the ten-day period of notice in a poet's delivering of satire, for which see Breatnach, 'On Satire and the Poet's Circuit', pp. 25–6.

[167] See section 2.2.4 below. In addition, since the *aire coisring* (also known as the *aire fine*), the head of a non-noble kindred, constrains his kindred on behalf of king, ecclesiastical authority, and poets, he might also be involved, as a logical individual to spread word to each commoner kindred. See *CG* ll. 277–301.

whom they are responsible, it would be in their interest to notify them that a *cairde* was in place to avoid unnecessary inconvenience on their part. Moreover, the stipulation in section 1b) indicates they would be the ones liable for paying compensation for the offence, should they be negligent in giving notice.[168]

So sections 3) and 6) above involve negligence on the king's part in sending out word, and sections 4) and 7) involve negligence on the part of a legal officer in the kingdom who did not properly notify the offender and his kindred.[169] Since the scenarios presented here involve negligence, the legal mechanism of *arrae* is used. While this has hardly been a well understood or well explained concept, we have a parallel use of *arrae* being used to warrant a half-fine for an irresponsible act or one made in ignorance in *Cáin Adomnáin* §35: *mad étged nó anfes, lethfiach ind ₇ arracuir as-n-étged ₇ as-n-anfes* ('If there be inadvertence or ignorance, half-fine for it, and there shall be an oath-equivalent that it is inadvertence and ignorance').[170] As section 5a) describes, here the *lánarrae* consists of two people, and the *letharrae* consists of one person. This would seem to indicate, as Binchy suggests, that the *arrae* is a term for a procedure that involved one or more oath-helpers who support proof in court. In the present context, it seems that such people would verify by oath that negligence occurred and that the offender was ignorant, thus confirming that a reduced fine for negligence was warranted. However, in effect, this is a substitute for part of the payment normally due otherwise.[171] As such, the *lánarrae* or *letharrae* match the *lánfiach* or *lethfiach* that are due for the various situations of liability. Section 1c) details the conditions under which the *arrae* is used.

In sections 3), 4), and 5), *letharrae* is given since the offence occurred during the ten-day period and half fines were warranted on account of ignorance. In section 3), *letharrae* goes out to the victim's kingdom to verify that the offender was in fact ignorant of the *cairde* and that notice of

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[168] Specifically, *inti o nailenn in fis iss e icas in lanfiach no in lethfiach* ('the one who is bound to provide the information is he who pays the full fines or half fines'), *CIH* 258.30.

[169] The concept of the king's hand being 'emptied' is based on whether he bears any liability in the offence because of his own negligence in proclaiming the *cairde*. If he were not negligent, then he would not pay any portion of the fine and thus would not have any *arrae* go to him.

[170] *CA* §35; trans. Ní Dhonnchadha, 'The Law of Adomnán', p. 63 The definitions of *arrae* in *DIL* are heavily dependent on Binchy, 'The Old-Irish Table of Penitential Commutations', pp. 51–3, in which he gives the compound verb *ar-ren* ('pays on behalf of another' or 'pays over [something] in place of [something else]'), from which he suggests is made the verbal noun *arrae*. Here the definition 'the number of oath-helpers required by a person who was debarred from leading proof himself' fits most closely with the use here, but as Binchy notes the core concept here is the 'replacement' of one kind of legal procedure with another.

[171] Thus engaging with aspects both senses of the term *arrae* given by Binchy, 'The Old-Irish Table of Penitential Commutations', p. 52.

the *cairde* was not received from the king. In section 4), *letharrae* similarly goes to the victim's kingdom to verify that the offender did not receive notice of the *cairde* from the relevant legal officer who did receive notice from the king. Section 5) presents a slightly more complex situation. Firstly, as section 5a) explains, the statement of a single person cannot be divided in half, thus *letharrae* is still used even though quarter fines are paid. So *letharrae* goes from the relevant people in the kingdom to the victim's kingdom to verify that the offender did not receive notice of the *cairde*, and thus that half fines total are due (a quarter from king and a quarter from the relevant person in the kingdom), and *letharrae* goes to the king to verify that the offender's ignorance was partly due to lack of notice from the king himself.

After the ten-day proclamation period for *cairde*, section 1c) states that *arrae* is not sent out to the victim's kingdom, since full fines are due and thus no reduction in fines can be sought. However, the second condition in section 1c) which utilises *arrae* may still occur, namely when the king pays full or half fines. Thus, in sections 6) and 8), *lánarrae* and *letharrae* (respectively) are used to verify that the offender's ignorance of the *cairde* was fully or partly (respectively) due to lack of notice from the king. In section 7), there is no *arrae* at all since the king is not liable to pay any part of the offence in the first instance.

Naturally, it is difficult to know how early the aspects of *cairde* presented here existed, but at least the month-long period for settling claims in *cairde* is corroborated in Old Irish texts, including *Críth Gablach* and the Airgialla Charter Poem.[172] One would expect the ten-day period of notice to be an early element as well, since not only does it match the period of notice required in satire, as noted above, but the giving of notice in such situations is also a fundamental element of the early Irish legal system. In addition, the passage does have a paradigm between *rí* and *túath* much like *Críth Gablach* has (among other Old Irish legal texts), and this version is free from any obvious later intrusive elements such as the *trícha cét*, so it is naturally tempting to see this as being closely derived from earlier material.[173] What we can comfortably say is that all of the aspects of *cairde* detailed in this commentary on *Bretha Éitgid* were in effect from at least the Middle Irish period.

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[172] See in particular McLeod, 'The lord of slaughter', pp. 104–7. Note also the month-long period mentioned in fragments from a legal narrative that likely belongs to *Bretha Cairdi* (*CIH* 114.19–22, 2128.18–25), which provides a literary anecdote of a *cairde* projected into the distant past. See Qiu, *Narratives in early Irish law tracts*, p. 100, who suggests it may have been an introductory legal narrative to *Bretha Cairdi*.

[173] *CIH* 964.33–9 is an abbreviated summary of this passage from *Bretha Éitgid* that has a strange amalgamation of *túath* and *trichad cét*, which seems to indicate this scribe's preoccupation with applying these legal principles to the reality of his own time, rather than trying to understand them in their original sense.

Overall, some of our earliest sources concerning *cairde*, *Críth Gablach*, *Berrad Airechta* and Old Irish material from *Bretha Cairdi*, describe enactment as a process involving royal oaths and pledging (perhaps in slightly different situations). This put in place the legal mechanisms for legal procedure should a cross-border dispute occur, such as the nominating of *aitiri* as part of the royal oath-swearing, along with their own oath-swearing, as well as a military last resort to legal redress in the event of the king and other legal administrators in the kingdom obstructing legal process initiated by another kingdom. Other aspects of enactment which cannot be concretely verified as early (but fit with the general legal structure of the earliest texts and do not conflict with any legal concepts therein) are the exact process taken when an offence occurs shortly after enactment (as detailed in the commentary on *Bretha Éitgid*) and details concerning a change of inter-territorial contract between *cairde* and *cáin* (in *Bretha Cairdi*).

### 2.2.2. Types of *cairde*

The preceding sections examined ways in which a *cairde* might be made. The present section presents various types of *cairde* that could be made, which may well affect how each was made, and here I attempt to tease out the differences between these *cairde*, thereby extending Bemmer's exploratory work on the topic.[174]

#### 2.2.2.1. *Cair, cis lir cairde docuisin? nī, a tri.*

The extract of Old Irish textbook prose in the heading above exists in three separate sections of TCD MS H 3.18 (1337). The first comes from a section containing a collection of extracts from *Bretha Cairdi*. The other two, which are near identical to each other, are appended to copies of the short Old Irish text titled *Slán nAitire Cairde* by Meyer (followed by Thurneysen), but these may in fact be extracts from *Bretha Cairdi*, since they resemble the first extract (which is indeed from *Bretha Cairdi*) fairly closely.[175] In this case, they would have been appended by the compiler of

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[174] Bemmer, 'Inter-territorial alliances', pp. 195–199.

[175] The text was first titled and edited by K. Meyer, 'Mitteilungen aus irischen Handschriften', *ZCP* 13 (1921), pp. 24–5, following which appearaed a more complete edition and translation in Thurneysen, *Bürgschaft*, pp. 32–3. Thurneysen did not include the extra five lines that Meyer did, which in any case concern types of *cairde* rather than legal procedure in *cairde*. In combination with other evidence, these short extract appended to the material of *Slán nAitire Cairde* proper may be viewed as an extract from a separate text, as is discussed further below.

*OGSM* to the material in *Slán nAitire Cairde*, being content relevant to *cairde*.[176] All of these provide detail on different types of *cairde*; the passage of citations with glossing from *Bretha Cairdi* (A) and the Old Irish passage appended to the end of *Slán nAitire Cairde* (B) read as follows:

A. Cair, cis l*ir* cairde docuisi*n*? nī, a t*r*i:

**Cairde nairdbide**

i. i*m*a mbí airdeb*e* cintech .i. aithg*in nó* ani*m* dar eis araile*,*

**7 cairde ni*m*dilsi c*r*ichi**

.i. na roimtighed o*n* túaith doní an cairde a tuaith a ceil*i* ar o*m*on g[aite] 7 b*r*aite i*nn*te,

**7 cairde fei*n*e**

.i. cairde doni cairde it*er* na feineibh, bei*m* nderb f*or*a saighthibh a fiachaib .i. cin*n*e dei*m*en f*or*na fiachaib i*nn*saight*er* an*n*. fiach nad ar[d]b*an*ar[177] isin cairde airdbide sun*n* f*r*i fia*ch*aib cairdi feine .i. na fir-ci*n*dter isi*n* .c. i mbí aird-epi ci*nn*tech .i. gni*m* diaithg*in*, *nó* ca*ch* fia*ch* f*or*na tabair aird-bei*m* isin cairde airdbide is fia*ch* .c.f. icth*ar* and .i. smacht 7 en*eclann*.

A question: how many [types of] *cairde* are there? Not difficult, three:

**The limited *cairde***

i.e. concerning which there is a fixed 'high-limitation', i.e. restitution or a life for a life.

**and the *cairde* of mutual forfeiture of a region**

i.e. let no one go from the *túath* that makes a *cairde* into the territory of another for fear of theft and robbery in them

**and the *cairde* of freemen**

i.e. a *cairde* which makes a *cairde* between the freemen, a firm declaration governing their lawsuits in regard to fines, i.e. a fixed amount has been settled on the fines which are sought there. A fine which is not restricted in the limited *cairde* [applies] here for fines in the *cairde* of freemen, i.e. that which is not 'truly-settled' in the *cairde* in which there is a fixed 'high-limitation' [i.e. a maximum amount?], i.e. a deed apart from restitution,[178] or each fine on which a 'high-rate' is not given in the

[176] For further discussion of the philological issues at hand here, see section 2.2.4 below.

[177] From *ar-díben*.

[178] For this negative sense of *de* as a prefix to *aithgein*, see the example *díaithgina* given at *DIL* D2 51.85.

limited *cairde,* it is a fine in the *cairde* of freemen that is paid there, i.e. [body-]fine and honour-price.[179]

B. Cis l*ir* cairdi dochusin? nī, a t*r*i: cairdi feine ⁊ cairdi nairdbidhe ⁊ cairdi indlis.[180]
Cairdi nairdbithe .c.amus, a fiach-side am*ail* inlathar.
Cairde nindlis: n*ech*tar da line adrorast*ar* a c*r*ich a cheili is diles; fer dilis indilus i cairde, b*er*air a .c.guine f*r*i c*r*ich di siu; iarmotnorat fer .ii. t*ar* crich, adren-side, is dilis dia ceiliu.
Cairde feini cacha t*ech*ta, am*ail* incu*m*eth a fiach lā ocin .c.cairdi dogneth it*er* ulta ⁊ feniu dia mbai urbagh nul*ad*.

How many types of *cairde* are there? Not difficult, three. *Cairde* of freemen, limited *cairde*, and *cairde* of forfeiture.
The limited cairde first, its fines as it is stipulated.
The *cairde* of immunity: [if] either of the two comes into the territory of the other he is forfeit; free from liability [are actions against] the man who is forfeit in *cairde*,[181] [even when] his first

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[179] *CIH* 792.5–12; in accordance with standard practice, the hypenated words in quotation marks denote etymological glosses. Cf. *CIH* 964.14–16 for a slightly different version in an extract from an unidentified text in TCD H 3.18: *Ge beid cairde ilardha and re radh ⁊ re nairem, ni uil and acht tri cairde .i. cairde airdeibe ⁊ cairde feine ⁊ cairde imdilsi criche* ('Though there might be many *cairde* by name and by reckoning there are not but three *cairde*, i.e. the limited *cairde* and the *cairde* of freemen and the *cairde* of mutual forfeiture in a region'). Note this version substitutes the etymological gloss *airdeibe* in place of *airdbide*, which appears otherwise. The translation of *crích* as 'region' here follows the translation of *imdílse* as 'mutual forfeiture'. If there is indeed mutual forfeiture as outlined by the evidence below, then the *crích* must be referring to the region encompassing both kingdoms involved in the *cairde*, as each party from their respective kingdoms are only forfeit in the territory of the other's kingdom, not both forfeit in the same territory.

[180] Cf. *CIH* 574.31 for another instance of the alternate title *cairde ninndilius criche*. Perhaps there is a scribal error in *CIH* 893.11–16 and 574.31, and that *cairde imdilse críche* is what was intended, as we see consistently in *CIH* 791.37, 792.1, 792.6, 792.13 and 964.16. However, the concepts of *imdílse* ('mutual forfeiture') and *indílse* ('exemption from liability') both appear in the evidence we have for this type of *cairde*, so the two titles given can be seen as expressing two aspects of the same system. The semantic issues concerning *díles* and *indles* are discussed below.

[181] This phrase might be alternatively translated, 'the man who is forfeit is not subject to legal claim', i.e. forfeited persons cannot have a legal claim made in their favour.

wounding is born from this side of the frontier; the other man follows him across the border, he [i.e. the one following] pays compensation, he [i.e. the one following] is forfeit to the other.[182]
The *cairde* of freemen, of each lawful person, just as far as its corresponding fines according to legal tradition in the first *cairde* made between the Ulaid and Féne from which was 'the breaking of the *Ulaid*'.[183]

What we see here is a paradigm for three types of *cairde*, each with their particular stipulations. Bemmer has taken the first steps to define these based on extracts from *CIH* 791.37–792.12, but here we will expand and revise that analysis based on additional passages.[184] We will begin with *cairde n-imdílsi críche* ('*cairde* of mutual forfeiture of a region'). As we can see in passage (B) and elsewhere in *Bretha Cairdi*,[185] the core idea in this type of *cairde* is that a person from one kingdom is forfeit if he were to cross into the territory of the other kingdom. Bemmer makes the logical point that 'if any person crossing the border was forfeited, there was really little point in having a treaty in the first place', so we need to look deeper to determine the precise circumstances in which an outsider would be considered forfeit, and when someone in their own kingdom could be exempt from liability when acting violently against such an outsider.[186] In passage (A) above, the gloss mentions that type of *cairde* was made *ar omon g[aite] 7 braite innte* ('for fear of theft and

[182] The difficulty with this section of the passage are the terms *díles* and *indles*. In various contexts, *díles* can mean either 'forfeit' or 'not liable for legal penalty, immune from legal consequences', and *indles* can mean the opposite in both senses. Indeed, the dual opposing senses each word can have nevertheless go together: an entity forfeited to one person can become immune from legal claim from the party by whom it has been forfeited; similarly, a person who is forfeit, if harmed, cannot have a legal claim made in their favour, thus they are not subject to (thereby immune from) legal claim. The sense of the word is thus very relative with regards to whom it is referring. *Díles* is undoubtedly used in the sense of 'forfeit' in *Slán nAitire Cairde* §3 (*CIH* 893.8; 574.28), which, significantly, immediately precedes both versions of the present passage, just as in *AU* 859.3 and *Bretha Éitgid* §13 (*CIH* 1067.30–1; trans. McLeod, 'Bloodshed and compensation', pp. 17–18), for which see section 2.2.3.1.5 below. However, in *Cáin Ḟuithirbe* (Breatnach, 'The Ecclesiastical Element in the Old Irish Legal Tract *Cáin Fhuithirbe*', pp. 39–40) *díles* means 'immune' and *indles* means 'liable'. So the above section of the passage might be alternatively translated: '[if] either of the two comes into the territory of the other he (i.e. the local person) is immune; liable [are actions against] the man who is immune in *cairde*, [even when] his (i.e. the one leaving his own territory) first wounding is born from this side of the frontier; the other man follows him across the border, he (i.e. the one following) pays compensation, he (i.e. the one followed) is immune to the other'. However, regardless of which way this section is translated, given the aforementioned relative nature of these terms, it indicates the same legal principle: each person's actions are immune from legal claim when in their own kingdom and liable in the external kingdom.

[183] *CIH* 893.11–16; an alternate version is at *CIH* 574.30–5.

[184] Bemmer, 'Inter-territorial alliances', pp. 195–7.

[185] *CIH* 791.37–792.4.

[186] Bemmer, 'Inter-territorial alliances', pp. 5–6.

robbery').[187] This makes sense as context for someone being forfeit in another territory. Indeed, another gloss on a citation mentioning *cairde n-imdílsi críche* states *.i. isin cairde imdilsi crichi ata, 7 is dilis cach fer d'fiallach in cairde-so a crich araili 7 indiles ina chrich fein* ('i.e. in the *cairde* of mutual forfeiture of a region it is, and each person in a warrior-band from another territory is forfeit in this [type of] *cairde*, and is exempt from liability in his own territory [when engaged with a warrior-band from another territory]').[188] So given this evidence, the conditions of *cairde n-imdílsi críche* appear to be that when any obviously hostile company crosses the border from their own territory into the *cairde*-territory, the people in their own territory can kill those in the hostile company without being liable. However, as passage (B) emphasises, even if someone in his own territory, who is fending off a foreign aggressor, is wounded first (or wounds the aggressor first), then follows the retreating aggressor (or warrior-band) across the border into the aggressor's own territory, then the pursuing person, originally defending his own territory and thus immune from liability, has now become a foreign aggressor himself and is forfeit in the other region with which there was such a *cairde*.[189]

Bemmer has attempted to link this *fiallach* with a band of outlaws (such as the *fianna* we see in the Finn Cycle) but this is not necessary, and may introduce additional legal complications.[190] The main point is that the people who are forfeit in this type of *cairde* are those who are clearly

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[187] But cf. *CG* ll. 142–4 and 201–2 on the *aithech baitside* and *bóaire réire breithe*, respectively, particular types of commoners who apparently have certain legal functions and thus are required to have specific moral requirements, these being *cen gait, cen brait, cen guin doíne* ('without theft, robbery, or injuring people').

[188] *CIH* 792.7.

[189] cf. *Gúbretha Caratniad* §17 in Thurneysen, 'Aus dem irischen Recht III,' pp. 325–6, where there is an exemption for self-defence, but of course it is not self-defence if one is simply the first to receive a wound then pursue the offender across a border into his own territory. Note the specific conditions attached to this exemption for self-defence in *CIH* 791.10–12, which require 1) the offender not identifying himself, and the victim being attacked and 2) being unable to separate from him, 3) being unable to stop the offender without suffering deadly harm, and 4) being unable to recognise him to later apprehend him by legal process. See section 2.2.3.1.1 below.

[190] If one were to take *fianna* in the sense of landless, proclaimed outlaws (see *GEIL*, p. 223), this would hardly make sense in the present context as such people would not even have legal rights in their own kingdom to begin with, let alone in another kingdom, thus it would already be understoood that such people would be forfeit in other kingdoms, and thus the *cairde* would not actually be achieving anything. Of course, Bemmer, 'Inter-territorial alliances', pp. 195–6, also acknowledges that royal sons acquiring military training might be involved in a *fían*-band, for which see J. Nagy, *Wisdom of the Outlaw: the boyhood deeds of Finn in Gaelic narrative tradition* (Berkeley 1985), pp. 41–79; K. McCone, 'Werewolves, Cyclopes, *Díberga*, and *Fíanna*: Juvenile Delinquency in Early Ireland', *Cambridge Medieval Celtic Studies* 12 (Winter 1986), pp. 1–22; R. Sharpe, 'Hiberno-Latin *laicus*, Irish *láech* and the Devil's men', *Ériu* 30 (1979), pp. 75–92.

crossing into the other territory with ill intent, whatever kind of people they may be.[191] With no *cairde*, such people generally would have no legal rights in an external territory, but inter-territorial tension would result in the event of people from either territory being injured, wherefrom there might be an increase in inter-territorial tension. This might result in a hosting made to obtain redress, either by avenging or recovering compensation for an inter-territorial offence.[192] So *cairde n-imdílsi críche* was meant to discourage inter-territorial raiding by making those involved in raids forfeit while in the other territory. So the goal, in short, was a reduction in antagonistic cross-border activity.

The next type is *cairde n-airdbide* ('limited *cairde*'). Not much detail is provided about this type of *cairde*. As the name implies, in passage (B) we have the sense that there are specific limitations that the *cairde* would apply to. Passage (A) gives us slightly more information, a gloss on *cairde n-airdbide* detailing *aithgin nó anim dar eis araile* ('restitution or a life for a life').[193] It is not entirely clear whether this 'limited' sense of this *cairde* only applied to the amount or character of fines due, such as only allowing for *aithgein* ('restitution'), or whether limitations also applied to specific circumstances or types of offences. We can attempt to glean more detail about *cairde n-airdbide* by examining it within the context of the next *cairde*, *cairde féine*, and by examining the relationships between these three *cairde*.

*Cairde féine* ('*cairde* of freemen') is the next degree of *cairde*. The material in passage (B) concerning *cairde féine* attempts to provide various explanations for its name, alternatively describing it as referring to law-abiding freemen, or to the tradition of the dominant legal authority (*la Féniu*), or linking it to a legal narrative describing a *cairde* made between the Féni and Ulaid.[194]

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[191] cf. *CIH* 114.36–40, for which see section 2.2.3.1.2 below. This is perhaps what we are meant to understand in *Fled Bricrenn* §8 (K. Hollo, *Fled Bricrenn ocus Loinges mac nDuíl Dermait and its place in the Irish literary and oral narrative traditions*, Maynooth Medieval Irish Texts 2 (Maynooth 2005), p. 53) when Cú Chulainn slays a warband of *trí nonbor* ('three groups of nine') without hesitation, because they are a warband and he thus is legally entitled to, or perhaps it is implied that this is a band of landless outlaws with no legal rights.

[192] Note the hosting to obtain inter-territorial redress in *Echtrae Ferguso maic Léti*, Binchy, 'The Saga of Fergus mac Léti', pp. 37, 40; McLeod, 'Fergus mac Léti', p. 5.

[193] The phrase 'a life for a life' almost seems like a tantalisingly vague reference to the practice of *dígal* ('lawful vengeance'), administered by the *aire échta*, for which see McLeod, 'Blood-feud', pp. 114–133; *idem.*, 'The lord of slaughter', pp. 101–114.

[194] This is an excerpt or summary from a legal narrative that likely belongs to *Bretha Cairdi*, which provides a literary anecdote of a *cairde* projected into the distant past. Indeed, Qiu, *Narratives in early Irish law tracts*, p. 100, suggests it may have been an introductory legal narrative to *Bretha Cairdi*. See *CIH* 114.19–22, 2128.18–25; Breatnach, *Companion*, pp. 87–8. Also compare the similar formula concerning the enactment of *cairde* used here (*is amlaid dognīth…*) with that in *CIH* 792.13–15 (*is amlaid doniter in cairde…*).

The reference to law-abiding freemen provides an notable distinction from the *cairde n-imdílsi críche*, which seems to be aimed at those in a *fíallach* who, while not necessarily landless outlaws, would be nonetheless ripe for cross-border theft and robbery. A gloss in passage (A), *fiach nad ar[d]benar isin cairde airdbide sunn fri fiachaib cairdi feini* ('a fine which is not restricted in the limited *cairde* [applies] here for fines in the *cairde* of freemen') provides the basic principle for distinguishing it from the *cairde n-airdbide*.[195] This is further clarified by subsequent glosses as *gnim di aithgin* ('a matter aside from resititution') and *smacht 7 eneclann* ('[body-]fine and honour-price'). Since the term *éraic* is not used here, which could denote payment of the components of *corpdíre* and *aithgein* together, and since the fines at hand are described as those 'apart from restitution', then we may reasonably conclude that *smacht* here refers specifically to *corpdíre*.[196] In addition, it may be significant that a lengthy passage likely deriving from *Bretha Cairdi*, discussed below, refers throughout to payment of *corpdíre* and its distribution.[197]

In the above passages, we have already seen some mention of the relationship between these types of *cairde*, from which we can continue to reconstruct this inter-territorial legal structure. A few more passages will slightly illuminate this relationship further, though the general lack of material limits it to a tentative interpretation. First, in a late Middle Irish passage from *Bretha Cairdi* we have some evidence that the commentator believed *cairde n-imdílsi críche* was not meant to be enacted by itself:

> IS aml*aid* donith*er* in cairde i*m*dilse c*r*iche: a dil*se* d'fir in feraind ca*ch* ní tarr*aid* ara ferand, 7 m*un*u tar*aid* it*ir* hé *no* co rainic i*n*a c*r*ich budei*n*, is er*aic* cairde airdb*ide* and *no* cairde fei*n*e, ar ni fetht*ar* in cairde i*m*dilse c*r*ichi gan in cairde nairdb*ide no* gan i*n* cairde fei*n*e.
>
> It is thus that the *cairde* of mutual forfeiture of a region is made: forfeiture to the man of the land [i.e. the landowner?] everything that he [i.e. the offender] avenged on his land; if he did not avenge it at all until he goes [back] into his own territory, there is compensation [paid] in the limited *cairde* for

[195] This may indicate that the *cairde n-airdbide* involved limitation *both* in amount (limited to payment of restitution) and in type of offence or circumstance.

[196] In addition, note the mention of *corpdire in .c. feine* in *CIH* 792.18.

[197] See section 2.2.3.1.4 below.

> it or in the *cairde* of freemen, and the *cairde* of mutual forfeiture of a region does not apply without [also having in place] the limited *cairde* or the *cairde* of freemen.[198]

The passage here seems to be expanding on the others above that detail the workings of *cairde n-imdílsi críche* by noting that forfeiture for an aggressor and exemption from liability for a local defender applied only when the defender engaged violently with the aggressor in the defender's own territory, and that liability might be different if the defender engaged with the aggressor outside of the defender's territory. It adds on a condition that when an aggressor retreats to his own territory, and the defender follows him and an offence results therefrom. At this point, each have acted as an aggressor in the other's territory, so there is no longer any single foreign aggressor as the the *cairde* of mutual forfeiture was intended to handle. In this case, the dispute is handled more equivocally according to the limited *cairde* or the *cairde* of freemen, either of which the *cairde* of mutual forfeiture of a region could be paired with (since it was not intended to be enacted by itself, for the precise situation stated above). A similar sentiment is embodied in a brief statement nestled in the middle of a passage from *Bretha Cairdi* on liability concerning mistaken identity (examined in full below):[199]

> nucun etar cairdi imdilsi crichi gan cairdi fene *no* gan cairdi airdbidi d'eascairi maraen ria 7 nugun etar cairdi ardbidi gan cairdi feini 7 nugun etar cairdi feini gan urradus.
>
> It is not possible to proclaim a *cairde* of mutual forfeiture of a region without [proclaiming] a *cairde* of freemen or a limited *cairde* together with it, and it is not possible [to proclaim] a limited *cairde* without a *cairde* of freemen, and it is not possible [to proclaim] a *cairde* of freemen without *urradus*.[200]

Four possible combinations of *cairde* enactment are given here: 1) the *cairde* of mutual forfeiture of a region and the limited *cairde*, 2) the *cairde* of mutual forfeiture of a region and the *cairde* of freemen, 3) the limited *cairde* and the *cairde* of freemen, and 4) the *cairde* of freemen and *urradus*.

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[198] *CIH* 792.1–4. There are some lingering difficulties with this passage. Firstly, in the phrase *munu taraid itir hé*, rather than an independent object pronoun here, one would normally expect an infixed pronoun in the verbal phrase *munu taraid*, but this would be a development in late Middle Irish. The word *fethtar* appears to be a strange form of *feidid*, since the senses of *fethid* are either intransitive or do not fit with the context here. The term *éraic* is here used in the sense of 'compensation for an injury' instead of 'compensation comprised of body-fine and restitution', as neither the limited *cairde* or the *cairde* of freemen on its own involves payment of *éraic* in the sense of a combined payment of body-fine and restitution.

[199] Section 2.2.3.1.5 below.

[200] *CIH* 114.31–3.

We can look to what may be a more complete section of text which includes the citation in *CIH* 792.1 for a further elaboration on these relationships between types of *cairde*:

> Is aml*aid* donit*er* [leg. donither?] in cairde i*m*dil*se* c*r*iche ⁊ cairde airdbide d'esc*air*i leis,
> ⁊ is aml*aid* donit*er* [leg. donither?] in .c. airdb*ide* ⁊ .c.f. d'esc*air*i leis,
> ⁊ is aml*aid* donith*er* in .c.f. ⁊ urru[d]us d'esc*air*i leis;
> ⁊ ca*ch* ni na fagba*r* isi*n* .c. i*m*dilse c*r*iche, is a bre*th* isi*n* .c. airdb*ide*;
> ⁊ ca*ch* ni na fagb*ar* isin .c. airdb*ide*, is a *m*bre*th* isi*n* .c. fei*n*e;
> ⁊ ca*ch* ni na .f. isi*n* .c. fei*n*e, is a bre*th* isin (cairde)[201] urr*adus*;
> ⁊ da ba .x. corp*dir*e in .c. fei*n*e, ⁊ ni tuc an aithg*in* ar aird an*n*, *nó* co*mad* .uii.m*ad* in da bo .x. ar son aithgina.
>
> It is in this manner that the *cairde* of mutual forfeiture of a region is made: the limited *cairde* to be proclaimed with it;
> and it is in this manner that the limited *cairde* is made: the *cairde* of freemen to be proclaimed with it;
> and it is in this manner that the *cairde* of freemen is made: *urradus* to be proclaimed with it;
> And each thing which is not included in the *cairde* of mutual forfeiture of a region, it is a matter for the limited *cairde*; and each thing which is not included in the limited *cairde*, it is a matter for the *cairde* of freemen; and each thing which is not included in the *cairde* of freemen, it is a matter for *urradus*; and twelve cows is the body-fine in the *cairde* of freemen, and it [i.e. the scribe's source] does not explicitly mention the restitution here, unless it be a seventh of twelve cows for restitution.[202]

Firstly, this passage notably leaves off combination 2) above, which only appears in *CIH* 792.3–4 and 114.31–2. Secondly, the further detail it provides implies that each progressive degree of *cairde* does not involve the conditions of the last and thereby explains how each type of *cairde* was not intended to be proclaimed by itself. Indeed, this may explain why the scribe's source (at *CIH* 792.18–19) does not mention any restitution amount for the body-fine amount in the *cairde* of freemen, because restitution is paid only in the limited *cairde*, not the *cairde* of freemen (if the

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[201] Binchy suggests omitting this word in *CIH* 792i.

[202] *CIH* 792.13–19. Cf. the possibly truncated version in 964.16–18, which includes two of these statements of joint enactment: *Is amlaid dlegair in cairdi imdilsi criche ⁊ in cairde airdebe d'esgaire leis. Is amlaid dlegar in cairde feine d'esgaire ⁊ urradus leis* ('this is how the the *cairde* of mutual forfeiture of a region should be: the limited *cairde* proclaimed with it. This is how the the *cairde* of freemen should be proclaimed: *urradus* with it'). Note that both *CIH* 792.17 and 964.18 finish their sequential series and then similarly continue their dialogue by detailing fines in *cairde*. For the significance of the body-fine of twelve cows, see section 2.2.3.2 below.

glosses are any help).[203] It becomes clear from the above passages that not only are there progressive degrees of *cairde*, as Bemmer has proposed,[204] but also that at least two types were expected to be in operation with another kingdom at any given time. Since each type progressively adds more legal entitlements onto the last, the overall kind of *bésgnae* (means of inter-territorial protocol) established would depend on how many types of *cairde* were enacted together between two kingdoms, either two or three types.[205] In addition, the implication seems to be that the fullest legal entitlements, normally due in *urradus* but not in any type of *cairde*, could be added on to the proclamation of a *cairde* of freemen, which, presumably, would establish a relationship of *comurradus* between the kingdoms.[206] One would imagine either 1) a third type of *cairde* establishing further entitlements could be enacted later, or 2) a different combination of two types could be transitioned to, as the relations between the kingdoms changed. So the model that emerges from these passages is presented in Figure 1.

The final point here is that since *Cairde* type 3 in the table provides for compensation including payment of body-fine, restitution, and honour-price, *urradus* must include something additional (as stated in *CIH* 792.16–17) to what is provided in *cairde n-airdbide* and the *cairde féne*. As there is evidence that offences involving a *deorad* in a *cairde*-territory are paid with only half compensation, having a relationship of *comurradus* in combination with a *cairde féne* might add

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[203] Alternatively, the scribe here might be stating that his source 'does not explicitly mention the restitution here' for the **limited *cairde*** rather than the *cairde* of freemen, and he is suggesting a calculation for the restitution based on the body-fine of the *cairde* of freemen. However, the scribe misconstrues the calculation of restitution from the body-fine, since restitution is a seventh of the **total** *éraic*, not a seventh of the body-fine (of which it is a sixth). But here the amount of the body-fine given (twelve cows) has been reduced by the enforcer's third (and so normally the total body-fine would be eighteen cows), and so even if restitution were paid in the *cairde féne* (which it does not seem to be), it would be unclear anyway whether this would be calculated based on the body-fine including or less the enforcer's third.

[204] Bemmer, 'Inter-territorial alliances', pp. 195–7.

[205] For a possible description of two or three types of *cairde* enacted at the same time, see *CIH* 115.1–10, discussed above in section 2.2.1. However, this evidence is very tentative, and remains uncertain whether two types of agreement was just the minimum number intended, or whether it was the only number, and that various combinations of different pairs were intended instead.

[206] For an example of this, see *FCTM* §§9, 18. This term and concept is discussed further in sections 2.2.2.3, 2.2.3.1.4, 4.2, and 5.1 below.

full compensation for all offences in *cairde*. Essentially, everyone would be treated as an *urrad* with regards to fines.[207]

| **Figure 1: Types of combinations of *cairde*** | | |
|---|---|---|
| | *Cairde n-imdílsi críche* | *Cairde n-airdbide* |
| ***Cairde* type 1** | • If the offence met the conditions of *dílse*: the offender is forfeit<br>• If the offence did not meet the conditions of *dílse*: compensation is paid according to the *cairde n-airdbide* | • Restitution paid for offences |
| | *Cairde n-imdílsi críche* | *Cairde féne* |
| ***Cairde* type 2** | • If the offence met the conditions of *dílse*: the offender is forfeit<br>• If the offence did not meet the conditions of *dílse*: compensation is paid according to the *cairde féne* | • Body-fine and honour-price paid for offences |
| | *Cairde n-airdbide* | *Cairde féne* |
| ***Cairde* type 3 [*Cairde rígs*]** | • Restitution paid for offences | • Body-fine and honour-price paid for offences |
| | *Cairde féne* | *Urradus* |
| ***Cairde* type 4 [*Comurradus*?]** | • Body-fine and honour-price paid for offences | • Normal compensation paid just as between freemen of the same kingdom |

### 2.2.2.2. *Cairde ríg* and *cairde túaithe*

We already have visited a citation from *Bretha Cairdi* on the *cairde ríg*, which seems to entail a certain type of procedure and enforcement, which makes sense and fits with the procedure in *Slán nAitire Cairde* :

[207] A contemporary basis for this distinction between compensation for an *urrad* or *deorad* lies in an Old Irish metrical passage on compensation at *CIH* 1266.16–21, which has a mention of offences involving *findeoraid* 'known outsiders' (presumably outsiders who are from a recognised territory with which there is an inter-territorial protocol) being paid for with half of six *cumala* as *corpdíre* along with the normal *cumal* of restitution, while between *urraid* the full *éraic* of seven *cumala* is paid. The same general principle is stated in commentary on *Bretha Cairdi* (*CIH* 114.34–5) in glosses on *Di Ércib Fola* §1.9 (McLeod, 'Di ércib fola', p. 164) and in commentary on *Bretha Éitgid* (*CIH* 1260.25–7), and is implied in *CIH* 2103.10–11 (concerning the various distinctions in body-fine that a judge should know) and in material derived from *Bretha Cairdi* at *CIH* 118.35–119.36 (which distinguishes between *corpdíre urraid cairdi* 'body-fine of a local freeman in *cairde*' and *corpdíre deoraid cairdi* 'body-fine of an outsider in *cairde*'), which is discussed in section 2.2.3.1.4. below. In addition, the forms of payment made in *cairde* and *urradus* may consitute another difference between the two. In a relationship of *comurradus* one would expect the full *éraic* to be paid, which for homicide would mean seven *cumala* (including the enforcing third) in three forms of payment, one third of which would be in precious metals. See section 2.2.3.2 below.

> Co ndentar cairde ríg? toingthi in ríg 'ænur híc 7 fuaslucud n-aitire; ní h-ed tongar and na foruastar acht cid foruastar, a icc.
>
> How is a king's *cairde* made? The king on his own swears that hostage-sureties will be paid for and released. It is not that it is sworn there that will be no transgression, but that if there is, it will be paid for.[208]

We have one other mention of the *cairde ríg*, here alongside a *cairde túaithe*. The following passage of late Middle Irish commentary from *Bretha Cairdi* concerns the time period which is given to the offender to come forward with an offer of law (either agreeing to pay compensation or submit the case to arbitration):[209]

> IN cairde rig*h* mi gacha raithe do-sid*h*e.
> Masa cairde tuaithe, t*r*i cæcad*h*ais doib*h*-sid*h*e i*n* cac*h* raithe *acht* i ngea*m*rad*h* 7 ceith*r*i cæced*h*ais daib*h* isi*n* gea*mh*rad.
> Cid fo*dera* conid*h* sia in re doib*h* isi*n* gei*mh*riud*h* na isna rathaib*h* eile?
> IS e fa*th* fod*er*a mo a dhoinen*n* 7 doilgi i*m*thecht an*n* i*n*a 'sna raithib eile.
> Cidh fo*dera* conid*h* sia cairde na tuaithe i*n*a cairde i*n* righ?
> IS e fa*th* fod*er*a measu a nacm*h*ai*n*g re hi*mth*echt ria da turbroit*er* hi i*n*a acmai*n*g i*n* rig*h*.
>
> In the case of the *cairde* of a king: [the time limit for an offer of law is] a month for every season for him.
> If it is a *cairde* of a kingdom, three fortnights for the latter in every season except in winter and four fortnights for them in the winter.
> What is the reason why the period for them is longer in the winter than in the other seasons? The reason is the greater foul weather and difficulty traveling there than in the other seasons.
> What is the reason why the *cairde* of a kingdom is longer than the king's *cairde*? The reason is that their ability to deal with it, should it be infringed, is less than the ability of the king.[210]

I have not found any other references to the *cairde túaithe* nor to a 45-day or 60-day period for settling claims under *cairde*, and thus this passage produces more questions than answers. The phrase might indicate many different things, such as a *cairde* made by a kingless *túath* (temporarily or permanently), or rather a *cairde* perhaps initiated by (noble) members of the kingdom rather than

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[208] Breatnach (ed. and trans.), 'The King in the Old Irish Law Text *Senchas Már*', p. 117; *CIH* 791.35–6.

[209] This period (at least in the case of the *cairde ríg*) would involve normal aspects of legal procedure involving *aitiri chairdi* and other figures, and after which lawful *dígal* ('redress, vengeance') may occur, as discussed below in section 2.2.4.

[210] *CIH* 114.8–14, my translation.

by the king himself, or even perhaps a *cairde* made by a subkingdom rather than the overking. The last could parallel the distinction between the *rechtge fénechais* and the *rechtge ríg* in *Críth Gablach*.[211] This passage also provokes the question of whether the 30-day period for settling claims, often referred to in *Bretha Cairdi* and elsewhere, only refers to the *cairde ríg*, and what procedural methods were used for the *cairde túaithe* that warranted a 45-day or 60-day period. However, without further evidence these questions regrettably must be left unanswered.

#### 2.2.2.3. *Óenchairde fon Eilg*: *cáin einech* and the poets' *cairde*

How might inter-territorial dispute settlement be carried out when there is no protocol (*bésgnae*) between territories? Some evidence exists that accords poets a function in inter-territorial dispute settlement. An Old Irish passage from *Bretha Nemed Dédenach*, a tract focused on poets, describes this function:

> Ní roich colainn coimdílsi n-einech. Óenchairde fon Eilg n-áragar. It é ind filid do-bongat cáin n-enech, dáig na crích n-imderg imná bí gíall ná comurradas, coro fuiglea cách día gíall grúaide frisna fileda ar omun a n-aíre.
>
> The body is not as vulnerable as the face/honour. A single treaty is enforced throughout Ireland. It is the poets who enforce the regulation of honour, because of [the existence of] the hostile territories without exchange of hostages and joint citizenship (lit. 'around which there is neither hostage nor joint citizenship'), so that everyone submits to the poets for fear of their satire, having their cheeks/honour as hostage (lit. 'by means of the hostage of his cheek').[212]

As a general point, it is worth noting that this passage is from the *Nemed*-school of texts, like *Bretha Éitgid*, and so it is not from the *Senchas Már* legal tradition as is *Bretha Cairdi*.[213] In legal terms, two extremes in relationships are presented here, *crícha imderga* ('hostile territories') and *comurradus* ('mutual ordinary law'). The latter seems to be the fullest kind of relationship possible between kingdoms, and according to the eighth-century *Frithfolad Caisil fri Túatha Muman* is

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[211] For the passage in question, see section 2.1.

[212] Breatnach (ed. and trans.), 'On Satire and the Poet's Circuit', pp. 26–7; *CIH* 1111.19–22. Note also the Middle Irish text *Araile felmac féig don Mumain*–which includes an intentional echo of the concepts here of an *óenchairde* throughout Ireland, whilst noting the limitations of it within the jurisdiction of Viking Limerick–edited and translated in Breatnach, '*Araile felmac féig don Mumain*: unruly pupils and the limitations of satire', pp. 111–37. Note also the references to such an *óencharde* in glosses on citations from *Bretha Nemed Toísech* concerning *cairde* in *CIH* 844.18–24.

[213] See *GEIL*, p. 246.

linked with concepts of *comgíall* ('mutual hostageship')–also detailed as *coemchlud gíall* ('exchange of hostages')–and *comfonaidm* ('mutual enforcing/binding of sureties').[214] The *gíall* is normally the kind of hostage taken by an overking and held to enforce political subordination of a client king; however, when exchanged, a relationship of privileged free clientship was indicated. We have examples of (claimed) legal situations where hostages are exchanged between an overking and one or more privileged free client-kingdoms in the Airgíalla Charter Poem, *Frithḟolad Caisil fri Túatha Muman*, and the political tract in the Laud genealogical material (sometimes termed the 'West Munster Synod').[215]

On the other end of the spectrum are hostile territories which do not have any kind of *cairde*, much less a relationship of *comurradus*, and thus have no means for obtaining cross-border redress for any offences that might occur between members of those territories. In this instance, *Bretha Nemed Dédenach* claims that a kind of *cairde* (and thereby a means of cross-border redress) does in fact exist for all such territories in a rather figurative sense, and this is enabled through the legal practicality of poets' satire, and thus we have the figurative concept of the *gíall grúaide* rather than a physical *gíall* or *aitire*.[216]

Breatnach has edited and translated a *roscad* in *Bretha Nemed Toísech* that describes various people against whom such satire might be directed in the event of an unresolved inter-territorial dispute: against 1) the offender himself, or if he absconds, against 2) the offender's kin, 3) the head of the offender's kin, or 4) the lord of the offender's kin.[217] This would give a poet various angles of leverage until he obtained the *gíall grúaide*, the submission to legal process. As Breatnach has noted, this *roscad* correlates with the description of the *aire coisring* (head of a non-noble kindred) in *Críth Gablach*, who submits a pledge *tar cenn a fine do ríg 7 senud 7 óes cherdd* ('on behalf of

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[214] *FCTM* §§9, 18. For this dating, see Charles-Edwards, *ECI*, p. 534. However, as discussed below, a base client-kingdom might also have a relationship of *comurradus* with the kingdom of its overking and with other base client-kingdoms under that overking, since the overking, according to the tract on *cró* and *díbad*, would arbitrate disputes between his base client-kingdoms and thereby receive a share of the compensation paid. See sections 4.1, 4.2, 5.1, and 5.2 below. On the term (*com)fonaidm* in relation to overkings, cf. *Trecheng Breithe Féne* §202 (ed. and trans. K. Meyer, *The Triads of Ireland*, Todd Lecture Series 13 (Dublin 1906), p. 26).

[215] *FCTM* §18; *ACP* §39; Meyer, 'The Laud Genealogies and Tribal Histories, p. 316; Gibson, 'The Cíarraige Chiefdom Alliance', p. 24.

[216] Note an example given in Heptad 79 for when someone may lose their honour-price: *aor ina turgabail cen eraic do* ('satire [recited against him] arising from his offence without [paying] his [due] compensation'), *CIH* 1268.3–4, 1371.34, 1938.20; Jaski, *Early Irish Kingship and Succession*, p. 44.

[217] Also note the same kinds of people mentioned as being potential objects of satire in another *roscad* from *Bretha Nemed Toísech* found in *CIH* 2226.31–6, again edited and translated by Breatnach, 'On Satire and the Poet's Circuit', p. 28.

his kindred to king, ecclesiastical authority, and poets').[218] From this larger picture of legal interactions, we can see how poets were not simply operating in their own isolated legal capacity, but rather working together within the unified, composite legal authority of a kingdom so neatly codified in another phrase from *Bretha Nemed Toísech*: *Ní túath cin tri sáernemthib samuidter, eclais, flaith, file* ('It is not a *túath* without three noble dignitaries who are established [in it]: churchman, ruler, poet').[219]

The means by which such poets would conduct such satire is through a *trefḟocal* ('three utterances'), part of the formal process of lawful satire, which involves naming the offence, naming the offender, and praise. The *trefḟocal* is mentioned in passages of Old Irish in various legal texts, but only in a brocard with Middle Irish commentary do we receive more precise details concerning this legal process. The latter passage notes that a *fili echtarcríche* ('poet from a foreign territory') is maintained for the period of his *trefḟocal*, comprised of *na dechmaide apaid 7 na dechmaide trefocail 7 na dechmaide suidighe gell* ('the ten-day period of notice, and the ten-day period of *trefḟocal*, and the ten-day period of submitting pledges').[220] This provides a neat parallel with the oft-mentioned 30-day period for settling claims under a *cairde*, and as such would additionally facilitate the figurative concept of *óenchairde fon Eilg*. Another significant point is that the poet is required to go to the the ruler's house upon entering a foreign territory.[221] This parallels the role of the *aire tuísea* in legal procedure in *cairde* (who would seem to be acting as a *muiredach*), described in *Críth Gablach* as having *lánchongnam i túaith do aidbdenaib, do noillechaib, do gi[u]ll, do gíall, do chairdiu tar cenn ceníuil tar crích 7 i tech flatha* ('full assistance in the *túath* [to the king] for pleadings [i.e. from a lord representing his kin or clients], for oaths, for pledging, for hostageship, for *cairde* on behalf of his *cenél*, across the border and into the house of [an external?] ruler').[222]

Another pertinent element in this passage is the use of *cáin*, as Stacey has pointed out, but with the focus on inter-territorial law we are exploring here we may elaborate somewhat on her points.[223] *Bretha Nemed Dédenach* claims that this *óenchairde* exists because of the poets enforcing

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[218] *CG* ll. 280–2; trans. Breatnach, 'On Satire and the Poet's Circuit', p. 29.

[219] *CIH* 2225.7.

[220] *CIH* 2095.23–4. For the Old Irish passages, see *CIH* 2226.31–6 and *CIH* 884.1–4 (part of the Old Irish glossing of the *Senchas Már*). For translations and relevant discussion, see Breatnach, 'On Satire and the Poet's Circuit', pp. 25–8.

[221] See Breatnach, 'On Satire and the Poet's Circuit', pp. 29–34.

[222] *CG* ll.386–7, 411–13. For further discussion, including the functions of the *muiredach*, see section 2.2.4 below.

[223] Stacey, *Dark Speech*, p. 198.

a *cáin einech* (‘regulation of honour’), a legal concept which also emerges in a passage of *Bretha Nemed Dédenach* immediately preceding that cited above. That passage describes this *cáin* as being promulgated by kings and poets ‘from the beginning of the world’, and renewed (just as ecclesiastical *cánai* were) during the height of Christian conversion.[224] So the author appears to accord poets an inter-territorial arbitration role, which, from the early eighth century, was quickly becoming a position also occupied by prominent ecclesiastical centres with the advent of the ecclesiastical *cánai*. *Bretha Nemed Dédenach* was written in the Old Irish period; if it were written in the late seventh century or after, the author would have been well aware of the ecclesiastical *cánai* and the legal implications of their influence. As such, within the context of such momentous events in which ecclesiastical networks sought to garner greater legal authority for themselves, partly through mediating inter-territorial disputes, it is easy to see this passage as an attempt to reserve some legal authority to poets for similar inter-territorial functions, based on claimed ancient precedent originating from pre-Christian times and, crucially, being renewed at the pinnacle of Christian conversion. The author accomplishes this through imbuing his prose with figurative concepts from legal language concerning inter-territorial affairs, such as *cairde*, *cáin*, and *gíall*, and according poets a crucial function where normal methods of interterritorial dispute settlement would not (usually) apply. This focus accords well with the general recurrent theme of *Bretha Nemed Dédenach*, which is, as Robin Chapman Stacey neatly puts it, ‘the boundlessness of poetic power and the rewards due to those who command it’.[225]

### 2.2.3. Types of offences and fine structure

In this section, liability for various types of offence able to be claimed for in *cairde* will be examined. *Bretha Cairdi* details the types of offences which are covered under the terms of at least one kind of *cairde*:

> Cis l*ir* cinaid fofechat hi cairde? Ní *ansae*, a .uii.: guin 7 brait 7 gait 7 turorguin, .i. taid-orgai*n* i naidche, 7 f*or*cho*r* ban 7 f*or*losc*ad* 7 ær.

[224] *CIH* 1111.12–17.

[225] Stacey, *Dark Speech*, p. 199.

> How many offences do they commit in a *cairde*? Not difficult, seven: slaying, and robbery and theft and stealthy plundering (i.e., 'thief-raiding' by night), and rape of women, and arson, and satire.[226]

So if one of these offences occurred where the victim was from one kingdom and the offender from another kingdom, a *cairde* would provide legal processes for compensation to be made across the border, which otherwise would be more difficult to obtain.

#### 2.2.3.1. Liability

##### 2.2.3.1.1. Exempt homicide

There are a few instances of slaying that *Bretha Cairdi* exempts from liability in *cairde*. These are mostly detailed in a number of headed sections in TCD MS H 3.18 (1337), p. 262.[227] The content in several of the sections on this manuscript page overlaps frequently and sometimes repeats exact phrases, giving the appearance of a scribe citing a series of passages from similarly themed material (of which *Bretha Cairdi* still may be the ultimate source). However, in this section of *Bretha Cairdi*, it is often not easy to distinguish between citation and gloss, and as such here the citations are given in boldface. The first exemption is a situation of self-defence:

> **Atait gonad dui*n*e a cairde ata dilsi** .i. ci*n* eiric. **fer frithgo*n*a** .i. tic d'fir-guin riut, cen cæ*m*achtu imscair ris; nech segar dia gui*n* ł dia marb*ad* esem and-side cen tsluinde cin aithne ci*n* cæmachtu fastada.
>
> There are slayings of persons in *cairde* which are immune, i.e., without paying *éraic*: 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 wound him or to kill him without naming, without recognition, without the power to stop [him].[228]

Naturally, this exemption comes with specific conditions: 1) the offender not identifying himself, and the victim being attacked and 2) being unable to separate from him, 3) being unable to stop the offender without suffering deadly harm, and 4) being unable to recognise him to later apprehend him by legal process. Only if all of these conditions are met is the killing exempt, and presumably

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[226] *CIH* 791.5–6, my translation.

[227] *CIH* 791.10–34; Cf. *CIH* 808.28–31 for a very abbreviated summarised account of the same.

[228] *CIH* 791.10–12; trans. Bemmer, 'Inter-territorial alliances', p. 198; cf. *Gúbretha Caratniad* §17 in Thurneysen, 'Aus dem irischen Recht III,' pp. 325–6.

this exemption is only present in the *cairde n-airdbide* and *cairde féine*, since, as discussed above, they are the two types of *cairde* that actually involve payment of compensation and do not have a overt mechanism for exempted killing as does the *cairde n-imdílsi críche*.[229] Another exemption involves the killing of a *fer dofudmenat anfolad* ('a man who binds misdeeds'), which is someone without legal rights, because, if the attached gloss is of any help, he has committed some offence (such as *fingal* 'kinslaying') that has resulted in him being proclaimed, or else he is a plunderer (which might easily become his profession after being proclaimed).[230] In any case, killing someone who has no legal rights would not entail any legal penalty.[231]

The third kind of exempt killing in *cairde* is decidedly more complex. Another citation and gloss from *Bretha Cairdi* detail the situation:

> **No fer cairde tét do acalla*m* æsa escairde co teithend leo.**
> **Fer futhbibil tethe la hæs nescair*d*e** .i. bis f*or* fo-siub*al* imaille risi*n* lucht na bi isin cairde.
> **Fer cairde i mesc fiall*aig* escairde cin aitne.**
>
> Or a man protected by the *cairde* goes to collude with people outside the *cairde*, so that he might go with them. A man of secret departure 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 *fian*-band without being recognised.[232]

Fergus Kelly has explained the passage as follows:

> The *Cairde-text* also deals with a situation which might arise if there is a treaty between two peoples, *túath* A and *túath* B. A member of *túath* A kills a member of *túath* B. However, the victim is in a war-band *(fíallach)* along with members of *túath* C, which has no treaty with *túath* A. The killer is not aware that his victim belongs to *túath* B, and is therefore exonerated from liability.[233]

It seems an offender from *túath* A would be exempt as long as he does not recognise the *fer futhbil* (i.e. from *túath* B) for who he is (which, in the heat of raid and conflict, would be rather unlikely anyhow). However, as Bemmer notes, though, the other parts of the text concerning this *fer futhbil*

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[229] See section 2.2.2.

[230] *CIH* 791.15–16.

[231] For more details on proclaiming, see *GEIL*, pp. 13, 80, 103, 118, 156, 223.

[232] *CIH* 791.13–15; trans. Bemmer, 'Inter-territorial alliances', p. 198.

[233] *GEIL*, p. 129.

describe liability regarding his own actions against the people with whom there is a *cairde* (i.e. from *túath* A), rather than actions against him by those people.[234] The requirements that conditioned such an exemption are thus:

> **Atait da reco*m*us dō a cairde**
> […]
> 1) **Asb*eir* in fer cairde f*risi*n fer laisin teth: 'na*ch*am b*eir* co hæs cairde'** (.i. re roibe cairde) .i. do dena*m* fogl*a*;[235]
> 2) ⁊ **asb*eir* o ricc** .i. i*n* baile: **'in fuil nech do æs cairde? tætsat as,** ⁊ **bid anacol doib'.**
>
> There are two precautionary statements for it in *cairde*:
> […]
> 1) 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*), i.e. to carry out a plundering;
> 2) 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'.[236]

So this *fer futhbil* from *túath* B first must say to the war-band from *túath* C with whom he goes not to take him to people from *túath* A, with whom he has a *cairde*. Then, for due diligence, he also needs to make a statement three times, presumably when they are outside a structure with people inside, to ensure no one from *túath* A is present or to offer them protection if there were. As a side note, it may well be notable that he does not say specifically not to take him to *túath* A itself, as people from *túath* A might also be elsewhere, and this would still incur liability on the offending *fer futhbil*'s part.[237] It also may be possible that the war-band in *túath* C may cross a border into *túath* A without the *fer futhbil* knowing. This will affect the penalties for liability in this situation, which a late Middle Irish commentator reckons thus:

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[234] Bemmer, 'Inter-territorial alliances', p. 199.

[235] cf. *CIH* 791.24–5: *ader ris dul leo do denum fogla i crich escairde,* ⁊ *is ris-sidhe ata cairde do-som* ('he says to him to go plundering in a kingdom outside the *cairde*, and that he has a *cairde* with it [i.e. the *crích cairde*, our *túath* A]')

[236] *CIH* 791.17–20; trans. Bemmer, 'Inter-territorial alliances', p. 199.

[237] See section 2.2.3.1.4.

> Ma dorine in fiarf*aid*e ⁊ dorinde na t*r*i garmanda anacail, isl*an* dó.[238]
> Cia dorinde an fiathfr*aid*e, ma*n*a derna na t*r*i gar*m*anda anail, is lethcoirp*dir*e uada and,
> ⁊ ni fitir co*m*a c*r*ich cairde sin; ⁊ da finda, rob*o* lanfiach and.
>
> If he made the request and the three calls to protection, he is immune.
> Though he made the request, if he did not make the three calls to protection, half body-fine is due for it and [i.e. provided that also] he did not know that it was [within] the *cairde*-territory; and if he did know, it can be full fines for it.[239]

Thus, accounting for the phrases provided in n. 237, full fines are due if neither statement is made, half fines if someone from *túath* A were killed and for making the request ('do not take me to people within the *cairde*') but not the three calls of protection, so long as the offender did not know they were in the *cairde*, and the offender is exempt if he makes the request and three calls of protection. In contrast, an offender from *túath* A unknowingly assaulting a member of *túath* B who is accompanying a raiding party from *túath* C merits this exemption in respect of *anfes* 'ignorance', but also because of the particulars of the situation: the victim being (literally) 'mixed up' with a war-band in a heated inter-territorial situation where many things may be easily confused. This situation is remarkable in that it may represent the only instance where killing someone mistaken for another kind of person is entirely exempt from penalty, even in *cairde*.[240] Finally, it is worth noting that, similar to the exemption for self-defence, the *cairde* here must be one normally involving payment of compensation, and thus a type other than the *cairde n-imdílsi críche*, since in this type of *cairde* a person could be killed with impunity anyway if he were in a raiding party outside his own territory.[241]

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[238] Two sections of adjacent text on the same manuscript page, both with the same content and ending with the same phrase *is slán dó* (as in *CIH* 791.30) add on the penalty for not doing these, both of which are close variants: (*CIH* 791.23–4) *Dia nderna amlaid-sin, islan sin dó; mana derna, is eiric uad fo aicne na cairde* ('When it is done like this, he is immune; if it is not done, it is compensation for it according to the custom of *cairde*'); (*CIH* 791.28–9) *Acht ma dorinde amlaid-sin, islán dó, 7 mana derna, is coirpdire in bescna fil etarru do íc dó* ('Provided that it be made thus, he is immune; and if it is not done, it is body-fine according to the [inter-territorial] protocol which is between them for payment to him.'). In *CIH* 791.23 I take *éraic* in the more general sense of 'compensation for an injury' instead of 'compensation comprised of body-fine and restitution', which would put it at odds with the 'body-fine' in *CIH* 791.28.

[239] *CIH* 791.30–2.

[240] See section 2.2.3.1.5.

[241] See section 2.2.2.

#### 2.2.3.1.2. Joint liability

In its simplest sense, joint liability is when a group of people are held liable for an offence. In medieval Irish law, there were various degrees and types of complicity, ranging from (though not limited to) active participants, accomplices, inciters, facilitators, escorters, harbourers, passive onlookers, and, in an extended sense, complicit kingdoms. In short, if someone was present when and where an offence occurred, there were specific criteria for determining if and to what extent that person was liable. The other parameter of joint liability is the number of people involved: some texts limit a certain maximum number of people who could be liable to pay full fines.

Various law texts illustrate how aspects of joint liability worked. Before we examine how joint liability worked in *cairde*, it will be helpful to start with the fundamental text involving the *sellach* 'culpable onlooker' in the late seventh-century legal compilation, the *Senchas Már*, and this will be our foundational text for examining this topic. The so-named *Sellach*-text forms part of the lengthy tract on distraint, *Cethairślicht Athgabálae* (*SM1*, *2*). It details four types of culpable onlooker: the *sellach lánḟeich* 'onlooker of full penalty', *sellach leithḟéich* 'onlooker of half penalty', *sellach cethramthan féich* 'onlooker of quarter penalty', and *sellach slán* 'exempt onlooker'.[242] The degree of participation by each in the offence is summarised in the first column of Figure 2 below.

In this text, the verb *do-coímthet* denotes the *sellach*'s action of accompanying the offender after the deed.[243] However, whether this is a form of active escorting and assisting or passively fleeing the scene in the same direction is distinguished in the passage on the *sellach slán*. Throughout various law-texts the common legal phrase used to refer to accompanying an offender is *a héislinn co inill* or *o eisinill co inill* 'from a place of danger to a safe place'. Here, that particular *sellach* is exempt even if he happens to accompany the offender and other onlookers, since the precise phrasing is *acht docaemtet a heslinn co innill co netarscarad friu i ninill* 'and only accompanies them from a place of danger to a safe place until he *separates* from them in the safe place'.[244] Thus, the distinction may be between 1) an accomplice escorting the offender from the scene of his misdeed to help him escape and 2) someone who wishes to prevent further bloodshed

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[242] The *Sellach*-text §§1–6 is transcribed from MS Harley 432 and translated in Kelly, *GEIL*, pp. 352–353.

[243] See *Electronic Dictionary of the Irish Language*, s.v. *do-coímthet*.

[244] Kelly, *GEIL*, pp. 352–353.

| **Figure 2: Joint liability in the *Sellach*-text and *Bretha Cairdi*** | | | |
|---|---|---|---|
| ***Sellach*-text** | | **Fine** | ***Bretha Cairdi* (CIH 2033.31–40)** |
| ***Sellach*-text passage** | **Type of liability** | | **Type of liability** |
| **§2** | 1) instigating the offence<br>2) accompanying to the site<br>3) exulting after the offence (and thus does not intervene)<br>4) escorting offender from the site | Full penalty | 1) ¼ for going to the site of the offence with the offender<br>2) ¼ for bearing witness to the murder (and does not intervene)<br>3) ¼ for escorting the offender(s) from an unsafe place to a safe one<br>(¼ for doing all of these things) |
| **§3** | 1) accompanying to the site<br>2) exulting after the offence (and thus does not intervene)<br>3) escorting from the site | Half penalty | 1) ¼ for bearing witness to the murder, having the ability to intervene and not doing so<br>2) ¼ for escorting the offender(s) from an unsafe place to a safe one |
| **§4** | 1) accompanying to the site<br>2) does not attempt to prevent the offence though having the ability | Quarter penalty | 1) ¼ for bearing witness to the murder, having the ability to intervene and not doing so |
| **§§5–6** | Onlooker who either:<br>-Has the ability to intervene to protect the victim and attempts to do so<br>-Does not have the ability to protect the victim<br>-is a cleric, woman, or youth | Immune | Onlooker who either:<br>-Has the ability to intervene to protect the victim and attempts to do so<br>-Does not have the ability to protect the victim<br>-is a cleric, woman, or youth |

and escorts the offenders to a safe place (sometimes called an *ardnemed*), from which they can negotiate terms with the victim's kindred.[245]

Material deriving from Bretha Cairdi paints a slightly different picture of joint liability. The following passage has a rather complex transmission, and some philological considerations need to be presented here. While certain excerpts (*CIH* 2033.31–3, 38–9) from this passage do bear

[245] On this concept, see *CG* ll. 52–62 and the comments of McLeod, 'Blood-feud', pp. 118–19.

semblance to passages from the *Sellach*-text, as Breatnach acknowledges, he nonetheless states that 'we can be reasonably sure that 2033.31–3 and 38–9 derive from tract 31 [*Bretha Cairdi*]'.[246] This is in accordance with the marginal note in the manuscript stating that the material is from the final third of the *Senchus Már* (the *Sellach*-text is from the first third of the *Senchas Már* and *Bretha Cairdi* from the final third).[247] The passage is situated within a collection of passages grouped under the heading *Don aos fíachach sīsanaigh* ('On those liable to fines here below'), and this represents part of the reason why we have such marginal notes denoting what parts are from what legal texts, as that at *CIH* 2033i does with regards to the *Senchas Már* (and which similarly occurs at *CIH* 2029f). Law tracts quoting passages from one another, including when adding on additional or modified detail, is an attested concept–one particularly notable example is the *cró* and *díbad* tract quoting from *Córus Fine*.[248] Returning to the passage in question, while it is comprised of layers of citations and commentary, it does form a cohesive account (with proposed citations in boldface):

> **Atait .iiii. sell*aig* i cairde;**
> is amhl*aid* rosoich lainfiach ar s[ellach] i cairde ⁊ a cain pad*r*aic:
> .i. ceth*raimth*e air ar dul co maig*in* ⁊ ceth*raimth*e air ar beth a fiad*nais*e in marbhta ⁊ ceth*raimth*e air ar beth ina coimhid*echt* o eisin*n*ill co hin*n*ill; ⁊ am*ail* foxlus t[ochus] ⁊ in*n*racus ei*n*ecl*ainn* (?) co*m*l*ain* (?) do neoch o bet araon aige, is am*laid* foxlus na teora ceth*raimth*e -so in ceth*rainth*e aile leo
>
> IN s[ellach] lethfiach, asi 'aithne-side: dui*n*e eiseig ⁊ caomhachtain anacail aige, ⁊ noch*an* derna; ⁊ is am*laid* rosoich lethfiach air: c[ethraimthe] air ar beth a fiad*nais*e in marbhta, ⁊ c[ethraimthe] air ar imteacht leo iarsan marb*ad* it*er* in*n*ill ⁊ eisin*n*ill.
>
> IN s[ellach] ceth*raimth*e, dui*n*e eiside dobi a fiad*nais*e in marb*tha* ⁊ caomachtain anac*ail* aige, ⁊ noch dererna, ⁊ ceth*raimth*e in coirp*dir*e iss *ed* ata air, ⁊ nochar imigh leo iarsan marb*ad acht* o eisin*n*ill co hin*n*ill.
>
> IN s[ellach] slan, dui*n*e heiseig dobidh a fiad*nais*e in marbhta ⁊ noch*an* roibe caomhachtai*n* anac*ail* aige, ⁊ da mbeth aige dodenad, ⁊ nochar imdigh leo iarsan marb*ad acht* o eisin*n*ill co in*n*ill.

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[246] Breatnach, *Companion*, p. 271 n50; cf. p. 302.

[247] *CIH* 2033i.

[248] See McLeod, 'Distribution of Body-Fine', pp. 72–3.

**SELLACH SLAN INTI GAIBEAS OCCO CACH NIRT[1] CA*CH* FOLUD[2] 7 NAD CHOEMTHET[3] ACHT A EISLIN*N* CO HIN*N*ILL IS SLAN[4] CEN FIACHU ACHT NOILL I CHENN[249] GATHA[5]**

1 .i. asa dualgus fei*n*. 2. a dualgus neich .ii. 3. .i. ni bi i*n*a co*m*aitecht asi*n* c*r*ich i ndent*ar* in cin. 4. .i. i*n* sell*ach*. 5. .i. acht luighe uadhe da glanadh na raibe caomachtai*n* anacail aigi; ceithre aitire do chor crain*n*, 7 a do dib dia luighe; *nó* fir de ma*n*a fagba.

**ATAIT S[ELLAIG] SLANA CENA .I. CLERI 7 MNA 7 MEIC NECH NACH MEISECH AIRGAIRE[1] NA TESNGAIRE[2]**

1. .i. o breithir. 2. .i. o laimh.

**There are four onlookers in *cairde***;
It is thus that full fine extends for the culpable onlooker in *cairde* and *Cáin Phátraic*:

i.e. a quarter [is levied] on him for going to the site [of the offence with the offender] and a quarter [is levied] on him for being present at the killing and a quarter [is levied] on him for escorting them [the offender(s)] from an unsafe place to a safe one; and just as property and worthiness secure complete honour-price for anyone who has both, these three quarters thus carry away the other quarter with them.

The onlooker of half-fine, this is how he is recognised: that person had the ability to protect the victim and he did not do it; and the half fine extends thus on him: a quarter [is levied] on him for being present at the killing and a quarter [is levied] on him for going with them after the killing, both [in] a safe and unsafe place [and remains with them after reaching a safe place].

The onlooker of quarter[-fine], that person was present at the killing and had the ability to protect the victim, and he did not do it; and a quarter of the body-fine goes for it, and he did not go with them after the killing except only from an unsafe place to a safe one [and separates from them thereafter].[250]

The exempt onlooker, that person was present at the killing and he was not able to protect the victim and if he had had it [i.e. the ability] he would have done it, and he does not go with them after the killing except only from an unsafe place to a safe one.

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249 Assuming, when normalised, this should read *i cenn catha*.

250 The account of the *sellach cethramthan féich* here seems to utilise the concept from §5 of the *Sellach*-text above of the onlooker *separating* from the offender after accompanying (which merits this bracketed addition in the translation), since the quarter-fine in the material deriving from *Bretha Cairdi* is itemised *only* for passive onlooking (and failure to protect), nothing more.

**The exempt onlooker, the one who supports them with all his strength [to prevent the offence][1], every obligation [to encourage others to prevent the offence][2], and he does not accompany[3], except only from an unsafe place to a safe place, he is immune[4] without penalties provided that [he gives] an oath at the end of the conflict.[5]**

1. On his own account. 2. On account of someone else. 3. He is not in their [the offenders'] accompaniment out of the territory in which the offence is committed.[251] 4. The onlooker. 5. Provided that [there is] an oath from him, for clearing by oath that he could not protect the victim; four *aitiri* for lot-casting, and two of them for his oath; or an ordeal on account of it if it not be obtained.

**There are other exempt onlookers, i.e. clerics and women and youths [and] anyone who is not able to forbid[1] or to rescue[2].**

1. By word. 2. By [the force of their own] hand.[252]

Here particular culpable actions that comprise a *sellach lánf̓éich*, *sellach leithf̓éich*, and *sellach cethramthan féich* in *cairde* are itemised as having specific amounts in a way somewhat different from the *Sellach*-text. While the two texts share the concept that the *sellach lánf̓éich* to *sellach leithf̓éich* to *sellach cethramthan féich* are distinguished by subsequently removing one element of liability from the last *sellach*, the key difference is that *Bretha Cairdi* has one less element of liability than the *Sellach*-text for each type of *sellach* to start with, as can been seen in Figure 2. Thus, the *Sellach*-text has four elements of liability for the *sellach lánféich*, three for the *sellach leithf̓éich*, and two for the *sellach cethramthan féich*, while *Bretha Cairdi* has a parallel series of three, two, and one element. Indeed, we would expect *Bretha Cairdi* to have fewer elements of liability overall, given that in *cairde* it might be far more difficult to establish precise concepts of liability on less familiar individuals involved from another kingdom. Therefore, there appears to be an attempt here to make the legal situation clearer where liability cannot be easily fixed by witnesses on known or recognisable individuals, as opposed to when all the individuals involved were from the same kingdom.

As mentioned in the introduction to this chapter, legal commentaries inherently come with many methodological complexities. It is often difficult to determine how closely a section of commentary resembles material from the original text (especially where citations from the original

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251 This would indicate a cross-border offence.

252 *CIH* 2033.17–40.

are sparse or fragmented), as opposed to the commentator's own designs and purpose. However, here the commentator's comparison between *cairde* and *Cáin Phátraic* would quite logically indicate that the commentator is simply describing and summarising stipulations from the original legal texts (*Bretha Cairdi* and *Cáin Phátraic*). Furthermore, it is worth examining the beginning of the passage immediately following the section deriving from *Bretha Cairdi*:

> Is aml*aid* rosoich lanfiach arin s[ellach] i nurr*ad*us
> .i. lethfiach ar dul co maig*in* ⁊ ceth*raimth*e ar beth a fiad*nais*e in marb*th*a ⁊ ceth*raimth*e ar beth ina coimit*echt* ⁊rl–.
>
> It is thus that full fine extends for the culpable onlooker in *urradus*, i.e., half fine for going to the site [of the offence with the offender] and a quarter for bearing witness to the killing and a quarter for accompanying, etc.[253]

The heading *is amlaid rosoich lanfiach arin .s. i nurradus* mirrors the first part of the passage sourced from *Bretha Cairdi* above (*is amhlaid rosoich lainfiach ar .s. i cairde ⁊ a cain padraic*). The commentary following the former heading describes these full fines in *urradus* and matches closely with the account of *sellach lánféich* in the Old Irish *Sellach*-text, so one might expect the commentary concerning *sellach* in *cairde* to be similarly close.[254] Bearing these principles in mind, we may allow ourselves to be slightly more confident that the commentary sourced from *Bretha Cairdi* perhaps is not too far off from the Old Irish original.

We can expand this picture by looking at another parameter: the maximum extent of group liability in *cairde.* The Middle Irish text *Rith na cánann* ('The extent of enacted laws') describes joint liability in various pieces of interterritorial legislation. However, for those for which we have extant texts, it admittedly can be shown that what *Rith na cánann* presents is a much reduced summary of joint liability.[255] For our purposes here, *Rith na cánann* details various kinds of joint liability in *cairde*:

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[253] *CIH* 2034.1–3.

[254] However, it is worth noting that while the *content* of the above cited passage matches with that in the *Sellach*-text, the *itemising* of specific culpable actions each owing a half- or quarter-fine is the key difference, and thus this may be just the commentator's convention for explicating the concept of culpable onlooking.

[255] For instance, compare the phrase in *CIH* 1587.1 lightly summarising joint liability in *Cáin Adomnáin* with the much more detailed passage on joint liability in *Cáin Adomnáin* §35 (Ó Néill and Dumville 2003, 37). This is important to bear in mind when using this text as evidence for group liability in *cairde*.

.R. cairde 7 dlig*id* digona co t*r*i nonbo*r*aib[256]; a lanfiach-aidhe a iiiiraim*th*i fiach; lai*n*.f. ari*n* .c.no*n*bur 7 leth.f. ar nóenbu*r* tanaisti 7 .iiii.*rai*m*the* .f. ari*n* t*r*es no*n*bur a cairde .i. .uii. cu*mala* cacha lai*m*e co t*r*i nonbu*r* a ndlig*ed* digona, t*r*i cum*al*a a slicht sloig a cairdi; rith co moir.ui.ar ł co t*r*i no*n*bo*r*aib dona heit*ir*ib, 7 a mbeth co diairme dona heiti*ri*b.

[Joint liability from] *cairde* and *dliged dígona* extends to three sets of nine people; from full fine to quarter fine; full fine for the first nine, and half fine for the second nine, and quarter fine for the third nine in *cairde*, i.e. seven *cumala* is from each hand up to three sets of nine people for *dliged dígona*, three *cumala* for *slicht slóig* in *cairde*;[257] [the total fine] extends to seven people or to three sets of nine people [with respect to fines paid] to the *aitiri*, when the number of *aitiri* is excessive.[258]

Now, we are dealing with the concept of *dliged dígona* 'entitlement for violation of protection' also, which can be viewed as an intraterritorial counterpart of a violation under *cairde* and might explain why the two concepts have similar, though not identical, accounts of joint liability.[259] One notable aspect here are the two distinct numbers of offenders given as maximum fine for joint liability, either seven or three nines, which we will visit more fully later.[260] If the situation entails a maximum fine of three groups of nine offenders, there is a tripartite division of culpable offenders into *sellach lánḟéich*, *sellach leithḟéich*, and *sellach cethramthan féich*, each being a different group of nine. A composite passage of citation, gloss, and commentary from *Bretha Cairdi* gives a possible explanation for this tripartite division of fines, beginning with a stock phrase of textbook prose:

Cis f*or*sci*n* cairde la *Féniu*
…
ni *ansa*, fo lai*n*fiachaib .i. f*or*in cednonbur

---

[256] Note that this phrase matches that in *CIH* 1433.16, which Breatnach, *Companion*, p. 65 assigns to the *Díguin*-tract (*SM3*, *46*).

[257] For discussion of this technical legal term, see section 2.2.3.1.2.1.

[258] *CIH* 1587.6–10. I am indebted to Neil McLeod for assistance in the translation of this passage.

[259] *Dliged dígona* is compensation due for violating the precinct of protection (their home) of someone who is offering protection to someone else who is native to the *same* kingdom, for which see Kelly, *GEIL*, pp. 140–141. On the other hand, a violation under *cairde* essentially entails a violation against the king of the territory's protection of an outsider from a kingdom with which he has agreed a *cairde*. The fact that both the stated fine for *dliged dígona* is seven *cumala* and that this amount is due from *every* person of the three groups of nine further emphasises that this is an affair entirely concerning people all from the same kingdom. Seven *cumala* was the full amount of *éraic* in *urradus* (the legal measures operating within a single kingdom) and, as we will see below, this is stated to be twelve cows in *cairde*, the numerical equivalent of four *cumala*.

[260] More offenders than this number may be held liable, but the maximum fine is generally what they would jointly pay, and so it would be split among all of them. See discussion of *CIH* 114.15–18 below.

fo leichfiachaib .i. f*or*i*n* nonbur tanaise
fo ceathramtanaib fiach .i. f*or*i*n* t*r*eas nonbur

<IN fear cairdi i c*r*ich, mani focairt*er* cu ba t*r*i ‘i*n* buil fear cairde and? ma da’>[261]

[…] crich is lai*n*fiach cairde i*n*d .i. da ba dec
mad a t*r*eas c*r*ich, is lethfiach cairde i*n*d .i. se ba
mas i*n* ceathramhad c*r*ich [sc. *is cethramad fiach cairde ind*?] .i. is teora ba
mas i*n* cuiceadh c*r*ich, is bo ⁊ samaisc; rosoich curuice .iii. [leg. .ii.?] scrip*uil* dec;
ł ni dileas i*n* marb f*or* feor, ł ni dileas i*n* fear fæsma ga*n* seotu ce*n* atach cen torachtai*n* maidhne digona; rith cairde seo anuas.

What are the culpable onlookings in *cairde* according to legal custom?
…
Not difficult, subject to full fines, i.e. [imposed] on the first set of nine people
subject to half fines, i.e. [imposed] on the second set of nine people
subject to a quarter fines, i.e. [imposed] on the third set of nine people.

<The man under the protection of a *cairde* in a territory, unless it is announced three times [with the call] ‘Is there a man of the *cairde* present? If so …>

[If it is two territories (involved)?] it is full fines in *cairde* for it, i.e. twelve cows [=four *cumala*]
If it be in a third territory, it is half fines in *cairde* for it, i.e. six cows [=two *cumala*]
If it be in a fourth territory, [it is quarter fines in *cairde* for it?] i.e. three cows [=one *cumal*]
If it be in a fifth territory, it is a cow and a three-year-old dry heifer; it amounts to thirteen [leg. twelve?] scruples [=half *cumal*];

or the killing entails liability for the offender, or the [killing] of the [external] propertyless man under protection [by a native inhabitant of the kingdom] entails liability, [if it is] without invocation (of protection) [and] without coming to the freeman’s precinct of protection; this is the extent of *cairde*.[262]

[261] This phrase is an incomplete version of the more complete text at *CIH* 791.20, 791.27, 791.30–34. It probably presents an example of haplography, where the scribe went from copying *ma tá, ticid amach, ⁊ bíd anacal dó* ‘if so, let him come out, and let protection be given to him’ to *ma[d] dá crích* ‘if it is two kingdoms [involved]’. Given the switch in topic from fine structure to the call of warning and back again, one also might wonder if there is some insertion present here, generated by the scribe looking at an *IN* heading somewhere else on the page, then returning to the correct line at *ma[d] dá crích*.

[262] *CIH* 807.17–24.

As we can see, in the two thematically linked parts of this passage, the legal commentator appears to apply this structure of full, half, and quarter fines to a second, third and fourth kingdom, respectively (and carries the halving of the fine onto a fifth kingdom). Thus, the commentator would appear to envisage each group of nine being from a different kingdom, each one progressively farther away than the last from the victim's kingdom. The assumption seems to be that people from each progressively farther kingdom would have proportionately less involvement in the cross-border offence.[263] Thus, this passage expands the concept of degrees of accompliceship in the *Sellach*-text to an inter-territorial situation. The stipulations in these passages are collated in Figure 3.

**Figure 3: Joint liability in *Bretha Cairdi* and *Rith na cánann***

| Fine | Group | Type of liability |
|---|---|---|
| | **[*Rith na cánann* (CIH 1587.6–10) and *Bretha Cairdi* (CIH 807.17–24)]** | **[*Bretha Cairdi* (CIH 2033.31–40)]** |
| Full penalty | First group of nine, from adjacent territory to the victim's kingdom (the 'second kingdom') | 1) ¼ for going to the site of the offence with the offender<br>2) ¼ for bearing witness to the murder (and does not intervene)<br>3) ¼ for escorting the offender(s) from an unsafe place to a safe one<br>(¼ for doing all of these things) |
| Half penalty | Second group of nine, from next nearest territory (the 'third kingdom') | 1) ¼ for bearing witness to the murder, having the ability to intervene and not doing so<br>2) ¼ for escorting the offender(s) from an unsafe place to a safe one |
| Quarter penalty | Third group of nine, from next nearest territory (the 'fourth kingdom') | 1) ¼ for bearing witness to the murder, having the ability to intervene and not doing so |

Additional detail may be found in a passage of later commentary from *Bretha Cairdi* concerning extent of joint liability:

[263] I am indebted to Neil McLeod for this idea.

> Rith gu morṡeisiur arna bid*h*badaib*h* do*n*a hait*ir*ib*h* ⁊ a mbeith gu diarm*h*ithi daib*h* ł dā rith gu morseisiur do*n*a hait*ir*ib*h* ⁊ co*mh*roi*n*net fei*n* et*ar*ru ⁊ a beith gu diar*m*hithi ona bidh|badaib ł rith gu tri nonbur arna bidbadaib*h* ⁊ a beith gu moirseisiur dona hait*ir*ib.
>
> (1) [The fine] for the offenders [paid] to the hostage sureties is capped at that appropriate for seven people [when only one external territory is involved], when their number exceeds this (lit. 'is excessive').
> (2) Or perhaps [more precisely], [the fine] for the *aitiri* is capped at that appropriate to seven people, and it is shared among the offenders themselves, when the number of offenders exceeds this (lit. 'is excessive').[264]
> (3) Or [if more territories are involved], [the fine] for a group of up to seven *aitiri* [being involved] is capped at that appropriate to three groups of nine offenders.[265]

This passage more clearly summarises the situation of maximum joint liability in *Bretha Cairdi*. In addition, it overtly states the general concept of maximum joint liability–the total fine is divided among all the offenders if there are more than the maximum stated number bearing full liability. A deeper examination of the liability involving *trí nónbor* is necessary to understand more fully the intended situation. We can find a very neat reference to *nónbor* in a passage in the Old Irish *D'fodlaib cineoil tuathi*:

> [§4] Gelfine co cuicer. Isi-aide gaibes dibad cach cind comacuis di neoch diba uaid.
> [§5] Derbfine co nonbor. Ni daba huaide cobraind fo lin cenn comocuis.
>
> [§4] The *gelfíne* ('bright-kin') extends to five persons. It is the latter that claims the inheritance of each individual relative from any that perish out of it without heirs.
> [§5] The *derbfíne* ('true-kin') extends to nine persons. It shares any uninherited estate [i.e. of an extinct *gelfíne*] according to the number of individual relatives.[266]

It has already been established that the term *cóicer* can be used to refer specifically to the *gelfíne*, and that this does not necessarily mean a group of any five people.[267] The *derbfíne* was comprised of interlinked *gelfíni*, and each of its members would receive a share of body-fine if one of them

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[264] I take the intensive prefix *dí-* in this compound as 'excessive' (cf. *Electronic Dictionary of the Irish Language*, s.v. *díairde*) here for the word *díáirme/díáirmide*, since this fits more with the technical sense of the legal passage as indicating something beyond the limit of a previously specified number.

[265] *CIH* 114.15–18. Neil McLeod was particularly helpful in the precise, technical translation of this passage.

[266] *CIH* 429.27–28, 430.5; trans. McLeod, 'Kinship', *Ériu* 51 (2000), p. 1.

[267] McLeod, 'Distribution of body-fine', p. 67.

were killed, so it was an interconnected, logical unit for liability. As such, it was also a unit that one would expect to act together in (para)military affairs. Therefore, by using the term *nónbor*, the lawyers may have been indicating, by means of synecdoche, that liability extended to a *derbfíne* in each kingdom, rather than just any nine people, up to a maximum of three *derbfíni*, and thus to three external kingdoms, as outlined above.[268] If this is the case, whether this liability extended to all the participating members of each *derbfíne* or actually to nine people within each *derbfíne* is less clear.[269] However, it is to be wondered whether we should be looking towards another source for explaining this group of nine.

Various narrative tales describe a group of *trí nónbor* comprising a *fían*-band or military company often comprised of warriors from more than one territory.[270] In some of these narratives, the warband is assembled by an aggrieved victim or that victim's kindred in response to some inter-territorial injustice that has been committed. For example, the early Middle Irish *Scéla Conchobuir meic Nessa* illustrates a situation in which the female *fénnid* Ness takes up arms with three groups of nine people to avenge the killing of her fosterers:

> Luid iarum iar suidiu ind ingen for fennidecht ⁊ gabaid gaisced ocus luide trib nonbaraib fo Herind, co ffessed nech ro marb a haiteda, ocus ro chrín na túatha. Is cumma nos-crínad uili daig ni fitir sainriuth a bidbada.

---

[268] Though note that the author of *CIH* 807.17–24 continues this halving of liability in *cairde* to a fourth external kingdom.

[269] For an example of the former, we have already seen in *Cáin Adomnáin* §47 a fine potentially applied to a *derbfíne* as a whole (or at least all culpable members of it), regardless of the number of people within that *derbfíne*.

[270] A few examples include Creidne protesting the unjust exile of her sons in a Middle Irish anecdote in genealogical material edited in K. Meyer, *Fianaigecht: being a collection of hitherto inedited Irish poems and tales relating to Finn and his Fiana*, Todd Lecture Series 16 (London 1910), pp. xi-xii; Fráech pursuing an inter-territorial cattle theft to the Alps in *Táin Bo Fraích*, edited by W. Meid, *The romance of Froech and Findabair, or, The driving of Froech's cattle: Táin bó Froích*, Innsbrucker Beiträge zur Kulturwissenschaft, Neue Folge 10 (Innsbruck 2015), p. 48 (cf. the *nónbor* who go with Fráech when he challenges Cú Chulainn in *TBC1* l. 837, who are later described as *a muinter* in l. 853, therefore perhaps indicative of a *derbfíne*); in *Fled Bricrenn* (for which see Hollo, *Fled Bricrenn*, p. 53), where Cú Chulainn, without hesitation, slays three bands of nine in a forest, as if it were the natural thing to do, just as one would to a militant band of outlaws without legal rights, and indeed later in the narative they are called *foglaigi* 'plunderers', which reminds one of the *fiallach escairdi* mentioned in a section on exempt killings in *cairde* or those in a *fiallach* who may be killed with impunity in the *cairde n-imdílse criche*; see sections 2.2.2.1 and 2.2.3.1.1. Countless other references abound, for which see Meid, *Táin bó Froích*, p. 248.

> After this the girl became a *fénnid*, and took up arms and went with three groups of nine people through Ireland to learn of the one who had killed her fosterers, and she devastated the kingdoms. She devastated all equally, because she did not know the characteristics of the one who was guilty.[271]

Several scholars have shown how early Irish authors often imbued literature with underlying legal principles.[272] Certainly the author sought to present the inherent difficulty of establishing guilt in the event of an inter-territorial offence. This difficulty results in all potentially culpable parties being punished equally since guilt cannot be fixed easily on any particular offender(s). While this concept of joint liability somewhat resembles that found in the ecclesiastical *cánai*, here it is notably more destructive. And indeed, this anecdote also illustrates the chaos that could result when there was no protocol in place for establishing joint liability and obtaining compensation in inter-territorial affairs, such as we have seen in texts involving *cáin* and *cairde*, or perhaps when the terms of such an inter-territorial contract are not upheld. The grievance in question here is against Ness's fosterers, and this may be a clue. *Derbfíni* from different kingdoms may often have been connected by fosterage, and so it may be that the *trí nónbor* were conceived of as a *derbfíne* from one kingdom with a *derbfíne* from another kingdom connected by fosterage, and with yet another *derbfíne* connected by fosterage to the second, and this would fit with the concept of gradually decreasing liability from each *derbfíne* to the next, as each is a progressively distant ally of the last.[273] Thus, by using the phrase *co trí nonboraib*, the author of the passage originating from *Bretha Cairdi* (CIH 114.15–18) may have intended to create equivalencies with numbers, thereby indicating the inter-territorial situation involved *derbfíni* from more than one external kingdom of which each had a *cairde* with the other.[274] That the seven being liable when a single territory is involved might relate to the *aire échta* and his retinue of *seisser* ('six men') is discussed further below.[275] Of course, these must remain only tentative possibilities.

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[271] W. Stokes, 'Tidings of Conchobar mac Nessa", *Ériu* 4 (1910), pp. 22–3; trans. Robbie MacLeod, personal communication.

[272] On this topic, see especially R. Chapman Stacey, 'Law and literature in medieval Ireland and Wales', in Helen Fulton, (ed.), *Medieval Celtic literature and society* (Dublin 2005), pp. 65–82; Breatnach, *Companion*, 215–238; McLeod, 'Fergus mac Léti and the law', pp. 1–28; Qiu, *Narratives in early Irish law tracts*, pp. 111–141.

[273] See McLeod, 'Blood-feud', pp. 131–3; *idem*., 'Distribution of Body-fine', pp. 72–3.

[274] Indeed, these might even be the *derbfíne* of the victim, an external *derbfíne* from a kingdom linked through marriage, and a *derbfíne* from a third kingdom linked through fosterage.

[275] See section 3.1.1.

One final Middle Irish passage from *Bretha Cairdi* illustrates another concept of complicity involving multiple external kingdoms (I include the one interlinear gloss here in parantheses):

> Duine seo uil eit*er* da crich ⁊ cairdi do riu aræn ⁊ escairdi et*ar*ro fei*n*, ⁊ is *ed* dleg*h*ar de in uair rathaig*h*feas neach dib*h* ac dul do denu*mh* uilc re ceile: urdonal do denu*m*h gu gluinet luc*h*t na c*r*ich uad*h*a ⁊ a rad*h* riu bid*h* cach i faitcius (a ḟoit) ⁊ o dagena aml*aid*-si*n* islan do ⁊ mini d*er*na is fiach cubasbraith cindti | ł cu*n*ntabartach air.[276]
>
> This is a person who is between two territories and *cairde* for him with each of them and there is no *cairde* between them. And this is what is required of it from the time when either of them [i.e. of those two kingdoms which do not have a *cairde* between them] will go to do something wrong to another: to make a cry of warning so that the people of the territories might hear it and his shout to them that each of them should be heedful and when he did that, it is immune from legal claim; and if he did not do [it], it is a fine of determined or undetermined complicity.[277]

Essentially, there are three territories/kingdoms envisioned here, *crích* A, *crích* B, and *crích* C. *Crích* B has a *cairde* both with *crícha* A and C, but there is no *cairde* between *crích* A and *crích* C. Someone, perhaps a kind of sentinel who keeps watch at night, from *crích* B is obligated to make a public announcement (and to let those in *crích* A know) when someone from *crích* C is passing through *crích* B on the way to *crích* A with ill intent, and is similarly obligated to do the same for *crích* C when a company from *crích* A is passing through with ill intent towards *crích* C. This may easily represent a common situation where someone within a *cairde* could get caught up in a warband from a kingdom outside the *cairde* in question, who plan to raid a kingdom with which that person's kingdom has a *cairde*.[278] Thus, similar to the concepts of joint liability described above, here extrapolated to a more complex inter-territorial situation involving various agreements of *cairde*, an onlooker to potential misdeeds must clearly separate himself from the offending party to avoid being complicit in their misdeeds. He does so by giving public notice that may potentially prevent such misdeeds from occurring. Being complicit in the offending party's actions would result in his liability to pay compensation under the protocol of *cairde* which his kingdom has with either of the other kingdoms. This situation is illustrated in Figure 4.

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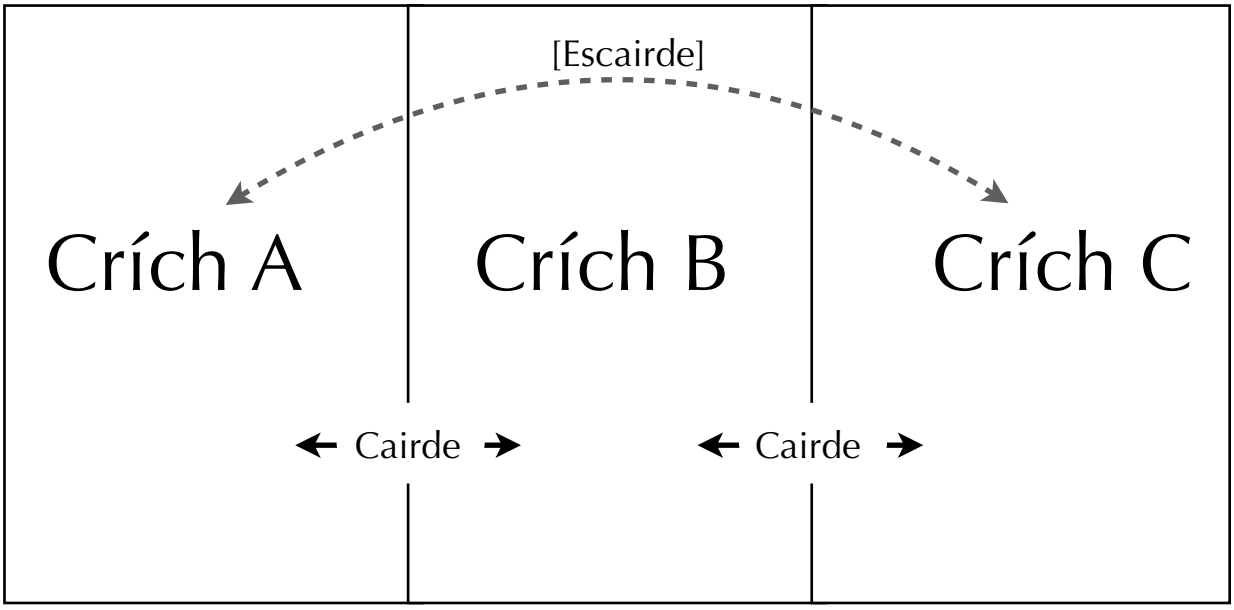
[276] For the phrase *cubasbraith cindti nó cunntabartach*, see *CIH* 2140.12, 2141.12, 2033.7, 2033.13; the last two appear to represent a case where it cannot be determined what kind of accomplice the person is (e.g. *sellach lánféich*, *sellach leithféich*, etc.), so it is 'a fine of determined or undetermined complicity'.

[277] *CIH* 114.36–40.

[278] For this situation, see *CIH* 791.13–34, discussed in section 2.2.3.1.1, and Bemmer, 'Inter-territorial alliances', pp. 198–200.

**Figure 4: Joint liability according to *CIH* 114.36–40.**




#### 2.2.3.1.2.1. *Slicht Slóig*

As cited above, the phrase *tri cumala a slicht sloig a cairdi* ('three *cumala* for *slicht slóig* in *cairde*') appears in *Rith na cánann*, the short text on joint liability. Since the concept of *slicht slóig* is clearly involved with joint liability, it merits discussion and analysis here, since it hitherto has not been adequately defined as a legal concept. A few passages similar to *Rith na cánann* also provide some detail about this concept. The first includes citations and glosses from the *Díguin*-tract (*SM3*, *46***)**:

> Rith caird*i* 7 dlighi digoina go t*r*i łnbura
> .i. *7*. cum*al*a g*a*ca lai*me* g*o* t*r*i nonbura
> Rith caird*i* .i. cum*al* g*a*ca laim*e* co t*r*i nonbu*r*a a ndlighi digona .i. ina sarug*ud* ima com*airci*;
> rith na ai*thgen*a co .u.;
> 7 slicht sl*oig* .i. ata fiach slechta sloigh sund a ndl*ig*i digona 7 isin f*or*losga, 7 ni fuil a cain na a caird*e*
>
> The extent of *cairde* and *dliged dígona* [is] up to three sets of nine people
> i.e. seven *cumala* from each hand up to three sets of nine people
> The extent of *cairde*, i.e. a *cumal* from each hand up to three sets of nine people [as?] in *dliged dígona*, i.e. with regards to violation of their protection;
> The extent of restitutions [is] up to five;
> And *slicht slóig*, i.e. there is a fine for *slicht slóig* here in *dliged dígona* and in arson, but it is not in *cáin* nor in *cairde*.[279]

[279] *CIH* 1433.16–19.

The first question concerns what types of law liability for *slicht slóig* applies in, which will help define the concept. The scribe of the above passage of commentary notes that in his sources *slicht slóig* exists in *dliged dígona* ('legal regulations involving violation of protection') and arson, but not in inter-territorial law, such as *cáin* or *cairde*. However, the scribe of a variant passage of lemma and commentary from the *Díguin*-tract, who appears be describing contents of older texts he is looking at, notes an exception to this:

> SLICHT SLUAIG: Ata fiach slechta sloig sund i ndlig*ed* maigne digona ⁊ isin f*or*loscud, ⁊ ni fuil i cain *nó* i cairde fiach slechta sloig *acht* a marbud nama
> Cach fogal dogentar i ndliged digona, rith gu t*r*i nonbu*r* arin smacht ⁊ arin enecl*ainn*, ⁊ rith gu .u.ir arin aithgin; ł guna beith *acht* arin f*or*loscud amain sin, ⁊ eric urrudais (o sin) amac and
>
> *SLICHT SLUAIG*: there is a fine for *slicht slóig* here in *dliged maigne dígona* and in arson, but there is no fine for *slicht slóig* in *cáin* nor in *cairde* except for killing only.
>
> Every offence which may be done in *dliged dígona*, it extends to three sets of nine people [i.e. three *derbfhíni*] regarding the compensation and honour-price, and it extends to a group of five [i.e. one *gelfhíne* within that group?] regarding the restitution; or this may be only for arson alone, and compensation according to *urradus* from then onwards for it.[280]

So this scribe adds on the exception that if the offence of *slicht slóig* were to result in the killing of someone, then it would incur joint liability in situations where *cáin* or *cairde* would apply. Another lawyer provides additional detail about *slicht slóig* from a slightly different perspective, in a passage of later commentary on joint liability:

> Duleici a fiach imraidh do fhiach maigni gu ti marbudh, ⁊ nugu teilgend a fiach maigne nach a fhiach slechta sloig nach a fhiach eolais du fiach taircthe gu ti marbadh, ⁊ o dharagha marb*ad* duleci a fiach i*m*raidh du fiach maigne ⁊ a fiach sl*echta* sloigh du fiach marbtha.
>
> Nugu teilgen*n* a fiach eolais nach a fiach taircthe du fiach marbtha cen a mbeth maræ*n* an*n*, *go*nadh ceit*r*i feich si*n* gu marbudh ⁊ t*r*i feich iar marb*ad* isna huilibh cánaib-si*n* ⁊ i nurradus cenmotha i*n* fiach slechta sloigh, uair nogun uil i*n* fiach slechta sloigh i *n*nurr*ad*us.
>
> Cairde (im) ⁊ dlig*ed* digo*n*a, cia thi marbadh in*n*tibh, nugu teilgen*n* a fiach eolais na*ch* a fiach slechta sloig nach a fia*ch* taircthe du fiach marbtha cen a mbeith a cethrur an*n*; duleci a fia*ch*

[280] *CIH* 2111.26–30. The second mention of arson seems to be more of a categorical sense, rather than referring to a specific text, but the *sund* near the beginning of the passage clearly seems to indicate the lawyer is referring to his sources which mention *dliged dígona* and arson.

imraidh du fiach maighne, cia thi marb*ad* gencu ti, isna huilib bescnaib uili, 7 doleice a fia*ch* maighne du fiach marbtha o daragha marbudh.

Nuchun uil i*n* fia*ch* sl*echta* sloigh isna huilibh bescnaibh o daraga marbadh *acht* i cairde 7 i ndlig*ed* digo*n*a, 7 nugun uil a nurradus.

He gives his fine of intention as the fine for [violating a] precinct up to killing, and he gives neither his fine for [violating a] precinct nor his fine for *slicht slóig* nor his fine of knowledge [of premeditation] as the fine of instigation up to killing, and when it comes to killing, he gives his fine of intention as the fine for [violating a] precinct and gives his fine for *slicht slóig* as the fine for killing.

He gives neither his fine of knowledge [of premeditation] nor his fine of instigation for the fine for killing without them being together there, unless these four fines [go] for killing and three fines after killing in all these *cánai* and in *urradus* apart from the fine for *slicht slóig*, since there is no fine of *slicht slóig* in *urradus*.

Concerning *cairde* and *dliged dígona*, though killing may happen in them, he gives neither his fine of knowledge nor his fine of *slicht slóig* nor his fine of instigation as the fine for killing without their being a party of four there; he gives his fine of intention as the fine for [violating a] precinct, whether killing may happen or not, throughout all the protocols, and he gives his fine for [violating a] precinct as the murder fine when it comes to murder

There is no fine for *slicht slóig* in all the protocols when it comes to killing, except in *cairde* and in *dliged dígona*, and there is not such in *urradus*.[281]

What emerges from collating the legal logic of these three passages is that liability for *slicht slóig* applies in inter-territorial law (*cáin* and *cairde*) and thus inter-territorial situations only when someone is actually killed, whereas liability for *slicht slóig* applies generally in situations resulting in arson (though it seemingly does not apply that kind of liability to the inadvertent killing of someone as a result of such a fire), and it applies in *dliged dígona*, regardless of whether or not someone is killed. The above phrase in *CIH* 2125.34–5 adds that there is no fine for *slicht slóig* in *urradus* for situations where someone is killed as a result of it, but the stipulation in *CIH* 2125.27–8 states that there is no fine in *slicht slóig* at all in *urradus*. One would expect there to be provisions for *dliged dígona* (and arson) in *urradus*, the protocol for legal affairs occurring between people from the same kingdom or territory. So what may be possible is that the scribe here is using *urradus*

[281] *CIH* 2125.21–35.

just to distinguish between the different remits of ordinary law other than the specific area of *dliged dígona*.[282]

So what does this technical legal term actually mean? It is certainly not a legal category of its own, as it is described as existing *within* (or not within) *cairde*, *cáin*, *urradus*, etc.[283] It is clear from the above legal passages that it is a facet of joint liability, interspersed as it is among other facets such as instigation, prior knowledge, and intention. In addition, since it is mentioned as something that can occur in correlation with *dliged dígona*, arson, or killing, it would seem to indicate a collective action involving a host that might result in such offences. To seek further clarification, we may turn first to a few verses from the Old Irish Leinster genealogical poem *Nidu dír dermait*:

> Nidu dīr dermait dāla cach rīg rōmdae,
> reimsi rīg Temra tuatha for slicht slōgdae.
>
> It is not fitting to me to forget the encounters of every famous king,
> The reigns of the kings of Tara, mustered kingdoms on the warpath.[284]

There are also several passages in *Táin Bó Cúailnge* (Recension I and the version from the Book of Leinster) which provide adequate context for the defining the term. When not used to describe another version of a tale, *slicht* often refers to a 'track' or 'wake', most evocatively in the toponym Slechta, a name motivated by Medb hewing a path through a forest.[285] In conjunction with *slóg*, there are a few notable instances in the Book of Leinster version, of which it will suffice to quote one, in which Cú Chulainn debates with his charioteer on estimating the size of the host:

> ‘Meith a Láeig, eirgg dún for slichtlurg in tslúaig 7 tabair airdmes forro, 7 finta dún cá lín dochúatar sechund fir Hérend.’ Tánic Láeg i slicht in tslúaig 7 baluid dia lethagid in luirg 7 tánic dia lettaíb 7 luid dara ési. ‘Mesc fri árim fort, a mo phopa Laíg,’ ar Cú Chulaind. ‘Is mesc écin,’ for Láeg. ‘Tair isin carpat didiu 7 dóber-sa ardmes forro.’ Tánic in t-ara 'sin carpat. Luid Cú Chulaind i slichtlurg in tslúaig 7 dobretha airdmes forro, 7 tánic dia lettáeb 7 luid dar' éisi. ‘Is mesc fri árim fort, a Chúcúc,’

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[282] In addition, given the scribe’s use of *sund* in the commentary following a citation from the *Díguin*-tract, he likely is at least referring to actual texts he has in front of him, and he may even be using *dliged dígona* to indicate an (earlier) copy of the *Díguin*-tract itself and *forloscud* to indicate *Bretha Forloisctheo*.

[283] Cf. Thurneysen, ‘Aus dem irischen Recht V’, pp. 384–5.

[284] *CGH*, p. 8; trans. Bhreathnach, ‘The Political Context of *Baile Chuinn Chétchathaig*’, p. 52.

[285] *TBC1* ll. 120, 302; *TBCLL* ll. 287, 513.

> bar Láeg. ‘Ní mesc,’ bar Cú Chulaind, ‘dáig forfetar-sa in lín dochúatar sechund na slúaig .i. ocht tríchait chét déc 7 ra fodlad dano in t-ochtmad trícha chét déc fo firu Hérend.’
>
> ‘Go, Láeg, I pray you, on the track of the army and make an estimate of them, and find out for us in what number the men of Ireland went past us’. Láeg came to the track of the host and came in front of the track and to one side of it and went to the rear of it. ‘You are confused in your reckoning, my friend Láeg’ said Cú Chulainn. ‘I am indeed’ said Láeg. ‘Come into the chariot and I shall make an estimate of them’. The charioteer came into the chariot. Cú Chulainn went on the track of the host and made an estimate of their numbers and came to one side and went to the rear. ‘You are confused in your reckoning, little Cú’ said Láeg. ‘I am not’ said Cú Chulainn, ‘for I know in what number the hosts went past us, namely, eighteen divisions, but the eighteenth division was dispersed among the men of Ireland’.[286]

The term is used here and in other examples to indicate the observable track made by the passage of a host.[287] There are also a few instances in Recension I that emphasise the destructive nature of such a track. The first is in the vision of Dubthach: *...dommema for trí slúagu slicht slúaig Ulad im Chonchobar* (‘...three armies will be overcome in the wake of the army led by Conchobar’).[288] The other concerns the wounds inflicted on Cethern by the host of the men of Ireland:

> ‘Ní gó ém,’ ol Fíngin, ‘nítad tabartha buí duit ar dartaib indosa. Céin ba deisib 7 triríb, ba h-erusa do chomchisi,’ ‘or Fíngin.’ ‘In tan as slicht slúaig, ar atbéla do anim cip cruth.’
>
> ‘In truth,’ said Fíngin, ‘you should not exchange your grown cows for yearlings now. As long as your attackers were numbered only in twos and threes, it were easy to cure you. But when you bear wounds inflicted by many [or: ‘when it involves the path of a host’],[289] you are destined to die in any case.’ [290]

So if we reconsider this term in a legal context given the above analysis, it would make sense as a type of joint liability for various kinds of collective collateral damage done by a host either incidentally (e.g. trampling tillage or grazing land) or intentionally (e.g. certain members of the host misconducting themselves such that violation of a precinct, arson or killing might occur). As such,

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[286] *TBCLL* ll.538–48.

[287] See *TBCLL* ll.3619–20, ll.4105–6 for similar uses of the term.

[288] *TBC1* ll.3532–3.

[289] My alternate translation.

[290] *TBC1* ll.3284–6.

the term implies a general type of event entailing a fine split among the host in question.[291] This would accord with the idea of having a specific offence (such as *dliged dígona*) within *slicht slóig*, and for *slicht slóig* to be used (or not used) as a kind of liability for offences within inter-territorial law, such as *cáin* or *cairde*. Thus, in the instances in the above law texts, *Rith na cánann*, the *Díguin*-tract, and the commentary on joint liability, I would suggest that *slicht slóig* be translated as 'the [destructive] track of a host'. However, to indicate it is a technical legal term in these sources, it makes sense to leave it untranslated. In summary, the joint liability of *slicht slóig*:

1) Does not apply in *urradus*
    A. Unless involving *dliged dígona* or arson
        1. In situations of *dliged dígona*, it applies also if someone is killed
2) Does not apply in *cairde* or *cáin*
    A. unless someone is killed

The idea behind 1) is that a host comprised of the people native to that kingdom would not constitute an exceptional situation of joint liability, since they would be understood to be aware and responsible enough of their own local demographic not to cause issues while in a host. If they did, though, offences they might effectuate would be handled according to accounts of joint liability typically applying in *urradus*, such as that described above in the *Sellach*-text. However, exceptional circumstances such as *dliged dígona* and arson would utilise the liability for *slicht slóig*, since they include more physically or socially destructive actions involving private buildings, not just actions made in public. The concept underlying 2) is that while there may be hosts moving about an overkingdom, such a host would be subject to normal joint liability under *cairde* for any offences it would commit, unless some people in it were to commit the more serious offence of murder.[292]

We can see that there was a fairly complex account of joint liability under the provisions of *cairde*. This included the degree of liability, based on the number of culpable actions assisting the main offender(s). It also included the type of liability accorded to a host or a maximum number of

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[291] As for the fine of *slicht slóig* itself, we have little information. Two sources detail the fine of *slicht slóig* in *cairde*: *Rith na cánann* has *tri cumala a slicht sloig a cairdi* ('three *cumala* for the [destructive] track of a host in *cairde*'), and a passage concerning *cairde* (*CIH* 964.30) has *tricha cumal i slicht sluaigh i cairde* ('30 *cumala* for the [destructive] track of a host in *cairde*'). It is unclear whether this discrepancy is the result of a scribal error, confusion, or some difference, regional or otherwise.

[292] For hosts coming into a client-kingdom within an overkingdom, see *FCTM* §17, *ACP* §§28–9, and *CB* §22.

people culpable within certain degrees of liability. This model of having certain numbers of people with varying degrees of culpability might be applied to various types of external kingdoms as well. Ultimately, this illustrates the breadth of inter-territorial interactions that would occur or would be expected to occur between kingdoms with an agreement of *cairde*.

#### 2.2.3.1.3. Liability at an assembly

Assemblies were meeting places for peoples from various kingdoms. As such, disputes arising at such events present a more complex legal situation. Since people from different kingdoms were meeting at a formal event, exceptional rules applied. Generally people in early Irish society would have been innately conscious of who was from their kingdom and who was an outsider. Since an outsider might easily be a person of misdeeds, and since the majority of people generally did not have legal rights outside their own kingdom, normally such an outsider could be assaulted without legal penalty. As stated in the legal introduction (section 1.3.2.2.1), only certain higher status people normally had mobility rights between kingdoms. However, an assembly was one exception to this situation.

A *cairde* already involved exceptional circumstances concerning outsiders, distinct from ordinary legal measures within a given kingdom, but assemblies represented an extra degree of exceptional circumstances concerning such people. This would be because these events involved *significant numbers* of people from different kingdoms together in one general area, rather than just an individual or small group of people somewhere in a foreign kingdom, as would normally be the case in a *cairde*. As such, at an assembly, there was more potential for confusion to occur concerning unfamiliar persons. This is emphasised by *Audacht Morainn* §28, which details the three immunities of an *óenach*, the second and third of which are important for our purposes here:

> Aile blaí díb dúnath. Tress blaí búaid cuirmthige co coímaib co mannaib móraib midchórto medarde baíth 7 gaíth, gnáith 7 ingnaith.
>
> The second immunity of them [is] a hosting [of a millitary force]. The third immunity [is] the privilege of the ale-house with friends and great abundances of mead-circuit, where foolish and wise, familiars and strangers are intoxicated.[293]

[293] F. Kelly (ed. and trans.), *Audacht Morainn* (Dublin: Dublin Institute for Advanced Studies, 1976), pp. 10–11.

This represents quite a logical setting to make actions occurring therefrom immune from legal claim. When all kinds of people from different kingdoms are meeting and drinking together, such an immunity would relieve the lords of responsibility for minding their kin and clients and for the confused mistakes they might make in such a setting, which otherwise might result in quite a few diplomatic incidents. However, in circumstances not covered by these immunities, the Airgíalla Charter Poem implies that the presiding king was responsible for the protection of those attending, as Jaski has noted.[294] Indeed, this is what we see in content relating to *cairde*, where Irish lawyers accounted for such situations, for which we have the following passage of later commentary on *Bretha Cairdi*:

> Masa fer com*h*urradais du*n* rig*h* ramarb*h* fear com*h*urradais eile do tre i*m*raichni isi*n* tulaig*h* dala, [l]ethenecl*ann* dun rig*h* and ⁊ leithcoirp*dir*e da fini ⁊ cum*al* chairdi dar es c*h*airdi ⁊ cuit enleithi cairdi dib tucc ar aird ma ta cairdi do re ni is lia.
>
> Masa fear urrad*h*ais dun rig ro*mh*arb*h* fear cairdi do isi*n* tulaig*h* dala tre co*mh*raite lan nei*n*eclai*n*ne dun rig*h* and ⁊ corpdiri cairdi d'ic re fini.
>
> Masa fear cairdi ramarbh fear urrad*h*ais dun rig*h* and isi*n* tulaigh dala nucu*n*n uil ni du*n* rig*h* an*n* *acht* eraicc roit *no* feoir ⁊ coirp*dir*e cairdi d'ic re fini.
>
> If it is a man of mutual *urradus* [with respect] to the [presiding] king who killed another man of mutual *urradus* by mistake in the hillside assembly, half honour-price to the king for it and half body-fine to his [i.e. the victim's] kindred, and [there would be] a *cumal* in *cairde* [i.e., if the victim killed by mistake were himself an outsider] as a result of the *cairde*. And the one-half share of *cairde* of those [payments] which he [i.e. the source] has mentioned, if there is a *cairde*, for him with regard to any amount which is larger [than a *cumal*].
>
> If it is a man of *urradus* with regards to the [presiding] king who intentionally killed a man covered by *cairde* at the assembly site, full honour-price to the king for it and body-fine according to *cairde* is paid to the kindred.
>
> If it is a man covered by *cairde* who killed a man of *urradus* of the [presiding] king there at the assembly site, nothing goes to the king for it except for 'compensation of road or field' and body-fine for *cairde* is paid to the kindred.[295]

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[294] *ACP* §§31–2 (apparently based on *Audacht Morainn* §28); Jaski, *Early Irish Kingship and Succession*, p. 51.

[295] *CIH* 116.16–23.

The main parameters here that affect how an offence is dealt with are: 1) the provenance of the offender with regards to the presiding king, 2) the provenance of the victim with regards to the presiding king, and 3) the intentional or accidential nature of the offence. The king here appears to be the king who presides over the assembly and in whose overkingdom the assembly takes place. This is why he is mentioned in relation to the *fer urraduis*, a person from his own particular *túath* and for whom he is more directly responsible. One of the differing factors from the normal stipulations of *cairde* is the amount of compensation paid to the king here. The honour-price mentioned is the king's own here, since, as mentioned above, he would be expected to guarantee the protection of anyone coming to the assembly in his overkingdom, and anyone who violates that protection has caused an outrage against his honour.[296] This is also because an assembly would often be held on *mruig ríg* ('royal land'), thus further reinforcing the king's role as the protecting figure who would be owed honour-price payment for transgressions by the people in attendance.[297] An offence arising between two people whose kingdoms have a relationship of *comurradus* would represent a situation where full legal entitlements would obtain, but confusion may occur since the two people are nonetheless from different kingdoms, hence the mention of accidental killing.[298] So if an offence between such people is accidental in some manner, the entitlements are not as full as when a *fer urraduis*, for whom the presiding king seemingly has more responsibility, assaults a *fer cairde*. However, if an offender whose kingdom has a *cairde* with the presiding king were to kill somone from that king's kingdom, the situation is more complex and the entitlements are even less. The king seems to have more reponsibility for someone from his own kingdom causing an offence against someone perceived as a greater degree of outsider, a *fer cairdi*, than the converse. Since this *fer cairdi* has come to an external kingdom with the understanding of being guaranteed protection by the king, this would seem to negate the possibility of having to give the king his honour-price payment. Rather, the offender would pay *corpdíre cairdi* to the victim's kindred and the only

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[296] Per the basic concept of *díguin*, explained in Kelly, *GEIL*, pp. 140–1. Also note a gloss on the lemma *la ríg slan cairde* ('the compensation of a *cairde* with a king'), from *Cethairślicht Athgabálae*, reading *eneclann don ríg i mbrissecht a cairde* ('honour-price to the king for violation (lit. 'breaking') in *cairde*'), *CIH* 401.13, 401.24.

[297] *CIH* 4.10–11, 54.18; see Kelly, *EIF*, p. 403. Cf. the honour-price payment usually due to the owner or head of the precinct on which certain offences occur, such as in *dliged* (*maigne*) *dígona* or a thief bringing stolen goods into the house of another, for which see *GEIL* 140–1, 148–9; Thurneysen, 'Aus dem irischen Recht V', p. 385.

[298] The two kingdoms in question presumably also have a *cairde féne*, hence the mention of *cairde* in the same section of the passage. See section 2.2.2.1.

compensation to the king would be the 'compensation for road or field', which remains to be explained. The closest parallel to this in legal texts that I am aware of lies in a passage from *Bretha for Macślechtaib* ('Judgements concerning Categories of Children'):

> Mac for rōt, rígh a díre .i. don rígh a āenur a coirpdīre mād for rōt mōr bes marb. Mādh for lāimraitib beacaib, is i ndē randait. Mā for gurt nō cladh fo-gabur, dā trian in lethe do ágha fine 7 trian do rígh.
>
> A child on a road, compensation for it belongs to the king, i.e. the body-fine for it [goes] to the king alone if it be on a road that it dies. If on minor by-roads it is in two that they divide [it]. If in a field or in a ditch that it is found, two thirds of the half to the head of the kindred, and one third to the king.[299]

While it is still slightly unclear what exactly is meant by *éraic roit nó feoir* in our passage from *Bretha Cairdi*, it would seem to be a technical legal concept for the compensation paid to a king when a wayward person is killed (and perhaps other offences) in one of such public places.[300] The phrasing of the passage (*nucunn uil ni dun righ ann acht eraicc roit no feoir*) indicates that it is just a portion of compensation for injury. In a similar sense, the king who presides over an assembly seems to have had a kind of public stewardship over this special public place by virtue of being the ultimate guardian of the overkingdom. This is why he would still receive such compensation in these extenuating circumstances.

#### 2.2.3.1.4. Exceptional Liability for various types of outsiders

A long continuous passage of later commentary 'probably based on' *Bretha Cairdi* details dispute settlement procedures for a variety of situations involving the injury or killing of a non-native

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[299] Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 121; *CIH* 1549.36–9. See also the other examples given in *idem.* pp. 118–21. Cf. Kelly's remarks, *GEIL*, p. 74n45: 'I omit another obscure category of husband, the *fer coirthe "*man of stone (?)", who can be divorced because "it is not right for a son to be on the road" *(CIH* 5.24 = *AL* v 132.6, cf. *CIH* 905.11; 1549.36). The glossators take him to be a landless man who cannot support his child, *CIH* 5.21; 1884.1-2'. Note also the *macc raite* ( 'child of the road') which Kelly, *GEIL,* p. 103, interprets as 'an abandoned child who has been taken into a household but not formally adopted by the kin', and a fragment of text headed *os fer do rot cid arna hurranda finntiu?* ('a man from the road, why does he not get a share of the kin-land?'), *CIH* 741.7.

[300] See also Charles-Edwards, *EIWK*, p. 507 for a reconstructed text which describes sequential liability for an offence stating that if an offender doesn't have property, kin members, a lord, or a home where he is maintained, then liability for an offence he commits falls upon the king, from which comes the legal principle *cach dícenn co rígh* ('every headless person to the king'), *CIH* 1142.38.

person in a foreign kingdom.[301] The passage illustrates quite a comprehensive model of inter-territorial dispute settlement and it has an extraordinary level of detail compared to other fragments of text concerned with *cairde*; we would expect this since it is the type of commentary that applies legal principles to every possible situation, and if the commentator was working from principles in Old Irish texts (which is likely, but the question remains how much later embellishment on such principles the author incorporated), it could potentially be very useful for explaining inter-territorial dispute settlement. So while it is later commentary, it will help contribute to the overall models of *cairde* reconstructed here. Our text is essentially divided into two parallel sections: the first concerns the inter-territorial dispute settlement procedure for three non-native kinds of people who have been 'naturalised' to some extent, as we would say today, and the second concerns the general rule for anyone else. The passage is particularly notable because of its remarkable level of detail and complexity: it considers 1) the origin of the victim, 2) origin of the offender, 3) the legal status between the victim's original native kingdom, the victim's resident kingdom, and the offender's kingdom, and 4) the fine amount and distribution method that result from the above three factors. The first section of the passage, with some added structuring, reads as follows:

A. In dalta ⁊ in gorm*a*c ⁊ in fear dun [leg. *din*] tuathgabail isi*n* mortuaith dani urrad*h* dib*h* cairdi d'escairi orro isna c*r*ichaib*h* a fis[302]; *acht* is e a deithbir a fis cia rafuac*h*tnaig*h* riu.

1) *acht* masa neach du lucht na c*r*iche-sin rafuachtnaig*h* riu
   a) masa beochnead*h* coirp*dir*i beochneid*h*e do urraid*h* urrad*h*ais ind ⁊ a breith do fei*n*.
   b) Masa marbad*h*, ma ta bescna d'ir marb*h*tha re fini coirp*dir*i urrad*h* cairdi ind ⁊ trenig*h*ud*h* air t*r*ian dia flaithaib*h* dia fine *nó* dia finib*h*[303] ⁊ t*r*ian dona hoitib ⁊ t*r*ia*n* d'ir grin.
   c) Maini uil bescna re fine corpdiri urrad*h* urrad*h*ais ind ⁊ a breith d'ir grin.

2) Masa fear cairdi rafuac*h*tnaig*h* ris
   a) masa beochnead*h*, coirpdiri beochneid*h*i urraid*h* chairdi ind ⁊ trenigud*h* air
   b) Masa marbad*h*, coirp*dir*e urradh cairdi i*n*d ⁊ t*r*einiug*h*ud*h* air ma ta bescna re fini
   c) Maine uil bescna re fini is a breith d'fir grin;

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[301] Breatnach, *Companion*, p. 17. The passage is briefly summarised in McLeod, 'Blood-feud', p. 131 and McLeod, 'Distribution of body-fine', p. 72.

[302] In *CIH* 118g, Binchy notes that the lenition mark was added later, which makes it possible that the possessive pronoun was originally intended as $a^N$ 'their', which would match the other surrounding plurals, such as *dib*, *orro*, *riu*, etc.

[303] This 'correction above line' as Binchy marks the phrase *nó dia finibh* (*CIH* 119a) simply is to match *flaithaib* with a plural *finib*, the *gelfíni* of the victim's biological kin-group, each of which would have a *flaith geilfíne*.

3) Masa fear comurrad*h*ais do budei*n* ra fuachtnaig*h* ris
   a) Masa beochned*h* coirp*dir*i beochneid*h*i urrad*h* cairdi ind 7 trenigud*h* air
   b) Masa marb*h*ad*h* ma ta bescna re fi*n*e coirp*dir*e urrad*h* cairdi ind 7 treinigud air
   c) Maine uil bescna re fi*n*e coirp*dir*e urraidh urrad*h*ais ind 7 a breith d'ir grin

A. The fosterling and the adopted son and the man from the annexed *túath* in the *mórthúath* are treated as a local freeman under *cairde* [lit. 'it makes a local freeman of them, *cairde* is to be proclaimed upon them'] in the kingdoms in which they are known [i.e. where they are residing]; however, this is its point of distinction [in how offences are handled]: knowing who attacked them [i.e. determining what kingdom the offender is from is necessary to determine legal proceedings].

1) Provided that it is someone from that kingdom [i.e. the kingdom where they currently reside] who attacked them:
   a) If it is a non-fatal wound, body-fine for [that degree of] a non-fatal wound appropriate for a local freeman under *urradus* for it and it is awarded to himself.
   b) If the victim is killed, if there is an [inter-territorial] protocol between slayer and [victim's biological] kindred, the body-fine of a local freeman under *cairde* for it and it is divided in three: a third for the heads of his kindred (or: his kindreds), a third for the fosterers, and a third for the local guardian [lit. 'the landowner'].[304]
   c) If there is no [inter-territorial] protocol with the [victim's] kindred, body-fine appropriate for a local freeman under *urradus* in that case and it is awarded to the local guardian.

2) If it is a man covered by a *cairde* who attacked him:
   a) If it is a non-fatal wound, body-fine for [that degree of] a non-fatal wound appropriate for a local freeman covered by *cairde* for it and it is divided in three [i.e. as above].
   b) If the victim is killed, body-fine of a ordinary freeman covered by *cairdi* for it, and it is divided in three if there is an [inter-territorial] protocol with the [victim's] kindred
   c) If there is no [inter-territorial] protocol with the [victim's] kindred, it is awarded to the local guardian.

3) If it is a fellow local freeman to himself who attacked him:
   a) If it is a non-fatal wound, body-fine for [that degree of] a non-fatal wound appropriate for a local freeman under *cairde* for it and it is divided in three.
   b) If the victim is killed, if there is an [inter-territorial] protocol with the [victim's] kindred, body-fine of a local freeman under *cairde* for it, and it is divided in three.

[304] See *Electronic Dictionary of the Irish Language*, s.v. *grian*.

c) If there is no [inter-territorial] protocol [between] the [victim's] kindred [and the victim's kingdom of residence], body-fine of a local freeman under *urradus* for it and it [i.e. the appropriate share] is awarded to the local guardian.[305]

Essentially, these three kinds of people have the rights of a local freeman of the kingdom in the event of bodily injury, perhaps in virtue of each being recognised as semi-permanent residents. When referring to the legal status between kingdoms, the term *bésgnae* (here '[inter-territorial] protocol') is used, which as previously defined is a general term for any kind of protocol involving the payment of compensation.[306] Scenario A1) above concerns an offender from the kingdom in which the victim is residing; in A1a), since the offender is from the same kingdom in which the offence occurs, and the victim is living, then no payment is made across a territorial border and thus no *bésgnae* is necessary for this situation. However, if the victim is killed, a portion of compensation would normally go to the victim's biological kin-group, and therefore across a territorial boundary. Thus, in these situations, we have the clause concerning whether or not a *bésgnae* is in place. If there is a *bésgnae* between the victim's resident kingdom and original kingdom, as in A1b), then we have this threefold division of the *corpdíre cairdi* among the victim's biological kin-group, fosterers, and the *fer grin* (the 'landowner' on whose land the victim is residing, and thus who essentially functions as the victim's local guardian). The last figure is the one on whose land and house the victim would be staying and thus who would receive part of the fine by virtue of a fatal offence occurring therein. Thus, when no *bésgnae* is in place between the victim's resident kingdom and original kingdom, as in A1c), no payment can go across a territorial border, and thus the share of the local guardian would increase.[307] Similarly, in the case of A1b) where the threefold division occurs, if the victim is a *gormac* (an adopted son of a childless couple) or a *fer din túathgabail isin morthúaith* who does not have fosterers, the share which would otherwise go to them would instead increase the shares going to the local guardian and the victim's

[305] *CIH* 118.35–119.13. Editorial numbering and subdivisions in the text are mine.

[306] It is important to note here that the *bésgnae* mentioned throughout could refer to more than just *cairde*. An overking arbitrating disputes between his base client-kingdoms is attested in *rann ó bunn* ('division from the bottom') in the tract on the distribution of *cró* and *díbad*, which is certainly a means of distribution across a border and thus a *bésgnae* (see Murray, '*cró* and *díbad*', pp. 251–60). While it is uncertain how much earlier before the tenth century this inter-territorial dispute method occurred, it certainly would make sense as something that evolved alongside the larger political consolidation of overkingdoms in the late eighth- and early ninth-centuries, for which see Ó Corráin, 'Nationality and Kingship', pp. 1–35; Etchingham, *CO*, pp. 147–8; MacCotter, *Medieval Ireland: territorial, political and economic divisions*, pp. 208–9.

[307] The same kind of increasing of shares may happen in the distribution of body-fine within a kin-group; if a certain category of distribution has no kin-members within it, the share that would normally go to that category instead enriches the shares of the next stage of distribution. See McLeod, 'The distribution of body-fine', pp. 65–109.

biological kin. If the victim is a *daltae* fostered across a border, the local guardian would likely be the same as the head of the foster-kin.

Scenario A2) involves an offender whose kingdom has a *cairde* with the victim's resident kingdom. In A2a), because he is not from the victim's resident kingdom, compensation to the victim would be paid across a territorial border. Since he is a *fer cairdi* with respect to the victim's resident kingdom, and since the compensation would be paid within the victim's resident kingdom, no differential clause is required concerning whether or not a *bésgnae* is in place. And so *corpdíre beochneidi urraid chairdi* is paid and this necessitates the aforementioned threefold division. But, crucially, since the victim is living, he would take the shares that would otherwise go to his biological kin and fosterers, and the last third would go to his *fer grin* as usual in *cairde*. However, things become decidedly more complex when the victim is killed in this scenario. Normally, this would entail compensation paid across two territorial borders, to the victim's biological kin (and perhaps fosterers) in one kingdom and the victim's local guardian in another. However, two inter-territorial protocols would need to be in place for this to happen: one between the offender's kingdom and the victim's resident kingdom, and another between the offender's kingdom and the victim's original kingdom. If both protocols are in place, then situation A2b) applies. If this second protocol is not in place, though, the compensation (still *corpdíre urraid chairdi*) can only be divided amongst the relevant parties in the victim's resident kingdom, as in A2c).

Scenario A3) involves an offender either from the same original kingdom as the victim or from a kingdom which has a relationship of *comurradus* with the victim's original kingdom.[308] If the victim is injured, a similar situation applies in A3a) as in A2a), only that it seems to be assumed that there is a *bésgnae* between the offender's (and victim's original) kingdom and the victim's resident kingdom, such that the offender would be able to pay compensation across a territorial border; if there is not one, presumably the victim could sue for compensation within his original kingdom instead. A3b) mirrors A2b), since payment would be crossing a territorial border, and the *bésgnae* mentioned here is between the offender's (and victim's original) kingdom and the victim's resident kingdom. However, in A3c) there is no *bésgnae* between the victim's original kingdom and his resident kingdom, no compensation can cross a territorial border and so the shares normally going to the victim's biological kin (and perhaps fosterers) would increase the share of the local guardian. Since there is no *bésgnae* in place between the offender's kingdom and the kingdom where the offence occurred (the victim's resident kingdom), thus making it difficult to constrain the

[308] For examples of this, see sections 2.2.2.3., 4.1., 4.2., and 5.1.

offender to pay compensation if the offender is from the victim's original kingdom, the scenario envisioned here must be one where the offender is from a kingdom with a relationship of *comurradus* with the victim's original kingdom and a relationship of *cairde* with the victim's resident kingdom.

The second section of our passage focuses on the scenarios occurring when the victim is not one of the three figures noted in the opening of the first section and is thus treated as a *deorad*:

B. Cach duini aili otha in t*r*iur-sin i*m*mach dani deorad*h* dib cairdi d'escairi orro isna crichaib*h*-sin a c*r*ich ele ⁊ a fis cia rafuachtnaig riu

1) Masa neach do luct na c*r*ichi-sein rafuac*h*tnaigh riu
   a) Masa beoc*h*nedh coirp*dir*e beochneidi urrad*h* urrad*h*ais ind ⁊ a breith do fein
   b) Masa marbhad*h* ma ta bescna re fi*n*e coirp*dir*i deoraid*h* cairdi ind ⁊ treinigudh air
   c) Mai*n*e uil bescna re fine, coirp*dir*i urrad*h* urradais ind ⁊ a breith d'ḟir g*r*in.

2) Masa fear cairdi rafuac*h*tnaig*h* ris
   a) masa beochnead*h* coirp*dir*i beochneidi deoraid*h* cairdi ind ⁊ treinigud*h* air
   b) Masa marbad*h* ma ta bescna re fini coirp*dir*i deoraid*h* cairdi ind ⁊ trenigud*h* air
   c) Maine uil bescna re fini is a breith d'ḟir g*r*in;

3) Masa fear comurrad*h*ais do fei*n* rafuac*h*tnaig*h* ris
   a) cid*h* beochned cidh marb*ad* coirp*dir*i deoraid*h* cairdi ind ⁊ treinighud*h* air
   b) no dā ceana ca*ch* uair is beochnead*h* is a beith amlaid*h*-sei*n*,
   c) ⁊ cach uair is marbadh, ma ta bescna re fini is coirp*dir*i deoraid*h* cairdi ind
   d) ⁊ mani uil [bescna?] is coirp*dir*i urrad*h*ais ind ⁊ a b*r*eith da fini ł dā cheana ge bet gi*n*gu bet.

   IS and ata ni du b*r*eith d'ḟini i*n* inbaid*h* ata bescna itir fear marbtha ⁊ fine ⁊ it*er* fine ⁊ fear grin ⁊ fear marbtha cena beith bescna it*er* fear marbtha ⁊ fer grin ⁊ fini Maini uil [bescna] it*er* fer marbtha ⁊ fine. nuca b*er*at fini na*ch* ni uair is ac ait*r*ib*h* crichi ne*m*bescna tarras iat

   Every other person [aside] from the group of three onwards [i.e. the three kinds of person listed in *CIH* 118.35] is considered an outsider under *cairde* in those kingdoms in respect of another kingdom [i.e. they are considered an outsider when a *cairde* is relied upon], and knowing who attacked them [is necessary to determine legal proceedings].

1) If it be anyone of the people of that kingdom [i.e. the one which the victim is visiting] who attacked them:

a) If it be a non-fatal wound, body-fine for [that degree of] a non-fatal wound appropriate for a local freeman under *urradus* for it, and it is awarded to himself.
b) If the victim is killed, if there is an [inter-territorial] protocol with the [victim's] kindred, body-fine of an outsider under *cairdi* for it, and it is divided in three.
c) If there is no [inter-territorial] protocol with the kindred, body-fine appropriate for a local freeman under *urradus* for it and it is awarded to the local guardian.

2) If it be a man covered by a *cairde* who attacked him:
a) If it be a non-fatal wound, body-fine for [that degree of] a non-fatal wound appropriate for an outsider under *cairde* for it, and it is divided in three.
b) If the victim is killed, if there is an [inter-territorial] protocol with the [victim's] kindred, body-fine of an outsider under *cairdi* for it, and it is divided in three.
c) If there is no [inter-territorial] protocol with the kindred, it is awarded to the local guardian.

3) If it be a fellow local freeman of his who attacked him:
a) Whether it be a non-fatal wound or death, body-fine of an outsider under *cairde* for it and it is divided in three.
b) Or perhaps whenever it is a non-fatal wound, it is treated just like that [*corpdíre beochneidi deoraid cairdi* and divided in three],
c) and whenever the victim is killed, if there is an [inter-territorial] protocol with the kindred, it is body-fine of an outsider under *cairdi* for it.
d) And if there is not [an inter-territorial protocol], it is body-fine under *urradus* for it and it is awarded to the kindred or perhaps [regardless of] whether it is or not [i.e. either the kindred makes a claim against the offender in the victim's original kingdom, or the *corpdíre urradais* goes to the local guardian].

It is in this case that anything [i.e. body-fine] is to be awarded to the kindred whenever there is an [inter-territorial] protocol between the slayer and kindred, and [in other cases] between kindred and local guardian and slayer although there may not be an [inter-territorial] protocol between slayer and local guardian and [biological] kindred. If there is no [inter-territorial protocol] between the slayer and kindred, the kindred cannot take anything since they are attacked while dwelling in a territory not covered by a protocol.[309]

[309] *CIH* 119.14–36. Editorial numbering and subdivisions in the text are mine.

As we can see, scenario B1 mirrors A1 for the same reasons, the only difference being *corpdíre* ***deoraid*** *cairdi* being paid in B1b. This would be half the body-fine of an *urrad* paid in *cairde*.[310] The kind of fine that is applied in *cairde*, whether *corpdíre urraid cairdi* or *corpdíre deoraid cairdi*, depends entirely on the status of the victim in the kingdom in which the offence occurs. Scenario B2 mirrors A2 in the same way. There are certain differences between the treatment of the *fer comurraduis* in B3) and that in A3). In B3), the offender has a relationship of *comurradus* with the victim and seems to have a relationship of *cairde* with the victim's resident kingdom, the site of the offence. If the victim receives a *beochned* or is killed and there is a *bésgnae* in place, then the local guardian has a claim to a share of the body-fine and the fine is handled according to the protocols of *cairde*. These scenarios would allow for the offender to be from the same original kingdom as the victim.[311]

However, in scenario B3d), if the victim's original kingdom has no *bésgnae* with his resident kingdom and he is killed, the implication seems to be (as in A3c above) that the offender must be from a kingdom with a relationship of *comurradus* with the victim's original kingdom. Here the victim's biological kindred may elect to make a claim directly with the offender's kingdom, which has a relationship of *comurradus* with their own. As such, this would involve a payment of *corpdíre urraduis*. There seems to be an alternative suggested which would imply that if this were not to happen for some reason, the *corpdíre urraduis* would go to the local guardian, as in A3c).

The principle stated in the final section of B) essentially explains all the preceding material. The body-fine can go to the victim's biological kindred when there is a *bésgnae* between the offender's kingdom and the victim's original kingdom (when the offender is from the victim's resident kingdom), when there is a *bésgnae* between the offender's kingdom, the victim's resident kingdom, and the victim's original kingdom (when the offender is from a third kingdom), and

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[310] The general principle is attested as early as an Old Irish metrical passage on compensation at *CIH* 1266.16–21, which has a mention of offences involving *findeoraid* 'known outsiders' (presumably outsiders who are from a recognised territory with which there is an inter-territorial protocol) being paid for with half of six *cumala* as *corpdíre* along with the normal *cumal* of restitution, while between *urraid* the full seven *cumala* is paid. This is also stated in commentary on *Bretha Cairdi* (*CIH* 114.34–5) and in commentary on *Bretha Éitgid CIH* 1260.25–7. The latter two examples explicitly mention compensation for offences against a *deorad*. This accords with the concept in the present passage (*CIH* 118.35–119.36), which distinguishes between *corpdíre urraid cairdi* 'body-fine of a local freeman in *cairde*' and *corpdíre deoraid cairdi* 'body-fine of an outsider in *cairde*', i.e. offences made by a *deorad* against an *urrad* in *cairde* would be paid with full compensation. A slightly different principle is expressed in glosses on *Di Ércib Fola* §1.9 (McLeod, 'Di Ércib Fola', p. 164) and commentary on *Bretha Éitgid* (*CIH* 258.5–9), which state that both offences caused by and against a *deorad* are paid for with half compensation.

[311] I am unsure about the exact implications concerning the apparent repetition (and thus perhaps implicit different situations therein) between B3a and B3b and B3c.

sometimes even if there is no inter-territorial protocol between offender and local guardian and victim (by virtue of the offender being from the same original kingdom as the victim). Otherwise, no part of the body-fine can go to the victim's biological kin.

It is important to note here that the passage is describing what is *different* from the normal fine distribution structure, thus the king's enforcing third is assumed here throughout and not overtly stated.[312] This is why, for example, the *corpdíre urraid cairdi* would be the amount paid for a victim treated as a *deorad* when the offender is a *fer cairde* and when there is no *bésgnae* between the offender's kingdom and victim's original kingdom in B2c). Since there is no such *bésgnae*, no compensation can be given there; however, normal procedures apply for the payment of compensation between the offender's kingdom and the victim's *resident* kingdom, with which there is a *bésgnae* (specifically a *cairde*, in this case). Since normal procedures apply for the payment of body-fine in *cairde*, the only variable left in question is to whom the kin's share of the body-fine goes. Thus our text simply is implying *this share* goes to the local guardian, but it is not indicating that the entire body-fine goes to the local guardian.

So, in summary, the model of inter-territorial liability in this passage can be represented as in Figures 5 and 6. Since this commentary is clearly of the style that involves 'treatment of a statement in the original text in a far more detailed way by giving all imaginable attendant circumstances and showing how they affect the basic legal principle', as Breatnach describes it, it certainly illustrates how such a lawyer from the time of writing envisioned such principles working in practice, but whether that reveals more about the legal reality in his own time or if it is indeed based on the lawyer's understanding of the legal principles in the original texts that he likely had before him is another matter.[313] While there will always be a question of how early some of the concepts here existed, the remarkable detail in this exploration of the basic legal principles of *Bretha Cairdi* can still be quite an aid to our understanding of how aspects of liability in *cairde* were thought to operate in a plethora of inter-territorial situations. At least, the lawyer here may well have had a copy of *Bretha Cairdi* before him, if one accepts Breatnach's ascription of the material in *CIH* 114.8–116.24 as extracts and commentary from *Bretha Cairdi*, since this material is only a few folios earlier in Rawlinson B 506 from that in *CIH* 118.35–119.36. As a side note, this passage would fit nicely as a description of the *cairde féne*, as it involves payment of body-fine but no

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[312] It is irrelevant here in any case, since the enforcing third is immune from legal claim, as stated in *Berrad Airechta* §4, *CIH* 591.23–4; trans. Stacey, '*Berrad Airechta*', p. 211.

[313] Breatnach, 'Lawyers', p. 6.

## Figure 5: Inter-territorial liability in *CIH* 118.35–119.13

| **If the victim is a *dalta*, *gormac*, or *fer don túathgabáil isin mórthúaith* and considered an *urrad*** | | | |
|---|---|---|---|
| **Provenance of offender** | **Offence** | **Fine** | **Distribution Method** |
| **A1) If the offender is native to the kingdom where the offence occurs (implied by the text?)** | a) Victim receives *beochned* ('non-fatal wound') | *Corpdíre beochneidi do* ***urraid*** *urradais* | Given to victim |
| | b) Victim is killed, when there is a *bésgnae* (interterritorial protocol) between offender's kingdom (here victim's resident kingdom) and victim's kingdom | *Corpdíre* ***urraid*** *cairdi* | Divided in 3:<br>• 1/3 to heads of biological *gelfíni*<br>• 1/3 to foster kindred<br>• 1/3 to local guardian |
| | c) Victim is killed, when there is no *bésgnae* | *Corpdíre* ***urraid*** *urradais* | Given to *fer grin* |
| **A2) If the offender is a *fer cairde*** | a) Victim receives *beochned* | *Corpdíre beochneidi* ***urraid*** *cairdi* | Divided in 3 as above, but with two shares going to victim and one share going to *fer grin* |
| | b) Victim is killed, when there is a *bésgnae* between victim's native kingdom and offender's kingdom (neither victim's native nor resident kingdom) | *Corpdíre* ***urraid*** *cairdi* | Divided in 3 |
| | c) Victim is killed, when there is no *bésgnae* | *Corpdíre* ***urraid*** *cairdi*<br>(we can presume this fine since this is an affair between victim's resident kingdom and offender's kingdom) | Given to local guardian |
| **A3) If the offender is a *fer comurradus*** | a) Victim receives *beochned* | *Corpdíre beochneidi* ***urraid*** *cairdi* | Divided in 3, but with two shares going to victim and one share going to *fer grin* |
| | b) Victim is killed, when there is a *bésgnae* between the offender's kingdom (also the victim's native kingdom here) | *Corpdíre* ***urraid*** *cairdi* | Divided in 3 |
| | c) Victim is killed, when there is no *bésgnae* | *Corpdíre* ***urraid*** *urradais* | Given to local guardian |

## Figure 6: Inter-territorial liability in *CIH* 119.14–119.36

| **If the victim is someone other than a *dalta*, *gormac*, or *fer don túathgabáil isin mórthúaith* and considered a *deorad*** | | | |
|---|---|---|---|
| **Provenance of offender** | **Offence** | **Fine** | **Distribution Method** |
| **B1) If the offender is native to the kingdom where the offence occurs** | a) Victim receives *beochned* ('non-fatal wound') | *Corpdíre beochneidi* ***urraid*** *urradais* | Given to victim |
| | b) Victim is killed, when there is a *bésgnae* between victim's native kingdom and offender's kingdom (which is neither victim's native nor resident kingdom) | *Corpdíre* ***deoraid*** *cairdi* | Divided in 3 |
| | c) Victim is killed, when there is no *bésgnae* | *Corpdíre* ***urraid*** *urradais* | Given to *fer grin* |
| **B2) If the offender is a *fer cairde*** | a) Victim receives *beochned* | *Corpdíre beochneidi* ***deoraid*** *cairdi* | Divided in 3, but with two shares going to victim and one share going to *fer grin* |
| | b) Victim is killed, when there is a *bésgnae* between victim's native kingdom and offender's kingdom (which is neither victim's native nor resident kingdom) | *Corpdíre* ***deoraid*** *cairdi* | Divided in 3 |
| | c) Victim is killed, when there is no *bésgnae* | *Corpdíre* ***urraid*** *cairdi*<br>(we can presume this fine since this is an affair between victim's resident kingdom and offender's kingdom) | Given to *fer grin* |
| **B3) If the offender is a *fer comurradus*** | a) Victim receives *beochned* or is killed (with *bésgnae*) | *Corpdíre* ***deoraid*** *cairdi* | Divided in 3 |
| | **Or:**<br>b) Victim receives *beochned* | *Corpdíre beochneidi deoraid cairdi*? | (Divided in 3, but with two shares going to victim and one share going to *fer grin*) |
| | c) Victim is killed, when there is a *bésgnae* between the offender's kingdom (also the victim's native kingdom here) | *Corpdíre deoraid cairdi* | Divided in 3 |
| | d) Victim is killed, when there is no *bésgnae* | *Corpdíre urradais* | Goes to the victim's biological kindred |

restitution.[314]

### 2.2.3.1.5. Liability for mistake in *cairde*

The passage in *CIH* 118.35–119.36 will help us understand some material in another passage derived from *Bretha Cairdi*, concerning the law of mistake. It is thus thematically related to material in *Bretha Éitgid*. We can turn to *Bretha Éitgid* §13 for the basic principle:

> A m*ai*c ara feis*er* fer rechta i *n*ecosc dilse ⁊ dilsech i *n*ecosc f*ir* r*echt*ce.
> lethfi̇ach do*n* taisech lanodo.
> .iiii.rai*m*te don deid[en]ech daigh i*n* ecosca i mbi.
>
> Son, [I will instruct you] so that you may know [the law regarding] a law-abiding man mistaken for an outlaw and an outlaw mistaken for a law-abiding man.
> Half the penalty is the full amount for the first of these situations.
> A quarter for the second situation because of the person he has been mistaken for.[315]

Here we have two parameters for the law of mistake: 1) who the person actually is, and 2) who they have been taken for. The particular interaction between these two parameters affect what kind of liability applies and what kind of fines result, though as we can already see, halving (or halving of halves) is the general principle.[316] A passage from *Bretha Cairdi*, discussing liability concerning mistaken identity, quite naturally adds a third parameter: the place where the offence occurred.

1) Lanfiac*h* isi*n* nurraid*h* i*n* ca*ch* c*r*ich cairdi cid*h* i rric*h*t fir cairdi cid i rric*h*t fi̇r escairdi ⁊ in ca*ch* cric*h* escairdi i rric*h*t fir cairdi.
2) leithfiac*h* ind isi*n* crich escairdi is nessu i rric*h*t fir escairdi
3) Ceat*r*aim*h*thi fiach ind isi*n* treas c*r*ich eascairdi is nessu i rric*h*t fir escairdi
4) .uii.mad fiach ind isi*n* ceatramad*h* crich escairdi is nesu i rric*h*t fir escairdi
5) nucun etar cairdi imdilsi crichi gan cairdi fene *nó* gan cairdi airdbidi d'eascairi maræn ria ⁊ nugun etar cairdi ardbidi gan cairdi feini ⁊ nugun etar cairdi feini gan urradus.
6) lugum fiach i*n* seisead*h* rand decc isi*n* .u.ed*h* crich escairdi is nesu i rric*h*t fir escairdi
7) leath ca*ch* neich dib*h*-sei*n* isi*n* deorad*h* isna hi*n*adaib*h* sein

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[314] See section 2.2.2.1.

[315] *Bretha Éitgid* §13, ed. and trans. in McLeod, *Bloodshed and compensation*, pp. 17–18; *CIH* 1067.30–1.

[316] Since *Bretha Éitgid* is not part of the *Senchas Már* (and is instead considered by Binchy to be a text from the poetico-legal '*Nemed*-school'), it is always necessary to question whether differences in treatment of legal topics exist between such texts. Here there is no evidence for any such differences. For discussion of the existence of pre-Norman law schools, see *GEIL*, pp. 242–50, and enclosed footnotes.

1) Full fine for it [when involving injuries against] a freeman in each *cairde*-territory, whether he be taken for a person covered by *cairde* or for a person from outside the *cairde*; and [for those] taken for a person covered by *cairde* in every territory outside the *cairde*.
2) Half fine for it in the nearest territory outside the *cairde* [in the case of someone] mistaken for a person from outside the *cairde*.
3) A quarter fine for it in the third nearest territory outside the *cairde* [in the case of someone] mistaken for a person from outside the *cairde*.
4) A seventh fine for it in the fourth nearest territory outside the *cairde* [in the case of someone] mistaken for a person from outside the *cairde*.
5) It is not possible to proclaim a *cairde* of mutual forfeiture of a region without [also having in place] a *cairde* of freemen or a limited *cairde*, and in a limited *cairde* without [also having in place] a *cairde* of freemen, and a *cairde* of freemen without [also having in place] *urradus* [i.e. full legal entitlements, just as exist within a single kingdom].
6) A smallest fine of a sixteenth part for it in the fifth nearest territory outside the *cairde*, [in the case of someone] mistaken for a person from outside the *cairde*.
7) Half of anything [i.e. half of normal compensation] to them for the outsider in those places.[317]

Now, the above passage is full of relative terminology. It is complicated by the fact that not all these relative terms are necessarily relative to the same entity. Thus, the key to understanding this passage fully is in understanding the specific relativity of each term. We may start with the *urrad* in stipulation 1), who is our victim. Since *urrad*, meaning 'local freeman', is already a relative term– he is only an *urrad* (normally) with regards to his own native kingdom–we will label him '**α**', from *crích* A. Stipulation 1) involves all the scenarios in which full liability occurs; that is, when there is no mistake or when the mistake is inexcusable and does not result in any reduced fine. If **α** is in any *crích cairdi*, a territory which has a *cairde* with his own, and an offender from that territory either takes him for a *fer cairde* (which he is, both with respect to the territory and to the offender) or for someone with whom his territory has no *cairde*, full fines are due (generally). The same applies when an offender from a *crích cairdi* B (termed **β** here) injures **α**, taking him for who he is (a *fer cairdi*), when both are in any *crích escairdi*, here referring to a territory with which at least **α**'s territory does not have a *cairde*. It also may apply to a scenario when **α** is in a *crích escairdi* and an offender from that territory mistakes **α** for a *fer cairdi* to himself, i.e. a person whose territory has a *cairde* with his own. Thus, full liability extends to a *fer cairdi* in a *crích cairdi* regardless of whether or not there has been mistaken identity; offender **β** is expected to know who is covered by *cairde* in his own territory. However, when he is in a *crích escairdi*, he is only liable for full fines if he knows **α** is in fact a *fer cairdi*, thus in a case where there is full knowledge.

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[317] *CIH* 114.27–35. Editorial numbering and subdivision in the text are mine.

On the other hand, if **β** mistakes **α** for a *fer escairdi* in any *crích escairdi*, then the reduced liability concerning inadvertence does come into play. The degree of this reduction depends on the proximity of the territory to **α**'s territory and any *crích cairdi*. As we see in stipulations 2), 3), 4), and 6), for each successively more distant territory, each subsequent fine is halved from the last. This progressively reduced liability occurs as the offender is expected to be less likely to recognise that the victim is actually a *fer cairdi*, the farther away from their own territories they are. That it is halved engages with the general principle in *Bretha Éitgid* §13 above, where the fine is halved where the offender injures someone thinking they are instead someone with less legal recourse involved. It is not entirely clear what relationship stipulation 5), which is discussed above, has to the rest of the passage.[318] Stipulation 7) states the general principle of compensation for those in a territory where they do not have normal legal rights (either as an *urrad* or as a *fer cairdi*).[319] This situation is represented in Figure 7.

**Figure 7: Liability for mistake in *cairde***

| Location of victim α | Offender β (a *fer cairdi)* takes him for: | Fine |
|---|---|---|
| Any *crích cairdi* | *Fer cairdi* | full |
| | *Fer escairdi* | full |
| Any *crích escairdi* | *Fer cairdi* | full |
| *crích escairdi is nessu* | *Fer escairdi* | half |
| *treas crích escairdi is nessu* | *Fer escairdi* | quarter |
| *cethramad crích escairdi is nessu* | *Fer escairdi* | seventh or eighth* |
| *cóiced crích escairdi is nessu* | *Fer escairdi* | sixteenth |
| *CIH* 114.30 has a seventh, while *CIH* 868.23 has an eighth. | | |

In addition to mistake, an Old Irish citation from *Bretha Éitgid* reveals that other kinds of inadvertence were recognised in inter-territorial law (*cáin* and *cairde*):

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[318] See section 2.2.2.1.

[319] A passage of Middle Irish commentary at *CIH* 868.20–7 is very similar to the above passage, with a few notable differences. Firstly, it does not include the series in 5), nor does it have the stipulation in 7). Next, it gives an eighth fine instead of a seventh in stipulation 4). Lastly, it adds the following material after stipulation 6): *⁊ co nathgabail a criche budein sin; ⁊ fir fon meit teasbus don eiric uadha re' thaeb-sin conach ana richt budein dorinne fogal ris; ⁊ on fir cairde atait na heirci-sin ina fer cairde budein* ('including [the more straight-forward case of] distraint [i.e. seizure of the victim] in his own territory. And proof [by a ritual oath] according to the amount which is lacking for the *éraic* from him [in the scenarios mentioned previously] in addition to that, and [proof by ritual oath that] it is not in his own [correct] identity that he did the harm to him [but rather in the mistaken belief that he was someone else]. And [it is] from the man covered by *cairde* [i.e. the offender] that there are those *éraic*-fines for the man covered by the same (lit. his own) *cairde* [i.e. the victim]').

[§14] A M*AI*C ARA FES*ER* CAIN NO CAIRDE CONA FOGLAIB. 7 A MBÆGLAIB 7 A NEITGEDAIB.

[§14.1] ARNA ERENAR FIACH FEIRGE I NANFOT, NA ANFOT I FEIRG.

[§14.2] NA FIACH FIS I NANFIS NA ANFIS I FIS.

[§14.3] NA COMRAITE. I NETGED. NA EITGED. I COM*RAI*TE.

[§14.4] NA MAR I MB*E*C NA BEC I MMAR.

Son, [I will instruct you] so that you may know [the law regarding a] *cáin* or *cairde* together with their harmful acts and their mistaken acts and their irresponsible acts:

So that the penalty for an act of anger is not paid in the case of negligence, nor negligence in the case of an act of anger;

Nor the penalty for knowledge in a case of [mistake through] ignorance, nor of ignorance in a case of knowledge;

Nor an intentional act in a case of [any other] irresponsible act, nor [any other] irresponsible act in the case of an intentional one;

Nor a large [offence] the case of a small one, nor a small one in the case of a large one.[320]

We can see here that there were various kinds of inadvertence distinguished from each other in *cairde*.[321] In addition to a mistake made through ignorance of a person's original kingdom, as we have examined above in the passage from *Bretha Cairdi*, the exempt killing of a *fer futhbil* elsewhere in *Bretha Cairdi* presents another instance where *anfes* is noted, and the Middle Irish commentary on *Bretha Éitgid* presents a situation where *anfes* may alter liability shortly following the enactment of a *cairde*.[322] In addition to the legal concept of ignorance, intentional offences are distinguished from irresponsible ones, and offences made in hot blood distinguished from those

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[320] *CIH* 1260.28–32; trans. McLeod, *Bloodshed and compensation*, pp. 7–8.

[321] Note also the legal narrative material on inter-territorial mistake, concerning a hospitaller from the Ulaid who was killed in mistake for a hospitaller from Connacht in *CIH* 2145.8–14 (translated in Qiu, *Narratives in early Irish law tracts*, pp. 316–17).

[322] See sections 2.2.1. and 2.2.3.1.1.

made in negligence. There is also a variety of fines for different degrees of physical injury, as the final stipulation outlines. Some of these fines are examined in the next section.

### 2.2.3.2. Fine structure and types of payment in *cairde*

As stated above, *Bretha Cairdi* gives the categories of offences covered by *cairde* as *guin ⁊ brait ⁊ gait ⁊ turorguin ⁊ forchor ban ⁊ forloscad ⁊ ær* ('slaying, robbery, theft, stealthy theft, rape of women, arson, and satire').[323] There are a number of excerpts, some from *Bretha Cairdi* and others of uncertain provenance, which provide some detail on payment given for certain offences in *cairde*. A citation of textbook prose from *Bretha Cairdi* introduces the topic of categories of payment in *cairde*:

> Caidi diat lughum i cairde (.i. caudiat na feich is lughu icar isi*n* caird*e*) ⁊ cis l*ir* sleachta docuisi*n* fo*r*aib?
> Nī, a se: bo co colp*dach* ⁊ dairt ⁊ cæra ⁊ screp*al*.
>
> What are the smallest [types of payment] in *cairde* (i.e. what are the smallest fines paid in *cairde*) and how many types [of payment] are there?
> Not difficult, six: a cow with a two-year-old heifer, and yearling heifer and sheep and scruple.[324]

Firstly, we have the problem of having only five types of payment listed. However, a gloss mentions a *samaisc* being subsituted in place of a *colpdach* in the event of inter-territorial theft. This would give six types of payment.[325] Two subsequent parallel citations elaborate on some of these categories of payment. One is the citation *atait .iii. aenscrepail i cairde* ('there are three single scruples in *cairde*'), which, going on the glosses, appear to be part of the payment for offences involving *turorgain* ('stealthy theft') or *díguin* ('violation of protection') when harming someone covered under provisions of *cairde*.[326] The other is *atait di aenba dec i cairde* ('there are twelve single cows in *cairde*'), the glosses of which give examples of various types of offence that involve

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[323] *CIH* 791.5–6.

[324] *CIH* 808.9–10, here utilising Binchy's suggestion of reading *caidi diat* as *caideat ata* in the translation (*CIH* 808a).

[325] *CIH* 808.11–13.

[326] *CIH* 808.22–7. The glosses themselves explicitly mention *díguin* and *turorgain*.

payment in cows (the *bó mblicht* 'milch cow', as opposed to lesser valued types of cattle).[327] The 'twelve single cows' may simply be a mnemonic based on the maximum fine of twelve cows in *cairde*. In various passages, *Bretha Cairdi* describes this amount as *lánfíach cairdi* and the amount of *corpdíre* ('body-fine') in the *cairde féine*.[328] Twelve cows is an amount normally equivalent to four *cumala*, whereas the *corpdíre* for homicide is usually six *cumala* (eighteen cows). Bemmer interpreted this as a lower rate of body-fine in *cairde*; however, there may be a better explanation.[329] *Berrad Airechta* §4 notes that the enforcing third, a third of the compensation for offences that goes to the enforcer(s), is entirely immune from legal claim; it cannot be recovered or taken through legal means once it has been paid.[330] Thus, this portion of the fine is treated separately (and furthermore, parts of this enforcer's third might end up split between kingdoms, depending on which kingdom, victim's or offender's, that the offence took place). What is left is the total body-fine claimable by the victim's kindred, which is twelve cows.[331] According to *Berrad Airechta* §16, this payment is also immune from legal claim (normally), once it has crossed a territorial boundary.[332]

It is significant that the payment of body-fine in *cairde* is in a single type of payment: cattle. Liam Breatnach has presented some evidence from *Bretha Éitgid* and other texts that payments in *cumala* would normally entail three equal forms of payment, at least one third of which would be comprised of a portion of precious metals.[333] Thus, with offences occurring within a single kingdom and thus under *urradus*, body-fine would be paid in units of *cumala* and thus in three forms of payment, including a third in the form of silver. As such, body-fine in *cairde*, being in cattle alone,

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[327] *CIH* 808.14–21.

[328] *CIH* 792.13–19; 807.20–1. Note also that another passage of *Bretha Cairdi* at *CIH* 808.16–17 gives three cows as the amount of *cethramthan fíach*. For an analysis of these passages, see section 2.2.3.1.2.

[329] Bemmer, 'Inter-territorial alliances', p. 196.

[330] *Berrad Airechta* §4, *CIH* 591.23–4; trans. Stacey, '*Berrad Airechta*', p. 211.

[331] I am indebted to Neil McLeod for this suggestion. The amount of the *corpdíre* less the enforcer's third being distributed across the border is at least the assumption in a passage of commentary derived from *Bretha Cairdi* that comprehensively deals with cross-border payment in *CIH* 118.35–119.36, for which see section 2.2.3.1.4.

[332] *Berrad Airechta* §16, *CIH* 592.13–16; trans. Stacey, '*Berrad Airechta*', p. 212.

[333] Breatnach, 'Forms of payment in the early Irish laws', pp. 16–17; for the *Bretha Éitgid* citations, see *CIH* 302.14, 1263.15–18.

was a much less onerous payment of compensation than normally.[334] The composition of types of cattle paid for fines for an offence in *cairde* is detailed in another passage from *Bretha Cairdi*:

> Is aml*aid* icthar feich cairdi dairti ⁊ dartaid*h*i ⁊ samaisci an*n* gu ria cum*h*ail ⁊ o rasia t*r*ian dib*h*-si*n* an*n* ⁊ t*r*ia*n* du buaib oga indlæg*h*a ⁊ t*r*ian du buaib*h* c*r*ina cæcha lecollb*h*a [leg. le colpthach?] ⁊ mess na fiach dib-sin and ⁊ na hoitt*ir*i da nid*h*nacul assi*n* crich amach ⁊ da ndilsiug*ud* i*m*muich.
>
> This is how fines of *cairde* are paid: yearling heifers and yearling bullocks and three-year-old dry heifers for it up to [the value of] a *cumal* or until those aforesaid extend to a third [of the fine], and a third [comprised] of young cows in calf, and a third [comprised] of old blind cows with a two-year-old heifer [?]; and the reckoning of fines [goes] for these in that case, and the *aitiri* escort them [the animals] out of the kingdom [to the plaintiff's own kingdom] to hand them over outside.[335]

The term *féich cairdi* specifically refers to compensation paid for offences in *cairde*; this is distinct from additional compensation that may be due to an *aitire*, such as the seven *cumala* ransom fee, or the pledge an *aitire* would give (that would guarantee his payment of the same seven *cumala* ransom fee) to the *muiredach* for being released from captivity. These would be payments reckoned in *cumala* and thus requiring three forms of payment, though it may be noted that the only cross-border payment reckoned in *cumala* would be between higher status individuals (the *aitire* and *muiredach*).[336] A single form of payment divided into thirds comprised of more specific units of value within that single form of payment is similarly attested in the aforementioned passage from *Bretha Éitgid*, where thirds of cattle, horses, and silver must each contain a third of a specific type of cow, horse, or metal.[337]

Other than homicide, not many other concrete fines for offences are overtly stated in *Bretha Cairdi*, which makes one wonder whether they were generally the same as in *urradus*, the ordinary legal measures in the kingdom the offence occurred. However, some differences from *urradus* are noted:

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[334] One might compare the cross-border payments under *cairde* incurred by one of the company of the *aire échta* in *CG* ll. 362–5: *Cia rogonat doíni din chairddiu in cóicer cétna[e] ascomren aire échta tara cenn, ná[d] té(i)t tír ná humachaire ind acht lestra[i] lóge bó* ('If the same five should kill people covered by the *cairde*, the *aire échta* can pay on their behalf. Neither land nor copper objects go for it [but] vessels of a cow's value.'). So as in *Bretha Cairdi*, valuable metals (whether copper or silver) are not included in cross-border payment in *cairde*, and in *Críth Gablach* for this specific kind of killing not even physical cattle are given, but rather vessels to the *value* of each cow that would be due as the single form of payment. Though of course the unit of value used is still in cattle.

[335] *CIH* 115.11–14.

[336] For more on this legal procedure, see section 2.2.4.

[337] *CIH* 1263.15–18.

> Gona beth fiach dunachaithe bod mo i cairde i*n*a colp*thach*; ł is a nocht coille [leg. nochtaille] cona nindtiuch ata so, ⁊ a beth am*ail* ata i nurr*adus* o tsain amach.
>
> That there should not be a fine for trespass of people in *cairde* greater than a two-year old heifer; unless it be [involving the area from] a fence to the interior of a house, [in which case] it is [the same amount] as it is in *urradus* from then on.[338]

Here we see a distinction made between *urradus* and *cairde* with regards to an offence of trespass: presumably this entails an outsider covered by *cairde* who is caught trespassing. One would imagine a lesser fine, and therefore greater leniency, would come from a decreased expectation that an outsider would be intimately familiar with general land boundaries and such. However, this greater leniency only extends up to very obvious boundaries that anyone should be able to recognise, such as the fence around a house, after which the fines under *urradus* apply to everyone. Indeed, we see fines of a greater amount elsewhere in *Bretha Cairdi* (under the aforementioned heading *atait di aenba dec i cairde*) for trespass that seem to be linked to plotting offences. One fine (two cows) is prescribed for an offence for someone being in the *faithche* (inner precinct) of the house of a *fer cairde*, and a greater fine (three cows) is stipulated for someone not only within the *faithche*, but also as close as the inner fence around the house and pressing his ear against it to hear who is inside. Both of these are defined as *fiach maighne cairde*.[339]

A lengthy possibly late Old Irish (or early Middle Irish) passage of uncertain provenance concerning specific fines for offences in *cairde* is preserved in TCD MS H 3.18 (1337).[340]

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[338] *CIH* 792.20–1.

[339] *CIH* 808.15–18: *.u.s. dia neach i faichi da teacaid da ba i faichi fir .c.* (leg. *u.s. da teacaid da ba dia neach i fai[t]hchi fir .c.?*)*; Ceathraimte fiach i nheo fri hunsˉ* [leg. *hudnacht*] *.i. tri ba ina cluais do tabhairt do re hun.sˉ.* [leg. *hudnacht*] *tighi a fir .c.; Fiach maighne .c. sin.* ('Five *seóit* which amounts to two cows if anyone be in the *faithche* of the person covered by *cairde*; a quarter-fine for an ear against a fence, i.e. three cows for his ear to be pressed (lit. brought) by him to the fence around (lit. of) the house. This is the fine of [trespassing in] the precinct of *cairde*.')

[340] We can lay aside obvious scribal modernisations such as *ge beid*, *re*, etc., and *nochon* (for OIr. *nícon*), which a series of subsequent scribes copying the manuscript could have made. There is the later form *amlaid*, which, unless a replacement for OIr. *samlaid* by a Middle Irish scribe, would indicate a late Old Irish date. In addition, *cairde* appears consistently as masculine: note *tri cairde* with no lenition, *cairde airdeibe* and *cairde imdilse* without nasalisation after the noun, and *in cairdi*. The instance of *dlegair*, if viewed as an independent form of the verb in a cleft sentence containing an adverbial, could represent an Old Irish construction. The form *leigsin* seems to be the late form of the verbal noun of *léicid*, which is less likely to be a mere scribal replacement, and may rather indicate a Middle Irish date. The instance of the word *pingin(d)*, a Germanic loanword, is relatively late and one of the earliest occurrences would seem to be in *Sanas Cormaic*, a ninth-century text. Taking all of this together and assuming a fair bit of subsequent scribal modernisation, a late Old Irish date, perhaps the second half of the ninth century, could be possible. However, an early Middle Irish date may be more plausible. I am grateful to Jacopo Bisagni for his assistance here in determining linguistic dating criteria.

Immediately following is a truncated passage from *Bretha Éitgid*, and preceding is a section on offences by foster-children and an extract from *Bretha Nemed Toísech*, but no direct link to *Bretha Cairdi* has been drawn, beyond Binchy's cross-reference in *CIH*.[341] The passage itself begins with the typical interrogatives of textbook prose: *Ca méd cairde fuiled and? 7 caide eraic cacha cairde dib?* ('How many *cairde* are there? and what is the compensation for them in each *cairde*?').[342] The first interrogative is similar to an interrogative in *Bretha Cairdi*: *Cair, cis lir cairde docuisin?* ('A question, how many [types of] *cairde* are there?').[343] The response to the first interrogative is thus:

> ge beid cairde ilardha a*n*d re radh 7 re nairem, ni uil a*n*d *acht* t*r*i cairde .i. cairde airdeibe 7 cairde feine 7 cairde i*m*dilsi c*r*iche. is aml*aid* dleg*air* i*n* cairdi imdilsi criche 7 i*n* cairde airdebe d'esgaire .leis. is amlaidh dleg*air* i*n* cairde feine d'esgaire 7 urradus leis.
>
> though there might be many *cairde* by name and reckoning, there are only three *cairde*, i.e. the limited *cairde* and the *cairde* of freemen and the *cairde* of mutual forfeiture of a region; this is how the *cairde* of mutual forfeiture of a region should be: the limited *cairde* proclaimed with it. This is how the the *cairde* of freemen should be proclaimed: *urradus* with it.[344]

Indeed, the material here is essentially a truncated version of the response in *Bretha Cairdi* beginning with the above interrogative, examined above.[345] What follows afterward would be the logical response to the two interrogatives heading the passage, a list of fines for offences in *cairde*:

1) se ba athg*ab*ail chairde, 7 ap*ad* .x.m*ai*d fil a cairde ar ca*ch* nduin*e* uile, 7 nochon uil dethb*ir* g*r*aid fl*ath*a na g*r*aid fei*n*e ui*m*e.
2) T*r*i hinadha a f̂aghaba*r* enecl*ann* a cairde:
   a) isan air 7 isi*n* slan 7 dona heit*ir*ib a leigsin a neloid
   b) 7 enecl*ann* isan air fo aic*ned* in cheneil aire;
3) bo smacht anf̂orraigh a caire
4) bo fia*ch* i*m*raid cairde
5) bo isin *m*banbei*m* a cairde, gid banbei*m* fagaib feith fo saeth gin gobed;[346]

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[341] See Breatnach, *Companion*, p. 42. On the passage from *Bretha Éitgid*, see section 2.2.1. above.

[342] *CIH* 964.14–15.

[343] *CIH* 792.5.

[344] *CIH* 964.14–18.

[345] *CIH* 792.13–17. Note the additional similarity that both *CIH* 792.17 and 964.18 finish their sequential series then similarly continue their dialogue by detailing fines in *cairde*. See section 2.2.2.1. above.

[346] Here I prefer the reading *gin gobed* over Binchy's *gingob ed*, reading *gobed* as a corrupt version of *gábud* 'danger, peril'.

6) bo isin tamall i cairde, cid tamall aire cidh tamall molta;
7) t*r*i ba fiach maighne cairde;
8) bo a ne*m*choi*m*ét na netha*r* i cairde;
9) colp*dach* fia*ch* dunachaithi cairde;
10) colp*thach* a ngabail fechta feile de a cairde;
11) dairt fia*ch* foi*m*ri*m*e cairde;
12) dairt i tegusc eoluis i c*r*ich cairde;
13) scr*epal* isin faeba*r* dar farr i cairde, ⁊ is cud*r*uma ata sin gidh o dur*n* cid d'i*n*gin doneth*ar* é;
14) eraic toghluas*acht*a cairde, ma thainig aini*m* isin leanam, is coirp*dir*e cairde i*n*d, ⁊ mana thainig, eraic togluas*ach*ta urr*aduis* i*n*d;
15) d'eiric i*n* cairde sin anuas, ⁊ isi er*aic* is lugha fogaba*r* i cairde pi*n*gi*n*d;
16) ⁊ t*r*icha cum*al* i slicht sluaigh i cairde.[347]

1) Six cows in distraint in *cairde*, and a ten-day stay, which is in *cairde* for every person, and there is no distinction between lordly grades nor commoner grades concerning it.
2) Three cases in which honour-price is obtained in *cairde*:
   a) in satire and in the compensation[348] and to the *aitiri* by releasing [the offender from] his evasion
   b) and honour-price in satire according to the type of satire
3) a cow the penalty of the exhausting disease of his cauldron (?)
4) a cow the fine of traveling in *cairde*
5) a cow for the white blow in cairde, though it be a white blow which leaves sinew weak without danger [of blemish];
6) a cow for the *tamall* in *cairde*, be it a *tamall* of satire or a *tamall* of praise;[349]
7) three cows for the fine of [violation of protection in] precinct in *cairde*;
8) a cow for non-safeguarding of the boats in *cairde*;
9) a two-year-old heifer [for] the fine of trespass in *cairde*;
10) a two-year-old heifer [for] their taking away a hospitable visit from him in *cairde*;
11) a yearling heifer [for] unauthorised use [of tools/articles/etc.] in *cairde*;
12) a yearling heifer for the teaching of charms in a *cairde*-territory;
13) a scruple for the 'sharpness on a wooden post' in *cairde*, and it is the same whether it is done by a fist or a fingernail;
14) compensation for abortion in *cairde*: if a blemish comes on the child, it is body-fine under *cairde* for it, and if it does not come, compensation for abortion in *urradus* for it;

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[347] Following this, the content of the last few lines on p. 428a of MS H 3.18 has already jumped to material derived from *Bretha Éitgid* (though the marginal note *eitgid so* is placed at the top of p. 428b), which I suspect may be due to a phonological correlation in the scribe's mind between the phrases *tricha cumal* and *tricha cét* and their abbreviations.

[348] This may be referring to instances where full compensation is due, such as in the joint enactment of a *cairde n-airdbide* with a *cairde féine*.

[349] A type of *airchetal* (versified satire), itself a subdivision of *áer* ('satire'). See McLaughlin, *Early Irish Satire*, pp. 52–9, 77–8, for these types of satire and some details concerning *tamall aíre* and *tamall molta*.

15) This above concerns compensation in *cairde*, and the smallest compensation found in *cairde* is a penny;
16) and [the largest is][350] thirty *cumala* for the [destructive] track of a host in *cairde*.[351]

Beside the similarities already observed between this passage and *Bretha Cairdi*, stipulation 1) mirrors *CIH* 792.22–3, stipulation 5) matches the payment and offence in *CIH* 808.16–18, and stipulation 7) summarises *CIH* 792.20–1. In addition, the fine list is generally organised in decreasing order of units of value, from *bó* to *colpdach* to *dairt* to *screpal*, which we can recall are four of six types of payment listed in the aforementioned passage of textbook prose on types of payment in *Bretha Cairdi*. All of these similarities in content inspire some confidence that the passage may well be derived from *Bretha Cairdi*. If this is so, this passage furnishes significant detail on fines for offences in *Bretha Cairdi* that do not exist in any other material ascribed to the tract.

### 2.2.4. Enforcement and Legal Procedure

Above we have examined the kinds of offences dealt with in *cairde* and their associated fines. We may now begin to examine how such fines were collected by looking at aspects of legal procedure and enforcing mechanisms in *cairde*. This will be done by looking at the enforcing figures themselves. *Slán nAitire Cairde* offers a clear model of enforcement for a *cairde*, providing details about enforcers and their specific roles.[352] The basic sense of this short Old Irish text is as follows: a *muiredach* (that is, a noble acting on behalf of the victim's kingdom) goes across the border into the offender's kingdom and summons an *aitire chairdi* who represents the offender. As we will see, the position of the *aitire chairdi* would vary depending on who the offender is. Because of this, it would make sense that the *muiredach* would initially go to the house of the king in the offender's kingdom (the arbitrator here), though *Slán nAitire Cairde* does not elaborate on the *muiredach*'s whereabouts

[350] The bracketed text here is an addition justified by the logical opposition of the smallest fine followed by what would certainly seem to be a fine larger than any other known fine in *cairde*.

[351] *CIH* 964.18–32. Editorial numberingand subdivision in the text are mine.

[352] Thurneysen, *Bürgschaft*, pp. 32–3. For a more complete analysis of *Slán nAitire Cairde*, albeit with some unresolved issues, see Bemmer, 'The early Irish hostage surety', 13–16.

before meeting the *aitire*.[353] From there, he would be able to summon the particular *aitire chairdi* responsible for the offender. These enforcers can be seen as arranged in Figure 8.

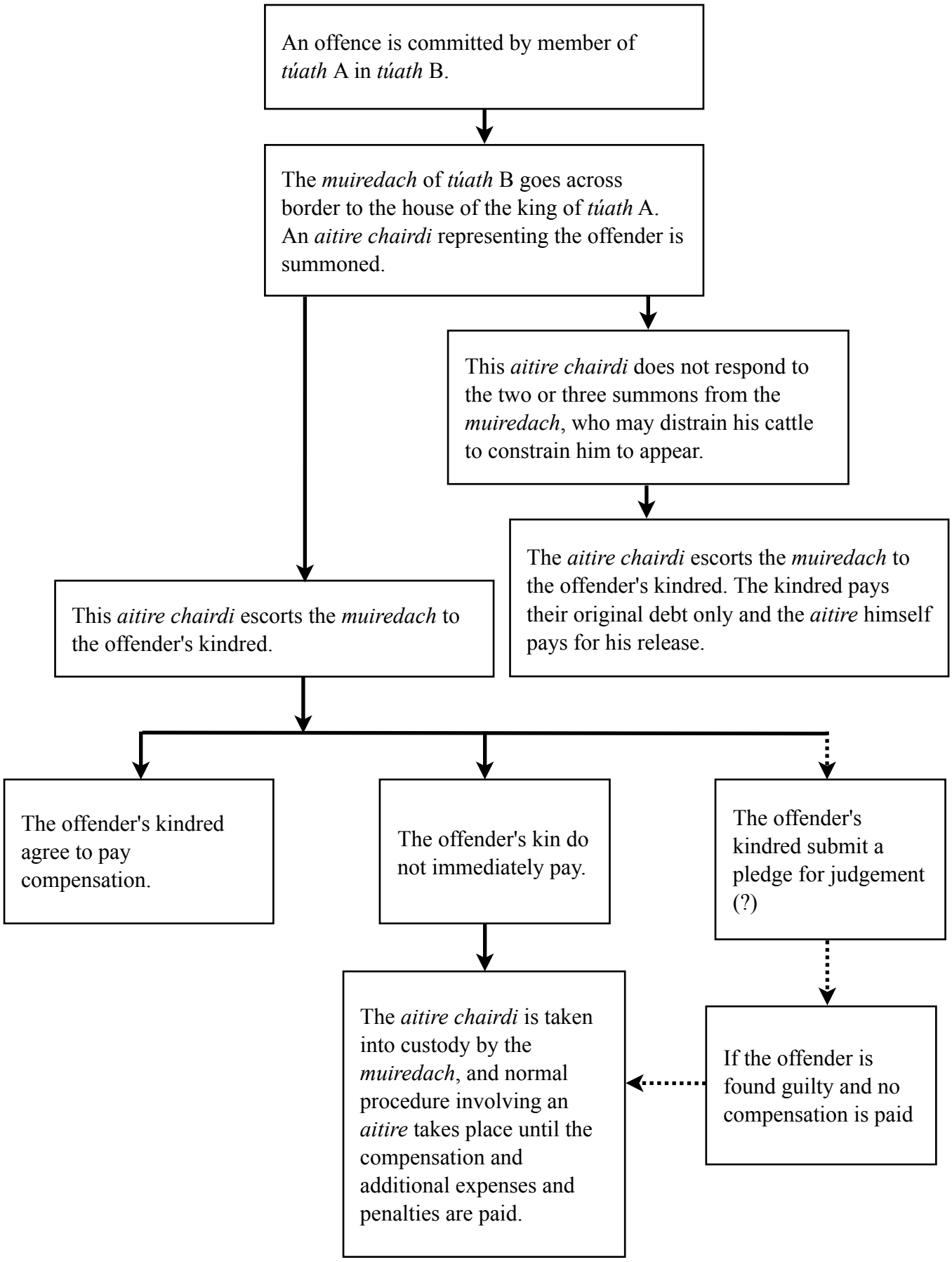
**Figure 8: Enforcing officers in *cairde* according to *Slán nAitire Cairde***


Once the *muiredach* meets the *aitire*, the text describes the *aitire* escorting the *muiredach* to the offender's kindred to negotiate or obtain payment for the offence. If they do not pay at that time (or, presumably, if they do not give a pledge for submitting the case to arbitration by a judge), then the *muiredach* takes the *aitire* into custody for a period, during which he might be released from duty by the kindred paying the original compensation due.[354] If that has not happened during this period of custody, then the *aitire* becomes forfeit and would be considered a *cimbid* ('captive'). This basic

[353] Note that a citation from *Bretha Cairdi* (*CIH* 791.35–6) concerning enactment of a *cairde* mentions the king swearing that *aitiri* would be released if an inter-territorial dispute occurs–it is probably at this time that the individuals acting as *aitiri chairdi* would be arranged and named. See section 2.2.1.

[354] Additional information concerning pledging in inter-territorial situations is provided by an Old Irish citation from *Bretha im ḟuillemu gell* §67: *Nach duine do-rata a gell ⁊ fo-coisle íarum i cáin no chairde direnar lánlóg amail bith sét inna beth cuit dó* ('any person who may give his pledge and subsequently removes it in a *cáin* or a *cairde*, [compensation] is paid like an article in which he has no share') [normalised from *CIH* 477.14–15, trans. Bemmer, forthcoming]. The kind of compensation being paid is certainly in question here. For some clues we might turn to the content of §68: *Nach duine dombera a gell ⁊ fochoisle na bi i cain no chardde direnar lanlog enech ind ir ara foxlaiter la taisecc in gill inna don in cetna* ('Any person who may give his pledge and removes it, and it is not in a *cáin* or a *cairde*, the full honour-price of the man from whom it is removed is paid, together with restoring the pledge to the same place') [normalised from *CIH* 477.18–19, trans. Bemmer, forthcoming]. Naturally, §67 is presented in opposition to what is paid in *urradus* in §68, which is clearly payment of honour-price and restitution of the item pledged. Are we to assume the same is implied for §67, or are we meant to understand, in the absence of any explicit mention of *lóg enech* (unless the form of the verb *do-ren* here is meant to imply payment of *díre*, its verbal noun, specifically referring to honour-price here rather than just general compensation) that instead this is a different kind of compensation appropriate for pledging in an inter-territorial offence, perhaps playing on the idea that goods crossing a inter-territorial border typically cannot be returned?

**Figure 9: Procedure in *Slán nAitire Cairde***



procedure is illustrated in Figure 9. At this point, the *aitire* must now make payment on behalf of the party for whom he went surety; *Slán nAitire Cairde* describes the details of this process thus:

> teit ind ait*ir*e laisin m*ured*ach. anaid lais combi dilis. gellaid .uii. cumal*a* de. hicthi fadesin 7 ic*aid* fiach cairde. do-tet iar suidiu cosin fine c*et*na. as-renat side do co fa-di, ar is diabladh fri helud.
>
> The *aitire* goes with the *muiredach*. He stays with him until he is forfeit. He gives a pledge for [i.e. that he will pay] seven *cumala*. He pays that and he pays the fines of *cairde*. He goes after that to the same kindred. They pay him twice, since it is double for evasion [of a legal obligation].[355]

The eighth-century legal text *Berrad Airechta* ('Synopsis of the court') provides a similar account but adds a few more details:

> Caite a-ssl*an* na ait*ir*e? .i. a fomeilt 7 a i*m*luath 7 a gni*m*, 7 log .uii. cumal niath iar ndithmaim .i. lógh cimedha, ar is cimidh i*n*d ait*ir*i iar ndith*m*aim fuirri. as·comræ, ar at·rean-si huil*e* don cach f*r*is·tét, am*ail* ron·gab ait*ir*e cairde, ar is i cairde cit[a]·roibi ait*ir*e luigi.
>
> 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 *cumal*s of a warrior after forfeiture, i.e. the [ransom] price of a captive, for the *aitire*-surety is a captive after falling forfeit, [and the double of?] what he has paid, for he pays all to each person against whom he acts as surety, as it is with an *aitire*-surety of a *cairde*, for it is in respect of a *cairde* that there first was an *aitire*-suretyship of an oath.[356]

So the *aitire* must give a pledge to pay the ransom price of seven *cumala* then pay the amount along with the *fiach cairdi*, that is, the original amount that the offender owed. Then the *aitire* may claim back from the offender's kindred twice the original amount, his seven *cumala* ransom price, and, as Fergus Kelly suggests, his honour-price on account of the indignity of being held as a captive.[357] The compensation that *Berrad Airechta* states the *aitire* is owed for maintenance, disturbance, or missed work probably refers to expenses he can claim if he is released by the kindred paying the debt while he is in custody *before* forfeiture, as Kelly interprets it.[358] The oath which an *aitire luigi*

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[355] *Slán nAitire Cairde* §3 (ed. Thurneysen, *Bürgschaft*, pp. 33); *CIH* 574.27–30, 893.8–10.

[356] *Berrad Airechta* §67, Thurneysen, *Bürgschaft*, p. 24; trans. Stacey, '*Berrad Airechta*', p. 223, though keeping *cairde* untranslated; *CIH* 597.26–9.

[357] Kelly, *GEIL*, p. 173.

[358] Kelly, *GEIL*, pp. 172–3.

swears, given in detail in *Berrad Airechta* §65, includes a section on the forfeiture period.[359] Slightly different translations by Robin Stacey and Fergus Kelly affect the interpretation of this aspect of legal process. This part of the oath concerns the time when the *aitire* becomes forfeit, stating: *Toing do dia benai foria aurlithe…co tumidiu cip no carcræ conut foaslichter as fiachaib no con ruighle dit fadein iar ndithim* ('Swear by God that you will be ready and willing to remain in stocks…until you be freed therefrom by debt-payments [by the principal], or until, having become forfeit, you give a pledge for yourself [i.e. to pay the normal ransom fee]').[360] For the last part, Stacey has 'or until you can give a gage for yourself after the forfeiture [period]'.[361] The difference in interpretation here is whether the *aitire* can give a pledge for his release as soon as the custody period ends and he becomes a forfeited captive, or instead if he must wait a set amount of time during a 'forfeiture period' (perhaps, like the custody period, another ten-day period) before he could give such a pledge. The latter would result in, like the custody period, a set period during which there was pressure put on the offender to pay up, only here the pressure would be significantly increased from the custody period, since his *aitire* would be suffering the indignity of being a captive.

Turning to the concept of *cairde* in *Críth Gablach*, we may infer what grades of nobles seem to have functioned as those figures mentioned in *Slán nAitire Cairde*, *Berrad Airechta* and *Bretha Cairdi*. We may start with *Críth Gablach*'s account of the *aire tuísea*'s functions in *cairde*:

> Aire túise, cid ara n-ep*err*? Arindí as toísech a ceníul 7 dofet airig n-ard... lánchongnam i túaith do aidbdenaib, do noillechaib, do gi[u]ll, do gíall, do chairdiu tar cenn ceníuil tar crích 7 i tech flatha.
>
> *Aire tuísea*, why so is he named? Because he is the leader of his *cenél* and he precedes an *aire ard*… [he is of] full assistance in the *túath* [to the king] for pleadings [i.e. from a lord representing his kin or clients], for oaths, for pledging, for hostageship, for *cairde* on behalf of his *cenél*, across the border and into the house of a[n external?] ruler.[362]

Elsewhere, *Críth Gablach* has a passage of significance for the *aire tuísea* (or *toísech* as he is referred to here):

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[359] *Berrad Airechta* §65, (*CIH* 597.6–25), trans. Stacey, '*Berrad Airechta*', p. 221–3. It is here that *Berrad Airechta* mentions the forfeited *aitire* actually giving a pledge to pay the ransom fee mentioned in *Berrad Airechta* §67.

[360] *CIH* 597.21–3; Kelly, *GEIL*, pp. 172–3.

[361] Stacey, '*Berrad Airechta*', p. 222.

[362] *CG* ll. 386–7, 411–13.

> Dicoissin cetheora déisi do flaithib...a dán i túaith, im dán toísig nó thánaisi tuisig…
>
> There are four kinds of *déis* for lords...his office in the kingdom, including the office of leader or second-in-command to the leader...[363]

As we can see, the nobility of this figure partly depends on his *dán i túaith* ('office in the kingdom'), which clearly seems to involve a variety of legal duties (pleadings, oaths, pledging, hostageship, and *cairde*)–however, it is important to note that neither of the above passages strictly indicate that he is the *only* one with this kind of position in his *túath*. The phrasing of his duties in *cairde*, acting *tar crích 7 i tech flatha* ('across a border and into the house of a[n external] ruler') on behalf of his *cenél* bespeak a single action, and it is this phrase coupled with all his other legal duties that give him similar duties to the *muiredach* of *Slán nAitire Cairde*, that is, acting on behalf of a victim and going across the border from his own *túath* to the house of the king of the offender's *túath* to summon the particular *aitire chairdi* representing the offender.[364] But who exactly would he represent? What does the word *cenél* here actually refer to?

I would be inclined to follow Thomas Charles-Edwards' interpretation of the word *cenél* in which he provides evidence for its use in a wider sense of kindred, such as that including a person's *íarfine* and *indfine*, that is to say, their five- and six-generation kin groups, respectively.[365] I would also follow his contention that the *aire tuísea* of *Críth Gablach* is the leader of a noble *cenél*, a wider kin-group, and thus being the same kind of figure as the *prímagae fine* mentioned in *OGSM* on *Tosach Bésgnai* (*SM2*, *12*).[366] In addition, for reasons stated below, I would suggest that his cross-border functions on behalf of his *cenél* could refer *both* to his noble kindred *and* any claim any member of his kindred might become involved in by virtue of being lords over their clients. The picture becomes a little clearer by looking at the *aire ard* and *aire désa* in *Críth Gablach*:

> Aire ard...Arcuirethar a chéliu cur 7 chairddiu…

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[363] *CG* ll. 322–3, restoring *tuisig* from MSS A, B, and C, for which see N. McLeod, 'Interpreting early Irish law: status and currency, part 2', p. 51. Aside from restoring *tuisig*, I use the translation of T.M. Charles-Edwards, '*Críth Gablach* and the law of status', p. 58.

[364] Cf. the phrasing used of the *aire tuísea* in *Míadslechta*: *Aire tuiseo: do-fet fini comchenel do co rig 7 arros-labrathar* ('the *aire tuísea*: he leads a *fine* of the same *cenél* as himself to the king and speaks on their behalf'), *CIH* 583.28 (ed. Manning, *Míadslechtae: An Old Irish Law Text on Status*, p. 38; trans. Charles-Edwards, *EIWK*, p. 513).

[365] Charles-Edwards, *EIWK*, pp. 96, 512–13.

[366] *CIH* 912.2–6. For the *cenél* as the wider kin group, see *CIH* 744.1, 2017.1–2.

> The *aire ard*...He represents his clients in regards to contract and *cairde*...[367]

> Aire désa...Imdích dliged a chéle cintaib cuir, cáin, cairddi[u] co neoch atallen...Atasuidi for sobus íar córus fĥine 7 túaithe 7 fĺatha 7 ecalsa 7 rechtge 7 chairddi.
>
> The *aire désa*...He protects the rights of his clients in regard to liabilities arising from contracts, *cáin*, *cairde*, and whatever follows therefrom...He legally binds them to good conduct with regards to the legal order of kindred, kingdom, lord, church, *rechtge* [enacted law of an overking] and *cairde*.[368]

According to the above suggested model, both of these nobles would be part of the wider noble *cenél* headed by an *aire tuísea*. The key concept here is that both nobles are acting on behalf of their clients in *cairde*, thus fulfilling similar roles. The *aire désa* both protects the rights of his clients with regards to claims they have in *cairde* and legally binds his clients to observe processes of *cairde*–the former would seem to imply the *aire désa* would serve as an *aidbden* ('legal representative') for his clients against whom a cross-border offence had been committed, in the sense of liaising with the *aire tuísea* with regard to the *aire tuísea*'s own function as *lánchongnam i túath do aidbdenaib* ('full assistance in the kingdom for pleadings').

Thus, according to this model, if one of his clients had a claim against someone from another kingdom, they would notify their lord, an *aire désa*, who would notify the head of his wider kin-group, an *aire tuísea*, who, upon gathering various claims against that kingdom, would go across the border and act as a *muiredach*-type figure. However, as we see the *aire désa* also legally binds his clients to observe *cairde*–this has a strong air of the lord functioning as an *aitire chairdi* for cross-border claims against his clients. The *aire ard*'s functions in *cairde* are not quite so detailed as the *aire désa*. While the verb *arcuirethar* could mean either that 1) he acts as an *aitire chairdi* for claims against his clients from a foreign kingdom, or 2) as an *aidbden*, forwarding claims against a foreign kingdom from his clients to the head of his wider kin-group, an *aire tuísea*, it may well mean both.

So the model we have from comparing *Críth Gablach* with *Slán nAitire Cairde* and *Berrad Airechta* is one where an *aire tuísea* acting as *muiredach* for a claim from his kindred or his kindred's clients, comes from the victim's kingdom across the border to the king of the offender's kingdom and therefrom summons the particular *aire ard* or *aire désa* who acts as *aitire chairdi* for the offender. If there were a cross-border claim against a particular noble *gelfĥine* or *derbfĥine*, and if

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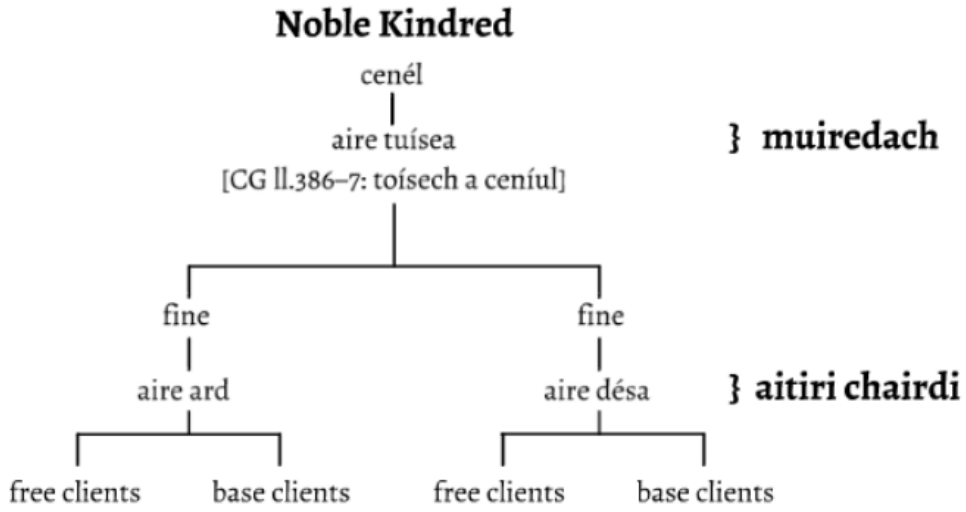
[367] *CG* ll. 368–74.

[368] *CG* ll. 328–43.

Thomas Charles-Edwards is correct in asserting that a noble *cenél* (headed by an *aire tuísea*) is a larger group including the *íarfine* and *indfine*, then we would also expect the head of the noble *gelfine* or *derbfine*, who might be either an *aire ard* or *aire désa* to act as *aitire chairdi* for that particular kindred. This would neatly distinguish between the roles of *muiredach* and *aitire chairdi* among noble kindreds. This would also mean that there could be a variety of different people who might act as *aitire chairdi* within a single kingdom for any given claim with another kingdom, depending on who the offender is. Figure 10 illustrates this model.

**Figure 10: Proposed structure of a noble *cenél* with suggested positions of nobles in *cairde*.**




There is one final figure associated with *cairde* in *Críth Gablach*, the *aire échta*, 'noble of vengeance'.[369] The core idea here is that there are two kingdoms in which there is already a *cairde*, meaning legal processes for handling cross-border compensation, and if for whatever reason compensation is not provided to the victim's kindred (either by the offender's kindred or by an *aitire chairdi*) within a month, then the *aire échta* could gather a group from the victim's *gelfine* ('three-generation kin-group) and head to the offender's kingdom to seek *dígal* ('redress'), which could mean forcible capture or killing of the offender. Figure 11 below comprehensively illustrates all these enforcers in a *cairde.*

[369] *CG* ll. 358–66. For a retranslation and logical explanation of this passage, see McLeod, 'The lord of slaughter', pp. 107–111.

Now this model would appear to have slight differences with a few Old Irish glosses on citations from *Di Dligiud Raith 7 Somaíne la Flaith* (*SM2*, *18*), which comprise part of the Old Irish glossing of the *Senchas Már* (*OGSM*).[370] These have to do with the repayment from an offender's kindred to an *aitire* who has been taken into custody for so long that he has become forfeit, and thus who is due a *meth* 'doubling-fine' for having to pay compensation on the kindred's behalf. Neither *Slán nAitire Cairde* nor *Berrad Airechta* describe how the *aitire* might recover all the payment he is due from the kindred if they continue to delay repayment to him. Kelly suggests 'the *aitire* can distrain goods to this value from the principal'.[371]

**Figure 11: Enforcing officers in *cairde* according to *Críth Gablach* and *Slán nAitire Cairde***


This would be a logical suggestion, since distraint is often resorted to as the basic form of dispute settlement, but the glosses on *Di Dligiud Raith 7 Somaíne la Flaith* give a different scenario, which

370 See Breatnach, *Companion*, pp. 338–46.

371 Kelly, *GEIL*, p. 173. Indeed, that distraint could be used by an *aitire* to recover payment from the principal might be suggested by a passage in *Bretha Cairdi* concerning distraint, *CIH* 792.22–3: *se ba do gabail i nathgabail do cach duine i cairde, ł comad a crod uile cinmotha a .uii.mad, ł a crod uile cinmotha aenbó* ('Six cows to be taken in distraint for each [offending] person in *cairde*, or [if he does not have that many cows] the equivalent of all his property aside from a seventh or one cow'). This could hardly be for any other purpose, since distraint is stated to not occur typically in *cairde* (*CIH* 392.15–16, 1695.24–5) and cannot usually occur across territorial boundaries, the general rule stated in *Gúbretha Caratniad* §49, for which see Thurneysen, 'Aus dem irischen Recht III', p. 364. However, cross-border distraint is viewed as an option in *Echtrae Ferguso maic Léti* when cross-border *éraic* for Dorn was not paid under the terms of an inter-territorial protocol, here what seems to be a *cairde* (the term *ógcórae* 'full peace' is used), for which see McLeod, 'Fergus mac Léti', pp. 6–7, 16–17.

also raise some further implications about the *aitire cairdi*.[372] I provide the text edited by Stacey accompanied by a slightly modified version of her translation:

> Slan cairde .i. ma dollece nech forsin aitaire fiachu cairdi do er[aic] (?) dia chinn, is rath cin athchor sin forsan fine mana errither fo cétoir cona meth coir, nibi rath for ceile a meth-sin ond flaith …Rath naitire .i. aitire cairde son bis tar cenn thuaithi iarna aitite ocus iarna tabuirt a slain acht bid aitire techtæ. Cadead-side? ni anse, tanusi tuisig son du a natamar dano tanisi la tuaith uile; ni didiu icas-[s]ide fri cach is rath fair ocus ni athcuirither a frithise.
>
> The compensation of a *cairde*–that is, if anyone should cause the *aitire* to pay the fines [for an offence under] *cairde* on his behalf, that [becomes] a fore-grant upon (viz. for which food-renders are due from) the kin-member[373] that is not (viz. cannot be) returned unless [the fines are] paid immediately with their proper doubling-fine; that doubling-fine [itself] is not [considered as] a fore-grant on a client from the lord.
> …The fore-grant of an *aitire*, i.e. that is [the fore-grant] of an *aitire chairdi* who [acts as surety] on behalf of his *túath*, [which fore-grant is given] after he has been acknowledged, and after he has been given his compensation[374] provided that he is a proper *aitire*. What are those [fore-grants]? Not difficult, that is [the fore-grant] of the *tánaise tuísig* where he is acknowledged, moreover, as a *tánaise* by all the kingdom; anything then that that person pays in respect of any person is a fore-grant upon him (viz. the offender) and is not (viz. cannot be) returned.[375]

The first thing we can note here is the compensation due for the original offence under *cairde*, now doubled for the offender's kindred's initial evasion of paying it, is due regardless. These glosses understand the rest of the compensation due to the *aitire* to be considered as a *rath cin athchor* ('fore-grant without unpenalised return') to initiate a contract of base clientship, thereby forcing the offender (and perhaps the offender's kindred, given the potential ambiguity of the term *fine*) into a

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[372] Cf. the circumstances described in *Bretha Nemed Toísech* where a poet may use distraint when his *trefocal* has been evaded, for which see *CIH* 2227.4–5; Breatnach, 'On Satire and the Poet's Circuit', p. 28. See also the sanctions appropriate for different grades of people in society in *CIH* 884.1–4.

[373] Or 'kindred', since it is not entirely clear whether individual or collective meaning is meant here, though the individual meaning would allow for the offender to be a member of the *aitire chairdi*'s kindred, which would certainly be a possible situation. See L. Breatnach, 'On old Irish collective and abstract nouns, the meaning of *cétmuinter*, and marriage in early mediaeval Ireland', *Ériu* 66 (2016), p. 4.

[374] One would imagine this would only be the doubling-fine, as the rest of the compensation is considered as a fore-grant of stock, as interpreted by Stacey, *The Road to Judgment*, p. 91.

[375] Stacey, *The Road to Judgment*, pp. 91–2; *CIH* 919.6–8 and 919.40–920.2. My modifications in the translation include retaining *tánaise tuísig* in the original and dispensing with the outdated translation of *túath* as 'tribe'.

subordinate position with regard to the *aitire*, as Stacey has explained.[376] This would have a particularly penal function to it if an offender already had another active contract of base clientship with another lord, in which case he would be initiating a second contract of base clientship (a disadvantageous situation), or if a (noble) offender only previously had a contract of free clientship, and now had the additional legal and financial obligations of a contract of base clientship on top of (or place of) the former.[377]

What is more notable is the association of the *aitire chairdi* here with a *tánaise tuísig*, and Stacey's interpretation of the implications therefrom. Stacey translates the *tánaise tuísig* as 'tanist of the chief' understanding this figure to be equivalent to the *tánaise ríg*.[378] She also assumes the *toísech* is the term for a 'chief' of a *túath*, which is, as far as I am aware, unattested in the Old Irish period as referring to a king.[379] To sort out this matter, first we must critically examine and better identify the *toísech* and *tánaise tuísig* within the context of other Old Irish legal texts. As detailed above, *Críth Gablach* explicitly refers to the *aire tuísea* as *toísech* of his *cenél*.[380] Another passage, which describes things that ennoble a lord within a kingdom, mentions a *toísech* alongside a *tánaise tuísig*:

> Dicoissin cetheora déisi do ḟlaithib...a dán i túaith, im dán toísig nó thánaisi tuisig…
>
> There are four kinds of *déis* for lords...his office in the kingdom, including the office of leader or second-in-command to the leader...[381]

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[376] Stacey, *The Road to Judgment*, pp. 91–2, especially p. 92 n55 where she cites a passage from *Berrad Airechta* (*CIH* 591.36–7) concerning a similar reduction to base clientship when property due to someone is not returned. Consider also the situation of a poor offender who is unable to pay onerous fines, such as in the narrative of Librán in *VSC* II 39, who is rescued from being held in chains by a wealthy kinsman, to whom he vows to serve thereafter. A similar situation seems to be implied in Heptad 72, which mentions a *fuidir* rescued from a pit. See Kelly, *GEIL*, pp. 215–9.

[377] See Kelly, *GEIL*, pp. 31–2.

[378] See especially Stacey, *The Road to Judgment*, p. 92n60.

[379] A mistake which Jaski, *Early Irish Kingship and Succession*, pp. 258–9, follows. Note in particular a phrase from an Old Irish passage on legal advocates in OGSM (CIH 896.37–9; ed. and trans. Breatnach, 'Lawyers', pp. 11–12), which distinguishes between *toísech* and *rí*: *trian cach lesa dó cachdesin [leg. cadesin] ⁊ is é in fer-sa a[d]-gair ó tosach [leg. thoísech] túaithi ⁊ ó breithemain ⁊ ó rig* ('a third of [the amount at issue in] every case to him himself, and it is this man who pleads a case on behalf of a leader of a *túath* and a judge and a king').

[380] *CG* ll. 386–7.

[381] *CG* ll. 322–3, restoring *tuisig* from MSS A, B, and C, for which see Neil McLeod, 'Interpreting early Irish law: status and currency, part 2', p. 51.

These are portrayed as various positions within a kingdom–surely the *toísech* here indicates the *aire tuísea*.[382] Building on the aforementioned concept of the *aire tuísea* as the head of a (powerful) noble *cenél*, a wider kin-group encompassing *íarfine* and *indfine*, it would be wisest to interpret *tánaise* as a deputy leader rather than 'heir' or 'tanist', interpretations which are fraught with difficulties.[383] Simply because *Críth Gablach* mentions elsewhere another *tánaise*–the *tánaise ríg*–does not justify assuming that the *tánaise tuísig* here is equivalent to the *tánaise ríg*. The *tánaise tuísig* rather seems to be a deputy head of the *cenél*, an interconnected group of noble kindreds (as the *toísech* is the head of a *cenél*). This would be a position that, like the *toísech*, would likely entail political, military, or legal obligations (or perhaps all of these), and we would expect the *tánaise tuísig* himself to be an *aire ard* who would have much of the kingdom either within his extended kindred or as his clients (or within the hierarchy of clients below them), thus in a natural position anyway to represent most of the people in the kingdom.[384] One of his obligations, according to the above Old Irish gloss on the citation from *Di Dligiud Raith 7 Somaíne la Flaith* would have been to serve as an *aitire chairdi*. However, it is difficult to reconcile the material here fully with the aspects of *cairdi* enforcement contained in *Críth Gablach*, since it does seem as though this gloss assumes only one *tánaise tuísig* might exist in a kingdom, since he is acknowledged as a *tánaise tuísig* by the entire *túath* (on whose behalf he acts as the only *aitire chairdi* in that *túath*). If the glossator's understanding of legal personnel and procedure in *cairde* was consistent with the model above, then this glossator would also be envisioning only one (powerful) non-royal noble *cenél* in a kingdom, or at least only one noble kindred in a kingdom that has a chosen *toísech* and *tánaise tuísig*. It may also be possible that there could be more than one *tánaise tuísig* in a kingdom (and thus more than one noble *cenél*) in a kingdom, and that each would *represent* his own *cenél* (and presumably the hierarchy of clients thereunder) rather than the entire kingdom, but since he would be acting under

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[382] Note that *Tecosca Cormaic* §34 (ed. Meyer, *The instructions of King Cormac mac Airt*, p. 50) mentions a *toísech* as part of the household of a king.

[383] See, for example, Jaski, *Early Irish kingship and Succession*, pp. 251–6; M. McGowan, 'Royal Succession in Earlier Medieval Ireland: the Fiction of Tanistry', *Peritia* 17–18 (2003–2004), pp. 257–81.

[384] Since it is an integral concept in *Críth Gablach* for a lord to represent his clients in matters of *cairde*, as discussed above in this section with regards to the *aire désa* and *aire ard*. Also note that *Córus Bésgnai* §26 describes a lord giving pledges to guarantee both his *fine* and his *acillne* (and an overlord to guarantee his subkingdoms) paying first fruits and tithes, thereby illustrating the kind of responsibility that a lord would have both for kindred and clients (*CB* §26). This fits nicely with the account in *Críth Gablach* of the *aire ard* and *aire désa* representing their clients in inter-territorial law, and if they are heads of their respective *gelfini* (which is likely), representing the members of that *gelfine* as well. Further significant evidence lies in the semantic range of the term *fine*, which can mean anyone who is adopted kin or even a 'kin-like' dependent of the lord (such as a *fuidir*), as given by Charles-Edwards, *EIWK*, pp. 44–5. Naturally there was some overlap between kin and clients, as some kin were clients, though there were also clients who were not kin of the lord. Cf. Breatnach, *CB*, pp. 28, 61 on the *finib aicnetaib 7 ecradaib* ('natural and adopted kin-members').

the stipulations of *cairde*, he would be (one of several legal officers) acting on behalf of the kingdom, and thus each person in various *cenéla* acting as a *tánaise* would require acknowledgment by the entire kingdom to serve in such a position.[385] However, this may be stretching the phrase *tar cenn* a bit too far. Doubtless there are unwritten implications not mentioned in this gloss from *Di Dligiud Raith ⁊ Somaíne la Flaith*, which would clarify the precise circumstances of how such a *tánaise tuísig* would function as an *aitire chairdi* and whom precisely he would represent.

Thus, while these apparent discrepancies may reveal some diversity in practice in the Old Irish period regarding the number of people functioning as *aitiri chairdi* within a kingdom and what precise groups of people they would represent, the overall model still stands: an *aitire chairdi* would be a member of a non-royal noble kindred. This makes logical sense in terms of legal officers within a *túath*. The king is the main legal representative of the *túath* with regard to other *túatha*, who gives a pledge on behalf of his *túath*, who makes an oath with another king to enact a *cairde*, or who serves a judicial function in inter-territorial affairs, as *Críth Gablach* details.[386] He has legal officers to serve the other functions, such as prosecution of legal claims against offenders from a *cairde*-kingdom through a *muiredach*, who acts on behalf of his (noble) wider kin-group and probably in coordination with *aidbdena* from that kin-group who advocate for their clients, and representation for offenders through the use of an *aitire chairdi*, of which there might be more than one in a kingdom. All of these logically separated but intertwined functions would serve to bind a king close together with noble kindreds in his kingdom by creating a strong legal interdependence within that kingdom.

The complexities concerning various models of enforcement of *cairde* do not end here, though. A lengthy Middle Irish passage from *Bretha Cairdi* details a slightly different situation involving the procedure in *cairde*:

1) Toic*h*id*h* urradais du beith i cairdi uair na hi*n*nis fear cairdi toic*h*id*h* and[387]

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[385] We would expect to see a multiplicity of *tánaise tuísig* within a kingdom (or overkingdom, rather) even more as we move into the period of increasing political consolidation from the late eighth century where *dux* (and later *toísech*) begins to appear in the annals to denote the leading figures of ruling kindreds in certain territories that have lost their status as a *túath* and their ability to have an actual *rí*. This would result in several such territories being subsumed within a larger kingdom (perhaps what the unclear term *mórthúath* denotes), in which these various territories would be 'governed' by the heads of their noble (but formally royal) kindreds (the *dux* or *toísech*), each of which with their own deputy head (the *tánaise tuísig*). See Simms, *Gaelic Ulster in the Middle Ages,* pp. 27–30.

[386] *CG* ll. 495–8.

[387] This line, though not in Thurneysen's edition, comprises part of the passage, and thus has been included from *CIH* here.

2) ⁊ nugu·toibhghenn nech i cairdi act aitteri, ⁊ is amlaidh da·niat a tobach: aitteri in feicheman toicheda do dul imach dochum aitteri in bidbadh.
3) ⁊ a dul cu teach righ in bidhbadh in cetadhaigh, ⁊ a lanbiathadh daibh cidh socaidhi bet.
4) ⁊ a ndamh choir du beith mar aen riu o ṡein immach. ⁊ a dula sidhe cu teach oitteri in bidbadh ⁊ a beith and icoret (l. airet) aitteiri in bidbadh ac tabairt a toicheda arin bidbaidh.
5) ⁊ in uair thair daibh toichidh do thabairt, tuidhecht do aittiribh in feicheman toicheda immach and sidhe ⁊ aittiri in bidbad du thabairt leo fo eccosc athgabala, ⁊ a beith acu amuich ina tigib re ré dechmaidhi.
   a) ⁊ samaisc gellas gach n-aidchi risin re sin gunudh bo mor iar maitin, gunadh amlaidh sin reithit deich mba na fomalta orro.
6) ⁊ tuidhecht daibh immach; ⁊ madh ferr re haittiribh in bidbadh athghabail du ghabail, cungnat oittiri fecheman toicheda riu; madh ferr leo, icat fein.
   a) ⁊ ma tarraidh in bidbu aenboin dibh can ic, is in oenbo do-intai tricait bo gan fuillium, gan los, gan gert.
   b) ⁊ maini·tarraidh ní dib can ic, is fuilliumh ⁊ los ⁊ gert du rith riu.
7) ⁊ in n-uair ra·sia leo sein immach, tabrat a toichidh arís im deich mbuaibh na fomalta, ⁊ a-ccuic dib sidhe cu fuilliumh ⁊ los ⁊ gert, ⁊ a cuic gan fuilliumh.
8) Is ann ata eneclann dona hoitiribh ⁊ fuilliumh ⁊ los ⁊ gert, in n-inbaidh ra·leicc in bidbhu a n-elodh, resiu ra-iccsatar ní immach ⁊ nucur·icsat ní acht i forba na ré i·ndlegar dibh — dia chaecaighdhis fri goit ⁊ dia mís fri guin duine — ⁊ nucu·tarraidh bidbu ní duna fiachaib gan ic.
   a) Mainir·leic a n-elodh reimi eitir, no, cia ra·leic, masa thoisci ra·icsat na fiachu immach inná in ré ari·ndlegar dibh, no ma tarraidh in bidbu ní dibh gan ic, nucun·uil eneclann ann na fuillium.

1) A suit incurring liability happens in *cairde* when a person covered by a *cairde* does not announce a suit there,
2) and it is not possible for anyone to levy [fines] in *cairde* except for *aitiri* and it is thus that they do the levying: the *aitiri* of the plaintiff go out to the *aitiri* of the offender.
3) And the first night they go to the house of the king of the offender (i.e. in the offender's kingdom) and they receive full hospitality, however many their company be.
4) But from then on only their proper retinue should be with them. And they [i.e. the plaintiff's *aitiri*] go to the house of the offender's *aitiri* and remain there while the offender's *aitiri* obtains justice from (lit. 'gives the suit before') the offender.
5) And at the end of the initial period for giving compensation (lit. 'the time before the suit for giving'), the *aitiri* of the plaintiff come from there [back to the plaintiff's kingdom] and they bring the *aitiri* of the offender with them as in the manner of distraint, and they remain with them outside [of the offender's kingdom] in their houses until the tenth night.
   a) And each night during this period they secure by pledge a three-year-old dry heifer so that after morning [the value of] a full cow is made, so that in this way ten cows for maintenance [of the *aitire*/*aitiri* in custody] are taken [lit. 'driven before them'].[388]

[388] That is, one *samaisc* ('three-year-old heifer') is given at night and another given in the morning (i.e. one for each 12 hour period), and thus the value of a *bó mór* ('full cow') is made in the morning.

6) And then they come out [back to the offender's kingdom?]; and if the *aitiri* of the offender prefer to recover the debt by distraint, then the plaintiff's *aitiri* will help them; or if they prefer, they [i.e. the offender's *aitiri*] pay themselves [at that time].
   a) And if the offender obtains a single cow of them without payment, that is the cow that reverses [payment of?] thirty cows, without interest, calves, or produce [i.e. milk and manure].
   b) But if the offender does not obtain anything of them without payment, interest, calves, and produce are added to it.
7) And when the payment might reach them, let them [i.e. the plaintiff's *aitiri*] give back the ten cows of maintenance, five of them with interest, calves, and produce, and five without interest.
8) It is thus there is honour-price for the [plaintiff's] *aitiri*, and interest, calves, and produce, when the offender has evaded his obligations, and before they have paid something out and they have not paid anything except at the end of the period in which it is owed to them – on the fifteenth day for theft and after a month for physical injury of a person – and the offender has not obtained anything of the fines, without compensation.
   a) If he has not evaded his obligations before, or if he has [but] if they [i.e. the offender's *aitiri*] have paid the fines to them [i.e. the plaintiff's *aitire*] earlier than the time at which it is owed to them, or if the offender has obtained anything of them without compensation, he does not have to pay honour-price nor interest.[389]

Firstly, the passage here unambiguously refers to multiple *aitiri* being involved both for the offender and for the plaintiff, with *do aittiribh in feicheman toicheda* and *re haittiribh in bidbadh* occurring in sections 5) and 6), respectively.[390] The *aitiri* of the plaintiff here assume the role of the *muiredach* of *Slán nAitire Cairde*, a marked difference between the latter text and *Bretha Cairdi*. However, that difference may not be so marked as initially seems. *Berrad Airechta* mentions a *aitire nadma* '*aitire* of enforcing', who may be an enforcer for inter-territorial claims and thereby the main figure behind *tulnaidm túath* ('an immediate *naidm*-suretyship of *túatha*') and equivalent to

[389] Thurneysen, *Bürgschaft*, pp. 63–5; *CIH* 115.22–116.2.

[390] Thurneysen, *Bürgschaft*, p. 66, postulates a reason for multiple *aitiri* functioning for a single offender: 'Da es sich bei Verletzung des Cairde oft um höhere Bußsumen handelte (bei Diebstahl, Verwundung, Tötung im andern Gebiet), so war eine größere Anzahl von aitire zur Sicherung erforderlich'. However, this idea does not consider the single *aitire chairdi* presented in *Slán nAitire Cairde, Berrad Airechta*, and the Old Irish glossing on *Di Dligiud Raith ⁊ Somaíne la Flaith*.

the *muiredach* of *Slán nAitire Cairde*.[391] If that were the case, then this difference would just be in the number, rather than type, of people involved.[392]

Other notable differences in aspects of legal procedure are also present. As presented above, the general picture of legal procedure we have from *Slán nAitire Cairde* and *Berrad Airechta* is as follows: A) if the offender does not pay within a given time period (typically ten days), an *aitire* representing the offender is taken into custody by a external *muiredach* for a ten-day period; B) following the ten-day custody period, if the offender has still made no payment, the *aitire* becomes forfeit and must redeem himself by giving a pledge to pay the seven *cumala* ransom fee; C) the *aitire* returns to his kingdom and sends over the payment of seven *cumala* along with the original fines of *cairde* that were due; D) he goes to the offender and claims his honour-price for the indignity of being a forfeited captive, the seven-*cumala* ransom fee, twice the original fine, and the expenses for maintenance and missed work.[393]

In contrast, the present passage from *Bretha Cairdi* only follows A) of the above legal procedure. At the end of the ten-day custody period, if no payment has been delivered, the offender's *aitiri* are escorted back to their own kingdom by the plaintiff's *aitiri* as stated in section 6) of the above passage from *Bretha Cairdi*. At this point, it seems that the final period for the offender to deliver payment has ended, and the offender's *aitiri* either make the payment themselves or, together with the plaintiff's *aitiri*, extract the payment from the offender, according to section 6).[394] If the *aitiri* of the offender choose to pay at the end of the custody period, presumably still before the fifteen-day period (for theft) or thirty-day period (for physical injury) ends, as detailed in section 8), then this would alleviate the offender from having to pay interest on the ten cows of

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[391] *Berrad Airechta* §§64, 65c (*CIH* 597.5–6, 597.14–15). This idea builds on that of Stacey, *The Road to Judgment*, p. 260 n28, who in discussing the term *tulnaidm túath* in *Berrad Airechta* §65c suggests that a certain *naidm* mentioned in *Bretha Nemed Toísech* (*CIH* 2227.20–8) may in fact be an inter-territorial enforcer and thereby equivalent to the *muiredach* of *Slán nAitire Cairde*, since, as she notes, 'the word *naidm* can be used to refer to anyone involved in enforcing any type of claim.'

[392] As for the composition of the group of *aitiri* prosecuting the claim on behalf of the plaintiff, one might compare the hierarchy of lords to whom part of the compensation for an offence goes in the tract on the distribution of *cró* and *díbad* §4 (ed. Murray, 'A Middle-Irish tract on *cró* and *díbad*', p. 253), discussed in section 4 below.

[393] It is worth noting that the reimbursement for the *aitire* being held captive is equivalent to the total payment for a homicide (honour-price and *éraic*), so in effect this process gives the effect of paying for a life, only here it is a life that can be recovered.

[394] It would seem most logical and fitting with the other elements of legal process here that the ten-day custody period of the *aitiri* occurs during the last ten days of either the fifteen-day compensation period for theft or the thirty-day period for physical injury. This would result in mounting pressure during the final ten days of the period, at the end of which (but just before the period actually would end) the offender's *aitiri* can opt to pay on behalf of the offender as in section 6), or let the offender have one final (brief) chance to pay something towards the fines before the period ends and the extra fines are applied.

maintenance and honour-price of the plaintiff's *aitiri*.[395] This course of action likely assumes the offender has agreed to reimburse his *aitiri* for the payment they initially make to the plaintiff's *aitiri*. On the other hand, if such an agreement was not reached, and the offender remains obstinate in evading his legal obligation to pay anything towards the original fine before the requisite period has ended, then the offender faces the increased penalty of paying honour-price of the plaintiff's *aitiri* as well as interest (and other dues) on the ten cows of maintenance. Both parties of *aitiri* seem to extract this total payment from the offender shortly after the requisite period has ended, though in this case, the offender's *aitiri* might advance the payment due and later extract it from the offender.[396] Besides the offender's *aitiri* initiating the payment, there are two other exceptions that would not require the offender to pay the honour-price and interest, as noted in 8a): if the offender has paid at least something towards the fines before the requisite period has ended, or if the offender has obtained an exemption from paying the fines at all, presumably through judgement or other extenuating circumstances.

Some notable features in the model we have from *Slán nAitire Cairde* and *Berrad Airechta* are absent in this passage from *Bretha Cairdi*, such as forfeiture of *aitiri* and the doubling of the original payment due from the offender for evading the debt, and several other aspects of procedure are different. Given the later language, one immediately wonders if this material from *Bretha Cairdi* was in the original tract, and thus whether this represents a later form of legal procedure in *cairde* from that in the Old Irish material in *Slán nAitire Cairde* and *Berrad Airechta*. However, this is not necessarily the case. An Old Irish citation from *Cethairślicht Athgabálae* contains a list of situations in which a ten-day period of distraint is used, including *im inblegon naitiri cairde* ('concerning distraint of an *aitire chairdi*'), a lemma with gloss not only including very similar phrasing to the *Bretha Cairdi* passage, but also explicitly citing its source with the phrase *ader ann .i. Bretha Cairdi*.[397] The reason this appears in *Cethairślicht Athgabálae* is that although there is not normally any kind of distraint in *cairde* (as the glossator notes), any *aitiri chairdi* involved because of a cross-border offence may be taken *fo eccosc athgabala* ('in the manner of distraint') for a ten-day

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[395] It is clear from the phrasing and logic of sections 8) and 8a) that the honour-price mentioned here is that of the plaintiff's *aitiri* (rather than the *aitiri*/*aitire* of the offender, as it is in *Slán nAitire Cairde* and *Berrad Airechta*). This is especially so since it is stated that if the offender's *aitiri* pay on behalf of the offender, then the offender is not due to make an honour-price payment, but if his *aitiri* do not pay on his behalf, he is due to pay honour-price. In such a situation, this would hardly make sense as being the honour-price of the offender's *aitiri*.

[396] At the least, a glossator on *Cethairślicht Athgabálae* envisions that at the end of this period, the offender's *aitiri* themselves pay the honour-price of the plaintiff's *aitiri*, and them claim this amount along with the ten cows of maintenance and the original compensation from the offender. See *CIH* 1695.28–31.

[397] *CIH* 392.4–21; *CIH* 1695.23–31.

period, as stated in section 5) above.[398] Since the gloss in *Cethairślicht Athgabálae* cites this passage as belonging to *Bretha Cairdi*, one does wonder how possible it is to say that this was not part of the original text of the tract.

Ultimately, this brings us to the question of differences in practice in various regions or over various periods of time. First, we need to look more at the relationship between the texts dealt with here, and only then might we attempt to consider any possibilities of regional variation. While it has been established above how *Bretha Cairdi* and *Slán nAitire Cairde* have different models of legal procedure, there is a potential link between the texts, which requires attention. As examined in section 2.2.2.1 above, a short glossed passage of Old Irish on types of *cairde* follows the text of *Slán nAitire Cairde* in both copies.[399] The citations in this Old Irish passage are very similar to citations in *Bretha Cairdi*, though the glosses differ somewhat.[400] Regarding this passage following *Slán nAitire Cairde*, Breatnach states that 'as the second part is found in both versions, it is hardly to be taken as separate', but it certainly concerns a different topic about *cairde* from the procedural focus of *Slán nAitire Cairde*.[401] Since the just previously discussed material concerning procedure in *Bretha Cairdi* is at odds with several aspects of procedure in *Slán nAitire Cairde*, one becomes reluctant to ascribe the material in *CIH* 892.39–893.10 (574.18–29) to *Bretha Cairdi*, even though material in *CIH* 893.11–16 (*CIH* 574.30–5) is clearly from *Bretha Cairdi*. Thus, the material in *Slán nAitire Cairde* would seem to originate from a different source than the passage on types of *cairde* following it. This is further emphasised in the way these two passages concerning *cairde* are arranged. As Binchy notes, the word *nī*, near the beginning of the more complete copy of *Slán nAitire Cairde*, suggests the original sentence heading the passage was an interrogative, as textbook prose is common for this section of *Cethairślicht Athgabálae* in the *OGSM*.[402] The following

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[398] Indeed, this entire process appears to be modeled on that of distraint, where following formal notice (*apad*), there is a delay (*anad*), following which removal of the cattle may occur (*tóchsal*/*tobach*), after which there is a period of delay (normally equal in length to the *anad*) while the cattle are impounded (*díthim*), culminating with the period of progressive forfeiture (*lobad*), where additional expenses are owed alongside the original debt. In a similar sense, following an offence under the terms of *cairde*, notice is given to the offender, following which there is a period where the offender may make payment (10 days) after which the *aitire* is taken and held in custody for a period (10 days), culminating in the forfeiture of the *aitire* where heavy additional expenses are owed. Also here, just as in distraint, the offender may offer to pay the original compensation due or submit to law at any point in the process. See Kelly, *GEIL*, pp. 177–9; *CIH* 413.29–30, 414.4–8.

[399] *CIH* 893.11–16; *CIH* 575.30–5.

[400] *CIH* 792.5–12. For a discussion on why these citations are best evidenced as being part of *Bretha Cairdi*, see Breatnach, *Companion*, p. 302.

[401] Breatnach, *Companion*, pp. 26–7.

[402] *CIH* 892.39j. For example, we see such interrogatives in *CIH* 893.11, 893.22, 893.23, 893.28, 893.34.

section concerning types of *cairde* begins with an interrogative, clearly switching topic but also, I would contend, separating material originating from different sources. The glossator of *OGSM* here has clearly taken a citation from *Cethairślicht Athgabálae* and used it as a lemma for this material from other textual sources.[403] However, any preceding interrogative implied by *nī* was replaced by the gloss *.i. slan naitiri cairdi*, the opening which Thurneysen used as a title for his edited version of this text. Such a gloss might suggest a question akin to that in *Berrad Airechta*: *caite a sslan na aitire?* ('what is the compensation of the *aitire*?').[404] Instead, though, from the subsequent 'answer' one would expect a rather different interrogative. Given all of the evidence henceforth presented, I would therefore suggest that the glossator cited material relevant to *cairde*, the topic of the lemma, from two different sources, one passage from *Bretha Cairdi* and the other containing the material now called *Slán nAitire Cairde*. The original identity or provenance of this latter text cannot be determined with certainty, though some tempting possibilities loom.[405] However, what can be said with relative certainty is that since it is at odds with *Bretha Cairdi*, it is unlikely to be from a *Senchas Már* text, if one accepts the *Senchas Már* is a compilatory lawbook that represents a unitary whole and therefore a unified legal outlook.[406] The *Senchas Már* is often viewed as a legal authority for the northern half of Ireland, as it has been argued recently that it was compiled at Armagh.[407] One would naturally look to Munster as another great source of legal influence and output, not least because of the mentions of Cork and Cloyne as centres of legal activity in the ninth-century text *Trecheng Breth Féne*.[408]

Munster is a possible location for at least some of the 'non-*Senchas Már*' texts, but of course this is by no means necessarily the case. None of the remaining texts dealing with legal procedure in

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[403] See Breatnach, *Companion*, pp. 26–7; *CIH* 401.13.

[404] *CIH* 597.26–9.

[405] For the name of another text concerning *cairde* (besides *Bretha Cairdi*) in which the material from *Slán nAitire Cairde* might possibly originate, a list of legal texts in *CIH* 1378.5–11 (cf. *CIH* 1931.35–40) mentions the title *Cáin Chairdi* (later called *Ríagail in Cairdi*). It is to be similarly wondered whether this might be a Munster text on *cairde,* given the Munster provenance of *OGSM*, for which see Breatnach, *Companion*, p. 344. But I am not aware of any surviving evidence to make any connection between such a *Cáin Chairdi* and the material in *Slán nAitire Cairde*. Nor is there much to go on to infer where *Cáin Chairdi* may have been authored, as the aforementioned legal list includes a mix of *Senchas Már* and non-*Senchas Már* texts.

[406] On this concept of Senchas Már representing a unitary whole, see Breatnach, 'On the Original Extent of the *Senchas Már*', pp. 1–43; *idem.*, *The early Irish law text Senchas Már and the question of its date*; *idem.*, *Companion*, pp. 310–14.

[407] See *ibid*.

[408] *Trecheng breth Féne* §§12, 16 (ed. and trans. Meyer, *The Triads of Ireland*, p. 2). The third legal reference in the text is Triad 21, which recounts Slane as *brethemnas hÉrenn*, and perhaps it is no surprise that the first individual noted as a judge in the annals (*AU* 802.3) is an abbot of Slane.

*cairde* have any clear geographical indication. *Críth Gablach* mentions places and events in both *Leth Cuinn* and *Leth Moga*, but the information therein gives no particular regional attention–the events are well known and the mention of the king of Cashel is simply descriptive rather than aggrandising, such as is in the '*Nemed*-school' text *Uraicecht Becc*. The glosses on lemmata from *Di Dligiud Raith ⁊ Somaíne la Flaith* comprise part of *OGSM*, and so technically would have a Munster connection, but being glosses they may have been drawn from texts with various provenances. I know of no indicators of regional provenance for *Berrad Airechta*. So ultimately, the only distinctions that can really be made are between texts within the *Senchas Már* and those without. Some of the material in these texts do not cover the same aspects of legal procedure, so it is not possible to trace diversity in practice. Among the material not in the *Senchas Már*, the only potential evidence of diversity in practice in legal procedure lies in the previous discussion concerning the *aitire chairdi* in *Críth Gablach* and in the Old Irish glosses on *Di Dligiud Raith ⁊ Somaíne la Flaith*. However, these potential differences might be harmonised as discussed above.

Therefore, not much can be said with certainty about diversity in practice regarding legal procedure in *cairde*. The one clear instance of diversity in practice–that is, between *Bretha Cairdi* and *Slán nAitire Cairde*–can be interpreted as regional diversity, if one accepts that the material in *CIH* 115.22–116.2 represents material originally in the main text of *Bretha Cairdi* (since it is cited as such in the glosses on *Cethairślicht Athgabálae*), thus minimising the possibility of it reflecting change in practice over time. As such, one might suggest that *Bretha Cairdi*, as part of the *Senchas Már*, would be expected to represent a legal authority used within the Uí Néill hegemony, and that texts with alternate accounts of legal procedure might have originated from different regions. Certain aspects of procedure in *Slán nAitire Cairde* and *Berrad Airechta* overlap and do not conflict with one another, suggesting they could be from the same legal tradition, one distinct from that preserved in *Bretha Cairdi* and the *Senchas Már*, and therefore from a different region, with Munster being an obvious possibility. Figure 12 illustrates a summary of legal procedure in *cairde* from the sources we have for it.

**Figure 12: Legal Procedure in *Cairde***

| Text | | Stage of Legal Procedure | | | |
|---|---|---|---|---|---|
| | | *Aitire*/*aitiri* nominated to represent offender | Official acting on behalf of victim | Custody period / forfeiture period | Compensation of *aitire/aitiri* |
| *Bretha Cairdi* | Citation | *CIH* 791.35–6: King swears oath to nominate *aitiri* | | | |
| | Commentary | *CIH* 115.22–116.2: Multiple *aitiri* may represent the offender | *CIH* 115.22–116.2: *Aitiri* of the plaintiff prosecute the offence | *CIH* 115.28–34: Offender's *aitiri* taken into custody for ten days, no forfeiture period | Implication is that the *aitiri* are reimbursed for anything that they pay, but no overt statement of *aitiri*'s compensation |
| *Cethairślicht Athgabálae* (Glosses) | | *CIH* 1695.23–31, 392.4–31: Quoting/summarising *Bretha Cairdi* (*CIH* 115.22–116.3) | | | *CIH* 1695.28–31: Interpreting *CIH* 115.28–41 as the offender's *aitiri* paying ten cows of maintenance and honour-price then being reimbursed by offender |
| *Críth Gablach* | | ll.339–43: *aire désa*'s role in *cairde* ll.373–4: *aire ard*'s role in *cairde* | ll.411–13: *aire tuísea*'s role in *cairde* | | |
| *OGSM* | *Di Dligiud Raith 7 Somaíne la Flaith* | | | *CIH* 919.4–6, 919.40–920.2: If the offender delays in reimbursing the *aitire* for having to pay the original compensation on his behalf (after the *aitire* becomes forfeit), then all the expenses (aside from the doubled original compensation) are taken to be a fore-grant of base clientship upon the offender | |
| | *Cethairślicht Athgabálae: 'Slán nAitire Cairde'* | §1 (*CIH* 892.39–893.2; 574.18–21): Single *aitire chairdi* representing offender | §1 (*CIH* 892.39–893.2; 574.18–21): Single *muiredach* representing victim | §3 (*CIH* 893.7–10; 574.26–30): Mentions custody and forfeiture periods, but not duration of either; *aitire* pays 7 *cumala* ransom fee, original compensation, then claims double of original compensation from offender | |
| *Berrad Airechta* | | §67 (*CIH* 597.26–9): Single *aitire chairdi* representing offender | §§64, 65c (*CIH* 597.5–6, 597.14–15): Possibility that *aitire nadma* '*aitire* of binding' who engages in *tulnaidm túath* 'immediate naidm-suretyship of *túatha*' is equivalent to a *muiredach* | §§65f, 67 (*CIH* 597.21–2, 597.26–9): Custody period implied; after custody period, *aitire* gives pledge to pay 7 *cumala* to redeem himself from forfeiture | §67 (597.26–9): *Aitire* is reimbursed for maintenance, missed work, 7 *cumala* ransom fee, and double the original compensation by offender |

### 2.2.5. Summary of *cairde*

A broad array of the workings of *cairde* has been presented here. An overview of these workings may be articulated as follows. The enactment of a *cairde* involved royal oaths and pledging (perhaps in slightly different situations), thereby initiating the legal mechanisms for legal procedure should a cross-border dispute occur, such as the nominating of *aitiri* as part of the royal oath-swearing, along with their own oath-swearing, as well as a military last resort to legal redress in the event of one kingdom obstructing legal process taken by another kingdom. These facets of enactment are detailed in Old Irish texts concerning *cairde*. Other aspects of enactment which fit within the general legal structure of these texts but which cannot be concretely verified as being as early as the Old Irish material include the process for liability shortly after enactment and the process for a change in inter-territorial contract between *cairde* and *cáin*. Various types of *cairde* existed, and pairings of these would be enacted to determine the *bésgnae*, or overall inter-territorial protocol, each of which included specific sets of legal entitlements due for a specific set of offences that could be claimed for in cross-border disputes. The amount and form of compensation may differ in these different types of inter-territorial relationship. While the amounts of compensation are often (but not always) the same as in *urradus*, fines reckoned in *cumala* in *urradus* were paid in multiple forms of payment while fines of the same amount in *cairde* were paid only in a single form of payment.

A complex mix of extenuating circumstances according to various inter-territorial situations may modify liability and therefore the amount of compensation for certain offences. These include 1) situational factors of an offence, such as mistake, ignorance, accident or lack of responsibility, 2) situations that merit exemption from liability for other reasons, 3) the number of people involved in a given offence, 4) certain locations of an offence, such as at an assembly or outside both the victim's and offender's territory, or 5) certain types of people involved in an offence, such as victims who are non-native residents (such as foster or adopted children) or offenders from a variety of different kinds of kingdom relative to the location of the offence.

The legal procedure by which such inter-territorial disputes were handled and by which protocol was enforced is evidenced by a variety of texts. This gives a more complete picture than we have for many aspects of *cairde*, but investigating this legal procedure comes with its own philological challenges, among which are the textual layers of legal sources that we have throughout. Slight differences among various texts concerning similar aspects of legal procedure complicate the reconstruction of the legal model, suggesting the possibility of diversity in practice

and a more complex philological picture of *Slán nAitire Cairde* than has hitherto been suggested. The material in this chapter which can be verified as belonging to the Old Irish period or which otherwise can most likely be ascribed as early (difficult though it may sometimes be) will be primarily used for comparative purposes with other inter-territorial law texts in subsequent chapters.

### 3. Inter-territorial Law: The Ecclesiastical *Cánai*

The late seventh century and early eighth century was a time of increasing rivalries among ecclesiastical networks, as we can see by the ecclesiastical rhetoric encapsulated within Patrician and Columban hagiography. It was also a time of great legal compilation, with the *Senchus Már* and *Collectio Canonum Hibernensis* appearing. The emergence of ecclesiastical *cánai* at this time embodies both these processes, on the one hand the drive to compile legal doctrines and on the other to utilise legal doctrines to bolster the influence of various ecclesiastical networks.[409] The 'saintly *cánai*', as we have termed them in the Legal Introduction (section 1.3.2.3), were certainly something new, but their extent was particularly notable. We can recall that the aforementioned passage from the introduction to the *Senchas Már* illustrates that 1) the pillars of societal order consist of local affairs, inter-territorial affairs, and divine affairs and that 2) mitigating each of these in the proper way can prevent (divinely-caused) natural disasters, military conflict ensuing from otherwise unresolvable cross-border disputes, and general societal disorder resulting from dissolving contracts.[410] *Cáin Adomnáin* (and most likely other *cánai* that followed in its wake, but some perhaps to a more limited extent) was cast as a piece of legislation representing all areas and all levels of legal order, instantiated through the intermediary power of a saint through his or her ecclesiastical foundations (both in word and with his or her corporeal relics) and enacted formally

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[409] It is beyond the scope of this study to engage in the complex discussions concerning ecclesiastical authority in early Ireland, but here I generally follow certain aspects of studies by Etchingham and Sharpe, among others. A passage from the mid-seventh-century *Liber Angeli* (ed. and trans. Bieler, *The Patrician Texts in the Book of Armagh*, pp. 188–9) grants special status to every *aeclessia libera* ('free/indepedent church'), every *ciuitas [quae] ab episcopali gradu uidetur esse fundata* ('ecclesiastical settlement which is seen to have been founded by a bishop'), and any *locus qui dominicus appellatur* ('church which is called *domnach*'). At least some of these 'free' or principal churches have been linked to the term *andóit* ('mother-church'), defined as the first foundations of a given patron saint. Such a church would have affiliated *daltai* ('disciple-churches'), centres claimed to have been founded subsequently by the same patron saint of the *andóit*. Together, these churches can, in certain contexts, be termed a patron saint's *familia* (OIr. *muinter*) in a wider sense, the basic grouping of what I term 'ecclesiastical networks' throughout this study. A *secnap/ tánaise abbad/secundas abbas* ('prior, second to the abbot') of a patron saint's principal church (an *andóit* or *prímeclais*) often served as head of an affiliated church. Besides this 'horizontal' authority, there seems to have been a 'vertical' hierarchy whereby these leading churches had directly subordinate churches under them in a base or unfree sense, which in certain contexts the difficult term *paruchia* may encompass. In a very broad sense, there are similarities here with lay base and free clientship, but ecclesiastical clientship certainly had many notable differences. The foundations which are known to have promulgated the 'saintly' *cánai* were clearly the principal foundations of the patron saints named for the respective *cáin*, and all of them had bishops noted in the chronicles over the eighth and ninth centuries, which, on the evidence of the *Hibernensis* (*CCH* 41.22, 41.32, 43.8, 47.5, 58.3), increased their status. See MacCotter, 'Origins of the parish in Ireland', *PRIA* 119C (2019), pp. 37–67; Jaski, *Early Irish Kingship and Succession*, pp. 151–6; Etchingham, *CO*, pp. 116, 126–50, 172–7, 217, 224–8, 478–81; Sharpe, 'Churches and communities in early medieval Ireland: towards a pastoral model', in John Blair and Richard Sharpe (eds.), *Pastoral Care before the Parish* (Leicester 1992), pp. 93–5.

[410] See section 2.1.

upon society by overkings.[411] It addresses ecclesiastical affairs, inter-territorial affairs (including matters between lay and ecclesiastical entities), and local affairs, and it accomplishes all this by using legal language as well as ecclesiastical rhetoric backed by very real ecclesiastical legal sanctions.[412] In this way, just as *Bretha Nemed Dédenach* contends that *óenchairde fon Eilg n-áragar* ('a single *cairde* is enforced throughout Ireland') because poets upheld a *cáin enech* ('regulation of honour') by the threat of satire and thus functioned as de facto inter-territorial arbitrators, so did the ecclesiastical *cánai* also claim such ultimate arbitration ability for certain ecclesiastical networks.[413] Part of the claim and effect was that it served to put in force influential peacemaking structures that would mitigate disputes where such might not have happened before. However, its limitation was that it only applied to offences concerning specific parties, for which a leading church network could justify taking a portion of legal dues.

Establishing the full impact of the *ecclesiastical cánai* on the legal structure and in society of early medieval Ireland reaches far beyond the scope of this study. The main purpose here is to examine some significant effects that the ecclesiastical *cánai* had on inter-territorial dispute settlement and on administration of overkingdoms. As discussed in the Legal Introduction (1.3.3.3), the 'saintly *cánai*' are here separated from the others and will be of most use for discussing inter-territorial dispute settlement. These texts, along with input from *Cáin Domnaig* (given its close connection to the saintly *cánai*) will be the focus here. Despite laudable work in recent decades, *Cáin Adomnáin* remains the only complete text where the promulgators, date of enactment, and extent of jurisdiction are all known. As such, it will be at the forefront of discussion, with other texts (*Cáin Phátraic*, *Cáin Dar Í*, and *Cáin Domnaig*) used to weigh in when their surviving content pertains to relevant issues of inter-territorial law.

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[411] It is worth noting here, as did D. Ó Corráin, 'Ireland *c*.800: aspects of society', in Dáibhí Ó Cróinín (ed.), *Prehistoric and early Ireland*, *A new history of Ireland* 1 (Oxford 2005), p. 583, that the ecclesiastical *cánai* often coincide with (and perhaps in response to) periods of plague or famine, which, as McLeod, '*Cáin Adomnáin* and the Lombards', p. 247 states, are among the various situations in which *Críth Gablach* declares an overking's *rechtge* may be imposed. For the relevant passage, see *CG* ll. 519–24 and section 2.1. above.

[412] See, for example, P. Ó Néill, 'A Middle Irish Poem on the Maledictory Psalms', *Journal of Celtic Studies* 3:1 (June 1981), pp. 40–58; D. Wiley, 'The maledictory psalms', *Peritia* 15 (2001), pp. 261–279; Ní Dhonnchadha, 'The Law of Adomnáin', p. 55; L. Bitel, 'Tools and scripts for cursing in medieval Ireland', *Memoirs of the American Academy in Rome* 51–52 (2006–2007), pp. 5–27.

[413] The parallel made here would be particularly fitting if, as Wiley, 'Maledictory Psalms', pp. 261–79, suggests, the form of malediction arose from poets' satire. For more complete discussion of this passage, see section 2.2.2.3.

### 3.1. Liability

Liability in *Cáin Adomnáin* extends to many areas, many of which have been scarcely examined or mentioned in the scholarship and are used here to illustrate what claims for offences could have been made across territorial borders in the ordinance. The first area concerns offences involving ecclesiastical personnel and assets. Two clauses in *Cáin Adomnáin* (§34 and §36) deal with ecclesiastical assets as a whole. The first concerns the concept of *soíre* ('immunity from legal claim, exemption'), and the second, which contains entities roughly corresponding to those in the first clause, prescribes compensation to be paid for transgressions within certain areas or against certain people. They are summarised in Figure 13.

**Figure 13: Summary of Cáin Adomnáin §§34 and 36**

| *Cáin Adomnáin* §34 | *Cáin Adomnáin* §36 | |
|---|---|---|
| **Immune from lay legal claim** | **Entity** | **Penalty for transgressions** |
| *Termoinn* ('precincts') | Every church in proper discipline | *Ógdíre* for transgressions within the church building itself |
| | *Termund sechtar faithche* ('precinct beyond the green') | *Lethdíre* for transgressions in the larger precinct outside the *faithche* |
| | *Blai-nemid* ('immune sanctuaries') | *Lethdíre* for transgressions in 'immune sanctuaries' |
| *Fethail* ('halidoms') | *fethtaltae* ('relics, insignia') | *Ógdíre* for violating (*sárugud*) relics in any location |
| *Muinter* ('ecclesiastical community') | Clerical grades | *Ógdíre* for wounding or theft or burning any of the clerical grades |
| | Clerical grades | *Lethdíre* for threatening clerical grades |
| Ecclesiastical dependents (*manaig*) who are in proper discipline | | |
| All animate and inanimate property | | |

The term *soíre* seems to indicate immunity of the listed people and assets from lay legal claims, which could indicate quite a conscious effort to separate lay and ecclesiastical interests.[414] It may refer, for example, to immunity from normal lay legal processes for such entities, such as

[414] Cf. a passage from *Bretha Nemed Toísech* (*CIH* 2226.12–13; ed. and trans. L. Breatnach, from a paper titled 'The law of the church in *Bretha Nemed Toísech*', given at the Dublin Institute for Advanced Studies, 28 June 2014), which includes the phrase *fillfit flaithi foltaib fír fri eclais*, *ar is ruidles la cach riucht* ('lords will bend, because of [its] assets of truth, to the church, for it is totally immune from claim by any person'). As McLeod, 'The lord of slaughter', p. 113, suggests, part of the motive here to advocate more strongly for the separation of churches from lay society may have been that 'wealthy monastic settlements were prime targets whenever inter-territorial tensions spilled over into armed conflict'.

distraint,[415] sacred property functioning as pledges, claims against church-owned livestock or lay church dependents (*manaig*) who live within a church's precincts.[416] However, it may also represent a clear exemption from lay military service, billeting, requisitions from a hosting, which lay entities who might otherwise live on the same land would be subject to, falling under the jurisdiction of the local king and (by extension) overking.[417] This was likely an endeavour to separate the ecclesiastical sphere not only from lay society, but also from lay dynastic politics.[418] Part of such an endeavour may have been for a collective protection of churches from the destructive activities of inter-territorial raids or hostings (by external territories) and from the obligations to support an internal hosting. In the other clause, the word *díre* here likely indicates compensation based on the honour-price of the concerned individual. For offences that occur within ecclesiastical precincts, the penalty here appears to be built on the concept of a *maigen dígona* ('precinct of violation of protection'). If certain offences occur within this area, the offender is guilty of *díguin* against the

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[415] Note the appearance of a *cathuir uasalnemid* ('ecclesiastical settlement of noble sanctuary') in a heptad on places immune from distraint in *CIH* 54.32–33. Another heptad mentions that a cow due to be paid to a church is immune from distraint at *CIH* 38.19–21. In addition, judges of *Cáin Phátraic* are entitled to immunity from distraint, for which see *CIH* 1269.12. However, a passage in a text on distraint, edited in D.A. Binchy, 'A Text on the Forms of Distraint', *Celtica* 10 (1973), pp. 78–9 (§8), does sanction distraint of an ecclesiastic's cows, but only as a last resort if a lengthy series of alternate methods that are more appropriate to an ecclesiastical prove unsuccessful. Importantly, however, this last text does allow for distraint to include clerics, so one wonders how restricted this practice was and whether this only occurred in certain regions.

[416] On various kinds of *manaig*, see Etchingham, *CO*, pp. 363–93. Much interesting research remains to be done on the implications in *Cáin Adomnáin* for ecclesiastical dependents and how church wealth grew through acquiring more of these dependents, in addition to how potential disputes occurring between a wealthy lay lord and much lower-status *manaig* might be settled. On the *termoinn* ('precincts') of early medieval Irish churches, see, for example, *CCH* 43.5; D. Jenkins, *'Holy, Holier, Holiest': The Sacred Topography of the Early Medieval Irish Church* (Turnhout 2010), pp. 87–103; C. Swift, 'Forts and fields: a study of "monastic towns" in seventh and eighth century Ireland', *Journal of Irish Archaeology* 9 (1998), pp. 105–125; T. Ó Carragáin, *Churches in early medieval Ireland: architecture, ritual and memory* (New Haven 2010). On the idea that churches of various sizes still had a number of precincts, see C. Manning, 'References to church buildings in the Annals', in Alfred P. Smyth (ed.), *Seanchas: studies in early and medieval Irish archaeology, history, and literature in honour of Francis J. Byrne* (Dublin 2000), pp. 37–52; Charles-Edwards, *ECI*, p. 108. On the ecclesiastical use of the term *neimed*, see *CIH* 50.28–30 for a heptad on inviolable places including *neimed cona termand* ('a church with its lands'); the conveyance of an ecclesiastic to a *uasal-neimhed* in *CG* ll.53–4, for which see McLeod, 'Blood-feud', p. 118–19. Concerning the term *blai-neimed*, note the sense of *blai* given in Charles-Edwards, '*The Airgialla Charter Poem*: The Legal Content', p. 110, as 'a prohibition on violence attached to an occasion or place rather than to a person'.

[417] For such military obligations, see *CB* §22–4 and *CG* ll. 559–65. Cf. the stipulation in *CA* §52 specifically referring to immunity of women from military hosting. For links between Cenél nÉogain overking Áed Oirdnide's promulgation of *Cáin Phátraic* in 806 (*AU* 806.5) and the later tradition in *Félire Óengusso* stating that he exempted clerics from military service, see Etchingham, *CO*, pp. 204, 209; Cf. C. Doherty, 'Warrior and king in early Ireland', in Jan Erik Rekdal and Charles Doherty (eds.), *Kings and warriors in early north-west Europe* (Dublin 2016), pp. 141–8, esp. p. 147, for how this did not quite seem to work in the end.

[418] On dynastic connections to churches and resultant entanglement in lay politics, see Charles-Edwards, *ECI*, pp. 594–6. Some contemporary consequences of this dynastic entanglement may be reflected in the burnings of Armagh, Kildare, and Clonmacnoise in *AU* 672.1, 690.2, 710.2, 723.1.

head of the house and would typically owe the owner's honour-price in compensation.[419] The same compensation is often due for damage to buildings.[420] So for *Cáin Adomnáin*, in relation to offences committed in precincts of a church or against its relics, *ógdíre* or *lethdíre* presumably would indicate the honour-price of the highest-ranking cleric of the church, thereby compensating the dishonour done to the sacred area.[421] For the assaults or threats against specific clerical grades, *díre* would refer to the honour-price of the cleric in question. The stipulations here might easily be seen as a codification into enforceable legislation of certain statements from synods (assimilated into *Collectio Canonum Hibernensis* in the decades after *Cáin Adomnáin* was first promulgated as *Lex Innocentium*) concerning the sanctity of holy places.[422]

The next kind of liability in *Cáin Adomnáin* concerns clerics and innocent children, which can be illustrated alongside its apparent counterparts in surviving stipulations from *Cáin Phátraic* (presumably involving clerics). The normal fines for an offender are summarised in Figure 14.[423]

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[419] For a brief explanation of this model, see McLeod, 'Blood-feud', p. 118–19. Cf. *CG* ll. 209–220 on various portions of honour-price due for certain offences.

[420] *CIH* 1.1–2.34, 13.1, 14.1–2; *CG* ll.238–41; See Kelly, *GEIL*, pp. 139–41, 144. See also Breatnach, 'Lord's share', pp. 8–9, who points to the example in *Bretha im Gatta* §§3–5, which discusses the concept of *díguin* in regard to thefts of one person's item from someone else's property, where the owner of the estate is paid his honour-price for violation of his precinct by virtue of an offence being committed in it.

[421] For further detail on the concept of ecclesiastical sanctuary, notably the *civitas refugii* ('city of refuge'), see *CCH* 27 and Etchingham, *CO*, pp. 49, 158, 167. Cf. *CB* §106 (which echoes the first stipulation in *CA* §36): *ógdíri cach cathir chathlaic* ('every catholic ecclesiastical settlement is entitled to full compensation'). Relics, while sometimes carried on circuit outside of the ecclesiastical settlement, would receive *ógdíri* since they generally resided in the sacred core of the ecclesiastical settlement (Jenkins, *Holy, Holier, Holiest*, p. 94). The phrase *cip port a ndéntur* ('no matter where it is done') allows for penalties to be paid even in situations where relics were taken on circuit (*comotatio* or *cúairt*), and such circuits are mentioned in the annals from the mid-eighth century onwards, for which see Etchingham, *CO*, pp. 198–9. On this compensation amount, compare the tale in *CGSH* 111 (§668), about a layperson breaking the *meinistir* ('service set') of Columba and paying seven *cumala* to the Columban community for it (which might be considered a payment of the full honour-price of the head of Iona at that time. It may be notable that the case is portrayed as being arbitrated by the king of Uí Dróna (the local king?) (Kelly, *EIF*, p. 147n87). Cf. *Liber Angeli* §26 (Bieler, *Patrician Texts*, p. 189) on a four *cumala* fine for violation of Armagh's insignia (and two *cumala* fine for the insignia of the patron saint of other ecclesiastical centres). On the semantics of *fethal*, see C. Eska, 'On the Swearing of Oaths in Cemeteries', *Cambrian Medieval Celtic Studies* 71 (Summer, 2016), pp. 51–67. For a recent close study of the significance of relics, see Niamh Wycherley, *The cult of relics in early medieval Ireland*, Studies in the Early Middle Ages 43 (Turnhout 2015).

[422] See *CCH* 43.5–9.

[423] This table is based on *CA* §§35, 44 and relies upon material in McLeod, 'Di Ércib Fola', pp. 126–8. Note that McLeod's broader study of various texts on physical injury (including *Di Ércib Fola*, and *Bretha Déin Chécht*, among others) provides ample evidence for his contention that the compiler of *Cáin Adomnáin* may have mangled his source, conflating fine amounts for *bánbéim*, *dergbéim*, and *cnocbéim* all into an erroneous fine of three *seóit* for the *bánbéim*, which he shows is usually two *seóit*, for which see McLeod, 'Di Ércib Fola', pp. 126–38. Note also the suggestion of McLeod, *idem.*, p. 137, that 'the seven-*sét* award for confinement to bed and the *cumal* (six-*sét*) award for a bandage-wound have simply been inverted in error here in *Cáin Adomnáin* §44', given that other Old Irish texts on injury give the opposite.

**Figure 14: Offences pertaining to clerics and innocent children**

| Cáin Adomnáin | | | | Cáin Phátraic |
|---|---|---|---|---|
| **Offence** | **Body-fine** | **Éraic** | **Forbach** | **Offence** |
| harmless (*beim co mbais no co ndurn* 'a blow with hand or fist') | 1 ounce of silver (=2 *seóit*) | 1 ounce and 4 scruples | 4 scruples | |
| mild (*glas no derg no att* 'bruise or abrasion or swelling') | 1 ounce and 6 scruples (=2.5 *seóit*) | 1 ounce and 11 scruples | 5 scruples | |
| minor (*bánbéim* 'white blow') | 3 *seóit* | 3 *seóit* + 6 scruples | 6 scruples | *tri séoit cacha bánbéime* 'three séoit for every white-blow' (*CIH* 672.32, 1021.34, 1581.34) |
| bloody (*teilciud fola* 'bloodshed') | 5 *seóit* | 5 *seóit* + 10 scruples | 10 scruples | *cóic séoit cach teilctheo fola* 'five *séoit* for every shedding of blood' (*CIH* 1581.34) |
| serious (*inindraig* 'bandage wound') | 7 *seóit* | 8 *seóit* + 2 scruples | 1 *sét* + 2 scruples | *dligid co[s]maillsi dligid Cana A[d]manain a banbeim co bas* 'the entitlements [here are] equal to the entitlements of *Cáin Adomnáin* for the white-blow up to death' (*CIH* 672.35) |
| severe (*inuithir* 'an injury requiring attendance') | 1 *cumal* (plus physician's fee) | 1 *cumal* + 1 *samaisc* (three year old dry heifer) | 1 *samaisc* | |
| grievous but not-fatal wound (*béoguin* 'non-fatal injury') | (3 *cumala*) | 3½ *cumala* | ½ *cumal* | |
| homicide | (6 *cumala*) | 7 *cumala* | 1 *cumal* | |
| Mistake | Half fines | | | |
| Inadvertance | Half fines | | | |

Since it has been suggested that *Cáin Phátraic* was Armagh's response to *Cáin Adomnáin* and the available evidence states that it involved protection of clerics, just as *Cáin Adomnáin* originally did, the fact that *Cáin Phátraic* utilises a similar fine structure for injuries to clerics in *Cáin Adomnáin* should hardly occasion surprise.[424] However there are other legal topics that *Cáin Phátraic* dealt with that either expanded on those in *Cáin Adomnáin* or were topics that *Cáin Phátraic* pioneered

[424] Thurneysen, 'Aus dem irischen Recht IV', pp. 193–6; Etchingham, *CO*, pp. 194–206.

this type of inter-territorial law evolved. Like in *urradus* and *cairde*, liability for the above offences in *cáin* are applied differently in exceptional circumstances.[425] As illustrated in the table above, some of these include offences made in mistake (through ignorance of the identity of the person) or other inadvertence, for which fines are halved, so long as such exceptional circumstances have been verified by the legal mechanism of *arrae*.[426] However, such exceptional cirumstances that merit a reduction in compensation may only apply to offences against clerics and innocent children, as they are the victims mentioned in the passage including the stipulations concerning such exceptions to normal liability.[427] The other set of exceptional circumstances in the ecclesiastical *cánai* concerns the concept of joint liability, which we will examine in the next section.

In addition to the above general fines for physical injury, liability concerning women in *Cáin Adomnáin* is illustrated in Figure 15.[428]

**Figure 15: Offences pertaining to women in *Cáin Adomnáin***

| Offence | Fine | Forbach |
|---|---|---|
| **Physical Injury** | | |
| Death of a woman by: physical wounding, drowning, burning, crushing, submerging, by means of accident concerning a ditch, pit, hearth, (stumbling on a) step, pool, kiln, building (e.g. collapsing), or hard larbour, with the only exemptions being an 'act of God' (natural disaster) or in 'proper lawful union' (presumably primarily referring to childbirth) | 7 *cumala* | 7 *cumala* |
| Wounding by domesticated animals | First offence: forfeiture of the animals and half the fine for the loss of a hand (1¾ *cumala*)<br><br>Second offence (if the owner is aware of the dangerous nature of the animal because of a prior offence and has chosen to keep it): 7 *cumala* | 7 *cumala* |
| Attempt at physical injury: tearing a woman's clothing | 1 *cumal* and 7 ounces | |
| **Ainim ('blemish, defect')** | | |
| Defect in head, eye, face, ear, nose, tooth, tongue, foot, or hand | 7 *cumala* | |

[425] See section 2.2.3.1.5.

[426] *Arrae* is discussed above in this context in section 2.2.1.

[427] *CA* §35.

[428] This is based on CA §§29, 41, 42, 45, 50, 51, 52.

| | | |
|---|---|---|
| Defect in a normally covered part of the body | 3½ *cumala* | |
| **Offences by women** | | |
| A woman committing homicide by physical violence or poison, for arson, or for digging beneath a church | Put in a boat of one paddle at the distance of a *muirchrech* out at sea, to determine her fate by divine providence or condemnation (either remaining at sea or going ashore with the winds). | |
| Women's hair fights | 5 wethers | |
| Woman-combat with degradation | 3 wethers | |
| **Sexual offences** | | |
| Pregnancy through fornication, without contract, without property, without bride-price, without betrothal | 7 *cumala* | |
| Sexual assault: *forchor ingine* ('forcible rape of a girl') | 3½ *cumala* | |
| Attempt at sexual assault: putting a hand touching against a woman or on her belt | 10 ounces | |
| Attempt at sexual assault: putting a hand under a woman's clothing to dishonour her | 1 *cumal* and 3 ounces | |
| **Honour-offences** | | |
| Accusing a noble woman (down to the wife of an *aire désa*, exclusive) of lust or denying her child as legitimate | 7 *cumala* | |
| Same offence for the wife of an *aire désa* | 3½ *cumala* | |
| Same offence for a commoner woman down to a castaway (a very low status woman) | 7 ounces | |

There are several items of note here. First, there appear to be remarkably few permitted exceptions from full liability for homicide; for example, accidents, negligence, and ignorance resulting in the death of a woman seem to entail full liability, which, as seen above, was not normally the case. Furthermore, normally the first offence that animals commit (with certain conditions being met) results in their forfeiture, nothing more, whereas here, a first offence entails a fine as well.[429] Concerning sexual and honour-price offences, typically these would be paid at half the rate of the woman's husband or father.[430] However, here a simpler system of fines is used, which, for most

[429] Kelly, *EIF*, pp. 142, 149, 154, 156; *idem.*, p. 180; Bemmer, 'Culpability and Negligence', p. 48.

[430] *CG* ll.121–4; See Kelly, *GEIL*, pp. 134–7.

people in society, would be far higher both in absolute numerical amount and forms of payment.[431] Thus, we can see from this angle how harsher fines than normal existed at least in *Cáin Adomnáin*, if not also other *cánai* which followed in its wake.

### 3.1.1. Joint Liability

Examining joint liability in ecclesiastical *cánai* will provide a counterpoint to joint liability in *cairde* and thereby help further illustrate such aspects of inter-territorial dispute settlement. While very little detail on joint liability survives for *Cáin Dár Í*, rather more exists in *Cáin Adomnáin*, *Cáin Phátraic*, and *Cáin Domnaig*.[432] At least these ecclesiastical *cánai* tend to prescribe much harsher penalties for joint liability than normal. In *Cáin Adomnáin*, there are several stipulations generally relating to *comláithre* ('accompliceship') or some other kind of joint liability, each with different fine amounts, and so each stipulation must be intended for a certain situation. Thus, with further investigation, we may elucidate and organise the various kinds of joint liability therein. Firstly, Cáin Adomnáin §47 reads:

> Mani-eir<re> bidbaid sáraigetar Cáin as-ren fine a llánfĩachu iar méitt a chinad ⁊ do-b*er*r a ndílsi ⁊ a n-indarbu iarsin co cend rechtghi**.** Leth secht cumal dia comláithriu for cach derbine ⁊ anpfine iarsin. Mad lesugud ⁊ dítiu ⁊ chomarlécad, is bás tar<a> éissi; acht aní et*ir*-bí fĩachu, etir-bí comláidre.
>
> If the offenders who violate the Law are not apprehendable, the kindred pay their full fines in accordance with the extent of their offences, and thereafter is proclaimed their forfeiture of legal rights, and their expulsion until the end of the [enforcement period of the] ordinance. Half of seven *cumala* for their accompliceship upon every member of the *derbfĥine* or unrelated *fine* after that. If there be maintenance and protection and connivance, it is [punishable by] death for it; but [normally] 'just as the fine [of the principal] was, such shall be that of the accomplice'.[433]

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[431] The honour-price of everyone except kings was calculated in *seóit* and thus was paid in cattle, whereas the fines in question here all entail a portion of precious metals, whether calculated in ounces of silver, *cumala* (which entailed three forms of payment), or a *cumal* (which entailed two forms). See Breatnach, 'Forms of payment in the early Irish laws', pp. 16–17.

[432] The only evidence for joint liability in *Cáin Dar Í* lies in the previously examined Middle Irish tract currently titled *Rith na cánann* (*CIH* 1587.3; trans. Breatnach, *Companion*, pp. 205–6), there mentioned by its other name, *Cáin Boślechta*: *.R. cana boileachta co c[ét] laech .i. leth .uii. cumal cacha laime co ria c[ét] l[aech]* ('*Cáin Boślechta* extends to a hundred warriors, i.e. half of seven *cumala* [are due from] each person up to a hundred warriors').

[433] *CA* §44. I have included quotation marks here because the indication seems to be that this is a general legal maxim. The phrases in brackets emphasise my interpretation that the lawyer is stating a *possible* penalty (death), but goes on to state the general rule regarding such things.

The topic here is clearly about ways in which offenders can evade being apprehendable. Thus, we can interpret the type of *comláithre* entailing a 3½ *cumala* fine as referring to someone helping an offender escape, since the *comláithre* involving *lesugud 7 dítiu 7 chomarlécad* appears to be harbouring and hiding an offender such that he evades legal process, a much more serious kind of accompliceship. It would seem that this 3½ *cumala* fine for helping an offender escape (regardless of whether the accomplice in question is also an onlooker to the offence) is intended as an additional flat fine in the event of any offence covered by the *cáin*, given the lack of any mention of a specific offence, such as we have in *Cáin Adomnáin* §35. Indeed, such a fine would stress the seriousness of impeding legal process regardless of the degree of offence. This additional 3½ *cumala* fine would apply to each entire *(derb)fine* which happens to have this kind of accomplice among them, such that each culpable kindred would split the 3½ *cumala* fine among all their members, since all of them would be viewed as jointly complicit (being so closely connected as kindreds were). The phrasing *for cach derbfhine 7 anpfine iarsin* emphasises that this fine could apply to every offender's *derbfhine* (viewed as the most likely party to help the offender escape) as well as to any other kindred involved (such as a member of a foster kindred helping the offender escape), thus allowing for more complex inter-territorial situations.[434] The next aspect of joint liability lies in *Cáin Adomnáin* §44:

> Math beoguin ro-gonae nech banscál nó cléirech nó mac n-ennac, leth secht cumal huad, cóic seúit déac for fine nó anfine dia comláithriu.
>
> If it be a non-fatal wound that anyone inflict on a woman or cleric or innocent youth, half seven *cumala* from him, fifteen *seóit* from [the offender's] *fine* or unrelated *fine* for their accompliceship.[435]

The phrasing *fine nó anfine dia comláithriu*, similar to that in §47, again indicates a fine split among each kindred on which it is imposed. The passage indicates that when a non-fatal wound is inflicted on a woman, cleric or innocent child, an additional fine is issued upon the offender's kindred or any other not directly related kindred (such as a foster kindred of the offender, who might be expected to assist the person), if someone from such a kindred assists the offender before

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[434] Note that any fines applying to a *derbfhine* would be enforced by the *aitire* taken from each *derbfhine*, as stipulated in *Cáin Adomnáin* §53 (Ó Néill and Dumville 2003, 51).

[435] *CA* §44; trans. Ní Dhonnchadha, 'The Law of Adomnán', p. 65, with my addition in square brackets.

the offence.[436] We have already seen a similar kind of fine shared among the kindred in §47. We may interpret the thirty *seóit* fine lurking in *Cáin Adomnáin* §43 (which discusses various amounts of fine supplements taken as a *forbach*) as the fine imposed jointly upon a kindred for *comláithre* resulting in the *killing* of a cleric, innocent child, or a woman, since the fifteen *seóit* fine is for *comláithre* resulting in a wound for which was due a fine of half that for murder.[437]

Another important distinction here is the different forms of payment due for the offender and complicit kindred, which further illustrates the difference in degree of offence. The forms of payment conditioned by the terms *lethcumal*, *cumal*, and *cumala* are detailed in *Bretha Éitgid* ('Judgements concerning Irresponsible Acts'):

> Āenarra i lethcumail. Dēide i cumail. Trēide i cumala .i. trian bō trian each. Trian airgit. Trian do damaib i triun bō. Tria do boininn i triun each. Trian do anfolam i triun airgit .i. uma indīu.
>
> A single denomination (viz. form of payment) for [penalties reckoned in] a half-*cumal*, two for [penalties reckoned in] one *cumal*, three for [penalties reckoned in] *cumala*, i.e. a third [in the form] of cows, a third [in the form] of horses, a third [in the form] of silver. A third part of the third [in the form] of cows is made up of oxen. A third part of the third [in the form] of horses is made up of mares. A third part of the third [in the form] of silver is made up of alloy, i.e. bronze at the present time (?).[438]

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[436] In CA §44, *comláithre* most likely refers to assisting the offender before the offence, since onlookers are mentioned in §35 and §47 deals with assisting the offender after the offence. For further detail on and for examples illustrating the basis of kindred liability for offenders who abscond and fines for anyone else habouring proclaimed offenders, see *CB*, p. 100. See Charles-Edwards, *EIWK*, p. 506 for his interpretation of the term *anfine* referring to anyone outside the *derbfine*.

[437] The lawyer uses the phrase *cenmothá banscála* 'apart from womenfolk' in §43, indicating the kinds of *forbaig* described in this passage generally are not for offences against women. However, the lawyer quite spontaneously switches between offences against different kinds of people in adjacent stipulations, and furthermore, the relevant stipulation in §44 concerning the fifteen *seóit* fine, cited above, concerns a non-fatal wound received by women as well as the others. Thus, it seems likely that this kindred fine for accompliceship would encompass offences against women as well. I am indebted to Neil McLeod for his suggestion concerning the following possible basis of the *forbach* on the fifteen *seóit* and thirty *seóit* fines involving accompliceship for offences against clerics and children. Essentially, the calculation of this *forbach*, being one-sixth of the fine for accompliceship, matches that of the *forbach* of standard injuries against such victims, which comprises one-sixth of the body-fine (which is also one-seventh of the *éraic*, and one-eighth of the total fine including *forbach*, as it is represented in *CA* §44). Interestingly, the numerical amounts of the total for these fines of accompliceship for certain injuries match the body-fine amounts for each respective injury (15+3 *seóit* = 3 *cumala* for non-fatal wound; 30+6 *seóit* = 6 *cumala* for homicide), though as noted below the terms *sét* and *cumal* condition different forms of payment. In this way, we might see the fine for *comláithre* being the same numerical fine as the body-fine the offender pays, and that the *forbach* for accompliceship could be viewed as being taken out of the total fine.

[438] Edited, translated, and discussed in Breatnach, 'Forms of payment in the early Irish laws', pp. 16–17; *CIH* 1263.15–18.

Breatnach explains the significance of this passage (along with an array of other evidence) quite clearly:

> Thus, while at one level one could set up a table of the relative values of amounts of *cumal*s and amounts of *sét*s, it is not a simple matter of a *sét* being a fraction of a *cumal*. Specifying the honour-prices of commoners in terms of *sét*s implicitly limits the way in which they are to be paid, whereas specifying the honour-prices of lords and kings, etc. in *cumal*s indicates at the same time that any payments are to include a substantial proportion of precious metals.[439]

So considering this evidence alongside the fines due from the offender and complicit kindred in *Cáin Adomnáin*, we can see that the offender's fine of 3½ *cumala* would entail three kinds of payment (cattle, horses, silver), and the 15 *seóit* fine upon the complicit kindred would only entail one kind, cattle.

We have one further passage in *Cáin Adomnáin* regarding joint liability:

> Nech gonus 7 marbus macclérech nó mac endacc a téchtu Cána Adomnáin, ocht cumala cacha láma, ocht mbliadna penda ind condice trí chét chumal 7 bliadain penda in cach [o]in ó cé[t]aib co míle, nó díárim; 7 is cummæ fiach nech fo-fich 7 ar-id-acci 7 nach-id-anaig a n[eo]rt. Mad étged nó anfes, lethfiach ind 7 arracuir as-n-étged 7 as-n-anfes.
>
> Whoever wounds and kills a clerical student or an innocent youth in transgression of *Cáin Adomnáin*, eight *cumala* and eight years of penance for it for every hand involved, up to three hundred, one *cumal* and one year of penance for it for each one from three hundred to a thousand, or an indefinite number, and it is the same fine for the one who commits it and the one who sees it and does not prevent it to the best of his ability. If there be inadvertence or ignorance, half-fine for it, and there shall be an oath-equivalent that it is inadvertence and ignorance.[440]

As we can see, for offences involving slaying of clerics and innocent youths, the edict groups offenders alongside those otherwise classed (in the *Sellach*-text and *cairde*) as onlookers of full penalty, half penalty, and quarter penalty all into one fully-culpable group, up to a group of three hundred people.[441] If the group is greater than that up until a thousand, the liability is spread more widely and thus the fine is less for each person. This change may reflect the realised difficulty of distinguishing between an actual accomplice and a mere onlooker in a large group. So with court procedure in mind, an onlooker may exculpate himself from liability of such offences by trying to

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[439] Breatnach, 'Forms of payment in the early Irish laws', p. 17.

[440] *CA* §35; trans. Ní Dhonnchadha, 'The Law of Adomnán', pp. 62–3.

[441] See Section 2.2.3.1.2.

| **Figure 16: Joint liability in *Cáin Adomnáin*** | | | | |
|---|---|---|---|---|
| ***Cáin Adomnáin* passage** | **Type of offence** | **Type of liability** | **Fine** | ***Forbach* owed to Iona** |
| **§35** | Cleric or innocent youth killed | Any onlookers who do not try to prevent it | Full fines up to group of 300<br>⅛ fine for group of 300-1000 | ⅙ of body-fine<br>⅐ of *éraic*<br>⅛ of total amount (§43/44) |
| **§35** | Cleric or innocent youth killed | Any onlookers who try to prevent it | Immune | |
| **§44** | Non-fatal wound against women, clerics, or innocent youths | Anyone involved in *comláithre* (assisting offender beforehand) | 15 *seóit* | 3 *seóit* (§43, using Ní Dhonnchadha's correction) |
| **§§43/44** | Women, clerics, or innocent youths killed | Anyone involved in *comláithre* (assisting offender beforehand) | 30 *seóit* | 6 *seóit* (§43) |
| **§47** | Any offence covered by the *cáin* | Anyone in *derbfine* or another more distant *fine* who helped the offender escape from being apprehendable | 3½ *cumala* fine on each kindred helping an offender escape (each fine issued on a kindred being split among its members),<br>kin of absconded offender jointly pays fines for original offence | *lethchumal* (§43) |
| **§47** | Any offence covered by the *cáin* | If *comláithre* with *lesugud* 'maintenance', *dítiu* 'protection', and *comarlécad* 'connivance' [essentially harbouring offender] | Can be punishable by death, but in general same fine as offenders | Same as offenders |
| **§52** | Coercing a woman to join military activities (*orgain nó cuire nó fechta* 'a massacre or muster or raid') | Anyone involved in such coercion | Full fines for liable group up to 7<br>For liable group greater than 7, an extra 7 *cumala* total is paid | ? |

prevent the offence from happening, providing a clear statement of his innocence. All of these

stipulations are summarised in Figure 16.

It is unclear to what extent *Cáin Phátraic* used a framework of joint liability similar to that in *Cáin Adomnáin*, but there are certainly some notable differences. It seems to utilise the stipulation in *Cáin Adomnáin* §47 that an absconding offender becomes 'proclaimed', thereby losing legal rights and effectively is banished for the promulgation period, and not only does it prescribe fines for maintaining proclaimed offenders from across a border but is also has nearly the same fine for maintaining homeless persons (who might have been proclaimed offenders from within the kingdom?), and even includes a fine for anyone who maintains the child of a proclaimed

**Figure 17: Joint liability in *Cáin Phátraic***

| ***Cáin Phátraic* passage** | **Type of liability** | **Fine** |
|---|---|---|
| ***CIH* 1402.1–3** | Maintaining a homeless person | 1 cow + 15 *seóit* |
| ***CIH* 1402.6** | Maintaining a proclaimed offender from another kingdom | 6 cows + 1 ounce |
| ***CIH* 1402.9** | Maintaining the child of a proclaimed offender | 1 cow + 1 ounce |
| ***CIH* 2033.17–20** | Liability concerning a *sellach* ('culpable onlooker')<br>1) going to the site of the offence with the offender<br>2) bearing witness to the murder (and does not intervene)<br>3) escorting the offender(s) from an unsafe place to a safe one<br>4) Doing all of these things | 1) ¼ fine<br>2) ¼ fine<br>3) ¼ fine<br>4) ¼ fine |

offender.[442] The commentary on *Bretha Cairdi* examined above states that liability for a *sellach* of full penalty is the same in *cairde* and in *Cáin Phátraic*, though whether it is the same for a *sellach* of half or quarter penalty is less certain.[443] These stipulations are summarised in Figure 17. Interestingly, we find one of the culpable actions stated in this passage–*cethraimthe air ar dul co maigin* ('a quarter [is levied] on him for going to the site [of the offence with the offender]')–closely resembling that from another fragment belonging to *Cáin Phátraic*: *ceathraime .uii. cumal hi tocomluth fris co maigin in echta* ('a quarter of seven *cumala* for advancing against him to the place of slaughter').[444] This phrase is in a passage involving fines for attempted assault, another kind of additional liability that *Cáin Phátraic* seems to have added onto normal liability for injury. By penalising attempts to injure, this legislation instituted a penal structure not just for physical injury but also for *potential* physical injury, including premeditation, which connects this type of liability to joint liability. The effect of this was to further decrease the chance of physical injury occurring, which expands upon the penalty of *lethdíre* in *Cáin Adomnáin* §36 for threatening clerics.[445] This kind of liability is summarised in Figure 18.[446]

There remains one more piece of evidence concerning joint liability in *Cáin Phátraic* mentioned in the short Middle Irish text *Rith na cánann*. That the details in *Rith na cánann* represent only an abbreviated summary rather than a comprehensive exposition can be concluded from the account of joint liability in *Cáin Adomnáin*. *Rith na cánann* mentions only the culpable group of one thousand people in *Cáin Adomnáin*, while the text of the *cáin* includes culpable

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[442] *CIH* 1402.1–9; 697.20–1. 6 cows + 1 ounce = 14 *seóit* in total numerical value and 1 cow + 15 *seóit* = 17 *seóit*, though it is important to note that there are at least two types of payment in the first fine (cows and silver), which makes it more onerous. On liability for proclaimed offenders, *CB* §65 similarly details how it lies with whomever harbours them and supports them, so long as they know him to be proclaimed, and *CB* §66 prescribes a fine of 5 *seóit* for giving food to a known fugitive, which we may compare to the 1 cow + 1 ounce of silver (numerically equalling 4 *seóit*) fine in *Cáin Phátraic* for giving food to the children of a proclaimed offender. Additionally, commentary on *CB* §66 (*CB*, p. 232) mentions that *Cáin Ḟuithirbe* prescribes a fine of 6 cows for harbouring offenders, and generally in *cáin*, a fine for harbouring 'active' offenders is 6 ounces (=6 cows), both of which which may be compared with the 6 cows + 1 ounce (numerically equalling 7 ounces) fine in *Cáin Phátraic* for harbouring a proclaimed offender from across a border.

[443] *CIH* 2033.17–20. See section 2.2.3.1.2.

[444] *CIH* 2077.28, as noted by McLeod, 'Di Ércib Fola', p. 126n12.

[445] Note also the stipulation concerning offences specifically against women in *CA* §50: *mad riacad étaic[h], secht n-unga for cumhail ind* ('if it be tearing her clothing, seven ounces and a *cumal* for it'), an offence which is also in *Cáin Phátraic*, and the fine of which is nearly numerically equivalent to the 3½ *cumala* fine for tearing of clothing with a weapon.

[446] This table is based on a detailed study of McLeod, 'Assault and Attempted Murder in Brehon Law', pp. 351–91, and adapted from the table in McLeod, 'Bloodshed and compensation', p. 19.

| Figure 18: Attempted Assault in *Cáin Phátraic* | | | | |
|---|---|---|---|---|
| ***Cáin Phátraic* passage** | **Type of liability** | | **Fine** | **Fraction of *éraic*** |
| | **With naked weapon** | **Without naked weapon** | | |
| ***CIH* 2076.21, 2076.37** | Attempt which results in piercing wound | | 4 ⅔ *cumala* | ⅔ |
| ***CIH* 2076.37, 2077.4; 2078.11, 2078.17** | Attempt which damages armour or clothing | Attempt which results in non-fatal laceration | 3½ *cumala* | ½ |
| ***CIH* 2078.21, 2078.26** | | Attempt which damages armour or clothing | 2 ⅔ *cumala* | 8/21 |
| ***CIH* 2079.31, 2079.35 (cf. *CIH* 1137.8–9)** | Advancing towards a homestead and actually performing a violent act from which the offender escapes | | 8 ounces of silver | |
| ***CIH* 2078.21, 2078.26; 2079.24–5** | Drawing a weapon | Advancing towards a homestead with intention of causing offence | 1¾ *cumala* | ¼ |
| ***CIH* 672.22, 1581.10, 1581.20; 830.18, 1538.1, 1581.22** | Attempt with regard to which there is to be an advancing | | 1 *cumal* from each person involved in [plotting] it | ⅐ |

numbers of three hundred and seven in certain other circumstances.[447] Concerning *Cáin Phátraic*, *Rith na cánann* states: *rith cana phatraic co mor.ui.ur .i. uii. cumala cacha laime co moir.uii.ur* [leg. *moir.ui.ur*] (‘*Cáin Phátraic* extends to seven persons .i. seven *cumala* [are due from] each person involved up to seven persons’). We have already established that, from accounts in *Rith na cánann* and *Bretha Cairdi*, joint liability in *cairde* seems to have extended to seven people in the event of an inter-territorial offence involving a single external territory.[448] The clause concerning full liability up to *mórfeisser* in *Cáin Adomnáin* involves coercing women to join an *orgain* (‘massacre’), *cuire*

[447] *CIH* 1587.5; *CA* §§35, 52.

[448] See section 2.2.3.1.2.

(‘muster’) , or *fechta* (‘raid’), which would most likely be an inter-territorial incursion, and thus the number of fully culpable people here may be related to the account in *cairde* and *Cáin Phátraic*. We have also already seen links between joint liability in *cairde* and *Cáin Phátraic*.[449] Given that the *mórfeisser* is a liable number in all these texts, one wonders whether the basis of this number might lie in the *aire échta* and his retinue of *seisser*, which is on par with that of the *aire désa*.[450] In *Críth Gablach*, the *aire échta* has cross-border functions under the conditions of a *cairde*, where he is responsible for obtaining *dígal* (‘redress’) on behalf of the victim’s *gelfíne*. In this passage, the term used for the *gelfíne* is the *cóicer*, literally ‘five men’, but in certain contexts this can be used as synecdoche for the *gelfíne*, as we have seen above in the passage from the Old Irish *D’fodlaib cineoil tuathi*.[451] In this way, we might reconcile these ideas by concluding that the six-person retinue of the *aire échta* may be (at least partly) comprised of members of the victim’s *gelfíne*, and thus the liable number of the *mórfeisser* may have originated as that for inter-territorial liability for a group of seven engaged in lawful vengeance. In this way, the retinue of the *aire échta*, who is already reminiscent of a mercenary type figure (albeit legally sanctioned), would be comprised of the kindred who hires him. Whether the stipulations in the ecclesiastical *cánai* were made in response to contemporary *aire échta* activity or simply because this had since become a ‘significant number’ for inter-territorial liability for a group from a single external territory is a matter for further research.[452]

Similar to *Cáin Adomnáin* and *Cáin Phátraic*, *Cáin Domnaig* (which has been dated most recently to the early ninth century) prescribes harsher penalties for joint liability than in the *Sellach*-text and *Bretha Cairdi*, but again, here it is just for a very specific set of offences on Sunday.[453] The edict has stipulations with similar force to those in *Cáin Adomnáin*, and indeed the stipulation involving onlookers in *Cáin Adomnáin* §35 (above) and in *Cáin Domnaig* §2 have similar phrasing: *is cummae fiach neich ad-chi 7 nad aidbri 7 nad thobaing íarum fri nech chuilles so fri in Domnuig* (‘the fine for someone who looks on and who does not act as identifier and who does not thereupon

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[449] See the phrase from *CIH* 2033.17–18 discussed above.

[450] *CG* ll. 366–7.

[451] See section 2.2.3.1.2. For a comprehensive discussion of the *aire échta* and the lawful feud, see in particular McLeod, ‘The lord of slaughter’, pp. 101–13, and McLeod, ‘The blood-feud’, pp. 114–33.

[452] On the concept of ‘significant numbers’, see in particular McLeod, ‘Interpreting early Irish law: status and currency. Part 1’, *ZCP* 41 (1986), pp. 46–65, and McLeod, ‘Interpreting early Irish law: status and currency. Part 2’, *ZCP* 42 (1987), pp. 41–115.

[453] Breatnach, *Companion*, pp. 209–12.

levy is equal to the fine for the person who violates the sanctity of Sunday').[454] The phrasing of the stipulation regarding harbouring offenders in *Cáin Domnaig* §7, *nachid-leci dia fini fri indnaide cirt* ('anyone who does not abandon him to his kindred to abide justice'), may indicate that the one harbouring an offender might not be someone from his immediate kindred, to which we can compare the concept of *fine nó anfine* above in *Cáin Adomnáin* §44 and §47.[455] The stipulations regarding joint liability in *Cáin Domnaig* are summarised in Figure 19.

**Figure 19: Joint liability in *Cáin Domnaig***

| ***Cáin Domnaig* passage** | **Type of offence** | **Type of liability** | **Fine** |
|---|---|---|---|
| **§2** | Any action that transgresses the sanctity of Sunday | Any onlookers who witness a transgression and try to enforce the edict | Immune |
| **§2** | Any action that transgresses the sanctity of Sunday | Any onlookers who do not act to enforce the edict | Same penalty as offender |
| **§§7–8** | Any action that transgresses the sanctity of Sunday | Anyone who gives hospitality and protection to an offender | Same penalty as offender |

The preoccupation of these texts with penalties for harbouring offenders mostly seems to have applied to lay kindreds. There is potentially conflicting evidence whether such legal stipulations applied to churches. On the one hand, there exists a citation from an unidentified *cáin* text that permits ecclesiastical sanctuary for wrongdoers: *mar ader cāin: bidbaid gonas 7 .g. do-tiagat co eclais dia ndītin, is sāer don eclais a ndītin co treisi nó .u.ti nō .x.maid* ('persons guilty of wounding and theft who come to a church for sanctuary, the church is free to give them sanctuary

[454] *CD* §2.

[455] *CD* §7.

for three or five or ten days').[456] Ten days is normally the maximum period an offender is given to pay compensation for an offence, before that offender is considered to have defaulted and an *aitire* representing him is taken into custody, five days being the normal time for judgement to occur and three days for a pledge given to submit the case for judgement.[457] So from this it would seem that certain churches are permitted, as a neutral arbitrator dedicated to legal process, to shelter the offender while legal process is being carried out, but not longer. This concept is summarised aptly by Neil McLeod, who explains 'the legal institution of "sanctuary" was not designed to allow the guilty to escape justice. Rather it was designed to allow accused persons who were prepared to "offer law" to escape unlawful vengeance'.[458] This, he suggests, is the underlying situation evisaged by a passage in *Críth Gablach* detailing the procedure for negligent injury, where an *aitire* representing the offender 'leads him from the scene of bloodshed into a noble sanctuary for his protection. He protects him against the onslaught of a host'.[459] However, two sections in *Collectio Canonum Hibernensis* mention exemptions and immunities granted to churches who do not harbour offenders, and Heptad 51 notes one of seven offenders not to be harboured includes *ditiu fir asluí a recht Dé nó duine* ('protection of a man who absconds from the law of God or man').[460] One way to harmonise the above citation from a *cáin* text with the legal statements in the Heptads and *Hibernensis* might be that the former permits only certain kinds of offenders to receive sanctuary in churches, excluding, among others, a *fer airm deirg* ('a man with a bloodstained weapon').[461] One does wonder whether part of the idea of preventing churches from offering sanctuary to certain offenders was to protect them from dynastic harm. Certain offenders, who might well be involved in dynastic disputes, could thus draw certain churches into such political arenas, resulting in the potential factionalisation of ecclesiastical centres, making them targets for violence, and

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[456] *CIH* 823.30–2; trans. Breatnach, *Companion* pp. 193–4, who also translates the gloss on the citation: *.i. xmad do eclais in espuic ⁊ .u.ti d'eclais in sacairt ⁊ treisi do eclais in deochain* ('i.e. ten days for the bishop's church, and five days for the priest's church and three days for the deacon's church'). For another example of ecclesiastical sanctuary being permitted to avoid violent consequences, see *Berrad Airechta* §45 (*CIH* 594.30; trans. Stacey, 'Berrad Airechta', p. 217), where a debtor can seek protection from a *naidm* in a church or with a bishop.

[457] For these enforcement mechanisms, see section 2.2.4. In *CA* §38, examined below, after three days judgement is passed and after five compensation is due.

[458] McLeod, 'The blood-feud', p. 119.

[459] *CG* ll. 53–4; trans. McLeod, 'The blood-feud', p. 118. Concerning the *ardnemed* ('noble sanctuary'), cf. the *blainemed* in *CA* §36.

[460] *CCH* 41.29–31; *CIH* 46.37–47.3. Cf. *CIH* 12.27, which refers to a house which has been turned into a 'den of thieves' can be destroyed without compensation.

[461] See Kelly, *GEIL*, p. 222.

undermining their supposed immunity.[462] So like other stipulations in the ecclesiastical *cánai*, these stipulations reveal a desire to avoid even the possibility of violence occurring in church precincts. A lay kindred harbouring one of their own who has committed homicide would produce fruitful circumstances for *dígal* to occur, facilitated by the *aire échta*.

Harsher penalties for harbouring or assisting offenders, as *Cáin Adomnáin* and *Cáin Phátraic* include, served to prevent feuds from occurring in the first instance, in turn preventing the *aire échta* from being called upon, and thus prioritised church-mediated legal process over potentially violent feud, however lawful it may have been considered. However, it is worth noting that the existence of these harsher penalties for harbouring offenders suggests that it was viewed as a contemporary problem that resulted in enough disorder to merit such harsher penalties. In short, joint liability in ecclesiastical *cánai* sought to prevent inter-territorial feud between kingdoms (a goal of the church) through reducing the chance that absconding offenders would go unapprehended, and it further clarified difficulties of determining complicity in offences from onlookers, and thereby helped overkings more easily consolidate their overkingdoms through legal centralisation.

### 3.2. Enforcement and legal procedure

In the last section, the range of offences covered in this type of inter-territorial law were explored and examined in terms of some differences between *urradus* and *cairde*. In this section, the legal mechanisms which enabled the ecclesiastical *cánai* to be enforced in inter-territorial situations will be examined. In addition, aspects of legal procedure that may represent shifts in legal practice will also receive some treatment.

#### 3.2.1. The personnel of *cáin*

The enactment of *Cáin Adomnáin* in AD 697 occurred at a joint assembly of lay and ecclesiastical lords, up to the highest level, including provincial kings and preeminent bishops. It instituted a legal mechanism of enforcement designed to regulate all levels of society, including the guarantors that appear as signatories to the ordinance, though for a set enforcement period.[463] Like in *cairde*, the method of enforcement is through *aitiri* who represent offenders, but the scale is far greater than in

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[462] On the reality of such potential situations, see Charles-Edwards, *ECI*, pp. 594–6.

[463] For a detailed account of these guarantors, see Ní Dhonnchadha, 'Guarantor list', pp. 178–215. On the set enforcement period, see in particular, Charles-Edwards, *ECI*, pp. 567–9.

the texts on *cairde*. That *Cáin Adomnáin* intended to arbitrate disputes among all levels and facets of society is indicated by the following stipulation:

> For-thá forus na cána as meise cacha saigte[c]he for aitiri æter grádu tuathi 7 grádu ecalse i críchaib immedón 7 [i] crícha[ib] díanechtair, di fiachaib beccaiph 7 móraibh ar réir Adomnán *nó* a muintire. Apad 7 forais, 7 ní díbdai Cáin Adomnáin nach a muntire.
>
> The enactment of this Law enjoins that a hostage-surety is to be appointed with respect to every suit, both for the grades of the laity and the grades of the church, in territories internally and externally, for dues small and large according to the stipulation of Adomnán or his community. [There shall be] proclaiming of enactment and the Law of Adomnán and of his *familia* shall not become extinct.[464]

This stipulation details that an *aitire* functions for disputes occuring among the laity, clerics, and between them, for the internal and external affairs of kingdoms, and for all offences in *cáin*.[465] The types of *aitiri* to facilitate this are detailed in another stipulation:

> Teora ait*ir*e cac[h]a prímegalsa fri Cáin Adomnán .i. secnap 7 coic 7 fertiges; 7 aitire cána derbf̂ine fo Éirinn uile 7 dá eitire cána ardflat[h]a, gialla gabhála dia díl, dia mbé tuar*asndal* bansgál.
>
> Three hostage-sureties for every principal church for the Law of Adomnán, to wit, the prior and the cook and the guest-master, and a hostage-surety for every *derbf̂ine* throughout Ireland, and two hostage-sureties for high rulers, and hostages to be held for its payment, if there be the [collective] evidence of women.[466]

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[464] *CA* §39; trans. *CA*, p. 40, with a slightly different translation of the phrase *i críchaib immedón 7 [i] crícha[ib] díanechtair*.

[465] The fact that the author of this ordinance felt the need to make this a stipulation may indicate that aspects of this may have not been the norm, and that otherwise *aitiri* were only normally appointed for inter-territorial offences. See Stacey, *The Road to Judgement*, pp. 89–90. However, note one of the obligations an *aitire* swears to that *Berrad Airechta* §65d (Thurneysen, *Bürgschaft*, pp. 22–4; trans. Stacey, 'Berrad Airechta', p. 222; *CIH* 597.16–18) mentions: *Toing do dia doindraigi snadhugud cleirich no laich co hairm i neipertar frit do dal nach fuicfe di dail, na digentar dít munas denu-sa ł muna déna mo f̂er dala conmeisur* ('Swear to God that you will undertake the safe conduct of cleric or layman, to the place in which your meeting is announced to you, and that you will not keep him from the meeting, and that it (the responsibility of your office?) will not be removed from you unless I remove it or unless my legal agent, whom I will appoint, should remove it'). The *fer dála* here presumably refers to the prosecuting figure(s) who liaises with the *aitire* (whether *muiredach*, *rechtaire*, *muire rechtgi*, or *aitire in fechemain*), interestingly described as being either a layman or cleric. As such, we have here an indication that an *aitire* could be used for ecclesiastical claims as well, but perhaps these would normally only be claims involving a dispute between lay and ecclesiastical entities from different kingdoms.

[466] *CA* §53; trans. Ní Dhonnchadha, 'The Law of Adomnán', p. 68, preferring 'high rulers' to Ní Dhonnchadha's 'noble lords'.

So, with one *aitire* nominated for every *derbfhíne* in Ireland, two *aitiri* for *ardfhlatha*, and three *aitiri* for each *prímeclais*, *Cáin Adomnáin* incorporates a comprehensive enforcing mechanism for specific offences against women, clerics, and innocent children arising within a kingdom, across kingdom borders, or even across borders separating lay and ecclesiastical jurisdictions.[467] The *aitire* serving for a non-noble kindred would likely be the head of that kindred, the *aire fine* or *aire coisring* detailed in *Críth Gablach*, and the *aitire* serving for a noble kindred would likely be the same as the person serving as *aitire chairdi* for his kindred, as detailed above.[468] The two *aitiri* taken for *ardfhlatha* would most logically function in the event of inter-territorial affairs, and therefore would most likely be of noble status, like in *cairde*.[469] One would imagine this would even extend to interprovincial affairs, which would illustrate the full impact of this piece of legislation and contains deep implications for the consolidation of overkingdoms. While representing fellow kin members, such *aitiri* are normally immune from kindred liability, unless they (or someone for whom they are directly responsible) are involved in an offence.[470] *Gíalla* are only required in the event of female evidence being used, a statement that reveals that *Cáin Adomnáin* recognised that female evidence was generally a difficult issue in legal procedure, and thus required a more forceful

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[467] This inter-territorial outlook is further emphasised by *CA* §38: *trian gild do humui nó argit* ***fo mes cacha críchiu*** *a tóthucht cacha cainggne* ('a one-third pledge [better 'a third of the pledge'?] in bronze or silver **according to the estimation of each territory** from the entitlement of every case'). For the clear identification of an *ardflaith* as an overking, see *CD* §3, which mentions an *ardflaith for-bé tóatha* ('high ruler who rules over kingdoms'). The *secnap*, *cóic*, and *fertigis* are the three ranks of *gráda uird ecalsa* ('church administrators') immediately below the *airchinnech*, the presiding administrator, for which see Etchingham, *CO*, p. 67; cf. these three figures grouped together in the *port* ('monastery') of an *airchinnech* in the eighth-century 'Rule of Ailbe', see J. Ó Néill, 'Rule of Ailbe', p. 106.

[468] Note that the *aire coisring* submits a pledge *tar cenn a fine do rígh 7 senud 7 óes cherdd* ('on behalf of his kindred to king, ecclesiastical authority, and poets'), *CG* ll. 280–2 (trans. Breatnach, 'On Satire and the Poet's Circuit', p. 29). Cf. *CG* ll. 339–43, 373, where the *aire désa* protects his clients with regard to a *cáin* and constrains them (as well as his kindred, it seems, from *CG* ll. 341–2) to obey a *rechtge*, and where the *aire ard* 'represents his clients in regards to contract and *cairde*'. As discussed in section 2.2.4, clients of such a lord may often include kin members.

[469] See section 2.2.4. An interesting implication of this (combined with the stipulations of *CA* §48) would be that a lay commoner committing an inter-territorial offence then defaulting on the payment, such that a high-status *aitire* representing him is taken into custody, would thereby face higher maintenance fees for the higher status *aitire* than an *aitire* for an offence within his kingdom, who would just be the head of his non-noble kindred. As a side note, the number two for inter-territorial *aitiri* is curious here; an interesting parallel is the mechanism of *lánarrae* being comprised of two people, though whether there is any connection at all here I cannot say. For discussion of *lánarrae*, see section 2.2.1.

[470] *CA* §49.

means of legal constraint, the *gíall*, to ensure that the matter went according to the legal process in the *cáin*.[471]

The only information we have about *aitiri* in *Cáin Phátraic* lies in *Cáin Domnaig*, which states: *is di aitiri chána Pátraic do-bongatar féich inna cana-so in Domnuig* ('it is on the basis of a hostage-surety of *Cáin Phátraic* that the fines of this Law of Sunday are levied').[472] Like we have seen in *Berrad Airechta*, an *aitire* here is due double the fines he has to pay on the offender's behalf.[473] Similar to *cairde* and later with the tract on *cró* and *díbad*, an *aitire* collaborates with a levying figure. In *cairde*, this is the *muiredach*, in *C₇D*, the *muire rechtgi*, in *Cáin Adomnáin*, the *rechtaire*, and in *Cáin Domnaig* it seems to be the *fer tobuig cech ceníuil* ('levier from each *cenél*'), though the related tract *Epistil Ísu* overtly mentions *rechtaire na cána*.[474] The company of the *rechtaire* in *Cáin Adomnáin* is given as *cóicfer* ('five men'), which includes the *aitire* representing the offender; similarly *Cáin Domnaig* mentions a party of four claimants with an *aitire*.[475] The others of this company are described as leviers who, like the *aitire*, might be a lord, (non-noble) layman, or cleric. What is curious about this passage are the fines for refusing to maintain this company while on circuit: before guilt is established, one would imagine the offender's kingdom (and thus the local king) would be responsible for maintaining the *rechtaire*'s prosecuting party, and

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[471] In general, female testimony is invalid, according to passages from the various vernacular law texts as well as from the *Hibernensis*, for a summary of which see Kelly, *GEIL*, pp. 207–8. However, there are exceptions, notably concerning sexual matters in various texts (*Bretha Crólige* §38, Binchy, 'Bretha Crólige', pp. 30–1; *CIH* 966.2–5, R. Thurneysen, 'Aus dem irischen Recht IV', *ZCP* 16 (1927), pp. 218–19; *CIH* 145.30–146.4; Kelly, *Marriage disputes: a fragmentary Old Irish law-text*, Early Irish Law Series 6 (Dublin 2014), pp. 7, 32–5), the testimony of a nun against a cleric in *Gúbretha Caratniad* §35 (*CIH* 2197.5–6, Thurneysen, 'Aus dem irischen Recht III', p. 345–6), in *bántellach* in *Din Techtugad* (*CIH* 208.15). Thus, *túarasndal bansgál* could be invoked in situations of sexual assault and physical blemishes (*CA* §50), potential sexual matters in (*CA* §51), and in suspected cases of fornication (*CA* §52).

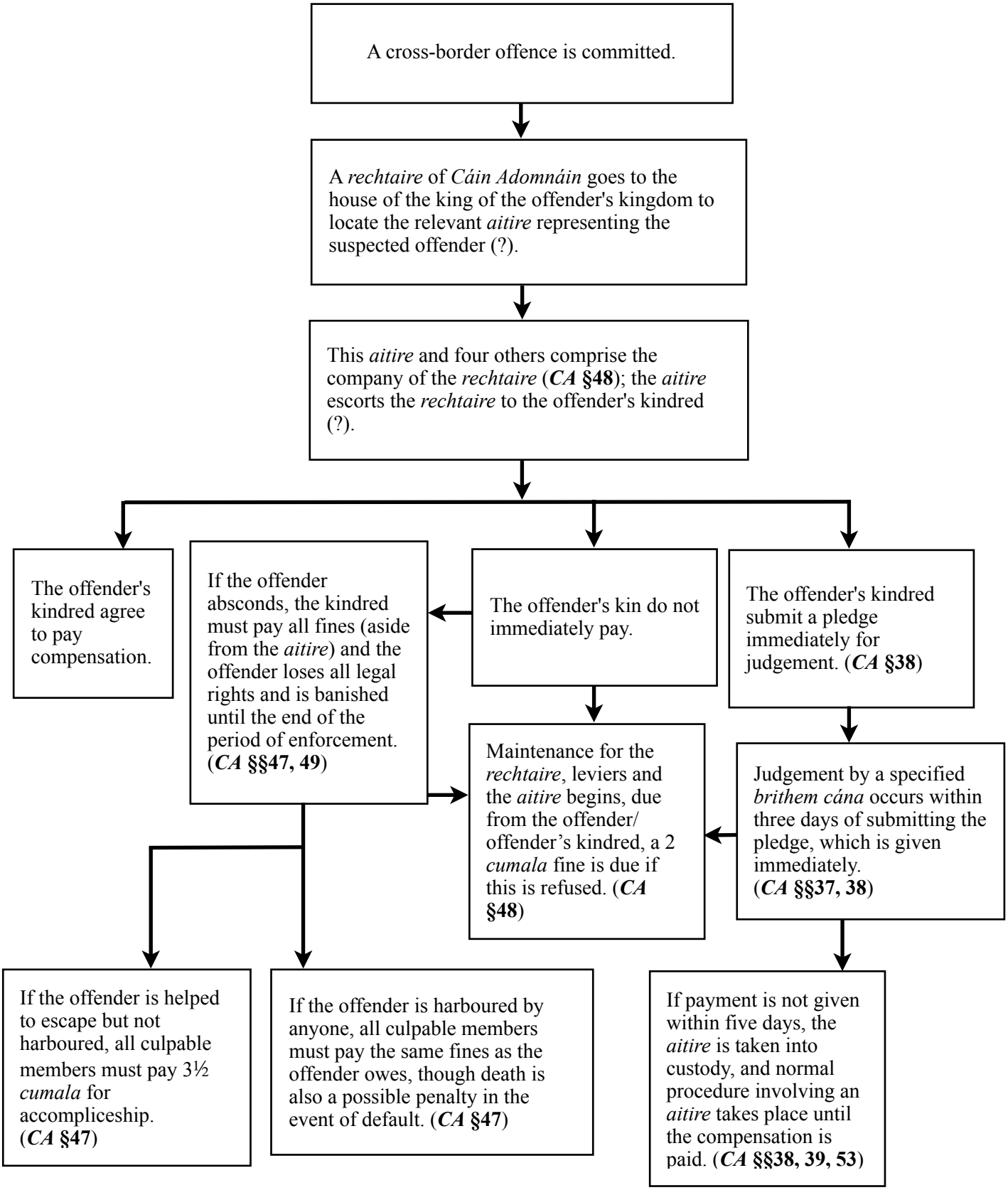
[472] *CD* §3.

[473] *CD* §6. See section 2.2.4.

[474] *CA* §48 (though cf. the *maor Cána Adhamhnáin* in *AFM* 927.4, who may or may not have similar functions); *CD* §2; *Epistil Ísu* §29, O'Keeffe, 'Cáin Domnaig', p. 208. In addition, it seems possible for certain witnesses in *Cáin Domnaig* to levy as well, for which see *CD* §§2–3. On the *muiredach* in *cairde* and the *muire rechtgi* in *C₇D*, see sections 2.2.4 and 4.2. On the relationship between *Cáin Domnaig* and the *Epistil Ísu*, see Breatnach, *Companion*, pp. 211–12. The *muire* used in legal procedure in *Cáin Domnaig*, which Hull translates as 'immediate superior', is probably the lord of the offender, as is implied in *CG* ll. 349–43 (where the *aire désa* protects his clients with regard to a *cáin* and constrains them to obey a *rechtge*) and as we see later playing a role in *C₇D*. See section 4.1. Note that *Tecosca Cormaic* §34 advises *ní bad rechtaire duit fer co célib* ('do not let a man with clients be your *rechtaire*'), suggesting that such a legal officer should not have economic ties to those against whom he may enforce legal ordinances and from whom he may collect legal dues.

[475] *CA* §48, preferring here Ní Dhonnchadha, 'The Law of Adomnán', p. 67, for the translation of *cóicfer do aitire* as 'the surety as one of five' to that of Ó Néill and Dumville in *CA* §48 ('five men as guarantors'); *CD* §6.

**Figure 20: Legal procedure for inter-territorial claims in *Cáin Adomnáin***



if they fail in this obligation, *Cáin Adomnáin* prescribes a fine of one *cumal*.[476] That this stipulation exists emphasises that this is an unusual external levying party (granted it comes from an ecclesiastical provenance) and is perhaps a slight departure from previous legal procedure. However, if the offender is proven guilty, from then on it would be the offender's responsibility to maintain the levying party for the remainder of the five-day period, at which point compensation for the offence would be due to them. If he refuses to maintain them, he would be liable for an additional fine of two *cumala*. Such a situation would create far more pressure for the offender than a situation like in *cairde*, where the offender had a set amount of time to pay, only *after which* the offender would need pay additional fees associated with the maintenance of an *aitire* representing him.[477] A model of how legal procedure works for inter-territorial offences in *Cáin Adomnáin* is presented in Figure 20.

Judges in the ecclesiastical *cánai* reveal another angle of ecclesiastical arbitration and inter-territorial enforcement. Firstly, the legal framework of *Cáin Adomnáin* installs specific judges for its measures 'in every church and kingdom' consisting of 'clerics whom the community of Adomnán choose and to whom they entrust the enactment of his *cáin*'.[478] The implications of this stipulation are vast. Installing *only* clerics to arbitrate lay cases involving all offences under an ordinance may well have been a legal innovation at the time; regardless, it was certainly innovative for all those clerics to be selected by a single powerful ecclesiastical network. This was indeed a move towards centralisation of legal authority, and it is noteworthy that these might often be judges from outside the kingdom in which they pass judgement. Such an innovation would permit ecclesiastical networks (Iona's in this case) to have a stronger legal hand in the affairs of each kingdom within the jurisdiction of *cáin* in question. *Cáin Domnaig* similarly invokes the need for high status judges, mentioning a *brithem bes gaíthem ⁊ bes cráibdigem bes i cach thúaith* ('judge who is most skilled

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[476] There is some question whether this would be in addition to or replacing the standard penalty for *etech* ('refusal of hospitality') or *esáin* (lit. 'driving away'), which would be payment of full honour-price, according to *Bretha Nemed Dédenach* (*CIH* 1123.22–4). See Kelly, *GEIL*, pp. 139–40.

[477] That maintenance charges on an *aitire* would occur *before* the period for payment ended would indeed represent a significant departure from the legal process described in *Berrad Airechta* and *Slán nAitire Cairde* (detailed above in section 2.2.4.), in addition to maintenance charges for the *rechtaire* and four other leviers, which, as far as the sources state, has no parallel in *cairde*. One would imagine that after the payment period, the *aitire* would subsequently be taken into custody and normal legal process regarding the *aitire* would take place. Cf. the legal procedure in *CD* §5, where a similar system of 'early' maintenance charges for an *aitire* is mentioned. For explanation of this passage, see Stacey, *The Road to Judgment*, p. 95.

[478] *CA* §37: *It é brithimain Cánæ Adomnán i cach eclais 7 i cach thuaith .i. clérich do-n-goat munter Adomnān*.

and most pious in every kingdom').[479] The need for high status judges might be explained by the necessity of having personnel with sufficient status and qualifications to be able to handle all levels of cases, including those covering inter-territorial offences. *Cáin Dar Í* provides little information about judges themselves, but does state that in the event of an inter-territorial offence, the offender is required to go across the border into the victim's kingdom to receive judgement at the house of the judge.[480] So here it is not just an external judge adjudicating, as seems to often have been the case in *Cáin Adomnáin*, but also not in the offender's own kingdom. *Cáin Phátraic* includes a lengthy passage on its judges:

> A folad o túaith nodo saora: a bíatha cethriur, .i. a fer mancuine ⁊ a dias fogluma do torba túaithe ⁊ hé fadesin. Et ní bí a mías cen féoil ara-gella im, ara-gealla as maith *acht* ná roib cleith ná díchell and; dia roib dligid a réir ná téit tar díabal a b[i]id la lóg n-einech fó míad.
>
> Mad fer túaithe b[i]id i cétud fri rig *nó* tuíseach oca mbé; diam clérech b[i]id i cétu fri aircindech n-úasal. Dligid toircsin taulche dó ó cách ⁊ étsecht a airberta, a lá n-air, a lá mbúana, a lá n-ime a lá coibdine, suíre athgabála, a faosam *dechmaide*; it é folad brithemon fo-gní rí[g] ⁊ túa[i]th cenmothá ní do-formaig a suíre ar séota ⁊ céile.
>
> Dliged ollum áirullud /–*aile deac* do derbfíachad / o fir dian fíach fothaigedar / nó dia ndíla tromcinta / ⁊rl
>
> Suíre ⁊ bíathad cacha brithemon in cach túaith imbi brithem; is innti a cháta ⁊ a suíre.
>
> Mad ardmaor las bet iltúatha ⁊ ilmuire a cháta ⁊ a toichned ⁊ a sárugud fo cátaid a ríg oca mbí i coimríadh.
>
> His considerations from the kingdom which ennobles [that is, appoints] him: he is to be given refection as one of four, that is, his servant and his two students [whom he instructs] for the benefit of the kingdom, and he himself. And his dish is not without meat, for which butter is a substitute, for which full milk is a substitute, provided that there be no deception or remissness there; if there be [deception or remissness], he is entitled to whatever he stipulates up to twice the value of his food, together with [the payment of] his honour-price in accordance with his status.
>
> If he be a layman he sits with the king or lord who employs him, if a cleric he sits with the noble abbot. He is entitled to [demand] attendance by all at the mound [of judgement], and listening in silence to his exposition of law, his day's ploughing, his day's reaping, his day's fencing, his day's military assistance, immunity from distraint, his ten days' conferring of protection; these

[479] *CD* §1; cf. *CD* §3, which accords judicial functions to a cleric or lay judge *bes gaíthem 7 bes chráibdigem bes i cech túaith* ('who is most skilled and most pious in every kingdom').

[480] Edited and translated by Breatnach, *Companion*, p. 207, who omits the glosses; *CIH* 1972.10–1973.3; cf. 865.32. This would appear to be a marked difference from *cairde*, where the king of the offender's kingdom, who receives the *muiredach* from the victim's kingdom into his house, would normally seem to be the arbitrating official, and as such the offender, if submitting the case to arbitration, would normally be expected to receive judgement in his or her own kingdom.

> are the considerations of a judge who serves king and kingdom, apart from whatever his nobility in the matter of wealth and clients adds.
>
> A chief judge is entitled to earnings–a twelfth as certain fees from a person to whom he awarded a payment, or whom he absolves from heavy liabilities, etc.
>
> The noble status and refection of any judge is in whichever kingdom he is a judge in; in it is his status and his nobility.
>
> If he be a superior officer with many kingdoms and many justices under him, his status and the penalty for refusing him food, and that for dishonouring him is in accordance with the status of his [over?]king who appoints him in a position of authority.[481]

In contrast to *Cáin Adomnáin*, the first thing that may be noted here is the utilisation both of clergy and laymen for the judges of this *cáin*, though the figures still have fairly high status, as demonstrated by the entitlements and immunities granted to them.[482] The next thing to note is the range of judges described. In addition to differing status of judges being mentioned throughout, specific higher ranks of judges, the *ollam* and *ardmáer*, are given as well.[483] This correlates with the scope of legal topics, ranging through various levels of society, that *Cáin Phátraic* dealt with, as discussed below. In such a way, this ordinance might be seen as expanding upon *Cáin Adomnáin*'s judicial framework. Indeed, this may have been a practical necessity by virtue of the seemingly greater range of legal aspects dealt with, but it is hard to say for certain, given the fragmentary nature of *Cáin Phátraic*. In this passage, the *ardmáer* is a particularly intriguing figure. This official is clearly a judge of sorts, but of significant status, most likely appointed by an overking, since he

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[481] *CIH* 1268.35–1269.20; ed. and trans. Breatnach, 'Lawyers', p. 7–9.

[482] Note in particular the immunity from distraint, and the ability to offer protection for ten days, which is on par with that of a bishop's church in a gloss on a citation from a *cáin* text (*CIH* 823.30; Breatnach, *Companion*, pp. 193–4), and that of the *aire tuísea* in *Uraicecht Becc* (for which see McLeod, 'Lord of slaughter', p. 104). As mentioned above, the immunity from distraint here is in contrast to §8 of a text on distraint edited and translated in Binchy, 'A Text on the Forms of Distraint', pp. 78–9.

[483] Further evidence for different ranks of judge can be seen in two Old Irish legal passages edited in Breatnach, 'Lawyers', pp. 9–10. One passage describes a lower rank *brithem na ceannaithe* ('judge of the territory'), who deals mostly with internal affairs of a kingdom (with the exception of *combeart dá crích* 'joint adjudication of [matters which involve] two territories'), including handling even minor disputes concerning *comaithches*, distraint, and kindred or land affairs (which he does immediately and without a fee). This judge is contrasted with a higher judge, an *ollam*, who is *ag dáil urdligid a n-airecht cáid, i medón ardaireachta, i fiadnaise airdrígh, airm nó áit ina cluinither caisi cáich* ('in a noble assembly, [or] in the middle of a superior assembly, in the presence of a high-king, where he hears the cases of all'), *CIH* 1932.14–15. This judge of an *ardrí* (likely a provincial king here), is not responsible for the minor disputes like the lower rank judge, which is emphasised by the other passage *brithim ard arberta breith fir fiad rig 7 tuath, ni he as fuidlidi im comaidces crich* ('a noble judge who expounds true judgements in the presence of kings and kingdoms, it is not he to whom cases concerning relationships between neighbours are to be submitted'), *CIH* 573.18.

has *iltúatha* (‘many kingdoms’) under him, and since his status derives from the king who appoints him. The *ilmuire* (‘many justices’) he has precedence over may indicate that he would have an appellate function in the event of difficult cases.[484] This would make even more sense when considering the appellate judicial function that Armagh claimed in the rhetoric of its *Liber Angeli*. Not only does *Liber Angeli* reserve exclusive judgement to the bishop of Armagh for any offence incurred against the *familia* or *paruchia* of Armagh, but a judicial sequence in the text refers difficult cases, which cannot be resolved by any judge of a kingdom in Ireland, *ad cathedram archiepiscopi Hibernensium, id est Patricii* (‘to the see of the archbishop of the Irish, that is, of Patrick’). Only if the highest ecclesiastics in Armagh could not adjudicate on the matter, would arbitration of the matter pass *ad sedem apostolicam…id est ad Petri apostoli cathedram* (‘to the apostolic see…that is the seat of Peter the apostle’).[485] Claiming to reserve ultimate jurisdictional authority of unresolved cases in Ireland to Armagh certainly bears some semblance to the ultimate ecclesiastical arbitration seemingly established by the ecclesiastical *cánai* and *Cáin Phátraic* in particular.

Rhetoric aside, we may turn to the annals to find some figures that may illustrate more practical reality of the position of the *ardmáer* in *Cáin Phátraic*. There exist several ninth- and tenth-century annal entries that mention a *máer* connected to Armagh in some capacity.[486] An entry for AD 814 mentions the obit of *Feidilmidh, abbas Cille Moinni 7 moer Breg o Phatraic, ancorita precipuus scribaque optimus* (‘Feidlimid, abbot of Cell Moinne, Patrick’s *máer* of Brega, and a distinguished anchorite and excellent scribe’) three years after a promulgation of *Cáin Phátraic* in Connacht and during the reign of Áed Oirdnide mac Néill as overking of the Uí Néill (as king of

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[484] It is uncertain what precise meaning *muire* has here. It may simply be a term for a legal officer, perhaps with judicial functions, but if it were a term indicating a prosecuting legal officer close to the *muiredach*, *muire rechtgi*, or *rechtaire*, then one might interpret the *ardmáer* as an appellate judge who handles more difficult cases and then liases with such legal officers to facilitate the collection of fines due from offenders who have been proven guilty. See Etchingham, *CO*, p. 212; cf. Charles-Edwards, *ECI*, p. 256.

[485] *Liber Angeli* §§28–9 (ed. Bieler, *Patrician Texts*, pp. 188–91). Cf. *CCH* 20.3, 20.5 where, on the authority of *Sinodus Romana* or *Patricius*, cases are ultimately referred to the *metropolitanus episcopus suae prouinciae* (‘metropolitan bishop of his own *prouincia*’), culminating with the *sedes apostolica* (‘apostolic see’) or *caput urbium* (‘chief of cities’, i.e. Rome). On the semantics of the terms *familia* and *paruchia*, see Etchingham, *CO*, pp. 120–30.

[486] *AU* 814.1; 888.3; 894.1; 924.1; 929.1 (cf. *AFM* 927.2, *AI* 929.2); cf. the *maor Cána Adhamhnáin* in *AFM* 927.4. Cf. *AFM* 889.12 on the *máer* in *AU* 894.1 also functioning as *prímh-breithemh Lethe Cuind* (‘chief judge of Conn’s Half’).

Tara), who himself had promulgated *Cáin Phátraic* in 806.[487] Again, it is quite clear that this is a high-status cleric, given his other positions. The other entries, while after the last known promulgation of *Cáin Phátraic*, are nonetheless useful in providing evidence of a continuing position: some of these mention a *máer muinntiri Patraicc fri sléibh fodes* ('*máer* of the community of Patrick south of the mountain'), who is sometimes noted as head (*princeps*) or bishop of churches likely under Armagh's jurisdiction, such as Lusk, Duleek, and Trevet.[488] A *máer* of a different district is mentioned in 922: *máer muinntiri Aird Macha o Belach Dúin co muir 7 o Boainn co Casán cenn comuirle 7 adchomairc fer m-Bregh n-uile* ('*máer* of the community of Armagh from *Belach Dúin* (Castlekieran, Co. Meath) to the sea and from the Boyne to Cassán, and chief advisor and counsellor of the men of all Brega').[489] Furthermore, an entry for 924 mentions a *tánaise abad Aird Macha 7 ardmáer Oa Néill in Deiscirt 7 comurba Buiti m. Bronaigh, cenn adcomairc fer m-Breg n-uile ocaibh cleirchibh* ('*secnap* of Armagh, and *ardmáer* of the southern Uí Néill and successor of Buite son of Brónach, chief counsellor of the men of all Brega, both laymen and clerics').[490] This is strikingly similar to the high-status person *Cáin Phátraic* describes as an *ardmáer*, with authority throughout an overkingdom (the southern Uí Néill), and, as a *secnap* being the next rank under an *airchinnech*, a clerical judge whom one would expect to sit with an *airchinnech úasal* (here the bishop-abbot of Armagh).[491] Presumably, this *ardmáer* would have jurisdiction over the contemporary *máer muinntiri Patraicc fri sléibh fodes* and *máer muinntiri Aird Macha o Belach Dúin co muir 7 o Boainn co Casán*, two smaller regions within the southern Uí Néill overkingdom. So as can be seen from the above evidence, *Cáin Phátraic* included a variety of judicial figures, some of whom had jurisdiction over large overkingdoms.

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[487] *AU* 806.5; 811.1; 814.1. The duration of the enforcement period of an ecclesiastical *cáin* has been suggested as seven years or for the extent of the reign of the overking who promulgated it, for which see Bemmer, 'Sin and Delict', pp. 13–14; Charles-Edwards, *ECI*, pp. 567–9; *idem.*, *EMGL*, pp. 55–6; Stacey, *The Road to Judgment*, p. 94. Regardless of the situation here, we may safely assume this *máer Breg ó Phátraic* held his position during the time when this enactment of *Cáin Phátraic* was in force in the Uí Néill overkingdom (which, of course, included Brega).

[488] *AU* 888.3; 894.1; 929.1. See K. Hughes, *The Church in Early Irish Society* (London 1966), pp. 209–10, who interprets this as a reference to the Fews mountains of south County Armagh.

[489] *AU* 922.1.

[490] *AU* 924.5. See Etchingham, *CO*, p. 212, for the idea and further evidence that the title *adcomairc* of these two *maír* may indicate a appellate judiciary function.

[491] This attested definition merits an additional entry in eDIL, especially since some of the examples given above are used in eDIL under the general definition of 'steward'. For the idea that *maír* (from Latin *maior*) also played a role in collecting dues (*pace* this definition of 'steward' given in eDIL), similar to a *muiredach*, *rechtaire* or *muire rechtgi*, see Hughes, *The Church in Early Irish Society*, pp. 209–10; Etchingham, *CO*, pp. 211–2; Charles-Edwards, *ECI*, p. 256. For pertinent discussion of the terms *secnap*, *secundus abbas*, and *tánaise abbad*, see Jaski, *Early Irish Kingship and Succession*, pp. 251–6.

As we have seen thus far, the floruit of the ecclesiastical *cánai* appears to represent an intensification of involvement by external personnel for functions involving many levels of society. The implication of such external personnel, notably levying figures and judges, may be better understood by factoring in the underlying content of two short excerpts from the Tripartite Life of Patrick.[492] Couched within Patrick's curses or blessings upon various dynasties of the Laigin, which are cast as contributing to the detriment or success of dynasties, are legal and political realities. He curses the Loíges, saying that 'there will be neither king nor bishop from them till Doomsday. It would be an external ruler who would govern them; he will not protect them from oppression and legal prosecution till Doomsday'. Alternatively, he blesses the Uí Ercáin, asserting that 'there would never be an external king or *rechtaire* over them till Doomsday' and 'from the time of Patrick they have retained their own *brithem* in their territory'.[493] The implication here is that dynasties whose kingdoms were able to retain relative autonomy (with a privileged relationship of free clientship) from their overlords, would not have external levying and adjudicating personnel from such overlords influence their legal processes.[494] With this in mind, one certainly wonders how early these political realities came into being, when exactly the *rechtaire* emerged as a hallmark of overkingship and political subordination, and whether this occurred before the first of the ecclesiastical *cánai*, *Lex Innocentium* (*Cáin Adomnáin*). The eighth-century *Frithfolad Caisil fri Túatha Muman* claims that the *rechtaire* of the king of Munster levies dues from all of Aurmumain except for the more privileged kingdoms of the Uí Maic Laire, the Déisi and the Muscraige, thus portraying a similar ideal as that in the Tripartite Life: that some client-kingdoms did not have an

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[492] K. Jackson, 'The date of the Tripartite Life of St. Patrick', *ZCP* 41 (1986), pp. 5–45, distinguishes Old Irish, tenth-century, and eleventh-century layers, while F.J. Byrne and P. Francis, 'Two lives of Saint Patrick: *Vita secunda* and *Vita quarta*', *Journal of the Royal Society of Antiquaries of Ireland* 124 (1994), pp. 5–117, discuss the lost eighth-century sources of the ninth-century Old Irish Tripartite Life, preserved as a layer of the version found in the current manuscripts. See also D. Dumville, 'The dating of the Tripartite Life of St. Patrick', in *idem.* (ed.), *Saint Patrick A.D. 493–1993* (Woodbridge 1993), pp. 255-8.

[493] For the entire relevant passage here, see *VT* ll. 2195–2218. For a detailed explanation of the political undertones of this passage, see Charles-Edwards, 'Irish Saints' Cults and their Constituencies', pp. 79–102. That the *rechtaire* is an external figure is additionally emphasised by a legal passage on advocates from *OGSM*, edited and translated in Breatnach, 'Lawyers', pp. 11–12. The passage mentioned as the highest rank of advocate the *aigne fris-n-innle breith* ('advocate whom judgement encounters') who pleads a case even on behalf of a king, with the exception *acht gníma rachtaire* ('except for [matters which pertain to] functions of a *rechtaire*'). This in itself indicates the external nature of the *rechtaire*, since it follows that one who can plead a case on behalf of a king surely could plead for any internal affair within the kingdom, which, thus, affairs of a *rechtaire* are not.

[494] Note, in particular, the claim for such autonomy in the Airgíalla Charter Poem that the Uí Néill overking does not normally have the right to judge matters concerning the Airgíalla, but there are four exceptions which he is permitted to judge on his own authority, for which see *ACP* §§31–2.

external *rechtaire* collecting dues from them.[495] In addition, there are other early eighth-century sources that mention the *rechtaire* in the context of an overking, notably *Críth Gablach*, *Tairired na nDéssi*, and *Togail Bruidne Da Derga*, but it is uncertain whether there exist any precisely datable texts that mention such a figure in seventh-century material.[496] If the overking's *rechtaire*, who acted in client-kingdoms, did not emerge as a figure acting in an extensive inter-territorial capacity until after the *cánai* began to create greater legal centralisation, we might question to what extent the figure did exist in legal administration before this time. This larger question is related to that concerning when the enforcing third was incorporated into the fine structure of dispute settlement, which is considered further below.

### 3.2.2. Aspects of procedure

There are various aspects of legal procedure that illuminate how ecclesiastical *cáin* texts were utilised in inter-territorial dispute settlement, which will be examined here. *Cáin Dar Í*, also called *Cáin Boślechta* or *Boślicht*, was promulgated in the ninth century in various provinces, eventually being promulgated throughout the entire island. One of the most notable of the surviving stipulations in this ordinance is the following:

> Nī fil dīthach i Cāin Dar Í .i. Cāin Bōslecta dīa mbé tūarastal .C.P. ag nech .i. mā beth .t. astus fīachu a Cāin .P. .i. in triar nó anōnbar.
>
> There is no denial by oath in *Cáin Dar Í*, that is, *Cáin Boślechta* if one has the description [of a crime] of *Cáin Phátraic*, that is, if there be the description which fixes penalties in *Cáin Phátraic*, that is, [accompanied by the evidence of] three or nine people.[497]

The concept of *díthach*, a verbal noun from Old Irish *do-toing* (meaning to 'swear away or deny by oath'), was a legal mechanism whereby in a court, a defendant might 'swear away' evidence against

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[495] *FCTM* §9.

[496] *CG* ll. 484; *TBDD* l. 797; *Tecosca Cormaic* §34 (ed. and trans. K. Meyer, *The instructions of King Cormac mac Airt*, p. 50); K. Meyer, 'The expulsion of the Déssi', *Ériu* 3 (1907), pp. 135–142. In *Uraicecht Bec* ('Small Primer'), a *rechtaire* and *secnap* ('deputy abbot') are cast as having as much as half the honour-price of their superiors, a king or *airchinnech* (respectively), *CIH* 923.8–10, 2273.3–4; Etchingham, *CO*, p. 73. Cf. *CG* ll. 484, which mentions a *rechtaire* in the context of the highest grade of king detailed in *CG*, the *rí ruirech*, and concurs with *Uraicecht Bec* that the *rechtaire* has half the honour-price of the *flaith* he serves. As noted by Byrne, 'Ireland and her neighbours, *c*.1014–*c*.1072', in Dáibhí Ó Cróinín (ed.), *Prehistoric and early Ireland*, *A new history of Ireland* 1 (Oxford 2005), p. 873, in Old Irish the word *rechtaire* was used to gloss the Latin term *procurator regis*.

[497] Ed. and trans. Breatnach, *Companion*, p. 206 (where I instead keep *Cáin Dár Í* and *Cáin Phátraic* in their original forms); *CIH* 1413.25–6.

his charged offence by having close kin or his lord swear an oath of his innocence. The legal force and value of this oath was highly dependent on social status as detailed in the legal text *Críth Gablach*:

> Cid asa f*or*dailtea grad túa[i]the? A aurlunn grad n-ecalsa; ar nach grad bís i n-eclais is coir cia bheith a aurlann i dtúaith, dég ḟortaig nó díthig nó ḟiadnaisi nó brithemnachta[e] ó chách dialailiu.
>
> How are the lay grades divided? In correspondence with the ecclesiastical grades; for each rank there is in the church, it is proper that there be its equivalent in the lay community, with respect to a superior oath or denial by oath or eyewitness evidence or judgment from one to the other.[498]

The idea here is that when litigation occurred between the church and lay community, there was a need to determine the relative status of the social grades of layperson and ecclesiastic. The *díthach* represents one such situation; the implication is that a powerful person could swear away allegations made against him by those with less status than he, on account of his more valuable oath. By negating the force of *díthach* if a pre-established kind of evidence was present (that is, incriminating eyewitness accounts of three or nine people), *Cáin Dar Í* essentially increased the impact of its stipulations on high-status people who might otherwise swear away a conviction and any associated monetary dues. While very fragmentary, *Cáin Dar Í* is understood to have involved penalties at least against the theft and slaying of cattle (and probably much more besides).[499] As such, a high-status noble, such as an *aire tuísea*, conducting a raid on lower-status prey (lay or ecclesiastical) could, given the mechanism of a *díthach*, potentially avoid legal repercussions. This is before considering the complexities of carrying out normal legal processes for cattle-raids across political boundaries, as was most common.

The other key element in the passage, a reliance upon sworn evidence as detailed in *Cáin Phátraic*, deserves attention as well. While the relationship between *Cáin Dar Í* and Armagh remains to be defined more fully, which is beyond the scope of this study, it may be notable that the *Liber Angeli* states *a se recte supraiuratur supra omnes aeclessias et illarum antestites, si uera necessitas poposcerit* ('[any oath] is rightly oversworn by him (i.e. the bishop of Armagh) over all churches and their bishops, if a true necessity should demand it').[500] Similarly, an Old Irish passage in *Bretha Nemed Toísech* states, concerning the church: *for-toing for cách, ní fortoing cách forrae*

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[498] *CG* ll. 6–9.

[499] For a collection of the passages concerning summaries of *cánai* from *Félire Óengusso* and *Liber Hymnorum*, see Breatnach, *Companion*, p. 192.

[500] *Liber Angeli* §20 (ed. Bieler, *Patrician Texts*, p. 189).

('it overswears everyone, no one else overswears it').[501] The superiority of ecclesiastical oath-making may be significant here as well. If we were to suggest that *Cáin Dar Í* focused on safeguarding *ecclesiastical* agricultural assets, we would have an extension of *Cáin Adomnáin*'s penalties for violating a ecclesiastical settlement's *termonn*, to include outer agricultural lands used for cultivation or livestock, or the immunity of *uile folud béudu ⁊ marbdu* ( 'all animate and inanimate property').[502] This would parallel *Cáin Phátraic*'s apparent subsumption of *Cáin Adomnáin*'s preoccupation with the protection of clerics. A hint that *Cáin Dar Í* may have involved more than just penalties concerning cattle lies in a glossator's interpretation of a citation concerning a seven-*cumala* fine as involving *marbad buachalla nó airamhain* ('the murder of a cowherd or ploughman'), precisely the kinds of people–the *laích dligthig* ('lawful layfolk') of *Cáin Adomnáin* §34–one would expect to find in the *termonn* of an ecclesiastical settlement.[503] Indeed, we have a record in 811 of the *termonn* of Tallaght violated by the Uí Néill, and it may well be significant that *Cáin Dar Í* was promulgated two years later for the first time in the Uí Néill overkingdom.[504] Further legal protection of ecclesiastical assets was clearly necessary. Pádraig Ó Riain has explored the custom of *crech ríg* ('royal foray'), during which a newly inaugurated king would conduct a raid upon a region.[505] This was to display his fitness to rule and to acquire additional wealth in cattle to initiate or renew contracts of clientship, in the process perhaps subduing political rivals into clientship, or perhaps marauding around the clients of a neighbouring overking as a symbolic

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[501] *CIH* 2226.22–3.

[502] See *CA* §§34, 36. It can be shown from *Cáin Adomnáin*, for which we have the full text, that the aforementioned descriptions of what *cánai* concerned in *Félire Oengusso* or *Liber Hymnorum* (which for *Cáin Adomnáin* simply state *cen mná do marbad* or *gan [n]a mna do marbad* 'not to kill women') are quite abridged rather than comprehensive.

[503] The full clause is: *Seacht cumala lāna for fer n-urraduis mBōslecta .i. īar marbad būachalla nō airamhain, nó is comlāithred deisí īar ngait, ar ní fil .uii. cumala a fiachaib an Bōslechta* ('Seven full *cumala* from the person who bears liability in *Bóslicht*, that is, after the slaying of a cowherd or ploughman, or it is a case of two persons being accessories after theft, for seven *cumala* are not [otherwise?] among the fines of *Bóslicht*'), ed. and trans. Breatnach, *Companion*, pp. 206–7; *CIH* 1367.4–6. The bracketed text is added since the citation clearly states that a fine of seven *cumala* does indeed exist in the ordinance. Note also the mention of herdsmen in another clause in *Cáin Phátraic*: *Na daine indraca…dō is Leo imdenom a mbuachalla cona fiacha cana patraicc ina nguin ł ina sarugud* ('Law-abiding persons...moreover it is up to them to establish a case on behalf of their herdsmen along with the penalties due to them in *Cáin Phátraic* for wounding them or violating them'), ed. and trans. Breatnach, *Companion*, p. 225; *CIH* 982.37–9.

[504] *AU* 811.2; 813.8.

[505] P. Ó Riain, 'The "*Crech Ríg*" or "Regal Prey"', *Éigse* 15 (1973), pp. 24–30. Cf. the number of fully liable persons given in *Rith na cānnan* for *Cáin Bóslechta* as one hundred (*CIH* 1587.4), which is the smallest retinue apportioned to a king (*rí túaithe* or *rí mórthúaithe*) in inter-territorial affairs (*cáin* or *cairde*) in a retinue list from an excerpt likely derived from *Bretha Cairdi* at *CIH* 808.4–6.

challenge to him.[506] Given the tendency of dynastic feuds to result in violence against lay and ecclesiastical entities alike, a moral edict to curtail the practice of raiding cattle (and probably other material assets) of ecclesiastical settlements, including during a *crech ríg*, may have seemed particularly necessary to the proponent of this *cáin* (be it Armagh, one of its subsidiaries, or another ecclesiastical centre) to garner collective support for the protection of ecclesiastical agricultural assets.[507] By using the same established account of incriminating evidence, *túarastal*, in *Cáin Phátraic*, which already dealt with offences against ecclesiastical settlements, *Cáin Dar Í* drew upon relevant existing authority but for a slightly different purpose.[508]

A selection of clauses on pledging in *Cáin Phátraic* reveals more about the range of legal areas covered therein. These clauses, *lethgille a Cāin Pātraic i fuirech for nech na n-indile ro gab i comund cen a fūasluccud dē* ('a half-pledge in *Cáin Phátraic* for withholding the cattle which he has taken into a pound from a person without releasing them from it'),[509] *lethgille risin nī tēit I lobad don athgabāil bruigrechta i Cāin Pātraic* ('A half-pledge for whatever of that which has been distrained under land-law enters into the period of progressive forfeiture in *Cáin Phátraic*'),[510] and *leithgille in comhaithchessa i cain patraic* ('the half-pledge of neighbourhood law in *Cáin Phátraic*'),[511] reveal that a half-pledge had a function for certain legal actions concerning *comaithches*, which distraint and *mruigrecht* are part of. To this collection we may add the clause *smachtg[ille] ēicindtech do scur troisci i Cāin Pātraic* ('an undetermined penalty-pledge for ceasing fasting in *Cáin Phátraic*'), which mentions fasting as a means of distraint.[512] It is curious that such an inter-territorial edict as *Cáin Phátraic* would seek to regulate even these minor affairs, which *Cáin Adomnáin* does not. We may therefore reckon the breadth of legal areas that *Cáin*

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[506] For example, see *AU* 797.5 concerning the Cenél nÉogain king (and king of Tara) Aéd mac Néill: *Uastatio Midi la Aedh m. Neill, 7 initium regni eius* ('The ravaging of Mide by Áed mac Néill and the beginning of his reign').

[507] See, for example, Charles-Edwards, *ECI*, pp. 594–6. On this topic, one also wonders, given the immunity from kindred liability for royal kindreds claimed in the Airgialla Charter Poem, for which see Charles-Edwards, 'The Legal Content', p. 117, whether the kindred liability detailed in *Cáin Adomnáin* §47, combined with enforcing mechanism of the *aitiri* nominated from **every** *derbḟine* as well as those nominated from *ardḟlatha* in §53, represented an attempt to negate such immunity from kindred liability for its stipulations, and thus try to hold even high-status people accountable.

[508] Also note that the promulgations of *Cáin Dar Í* in Connacht in AD 812 and 826 immediately succeed those of *Cáin Phátraic* in the same province in 811 and 825, which of course enabled it to utilise the account of *túarastal i Cáin Phátraic*. See *AU* 811.1; 812.13; 825.14; *CS* 826.

[509] Ed. and trans. Breatnach, *Companion*, p. 223; *CIH* 413.3–4, 1452.1–3, 1712.28–9..

[510] Ed. and trans. Breatnach, *Companion*, p. 224; *CIH* 297.3, 2002.32–3.

[511] Ed. and trans. Breatnach, *Companion*, p. 224; *CIH* 185.38.

[512] Ed. and trans. Breatnach, *Companion*, p. 223; *CIH* 186.6, 297.10–11, 2002.39.

*Phátraic* covered as quite wide, encompassing minor disputes only a local judge of a kingdom would deal with along with those an illustrious *ardmáer* over many kingdoms would handle.[513] In light of this, we may look at another legal passage headed *.7. ngabail ara-foghnat brithemhnacht in betha* ('seven divisions (?) which serve the judgement of the world'), which includes a list of various legal texts, several glossed with the later titles they bore.[514] One of these texts is *cáin críche* ('boundary regulation'), glossed *.i. Cāin Pātraic*.[515] Breatnach suggests this may refer either to a boundary between neighbouring landholdings, as Thurneysen proposed (based on the aforementioned references to *mruigrecht* and *comaithches*), or to territorial boundaries between kingdoms (based on the aforementioned stipulation on providing food for a proclaimed person from across a border).[516] However, one might propose that the title *cáin críche* here might refer to *all* kinds of boundaries as being the remit of *Cáin Phátraic*, given the scope of legal areas presented here.

Two clauses concerning legal procedure in *Cáin Adomnáin* illuminate potential shifts in inter-territorial dispute settlement. First, we have the following clause involving the establishing of liability: *Ní dleghar tra frithḟola hi Cáin Adomnáin ná comard cinath, acht as-ren cách a chinta ar a láim* ('There shall be no counter-claiming or balancing of liabilities, but everyone shall pay for the wrongs committed by him').[517] The implication here is that these are normally legal possibilities that are, however, rejected here to make the *cáin* more penal in nature. There are two tales in *Bretha Nemed Toísech* illustrating this concept. In one of them, a boy's dog attacked a herd of pigs belonging to someone other than the boy's kindred, and then fled to the boy, whom the pigs then attacked. Coirpre Lifechair initially judged that the pigs be forfeit, but the case then passed to a higher judge, Cormac mac Airt (his father), who adjudged that the dog bore liability for the boy's injuries. In this sense, we can see what may be viewed as a balancing of liabilities, rather than the owner of the pigs also having to pay compensation (or forfeit the pigs). The other tale involved an

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513 This brings to mind the aforementioned legal passages on different ranks of judges in *CIH* 1932.1–17; 573.18; Breatnach, 'Lawyers', pp. 9–10. Cf. a passage in *Bretha Nemed Toísech* which states *Adamrae áe ecalsa arda-labrathar cach riucht…cach grád, cach delb, cach ḟut, cach gairdi, cach ardi, cach ísli* ('Most wonderful is the lawsuit of the church, which speaks for all conditions of persons…for every grade, every like dignity, however long, however short, however lofty, however lowly') *CIH* 2226.17–19, ed. and trans. Breatnach (from a paper titled 'The law of the church in *Bretha Nemed Toísech*', given at the Dublin Institute for Advanced Studies, 28 June 2014).

514 *CIH* 1931.35–40; 1378.5–12.

515 *CIH* 1931.40; 1378.10.

516 Breatnach, *Companion*, pp. 225–6; Thurneysen, 'Aus dem irischen Recht V', *ZCP* 18 (1930), p. 389; *CIH* 1402.1–9.

517 *CA* §43; trans. Ní Dhonnchadha, 'The Law of Adomnán', p. 65, with minor changes.

unsupervised herd of pigs who killed a boy, were subsequently impounded in a shed by the boy's father, where they killed a calf belonging to the owner of the pigs who happened to also be in the shed. The owner, Mugnae, put forth a counter claim for the death of his calf, and King Conchobor apportioned damages to Mugnae for his calf and against him for the death of the boy. In this sense, the compensation for homicide Mugnae owed to the boy's father would be offset by the compensation owed to Mugnae himself for his calf, rather than each formally paying the other compensation.[518]

However, the stipulation in *Cáin Adomnáin* quite clearly states that every offender must pay the fines owed by them (unless, of course, they are not apprehendable, in which the offender's kindred would fall liable). One possible reason for this lies in the context of this clause, which is chiefly concerned with the calculation of the *forbach* ('superlevy') due to Iona. As such, the point of this stipulation might be that all offenders must pay *forbaig* on their fines in every case, such that there should be no legal process permitted that would result in a smaller *forbach* being paid. Take, for example, a case where party A is owed seven *cumala* from party B for the killing of a woman and party B is owed half of seven *cumala* from party A for the serious but non-fatal wounding of a child. A cross-claim here would result in the difference of the fines being due, so party B would pay party A just half of seven *cumala* and, depending on the interpretation of the *forbach* involving women, party B would pay either half of seven *cumala* or nothing as *forbach*.[519] However, if both parties A and B pay their respective fines, then seven *cumala* would be paid to A and seven *cumala* paid as *forbach* to Iona, and half of seven *cumala* paid to B and a half *cumal* paid as *forbach* to Iona. Thus, *Cáin Adomnáin* would maintain its harsher penalty in more circumstances by preventing aspects of legal procedure from occurring.

This clause may also apply to a counter-claim made in a situation of *dígal* ('redress'), whereby, according to *Córus Fine*, certain *gonai deithbiri* ('forgiveable slayings') were permitted in response to the killing of a member of the avenging kindred. If all the correct protocols were followed, the forgiveable vengeance would only entail a payment of two-thirds the normal

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[518] For these tales, see *CIH* 2217.8–23; 2217.24–35; Kelly, *EIF*, pp. 154, 180.

[519] This issue rests on the question of whether the *forbach* for women is paid only in case of an offence of homicide requiring payment of *lánéraic*, or also for lesser offences. The clauses dealing with the *forbach* for women only explicitly mention it in conjunction with female homicide: *atropartatar lánéraic a mbanchró do Adomnáin* ('they have offered the whole *éraicc*-fine of their female deaths to Adomnán'), *asn-eirri[thi] lánfíachaib do Adomnān na banscāl romarbthar* ('payment in full fines is to be made for every woman that has been killed'), *cip aided ad-mbéla banscál, acht chuit Dé nó choiblighe díles théchtaide, as-renar lánfíachaib do Adomnán* ('whatever violent death a woman die, excepting that which results from an act of God or proper lawful union, it is paid in full fines to Adomnán'), *CA* §§29, 41, 42.

compensation for homicide.[520] However, *Cáin Adomnáin* may well have disallowed such counter-claiming here, thereby discouraging the practice of *dígal* (if women, clerics, or children were involved) and requiring full *forbaig* to be paid for each offence caused.[521] Furthermore, the stiff fines examined above for harbouring offenders would make it highly unlikely for an offender both not to pay compensation for a murder and be protected by his kindred or another kindred (and thus create the fruitful conditions for forgiveable vengeance to occur). If the offender absonded, the offender's kindred would be held liable for paying compensation, and concerning the offender, the relevant clause states *doberr a ndīlsi 7 a n-indarbu īarsin co cend rechtghi* ('thereafter is proclaimed their forfeiture [of legal rights], and their expulsion until the end of the Law').[522] This is notably different from a section of *Córus Fine*, which mentions turning the offender over to the victim's kindred as an option if he cannot pay for his offence and his kindred do not wish to (though of course this is only in the event that the offender has not absconded).[523] The effect of banishment in correlation with the other relevant mechanisms in *Cáin Adomnáin* is best summarised by Charles-Edwards:

> A similar policy of intervening in the feud is implicit in the other penalty, that of banishment, since it had the effect of removing from the district the person on whom vengeance might be taken. The aggrieved kindred, instructed by the terms of the *cáin* to accept compensation rather than take vengeance, would be much less likely to take the law into their own hands if the object of their hatred were removed from the kingdom. A system of compensation enforced by 'stewards of the law' and banishment of the offender were thus complementary devices: banishment made vengeance less tempting, leaving the field clear for the system of compensation prescribed by the *cáin* and organised by 'the stewards of the law'. Banishment, however, was only available within the area governed by the *cáin* and 'until the end of the *rechtge*', and it may well be that the system of collecting 'the debts of the *cáin*' was equally temporary.[524]

Another way *Cáin Adomnáin* decreased the chance of *dígal* occurring lies in another modification of normal legal procedure. It utilised an expedited timeline of legal procedure, in contradistinction to the normal situation:

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[520] For discussion, including citations from *Córus Fine*, see McLeod, 'Blood-feud', pp. 124–5.

[521] We should hardly presume that clerics were necessarily innocent of physical violence, a key example being Áed Dub, whose violent misdeeds Adomnán describes in *VSC* I 29.

[522] CA §47; trans. Ní Dhonnchadha, 'The Law of Adomnán', p. 66.

[523] See McLeod, 'Blood-feud', pp.126–7.

[524] Charles-Edwards, *ECI*, p. 568.

> Gell ar trisi, bret[h] ar cóicthi, híc ar dechmaid di caingnib olchenae. Gell a ochtaib, breth ar trisi, híc ar cóic[th]i isin cai[ng]in se.
>
> The pledge before [the end of] the three-day period, judgement before [the end of] the five-day period, payment before [the end of] the ten-day period in all other cases. The pledge immediately, judgement before [the end of] the three-day period, payment before [the end of] the five-day period in this case.[525]

If an offence covered by this edict occurred, including between kingdoms, the procedure for pledge, judgement, and payment was five days faster overall than normal. Figure 21 portrays the differences here between normal legal procedure, including in *cairde*, and that in *Cáin Adomnáin*.[526] The passage concerning the *aire échta* in *Críth Gablach*, according to the improved translation and thorough analysis from Neil McLeod, states that he had to wait a month (the duration for which a king could offer protection) until being lawfully permitted to assist the victim's *gelfine* in avenging the grievance in the offender's external kingdom.[527] Under normal procedure, once the offender's *aitire*, or surety, becomes a *cimbid* 'captive', he only has ten days to 1) perhaps wait for notice to reach the offender's kin that he has been made a captive to pressure them further to pay the outstanding fine, 2) for him to decide at some point in this period to give a pledge to pay for his ransom totalling seven *cumala*, and 3) to get the funds together to pay this high sum of ransom and the original debt (the *féich cairdi*) owed by the offender, which, if the offence were homicide, would be the same amount.[528] Only after this point would the dispute be considered settled. Depending on the wealth and status of the surety, this could be quite an ambitious deadline. After this month-long period, the *aire échta* would be permitted to act accordingly.

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[525] *CA* §38; trans. Ní Dhonnchadha, 'The Law of Adomnán', p. 63.

[526] For a full account of this procedure, see Kelly, *GEIL*, pp. 172–173, Stacey, *The Road to Judgment*, pp. 82–99, McLeod, 'The lord of slaughter', pp. 101–114, and Bemmer 'Inter-territorial alliances', pp. 202–7. See section 2.2.4.

[527] *CG* ll. 358–67. For a collation of the relevant sources and pertinent discussion, see McLeod, 'The lord of slaughter', pp. 101–113.

[528] See section 2.2.4.

**Figure 21: Legal procedure normally and in *Cáin Adomnáin***

<table>
<tr><th rowspan="3">Type of Law</th><th colspan="5">30-day period</th><th>After</th></tr>
<tr><th colspan="4">10-day period</th><th rowspan="2">10-day period</th><th rowspan="3">CG: Aire échta may go with the cóicer into the offender's kingdom to avenge the grievance</th></tr>
<tr><th>Immediately</th><th>After 3 days</th><th>After 5 days</th><th>After 10 days</th><th>After 15 days</th></tr>
<tr><td>Normally (Slán nAitire Cairde, Berrad Airechta)</td><td></td><td>Pledge given</td><td>Judgement</td><td>Payment due</td><td colspan="2">Aitire 'hostage-surety' held in custody</td><td>Aitire becomes a cimbid 'captive', must ransom himself by the end of this period and pay the fines, or become forfeit</td></tr>
<tr><td rowspan="2">Cáin Adomnáin</td><td>Pledge given</td><td>Judgement</td><td rowspan="2">Payment due</td><td colspan="2" rowspan="2">Aitire 'hostage-surety' held in custody</td><td colspan="2" rowspan="2">Aitire becomes a cimbid 'captive', must ransom himself by the end of this period and pay the fines, or become forfeit</td></tr>
<tr><td colspan="2">Whenever guilt has been established, the offender begins to maintain the rechtaire, leviers, and aitire, and faces a 2 cumala fine for refusing</td></tr>
</table>

So instead, *Cáin Adomnáin* allows for five more days in this process, thus decreasing the chance of the *aire échta* being permitted to perform his duties.[529] It should hardly surprise us if the headship of Iona intended the *rechtaire* and his enforcing *cóicer* eventually to subsume the *aire échta* and his *cóicer*, especially given the ample evidence illustrating ecclesiastical disfavour towards the *aire échta* in other texts, which is discussed below.[530] This feature of *Cáin Adomnáin*, like the other aspects of legal procedure discussed above, marks a further departure from kindred-based methods of dispute settlement and towards greater legal centralisation and regulation.

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[529] Cf. *CD* §5, legal procedure of which can follow an expedited timeline, but also can follow the normal timeline in certain circumstances. For relevant explanation and discussion of this passage, see Stacey, *The Road to Judgment*, p. 95.

[530] While there is potentially parallel language concerning the *cóicer* in the *rechtaire*'s company in *Cáin Adomnáin* and that of the *aire échta* passage in *Críth Gablach*, it has already been discussed that, in the context of the latter, this may simply be a symbolic term for the *gelfîne*, and that *Críth Gablach* accords the *aire échta* a retinue of *seisser* ('six men'), which results in the liable number of the *mórfeisser*, as all mentioned above. See section 3.1.1. There may also be some curious implications behind an anecdote in *Tairired na nDéssi* ('The Expulsion of the Déisi'), a legal narrative that implicitly showcases the flaws with the *aire échta*'s style of inter-territorial dispute settlement, where the *aire échta* Óengus Gaíbuaibthech accidentally kills the *rechtaire* of the king of Tara, which is discussed further below.

### 3.3. Fine structure and distribution

*Cáin Adomnáin*'s success in being widely enacted partly relied upon its utilisation of existing authority, notably the personnel of overlordship. However, as has been discussed, the Columban ecclesiastical network played an inter-territorial arbitrating role in its process of enforcement and procedure. We have already seen that enforcers are apportioned a share of the fine revenue, and so to take such a share but not interfere with existing fine distribution structures, *Cáin Adomnáin* innovated its own enforcing share, the *forbach*. As has already been noted to some extent, this share varied in amount according to the particular offence, the general rule being an amount equivalent to full *éraic* for homicide of women, and a seventh of *éraic* for any offence against clerics or children (or a sixth of body-fine, an eighth of the total including body-fine).[531] This revenue would go to the arbitrating ecclesiastical network emanating from the *andóit* ('mother church') mentioned above (Iona in the case of *Cáin Adomnáin*), whose patron saint gave its name to the *cáin* in force. We may reasonably assume that *Cáin Phátraic* and others of the 'saintly' *cánai* (*Cáin Dar Í*, *Cáin Ailbe*, *Cáin Chommáin*, *Cáin Choluimb Cille*, *Cáin Chíaráin*, and possibly *Cáin Chormaic*) included *forbaig* of their own.[532]

To determine properly the place and effect of the ecclesiastical *cánai* in inter-territorial dispute settlement, it would be useful to know what kinds of enforcers' shares came about and when, but this is hardly an easy question, similar to the question posed above concerning when certain aspects of the legal administration of overlordship emerged, such as external levying personnel. *Berrad Airechta* mentions a *trían naignaid* ('[enforcing]-third of a legal agent') and *Críth Gablach* notes *trían…a éraic do flaith* ('a third…of his *éraic* to a lord'), so both the enforcing third and lord's third (which may not necessarily be the exact same) are attested from the eighth century.[533] However, since the general dating of these texts is very close to the first promulgation of *Cáin Adomnáin* in 697, then it becomes difficult to say with certainty if such shares existed before its promulgation. There is a reference to what appears to be an enforcing share in the *Díre*-tract

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[531] *CA* §§29, 33, 43, 44. For pertinent discussion on the possible bases for these *forbaig*, see McLeod, '*Cáin Adomnáin* and the Lombards', pp. 253–62.

[532] Indeed, there is a mention of *forbaig* in correlation with *Cáin Phátraic and Cáin Chormaic* at *CIH* 812.8–14, for which see Breatnach, *Companion*, p. 225.

[533] The lord's share likely emerged from his involvement to act legally on behalf of his clients, and so is inherently an 'enforcer's share', but there may of course be another 'primary' enforcer (such as a *rechtaire* or *muire rechtgi*). See Binchy, 'Irish history and Irish law', p. 23.

(*SM2*, *19*), referring to dues of *cáin*.[534] If one accepts Liam Breatnach's dating of the compilation of the *Senchas Már* to between AD 660 and 680 and accepts the citation in the *Díre*-tract as originating in the canonical version, then this would indicate that some kind of enforcing share existed before *Cáin Adomnáin*.[535] Thus, the reference to a *cáin* in the *Díre*-tract would most likely refer to a *cáin* of a base client-kingdom rather than an ecclesiastical *cáin*, which would not have come into existence yet. It does seem likely that an enforcer's share existed before the ecclesiastical *cánai*, but the extent to which it did provokes two questions: 1) when overkings began arbitrating disputes between their subkingdoms and thereby began receiving an enforcing or lordly share, and 2) to what extent overkings were receiving a portion of fines for disputes even within a single subkingdom of theirs, such as we see later in *C7D* where, in the method of *cró ó inn*, the overking receives a portion of the lordly share even for an offence sued for under *urradus* and thus occurring between members of a single base client-kingdom under his authority. We can hardly answer these questions in full here, but some further investigation of the fine distribution in *Cáin Adomnáin* might cast some light on the matter.

We may begin with a stipulation concerning the *forbach* for women in *Cáin Adomnáin*: *Atropartatar lánéraic a mbanchró do Adomnán 7 do cach comorbuo bias ina suidiu co brádh 7 ní [g]ata Adomnán fiachu ar flaith 7 eclais 7 fine dia-mbí dír* ('They have offered the full *éraic* of their female deaths to Adomnán, and to every heir who will be in his seat until Doom, and Adomnán does not steal fines from lord or church or *fine* to whom [their payment] is due').[536] Here *Cáin Adomnáin* states how the *forbach* is an additional fine that does not interfere with the existing system of fine distribution, and it describes this system as consisting of shares for lord, church, and kindred. As we can see, a lord's share is already in place by this time, just as in *Críth Gablach*. We

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[534] *Díre*-tract §36 (Thurneysen, *Irisches Recht*, p. 34; *CIH* 443.10–11; trans. Charles-Edwards, *EIWK*, p. 508): *Techta cana caich la derbfine, acht aimser imfuigill im anflaithius n-aige fine; is i suide berair cuit forbaig ar anflaithius n-aige fine* ('The dues of *cáin* of each person to the *derbfine*, except while there are legal proceedings concerning the non-lordly status of the head of the kindred; in that case the enforcement-share is taken away because of the non-lordly status of the head of the kindred'); cf. gloss 4, which describes the enforcing share instead as *cuit tobaig* ('levying portion'). The meaning of the passage is slightly unclear, but it seems to indicate that as long as the head of a *derbfine* is of noble status, he is eligible to receive an enforcing share of fines under the *cáin* of an overking. As such, this would seem to refer to the share given to the lord of (or hierarchy of lords over) the victim's kindred, which we later see references to in *CA* §29 and *C7D*. On this type of *forbach*, see the explanation of Binchy, 'Irish history and Irish law', p. 23: 'A rule of "private" law lays down that where an offence has been committed against the client of a lord (*flaith*) and the victim (or his surviving kindred in a case of homicide) is powerless to enforce the legal penalty against the guilty party, the *flaithi* intervenes and levies it; as a result he becomes entitled to a proportion (normally one-third) of the amount involved, and this is known as the *forbach flatha*.'

[535] Breatnach, '*Senchas Már* and the Question of its Date', p. 42.

[536] *CA* §29; trans. Ní Dhonnchadha, 'The Law of Adomnán', pp. 59–60.

find slightly more detail on these shares in another stipulation: *For-thá forus na Cánae: día-ngontar maic annaic nó cléirich, is dia n-uamaib adnacail tíaguit a féich 7 a féich erradais dia flaithib a finib* ('The enactment of this Law enjoins that if innocent youths or clerics are slain, it is to their tombs of burial that their fines go, and their *erradas*-fines to their lords from their kindreds').[537] In this particular context (homicide of clerics or children), and building on the tripartite group of interests listed in *Cáin Adomnáin* §29, it would seem that the *forbach* would go to the Columban ecclesiastical network, and the remainder would be divided in three, one third going as burial fee (sometimes called *trían n-imnai* or *tertia Deo*) to a local church, and the other two-thirds being passed on as *urradus*-fines to lords of the victim's kindred to distribute among them. The way *Cáin Adomnáin* portrays this is surprisingly similar to what we see later in *C7D* in the method of *rann ó bun*: an enforcer's share is taken first, followed by a threefold division, the first third of which is taken by the entity bearing primary responsibility in the situation, and the other two thirds passed onto lords and the kindred.[538] Here, the entity bearing primary responsibility is the church where the victim would be buried. This would be the church to which the cleric belonged or which would claim spiritual guardianship over the child, and to which the *trían n-imnai* or *tertia deo* would be given.[539] As Elizabeth O'Brien notes, there is evidence to suggest that the seventh and eighth centuries were still a transitional period in terms of Christian burial: the laity were not necessarily buried on church ground, which, as Etchingham notes, *Córus Bésgnai* additionally affirms by portraying it just as an option for layfolk.[540] It is to be wondered, therefore, if this insistence upon spiritual guardianship and burial on consecrated ground for children under the age of seven was something that *Cáin Adomnáin* sought to affirm more strongly. A final point is that this passage of

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[537] *CA* §40.

[538] Cf. *CD* §2, which apportions a seventh of levied fines to the *aitiri*, and half of that which remains to lords and 'high dignitaries' and the other half to those who identify offenders and levy fines from them (the enforcing share). Though note the slightly different structure in *Epistil Ísu* §33 dealing with enactments concerning *in cáin so in Domnaig* ('this law of Sunday'), which prescribes a third of all levied fines *do áes tobaig 7 do aitirib* ('to levying folk and to sureties'), a third to God and a third to lords and churches, for which see O'Keeffe, 'Cáin Domnaig', p. 208.

[539] Such a threefold division between lord and church and kin is countenanced in both canon law (e.g. *CCH* 33.13; 33.14; 33.22; 48.1), and vernacular tracts (such as *Bretha Nemed Toísech*, *Di Astud Chirt 7 Dligid* and part of the *OGSM* on *Di Astud Chirt 7 Dligid*, for which see *CIH* 227.1–2; 915.6; 2213.3–4), for discussion of which see Etchingham, *CO*, pp. 275–8. On the subject of spiritual guardianship in *Cáin Adomnáin*, see McLeod, '*Cáin Adomnáin* and the Lombards', pp. 253–62. For a comprehensive discussion of burial fees, see Etchingham, *CO*, pp. 271–89.

[540] Etchingham, *CO*, p. 273; E. O'Brien, 'Pagan or Christian? Burial in Ireland during the 5th to 8th centuries AD', in Nancy Edwards (ed.), *The archaeology of the early medieval Celtic churches: proceedings of a conference on the archaeology of the early medieval Celtic churches, September 2004*, The Society for Medieval Archaeology Monographs 29 (London 2009), pp. 135–154.

*Cáin Adomnáin* calls the portion going to lords and kin-members the *féich urraduis* ('fines of *urradus*'), which in itself would indicate the *forbach* and burial fees going to churches were unusual additions.[541] It may also be notable that normally one would expect *urradus* to refer only to the affairs within a single kingdom, but that by the time of *C7D*, even fines under *urradus* entailed a payment to overkings, as we have seen in the method of *cró ó inn*. Given the hierarchical relationships of overlordship that were certainly already in place by the enactment of *Cáin Adomnáin*, this may have already begun by this time, such that the lords' share of fines would be distributed from the lord of the victim's kindred upward to the overking who enacted the *cáin* within his province.[542]

Another achievement of *Cáin Adomnáin* (and most likely other ecclesiastical *cánai*) was in the greater extent of inter-territorial dispute settlement it facilitated for certain offences. Given the legal mechanisms previously described, this church-mediated inter-territorial dispute settlement was able to facilitate cross-border payment for specific offences just as would occur in a relationship of *comurradus*, even between kingdoms which may have had no protocol or which had a more limited type of *cairde* in place which did not facilitate the full payment of *éraic*. However, even when there was a *cairde n-airdbide* in conjunction with a *cairde féne* established between kingdoms, which would entail payment of body-fine and restitution, aspects of cross-border payment differed from *Cáin Adomnáin*.[543] For a homicide in a *cairde féne*, *Bretha Cairdi* gives the amount of the cross-

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[541] Thomas Charles-Edwards, *ECI*, p. 567n152, suggests 'The *féich cána* appear to be contrasted with *féich erradais* in *Cáin Adomnáin*, ed. Meyer, §40', but on the same page contends that 'the "stewards of the law", appointed by and responsible to the abbot and community of Iona, collected the entire debt 'of the *cáin*' for, say, the killing of a woman. They would then be responsible for paying to the woman's kindred and lords the compensation owed to them for her death (*fíach erradais*)'. According to the passage to which he refers in the latter statement, *CA* §48, the *rechtaire* collects what are termed *féich cána*, which thus would be a term for the entire fine including the *féich erradais*. In the same vein, *idem.*, p. 568, he states 'In *Cáin Adomnáin*, the community of Iona was entitled to a *forbach*, "additional mulct", as well as "the debts of *cáin*". The sponsoring authority thus benefited financially by the operation of the *cáin*, but also the victims may have been better off if they did not need to pay a "third of enforcement" to a local lord or king'. On the one hand, if the *féich cána* do indeed refer to the entire amount levied by the *rechtaire*, as seems likely, then the community of Iona would only normally receive the *forbach* (unless, of course, it were a cleric of Iona against whom an offence were made). On the other hand, if the lords' share totalled a third of the amount aside from the *forbach*, as seems likely at least in the event of a homicide of cleric or child, then there would still be a third of the fine going to lords and kings (which, again, originated from their function in advocating for their clients and assisting with enforcement, even if in certain situations they did not fulfill a primary enforcing function).

[542] This would provide a potential explanation for oft suggested but rarely investigated claim that overkings benefitted financially from the enactment of *cánai*. For a brief explanation of the possible basis of this process, see Binchy, 'Irish history and Irish law', p. 23.

[543] For this type of *cairde*, see section 2.2.2.1.

border compensation as twelve cows.[544] The scribe there is likely just referring to the maximum amount of the *corpdíre* that is claimable across a border by the victim's *derbfĥine* and lords of that kindred, thus leaving out the enforcing third, which would normally go to enforcers acting in the kingdom the offence took place in and which would be immune from legal claim anyhow, as previously discussed.[545] Thus, the full fine the offender pays for the *corpdíre* ('body-fine') for homicide would be eighteen cows, equal numerically to six *cumala*, the normal amount for *corpdíre* (and presumably an additional three cows for the *aithgein* 'restitution'). The notable difference here is in the form of payment made across a border. In *Cáin Adomnáin* the full *éraic*, seven *cumala*, would be paid for the murder of women, clerics and young children in cross-border situations, plus the *forbach* going to the community of Iona, which was an additional *cumal* for young children and clerics, and an additional seven *cumala* for women.[546] The material from *Bretha Cairdi* describes payment in cattle alone, whereas *Cáin Adomnáin* always stipulates payment for homicide being in *cumala*. We have already visited the evidence that illustrates that payments in *seóit* were normally paid in one form of payment (often but not always cattle, at least when relating to commoners) and payments in *cumala* may entail three equal forms of payment: silver, horses, and cattle.[547] Thus, in this way it is evident that *Cáin Adomnáin* would entail a more onerous payment of compensation across borders than in *cairde*. In a slightly different way, a passage in *Sanas Cormaic* relating to *Cáin Phátraic* states that *7 it he sin na seoit acobair itbeir i Cain Patraic, ar it lethunge a seoit ade* ('and those are the *seóit* of wish, which it mentions in *Cáin Phátraic*, for the *seóit* of the latter are [in the form of] in half-ounces [of silver]'). We may compare this phrase to another in the same passage, which details a different situation concerning the payment of *seóit* in *urradus* within a single kingdom (for which the term *bráthchae* is used here): *is é cruth asrenaither i mBrath C[h]ai, cach tris set sét gabla, samaisc alaili, lulgach no dam timchill arathair araile* ('the way they are paid out in *bráthchae* is that every third *sét* is a *sét gabla*, the next is a three-year-old dry heifer, the

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[544] Bemmer, 'Inter-territorial alliances', pp. 195–7; *CIH* 792.17–18, 807.20–1; cf. the citation from *Bretha Cairdi* in *CIH* 808.14: *Atait di ænba dec i cairde* ('There are twelve single cows in *cairde*').

[545] See section 2.2.3.2.

[546] *CA* §§29, 42, 44; trans. Ní Dhonnchadha, 'The Law of Adomnán', 59–60, 64–5).

[547] See section 2.2.3.2. For this array of evidence, see Breatnach, 'Forms of payment in the early Irish laws', pp. 3–7, 16–17.

next is a milch cow or an ox which pulls a plough').[548] By requiring that *seóit* be paid for completely in silver, rather than mostly or entirely in cattle, *Cáin Phátraic* would have certainly established harsher penalties than *urradus*.[549]

### 3.4. Conclusion

As we have seen, the ecclesiastical *cánai* enabled powerful ecclesiastical networks to assume a greater role of ecclesiastical oversight over lay dispute settlement (as well as over ecclesiastical affairs). In this way, we can appreciate more the implicit meaning of the phrase 'ecclesiastical *cáin*'; in one sense, this can be described as a *recht crettme adannai* ('an ordinance of faith that illuminates'), as *Críth Gablach* does (though it does not explicitly use the word *cáin*). However, the more prevalent use of the term *cáin* for this legislation implies a statement of overarching authority. At the beginning of this chapter was mentioned how the *cánai* were cast as an additional divine and worldly imposition to combat potential disasters that might otherwise arise in local, inter-territorial, and divine affairs. Here can be seen how an overking's relationship of *cáin* has been adapted for an ecclesiastical purpose: this imposition was channeled through the intermediary power of an *érlam*, or founding saint, of an *andóit* ('mother-church') at the head of an influential ecclesiastical network.

The ecclesiastical *cánai* were more than just a single, overarching remedy to mitigate all of these potential problems. In various ways, they appear to be a legislative indoctrination of the prerogatives embodied in the ecclesiastical rhetoric replete throughout hagiography and other ecclesiastical prescriptive texts. One only needs to look at *Vita Sancti Columbae* to see contemporary rhetoric motivating the clauses of benediction and malediction that form an integral part of the enactment of *Cáin Adomnáin*, or the Patrician hagiographers' claims for the supreme jurisdiction of Armagh to understand the intent of the wide scope of legal regulation and variety of

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[548] Ed. and trans. from *CormY* 209 in Breatnach, *Companion*, pp. 171, 225. For a comprehensive discussion of *bráthchae*, see Breatnach, *Companion*, pp. 170–4, noting in particular his point concerning the opposition with *rechtge* in *CormY* 144 and the connection with *urradus* in *CIH* 1450.7. In addition, note *CB* §16 which lists *bráthchae* under the remit of *córus féne* ('arrangements of freemen'), which can be compared to *CB* §18, which lists *rechtge* as falling under *córus flatho* ('arrangements of the lord'), and *CIH* 1712.7–11, which portrays *bráthchae* in opposition to *cáin* and *cairde*, and enforced by distraint. In *CB*, p. 59, Breatnach prefers to translate *bráthchae* as 'judicial process'.

[549] *Cáin Adomnáin* (*CA* §44) similarly prescribes the two smallest fines for physical injury in terms of payment in silver, but whether this was the implied form of payment for all injuries paid for in *seóit* that are listed in that passage is uncertain (see section 3.1.). If it did not, then *Cáin Phátraic* could be seen as building on penalties in *Cáin Adomnáin*.

judges and their immunities in *Cáin Phátraic*.[550] Surely some legal arbitration role is implicit in the Old Irish Rule ascribed to Mochutu, which includes *sidhaig na mórthúatha* ('pacifying the *mórthúatha*') as a responsibility of the bishop.[551] Similarly, a continuous passage in *Bretha Nemed Toísech* accords an array of significant legal privileges to ecclesiastical entities, essentially advocating for the superiority of ecclesiastical litigation: *adamrae áe áe ecalsa, nís frithaí frecair… ro-fes as fás féinechus i coindeilg ḟerb nDé…biaid íar tain suidigud gill fri cimbail guth, co n-ailli co fiat…ar-foilgither fuigell Féine…níbi do flaith laimithir labrathar, ar ní in-airecht láech clandtair findšruth fir…rechtaid áe áe ecalsa…ad-ri, ní áragar, do-immairg, ní timmargar, fo-gelltar, ní fuiglea, for-toing for cách, ní fortoing cách forrae, dóer cách frie, sóer-si fri cách; is muir tar glasa* ('the lawsuit of the church is a most wonderful lawsuit, no counter-suit answers it…it is certain that *fénechas* is vain in comparison with the words of God…there will be after a time the giving of a pledge to ward off a bell's sound with *halleluiah* with *fiat*…the arbitration of the laymen will be eclipsed…it is not to a lord that it ventures to speak, for it is not in the assembly of laymen that the fair stream of truth is settled…the lawsuit of the church is a predominant lawsuit…it binds, it is not bound, it constrains, it is not constrained, it is appealed to, it does not appeal, it overswears everyone, no one else overswears it; everyone is base in relation to it, it is free in relation to all

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[550] *CA* §§30–2 (Cf. *CD* §§ 7, 9, 10; *Epistil Ísu* §§18–19, O'Keeffe, 'Cáin Domnaig', pp. 202–3; Meyer, 'Mitteilungen aus irischen Handschriften', *ZCP* 3 (1901), p. 228); *VSC* II 48–9). Indeed, *Vita Sancti Columbae* represents a text even more tied in with inception of *cánai* since it was composed by Adomnán and has conceptual links with the *Lex Innocentium*, for discussion of which, see McLeod, '*Cáin Adomnáin* and the Lombards', pp. 243–53. The clauses of benediction and malediction in *Cáin Adomnáin* (and *Cáin Domnaig*), somewhat resembling the sanction section of later charters, would enhance the force of the edict and, furthermore, illustrate rhetoric which may well have been used on circuits (*cúarta*/*comotationes*) on which relics were taken, which often coincided with times of plague or famine. See Etchingham *CO*, p. 270; Hughes, *The Church in Early Irish Society*, pp. 168–9. On matters of malediction and similarities with the satire of poets, see Bitel, 'Tools and Scripts for Cursing', pp. 5–27; Ó Néill, 'Maledictory Psalms', pp. 40–58; D. Melia, 'The Irish saint as shaman', *Pacific Coast Philology* 18:1–2 (November 1983), pp. 37–42; D. Wiley, 'The Maledictory Psalms', *Peritia* 15 (2001), pp. 261–79. On the charter tradition in the Gaelic world, see W. Davies, 'The Latin charter-tradition in western Britain, Brittany and Ireland in the early mediaeval period', in Dorothy Whitelock, Rosamond McKitterick, and David Dumville (eds.), *Ireland in early mediaeval Europe: studies in memory of Kathleen Hughes* (Cambridge 1982), pp. 258–280; D. Broun, *The charters of Gaelic Scotland and Ireland in the early and central Middle Ages* (Cambridge 1995); Marie Therese Flanagan and Judith Green (eds.), *Charters and charter scholarship in Britain and Ireland* (Hampshire 2005).

[551] K. Meyer, 'A medley of Irish texts: X. Incipit Regula Mucuta Raithni', *Archiv für celtische Lexikographie* 3 (1907), p. 313; Etchingham, *CO*, pp. 163–4.

others; it is like a sea obliterating small streams').[552] More specific superior entitlements to ecclesiastical litigation lies in a passage on the length of testimony various classes of person are able to give in court: *.uii. n-anāla don eclais, 7 .uii. in cach anāil; trī anāla don flaith 7 .uii. focail in cach anāil; dā anāil don filid, 7 .u. focail in cach anāil; ænanāla dona fēnib, 7 .u. focail inntib* ('seven breathings for the ecclesiastic, and seven [phrases] in each breathing; three breathings for the lord, and seven phrases in each breathing; two breathings for the poet, and five phrases in each breathing; a single breathing for the commoners, and five phrases in it').[553] This posturing of canon law and ecclesiastical litigation as superior reflects the ultimate arbitrating position powerful ecclesiastical networks claimed in the ecclesiastical *cánai* and represents a movement away from kindred-mediated and towards church-mediated dispute settlement.[554] We should hardly be surprised at this synchronic theme between legal rhetoric and legal ordinance, given that *Bretha Nemed Toísech* has been dated to the second quarter of the eighth century, when the first wave of ecclesiastical *cánai* were being enacted by various institutions in various regions around Ireland. By the middle of the ninth century, we can see such ecclesiastical arbitration well established.[555]

Another key development in inter-territorial dispute settlement that emerges from the *cánai* is the notable shift from aspects of kindred-based dispute settlement that lords and the king would have facilitated within a single kingdom or with a single external kingdom. We have already pointed to evidence of this in the 1) harsher penalties for harbouring or assisting offenders, including those from across a border, 2) the barring of the use of legal concepts in court procedure

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[552] *CIH* 2226.3–24; ed. and trans. Breatnach (from a paper titled, 'The law of the church in *Bretha Nemed Toísech*', given at the Dublin Institute for Advanced Studies, 28 June 2014). For some discussion of the relationship of *Bretha Nemed Toísech* to canon law, see Breatnach, 'Canon law and secular law in early medieval Ireland: the significance of *Bretha Nemed*', *Peritia* 3 (1984), pp. 439–59. For a parallel passage in Irish canon law for the church being free and every other entity being subservient to it, see *CCH* 42.27, as Liam Breatnach has noted (in the same paper titled 'The law of the church in *Bretha Nemed Toísech*'). Specifically with regard to giving a pledge to prevent the issuing of bell and psalm, here cast as a superior form of sanction even to that of lords, Breatnach, 'On satire and the poet's circuit', p. 26, has pointed to an Old Irish commentary on *Cethairślicht Athgabálae* (*CIH* 884.1–4), which describes the appropriate kind of sanction each class of person should use for offences committed against them: *clocc 7 salm d'eclais, gēll do flathaib, trifocflad do filedaib, aithgabāil do fēinib* ('bell and psalm for the church, hostages for lords, "three utterances" for poets, distraint for commoners'). For an explanation of this ritual involving an assembly of clerics ringing bells and chanting psalms, see Ó Néill, 'Maledictory Psalms', pp. 40–58.

[553] *CIH* 662.12–14; ed. and trans. Breatnach (from a paper titled, 'The law of the church in *Bretha Nemed Toísech*', given at the Dublin Institute for Advanced Studies, 28 June 2014).

[554] Also note *CB* §26, which claims that even a *márḟlaith* ('overlord') has obligations to a church.

[555] This is overtly illustrated by a *rígdál* ('royal meeting') where Féthgna, the *comarba Phátraic* ('successor of Patrick') of Armagh, and (to some degree) Suairlech, the *comarba Finnio* ('successor of Finnian') of Clonard, arbitrated the alienation of the Osraige from Munster to *Leth Cuinn* by *denum sidha 7 caincomraicc* ('making peace and harmony') between all present, which included the Uí Néill overking, king of Munster, and king of the Osraige. It is notable that Cerball, the king of the Osraige, gave full authority (*ógréir*) to the *comarba Phátraic* alone to arbitrate the alienation. See *AU* 859.3.

such as *díthach*, counter-claiming or balancing of liability, 3) the centralised use of external levying personnel (and additional maintenance of them required), 4) the apparent instantiation of types of ecclesiastical immunity detailed in canon law, 5) the expedited timeline of legal procedure presented in *Cáin Adomnáin*, and perhaps 6) the utilisation of the liable number of *mórfeisser* in *Cáin Adomnáin* and *Cáin Phátraic*. This process may become even clearer when considering one last line of evidence: ecclesiastical disfavour towards the *aire échta*. This can be seen in subtle ways in various texts. First, we may look to an anecdote in *Tairired na nDéssi* ('The Expulsion of the Déisi'), a legal narrative that implicitly showcases the flaws with the *aire échta*'s style of inter-territorial dispute settlement. The first notable thing about the tale is that it involves two royal sons: Óengus Gaíbuaibthech, the son of Art Corb, king of the Déisi Breg, and Cellach, son of Cormac Mac Airt, king of Tara (overking over the Déisi Breg). While Óengus was acting as an *aire échta*, pursuing an unresolved transgression against his kindred and thus looking to obtain *dígal* ('redress') from the offender's kindred in a kingdom in Connacht, Cellach abducted his niece, Sorath. Óengus heard about this from a woman whose house he broke into for a drink of milk, who quite clearly states *olc or si do dán bith oc búadred na Herend* ('evil, said she, is your profession, to be stirring up strife in Ireland') in the *Lebor na hUidre* version of the narrative.[556] His boisterous attitude continued when he immediately headed home, with vengeance for an outrage against his own kindred on his mind. Upon arriving, he carried out his own form of justice by killing Cellach, without first resorting to proper legal process and waiting for an offer of law to be made during the period for compensation for the outrage done to him. In the process of running Cellach through with the spear, Óengus accidentally punctures Cormac's eye and, upon vigorously removing the spear, kills the *rechtaire* of the king of Tara. This episode is filled with symbolic perspective of the *aire échta*: Óengus' unchecked actions and boisterous nature lead him to disregard proper legal process and make careless mistakes. The killing of the king of Tara's legal official, his *rechtaire* (who would be someone handling legal claims), seems to be symbolic of tearing apart the legal fabric of the overkingdom. This mistake eventually leads to the titular expulsion of the Déisi Breg, by Cormac mac Airt, which explains both the contemporary locations of the Déisi in the eighth century and the

[556] R. Irvine Best and O. Bergin (eds.), *Lebor na hUidre: Book of the Dun Cow* (Dublin 1929), ll. 4352–3; trans. McLeod, 'The lord of slaughter', p. 113.

composition of the legal text *Bretha Éitgid*, which Cormac is said to have afterwards aptly retired from the kingship to compose.[557]

The unruliness of those in royal kindreds reminds us of Conaire's foster-brothers in *Togail Bruidne Da Derga* who, after being unchecked for theft of livestock, grew bolder: *gabsat díberg co maccaib flaithi fer n-Érenn impu; trí .lll. fear doib in tan bádar oc faelad i Crích Connacht occa múnud* ('they took to marauding, surrounded by the sons of the lords of the men of Ireland; thrice fifty men had they as pupils when they were wolfing in the province of Connacht').[558] The significance of noble (and royal) sons engaging in *díberg* ('marauding') and 'wolfing' on easy prey reminds us of the *maic báis* ('sons of death') who are present at the *fled demunda* ('devilish feast') in *Córus Besgnai*, or the *filli perditionis* in *Vita Sancti Columbae*, as well as of the activity of a *fían*-band in general.[559] The connection of the *aire échta* to *díberg* is made in *Bretha Crólige* §51, where three people are given equal status to a *bóaire*, on the basis of the statement *is techtta la dia a ndinsed oldas a cumdac* ('it is more fitting in the sight of God to repudiate them than to protect them'). One of these is a *díbergad*, glossed *int aire echta*.[560] This is in stark contrast to the portrayal of the *aire échta* in *Críth Gablach*, where he not only is accorded clearly legally sanctioned duties that are portrayed far more as legally appropriate than as marauding, but also is accorded the same status as the *aire désa*. Neil McLeod has suggested that this may represent a demotion in the *aire échta*'s status by the glossator's time.[561]

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[557] The versions of *Tairired na nDéssi* survive in various recensions (Recension A from Rawl. B 502; Recension A from Laud; Recension A from Book of Uí Maine and Liber Flavus Fergusiorum; Recension B), which are found in K. Meyer (ed. and tr.), 'The expulsion of the Dessi', *Y Cymmrodor* 14 (1901), pp. 101–135; *idem.* (ed.),, 'The expulsion of the Déssi', *Ériu* 3 (1907), pp. 135–142; S. Pender (ed.), 'Two unpublished versions of the Expulsion of the Déssi', in S. Pender (ed.), *Féilscríbhinn Torna: essays and studies presented to professor Tadhg Ua Donnchadha (Torna) on the occasion of his seventieth birthday, September 4th, 1944*, (Cork 1947), pp. 209–217; V. Hull (ed. and trans.), 'The later version of the expulsion of the Déssi', *ZCP* 27 (1958–1959), pp. 14–63. The relationships between the various versions of this narrative are best explicated by T. Ó Cathasaigh, 'The Expulsion of the Déisi', *Journal of the Cork Historical and Archaeological Society* 110 (2005), pp. 13-20. See also McLeod, 'The lord of slaughter', pp. 102–3.

[558] *TBDD* ll. 205–7.

[559] *CB* §25; *VSC* I 29; cf. *AU* 847.3 for a raid by Uí Néill overking Máel Sechnaill against a *fianlach* consisting of 'sons of death of the Luigni and Gailenga who had been ravaging the *túatha* in the manner of pagans'. The association with pagans here is a key indicator of ecclesiastical dissatisfaction. For an extensive discussion of these connections, see Nagy, *Wisdom of the Outlaw*, pp. 41–79; McCone, '*Díberga* and *Fíanna*', pp. 1–22; Sharpe, 'Hiberno-Latin *laicus*', pp. 75–92; W. Hyatt, *Slaves and Warriors in Early Medieval Britain and Ireland, 800-1200* (Leiben 2009), pp. 68–84; C. Doherty, 'Warrior and king in early Ireland', pp. 111–17.

[560] *Bretha Crólige* §51 (Binchy, 'Bretha Crólige', pp. 40–1).

[561] For further discussion of this demotion, see McLeod, 'The lord of slaughter', pp. 111–13; McLeod, 'The blood-feud', pp. 130–2.

Considering this evidence alongside the various shifts in inter-territorial dispute settlement made in the *cánai*, we can see more motive to steer legal process away from *dígal* and kindred-based (or 'private', as Mac Neill, Binchy, and Sharpe styled it) methods of dispute settlement.[562] However, sometimes even ecclesiastical arbitration and this greater degree of legal centralisation had its limits, particularly when dynastic feuds emerged. As Neil McLeod aptly discusses:

> Nobles attempting to secure the kingship, or the over-kingship of other kingdoms, will construct allegiances which are designed to be clearly differentiated from each other. Each will marshal groups of clients and supporters for themselves, and against their opponents. Dynastic rivals will also be, by definition, among the most powerful members of their kingdoms. They will not be subject to the normal restraints exerted by peers, let alone those from superiors…within kingdoms, an intersecting web of mutual interests meant that the threat of violence could be harnessed as a force for peace. This was less the case as between kingdoms, and the forces for peace were especially weak across dynastic schisms.[563]

Muirgius mac Tommaltaig, a ninth-century king of Connacht, despite having promulgated more ecclesiastical *cánai* than any other king, was engaged in such a feud with the Luigni.[564] One is reminded of a particularly apt phrase in *Críth Gablach* concerning the *rí ruirech*, which Muirgius could be considered: *dochundri(u)g la cách* ('he is uncoercible by everyone').[565] Nevertheless, overall, by giving a provincial overking and influential ecclesiastical network the leading roles in arbitrating affairs, the ecclesiastical *cánai* made it easier to enforce certain stipulations across borders and thereby helped consolidate legal order throughout and among overkingdoms. At its core, the enactment of ecclesiastical *cánai* may have been a gradual process to safeguard ecclesiastical entities from lay interference, but at the same time it was a process for increased regulation of lay behaviour and for the growth of the power of the church across society generally.[566] This, in its enforcing mechanisms, resulted in greater legal centralisation as well as stronger affiliations with powerful church networks, both additional tools for overkings to consolidate their overkingdoms. As for the development of the *cánai*, we have seen how *Cáin*

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[562] We can now more fully understand the claim of Charles-Edwards, *ECI*, p. 568: 'One thing that the *cáin* did, therefore, was to replace the ordinary processes of feud with its own means of enforcing compensation'.

[563] McLeod, 'The blood-feud', pp. 132–3.

[564] For details and discussion of this dynastic feud, see McLeod, 'The blood-feud', pp. 132–3.

[565] *CG* ll. 479–80.

[566] McLeod, 'The lord of slaughter', p. 113, suggests, a motive for this: 'wealthy monastic settlements were prime targets whenever inter-territorial tensions spilled over into armed conflict'.

*Adomnáin* was a broad overarching piece of legislation, and included protection for entities which later *cánai*, such as *Cáin Phátraic* and *Cáin Dar Í*, took up. Consequently, these later *cánai* might almost be considered progressive footnotes to *Cáin Adomnáin*, dealing with a smaller more focused range of issues and only enacted on a provincial level at any single promulgation (while, of course, sometimes being in force in several provinces simultaneously). By the middle of the ninth century, notices of promulgations of *cánai* cease to appear in chronicle entries. However, Charles-Edwards has concluded aptly about the end of the *cánai* thus:

> The framework may have been temporary, but it was clearly intended to effect permanent change: hence the talk of a 'perpetual edict'. It was presumably hoped that the protection of non-combatants would become accepted custom, enforced by the normal processes of compensation backed up by the threat of feud. 'The end of the edict' would then be the end of a mode of enforcement, not the end of a rule of law.[567]

[567] Charles-Edwards, *ECI*, pp. 568–9.

## 4. Tract on the distribution of *cró* and *díbad*: an inter-territorial protocol

The tract on the distribution of *cró* and *díbad* (hereafter *C₇D*) survives in a sole copy in TCD MS H 3.18 (1337). It was first edited by Meyer, with partial translations of the text by Eoin MacNeill and Rudolf Thurneysen.[568] Thomas Charles-Edwards and Fergus Kelly provide some general analysis, while the text was most recently edited and translated in full by Kevin Murray, who also provided some overarching analysis, part of which was expanded by Neil McLeod in the context of the distribution of body-fine among the *derbfhine*, and Liam Breatnach has provided some additional notes on features of the text.[569] The tract has been dated to the early tenth century, given the *terminus post quem* of 908, the year given in the Annals of Ulster for Cormac mac Cuilennáin's death, who is mentioned in the tract. Breatnach gives a narrow dating of the early tenth century 'since the language is Early Middle Irish, the date of composition is not very long after Cormac's death'.[570] *C₇D* seeks to provide an overarching model of dispute settlement, offering various methods according to different situations. This text is of particular import to the discussion not only because it provides information on methods of interterrorial dispute settlement, but also because it provides very specific details on how compensation from a dispute is divided. In this way, it offers us information we do not quite have in other texts concerning inter-territorial law. Here I intend to expand upon (and in certain places revise) previous analyses and situate and explain the tract within the context of inter-territorial law.

The introductory passage of the tract includes the crucial dating criteria (such as the mention of Cormac mac Cuilennáin, d.908 AD), which have already been appreciated by the aforesaid scholars, but other significant aspects therein are worthy of mention. Firstly is the use of the term *bésgnae*, which I would rather translate 'legal protocol' here (as opposed to Murray's 'legal custom'), since the context is legal protocols for dispute settlement, either local or inter-

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[568] Meyer, 'A Collation of Críth Gablach, and a Treatise on *Cró* and *Díbad*', pp. 214–15; E. MacNeill, 'The Irish law of dynastic succession', *Studies* 8 (1919), pp. 372–5; Thurneysen, *Bürgschaft*, p. 62. Thurneysen, 'Aus dem irischen Recht IV', p. 205 first noted a parallel passage in another legal text (note also Binchy's note at *CIH* 600s), which has since been identified as part of *Córus Fine*, and which has been analysed together with *C₇D* by McLeod, 'The Distribution of Body-fine', pp. 68–75.

[569] Kelly, *GEIL*, pp. 23, 125–6, 175–6; Charles-Edwards, *EIWK*, p. 491; Breatnach, *Companion*, pp. 27–8; Murray, 'A Middle Irish tract on "cró" and "díbad"', pp. 251–60; McLeod, 'The Distribution of Body-fine', pp. 68–75.

[570] Breatnach, *Companion*, p. 28.

territorial.[571] Next is the stock legal framing of the protocol. Binchy has suggested 'leading cases are generally cited in order to justify legal innovations rather than archaic institutions' and McLeod has expanded upon this idea, stating that where the bastion of legal tradition, *fénechas*, cannot be cited, 'traditional status is nevertheless attained' for such legal facets by 'citing' other authorities.[572] The author of the present tract utilises a similar convention here by invoking ancient tradition, namely that this system was the legal protocol in place for dispute settlement 'from the beginning to the end', while in practice it may have been a newer modification of legal protocol. Here, though, the earliest authorities are 'Patrick and the men of Ireland besides', alluding to the elements present in the pseudo-historical prologue to the *Senchus Már*, such as the island-wide assembly at Tara.[573] Such an allusion back to the traditional 'beginning' of a contemporary body of law in a christianised Ireland symbolises in itself the attempt to give longstanding authority to a legal protocol that may include some more recent modifications. This convention is continued by citing authorities from the seventh century (such as Cenn Fáelad) and later figures. While it is uncertain how much this set of dispute settlement methods evolved before the tenth century, one would imagine it evolved in some way during the latter half of the eighth- and early ninth-centuries, alongside the enactment of ecclesiastical *cánai* and the larger political consolidation of overkingdoms, occurrences which are doubtless themselves intertwined as well.[574]

### 4.1. Models of enforcement

The tract details three methods of dispute settlement: *rann ó bun* ('division from the bottom'), *cró ó inn* ('*cró* from the top') and *cró ar medón* ('*cró* from the middle'). Since *rann ó bun* essentially begins with the highest overking and *cró ó inn* with the lowest, most immediate lord of the victim's kindred, one might imagine that a tree model is envisaged here, with the highest overking represented by the trunk, the largest branches representing subsidiary kings, and the gradually

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[571] See section 1.3.3.5 on the legal definition of the term and section 2.1, where a similar use in the pseudo-historical prologue to the *Senchus Már* is noted.

[572] Binchy, 'Distraint in Irish law', *Celtica* 10 (1973), p. 41; McLeod, 'Jurisprudence', p. 359.

[573] See Wadden, 'Royal legislation', pp. 141–58.

[574] On this point, Charles-Edwards, *EIWK*, p. 491, states: 'by the tenth century, too much had changed for a text of that date to be a reliable witness to seventh and eighth century conditions'. On this period of consolidation, see Ó Corráin, 'Nationality and Kingship', pp. 1–35 and MacCotter, *Medieval Ireland: territorial, political and economic divisions*, pp. 208–9. Aspects of this progression have been discussed in the last chapter. However, for our purposes here, one may note the continued use of the *derbfîne* in fine distribution, which has often been ascribed to an older method, for which see Charles-Edwards, *EIKW*, pp. 486–514; *idem.*, *ECI*, pp. 86–8; cf. McLeod, 'Kinship,' p. 1–22.

increasing number of smaller offshoots branching off representing various grades of lords decreasing in status as the top of the tree is reached. The method of *rann ó bun* concerns inter-territorial dispute settlement:

> Ran*n* ó bun c*ét*am*us* .i. t*ét* rí(g) in c[h]óicidh nó na mórt*húaithe* i tech rí[g] Ér*enn*. Ma[d] rí(gh) cóicid ma[d] rí(gh) mórt*húaithe*, t*ét* i tegh rígh in c[c]óic*id nó* ind ardrígh cena 7 gaibid gíall n-an*n* im c[h]i*n*aigh ind-í marb*us* a f*er co n*-éirre*n* fr*i*s a cró 7 ran*n*tair íar*a*m in cró.
>
> A division from the bottom first, i.e. the king of the province or of the major *túath* goes into the house of (that is, submits to) the king of Ireland. Whether provincial king or king of a major *túath* he goes into the house of (that is, submits to) the king of the province or the high-king on the other hand and he takes a hostage there for the crime of the one who kills their man, until he pays him their *cró* and this is then divided.[575]

Here a *gíall* is the central cog of the enforcing mechanism. This hostage cannot possibly be taken directly from the overking by a subordinate king, as that would imply the illogical legal and political subordination of the overking under one of his client kings. Therefore, the hostage here must be from the offender's kingdom, as Kelly contends.[576] Such a hostage (if not more than one) would already be held by the overking from his base-client kingdoms, and this is likely the hostage used here, given it occurs in the house of the arbitrating overking.[577] It would be logical that the king of the victim's kingdom would formally 'take' or hold the hostage into custody at the court of the overking, where all the legal procedure seems to take place.[578] The hostage is held in custody there *co n-éirren fris a cró* ('until he pays him their *cró*'); the implicit context here may be that the one paying is a representative from the offender's kingdom, rather than the overking himself, who is an arbitrating and enforcing figure here.

As Kelly states, both the victim's kingdom and offender's kingdom must be two client-kingdoms under the same overking.[579] However, we can be more specific than this: they are most

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[575] Ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', pp. 252–3; *CIH* 600.11–14.

[576] Kelly, *GEIL*, p. 176.

[577] We see a similar action of going to the house of the arbitrating official as in *cairde*, where the *muiredach* from the victim's kingdom goes to the house of the king of the offender's kingdom, who is the arbitrating official in *cairde*. See section 2.2.4.

[578] Cf. the setup of the court in the *Airecht*-text, which includes, at the court of a provincial overking in the *taebairecht* ('side court'), *ruirig 7 geill* ('overkings and hostages'), for which see Kelly, 'An Old-Irish text on court procedure', pp. 77–80.

[579] Kelly, *GEIL*, pp. 23, 175–6.

likely both base client-kingdoms under the arbitrating overking, since it is that kingdom which would provide the *gíall* used in the process of enforcement (and a free client-kingdom would not provide a *gíall* to the overking).[580] The victim's kingdom would most commonly also be a base client-kingdom, as this fits neatly within the paradigm of a lord arbitrating disputes between his base clients and receiving a share of the compensation due to the victim.[581] This model extends to an interritorial scale as well, as we see at work here. One might wonder if this method might also be available for a free client-kingdom of the arbitrating overking if that kingdom did not have any independent legal protocol with the offender's kingdom (itself a base client-kingdom of the arbitrating overking). However, there is not a simple answer here. First, just as a lord does not take a share of the compensation owed to a free client, neither would an overking take a share of compensation owed to a member of one of his free client-kingdoms for an offence which occurred under *cairde*.[582] However, if there is no legal protocol between the two kingdoms, and if the only potential legal recourse is through such an arbitrating overking, then it could be a conceivable option, but this remains uncertain.

Regarding the arbitrating overkings themselves, my understanding is that either the highest royal figure in an overkingdom is appealed to–either the *rí Érenn* (presumably the Uí Néill overking) or a provincial king–or perhaps just the next highest *relevant* royal figure is appealed to. By relevant we mean the next highest royal figure above the kings of the victim's and offender's kingdoms. So if these are both kings of the rank *rí mórthúaithe*, then the provincial overking over them would arbitrate. If a provincial overking's own kingdom (such as the king of the Ulaid) had a dispute with that of a *rí mórthúaithe* and if there were a *rí Érenn* presiding over both of them, then the latter would arbitrate the matter in that case. The term *ardrí* appears to be used in two different

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[580] This is most notably apparent in a citation from *Cethairślicht Athgabálae*: *aithgabāil fri brāta Caī, gīall fri cāin, aitire fri cairddi, gell fri neimthiu* ('distraint in the case of [customary] judicial process, hostage[-taking] in the case of *cáin*, hostage-surety in the case of *cairde*, a pledge in the case of dignitaries') *CIH* 412.13–15. The only situation in which a free client-kingdom providing a *gíall* to an overking would be in an relationship of *comurradus*, as stated in *FCTM* §§9, 18 and discussed in sections 2.2.2.3, 4.1, 4.2, and 5.1, wherein there is a situation of *comgíall* ('mutual hostageship'), the exchanging of hostages. This occurs between kingdoms nearly on equal footing, including between an especially privileged free client-kingdom and an overking. However, since this is a fairly equitable relationship, one would hesitate to suggest that the method of *rann ó bun* might be used simply because there is a *gíall* of an offender's kingdom present in an overking's house. The legal relationship is measurably different if that same overking *also* has a hostage of his own kept in the privileged free client-kingdom; this would negate any potential legal power of enforcement he would otherwise have, such as over a base client-kingdom of his (from which he would take a *gíall* without giving one himself).

[581] For brief discussion of this see Breatnach, 'Lord's share', pp. 6–8. This king would therefore have a relationship of *cáin* with both client-kingdoms, and this share of compensation would be the *féich cána* mentioned in an Old Irish passage from *Recholl Breth* (*SM 2, 13*), *CIH* 219.5–7, for which see section 2.2.1.

[582] Breatnach, 'Lord's share', pp. 6–7.

ways here. The first instance in the tract is clearly referring to the *rí Érenn*, while all subsequent references to an *ardrí*, beginning with the *ardrí dond-boing* ('high-king who levies it'), seem to be referring to the arbitrating king in general, whether he be *rí Érenn* or provincial king. In *rann ó bun*, the king of (or presiding over) the victim's kingdom, whether *rí cóicid* or *rí mórthúaithe*, takes the *cró* to the victim's kingdom and distributes it to the relevant parties there (both lords and kindred), after the shares of the *gíall* and *ardrí* have been taken at the arbitrating overking's court.[583] So, in a very general sense, this type of inter-territorial dispute settlement does bear some semblance to the first and second types of *rechtge* described in *Críth Gablach,* where we can see the general concept of an overking establishing and arbitrating legal situations among his client kingdoms.[584]

The method of *cró ó inn* ('*cró* from the top') is an inverse of *rann ó bun* in certain ways. It is very clearly a method for settling disputes between members of the same kingdom, emphasised by the phrasing *is héisidh[e] saighus fine ar urradhas, ar athgabáil* ('it is this that the *fine* claims through *urradus*, through distraint').[585] Where the enforcing lord in *rann ó bun* is the *ardrí*, here the enforcing lord is the most immediate lord of the victim's kindred. As such, he receives the enforcing third of the compensation, which the *ardrí* receives in *rann ó bun*. However, given the absence of the *gíall*, the share amounts are slightly different in *cró ó inn*: the enforcing third here is actually a full third of the total *cró*, where in *rann ó bun* the enforcing third going to an overking is two-sevenths of the total *cró*, since a hostage is involved in enforcement as well. As examined further below, there is also a further difference in the share of the lord of the victim's kindred in *rann ó bun* and the overking in *cró ó inn* conditioned by the slightly different ways they are distributed. Significantly, the *ardrí* here receives a share, even though it is an intraterritorial dispute. Unless it is his own kingdom in which the dispute occurs, this figure would not be the king of the kingdom in which the offence occurred but rather the (highest) overking of the kingdom of the offence. One

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[583] The particularly relevant phrase in *C₇D* being *is húadha berus cach a c[h]uit itir fine ₇ flaithi* ('it is from him that everyone, both *fine* and lords, gets his share'), for which see *CIH* 600.17–18; ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 253. Cf. a passage in *Di Brethaib Gaire* ('Concerning Judgements on Maintenance') [*SM3*, *42*] for a king having a similar role in the distribution of body-fine, though here in the context of a king taking a portion of compensation for a mentally disabled person in his kingdom: *Cach rí lasa fuachar fris, aircheallad-side a díre n-airi acht is gó ḟlatha dó cen a trian dia ḟini* ('Any king in whose territory an offence is committted against him (the fool), let him take his compensation on his behalf, but he is guilty of a sovereign's falsehood if he does not pass on a third of it to his kindred'), ed. and trans. Breatnach, 'The King in the Old Irish Law Text *Senchas Már*', p. 119; *CIH* 1276.28–31.

[584] *CG* ll. 515–19.

[585] Ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 253 (*CIH* 600.21). *Urradus* is clearly used here in the sense of the ordinary legal protocol between members of the same kingdom, and this is further underscored by the mention of distraint as a potential dispute settlement method, since cross-border distraint is not normally permitted. See n370 above in section 2.2.4.

would expect that just as a base client-king would essentially owe his overking a portion of the food renders he receives from his own client-kings, so too would he owe a portion of the profits of justice to his overking.[586]

The passage detailing the method of *cró ar medón* has certain unclear aspects and as such much is left to piece together. As each aspect of the passage needs to be looked in turn, it is necessary to provide it in full here:

> Cró ar m*et*hón .i. t*ét* mórt[h]úa(i)th íarna n-atugh do s[h]ochrait[i] aiccme bis húadhaib hi céi*n* ía*r* marb*ad* fir díb 7 ní damt*har* c*er*t ná dliged dóibh ima f*er* co toibget in mórt[h]úath ar éigi*n* leo-si*m* co slúaga[ib] 7 [n]-innib 7 at-gellt*ar* a cuit dóibh din c[h]rú t*ar* héisi a tobhaigh leo.
>
> A middle *cró*, i.e. the *mórthúath* goes after being requested in friendship to a family which is far away from them after the killing of one of them and neither justice nor entitlement is ceded to them regarding their man until the *mórthúath* exacts it by force along with them by hosts and weapons and their share of the *cró* is promised to them after its exaction by them.[587]

Murray's brief analysis is wisely kept in general terms, but here I intend to offer a more extensive interpretation. It is immediately evident, as Murray notes, that a hosting by the *mórthúath* is the enforcing measure here, while the *gíall* or *urradus* and distraint serve similar functions in *rann ó bun* or *cró ó inn*, respectively.[588] The precise meaning of the term *mórthúath* here is not entirely clear. Murray gives the definition of 'major *túath* or over-kingdom'. In the present context, it could indicate 1) entire region of an overkingdom or 2) just the arbitrating overking's kingdom, which might be described as a great *túath* (or a collection of recently merged kingdoms, according to Neil McLeod),[589] and so such an arbitrating overking would have the titles both of *rí mórthúaithe* and *rí cóicid*/*rí Érenn* (since, presumably, just as in *rann ó bun* the arbitrating overking is either a *rí cóicid* or *rí Érenn*).[590] If used in sense 1), it would indicate that the overkingdom in general is assisting the

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[586] See Charles-Edwards, *ECI*, pp. 530–1; Breatnach, 'Lord's share', pp. 6–8.

[587] Murray, 'A Middle Irish tract on "*cró*" and "*díbad*"', pp. 253–4; *CIH* 600.28–31.

[588] See Murray, 'A Middle Irish tract on "*cró*" and "*díbad*"', pp. 257–8.

[589] Personal communication.

[590] It may also be noted here the appearance of the *rí mórthúaithe* alongside various other grades of king, including the *rí túaithe*, *rí túath*, *rí cóicid* and *rí Érenn*, in a passage of later commentary from *Bretha Cairdi* (see Breatnach, *Companion*, p. 302) at *CIH* 808.1–6. For local public business, the retinue of a *rí mórthúaithe* is a greater number than that of a *rí túath*; however, for the size of retinues in inter-territorial affairs (specifically in *cáin* and *cairde*), the retinue of the *rí túath* is greater than that of the *rí mórthúaithe*, which itself is given as the equivalent of the *rí túaithe*. See also Qiu, *Narratives in early Irish law tracts*, pp. 73, 297, for a legal narrative at *CIH* 1027.13–18 (cf. 2145.33–9), where Fergus mac Roích is noted as a *rí mórthúaithe*.

victim's *túath*, whereas sense 2) would suggest that only the overking's kingdom is involved in enforcing that compensation is paid, which perhaps is more plausible. What seems a bit clearer, as Murray notes, is that 'the member of the *fine* for whom the compensation is sought is killed a good distance away from his own *túath*, thus making enforcement more difficult'.[591] The phrase *húadaib hi céin* may indicate more than one territorial boundary may need to be crossed, which would complicate obtaining compensation and thus necessitate the involvement of a higher arbitrating overking. The use of the term *sochraite* is paralleled nicely in *Córus Bésgnai* §22: *Bíathad congbálae fri sochraiti túaithe, fri cuindgid fír 7 dligid 7 fri frecrae n-indligid* ('Providing food for a billeting for allies of the kingdom, for seeking truth and entitlement, and for responding to illegality'). Immediately following this is a list of various kinds of personal service, of which *slógad* is the first.[592] The *congbáil* ('billeting') of allies of a *túath* would suggest the fulfilling of military obligations and taking part in a hosting, which fits the sense used in *C7 D*.[593] The phrase *ní damthar cert ná dliged dóibh* ('neither justice nor entitlement is ceded to them') utilises typical contractual language–which we see most overtly in the law tract *Di Astud Chirt 7 Dligid* (*SM1*, *14*), as well as paralleled by *fír 7 dligid* in the just quoted passage from *Córus Bésgnai*–to state the offender's kingdom has given no offer of law, either by means of submitting the case to arbitration or recognising entitlement to compensation.[594]

Given the above, there may be various possible situations that could fit the *cró ar medón*. Situation 1) is that this represents a dispute between two kingdoms which have no common overking, thus being kingdoms in different provinces. In this case, no one lower than a provincial king would act as the king of the enforcing *mórthúath*. Other possible situations involve two kingdoms which do have a common overking, but have certain other extenuating factors that complicate the matter. Situation 2a) is that the dispute is between a free client-kingdom of an

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[591] Murray, 'A Middle Irish tract on "*cró*" and "*díbad*"', p. 258.

[592] *CB* §23.

[593] See the note on *CB* §23 at Breatnach, *CB*, p. 68. While a base client (and base client-kingdom, by extension) similarly would owe military service to his overking, this would be an obligation implied under the terms of that overking's *cáin* with the base-client, and so the term *sochraite* (having a base meaning of 'friendship' similar to the term *cairde*) would more often be used of a free client and free client-kingdom. On the military obligations due from free client-kingdoms, see, for example, Charles-Edwards, *ECI*, pp. 511–12, 531; *idem*., '*Lebor na cert* and clientship', pp. 18–33. If this is so, here in *C7 D* we see how this obligation of military assistance is mutual, as the free client-kingdom is securing the assistance of the overking (while the situation more often presented is that of client-kingdoms serving in an overking's hosting). One would imagine, though, that such a host would be comprised of members from both the free client-kingdom and that of the overking (and perhaps other kingdoms within the overkingdom).

[594] Cf. also a section of *CB* §24: *Ad-regar, in-omblegar, segair, as-renar cach* ***ndliged*** *do neimthib íar nDía 7 duiniu* ('Every entitlement is secured, is levied vicariously, is pursued [against a surety], is paid out [with a penalty] for dignitaries in accordance with God and man').

overking (the offender's kingdom) and a kingdom which is a base client-kingdom of the same overking (the victim's kingdom), and the two kingdoms do not have a legal relationship or protocol with each other.[595] If both kingdoms have a common overking, the offender's kingdom cannot be a base-client kingdom of the overking as the latter would have a *gíall* from the former and would use the dispute settlement method of *rann ó bun*. Situation 2b) is that both kingdoms are free client-kingdoms under the same overking, but similarly have no legal relationship with one another. This would similarly make sense for a *mórthúath* of an arbitrating overking serving as an enforcing body with military force. Situation 2c) is that the two kingdoms are free client-kingdoms under the same overking, and do in fact have a relationship of *cairde* between them. In this case, the phrase *ní damthar cert ná dliged dóibh* ('neither justice nor entitlement is ceded to them') would indicate a situation where the normal processes of inter-territorial dispute settlement under the terms of *cairde* have been significantly impeded, such as by the king of the offender's kingdom refusing to admit the *muiredach*, for example. If situations 1), 2a), or 2b) were the case, one is reminded of a type of *slóg* detailed in *Críth Gablach*: *slógad co hor críche fri forcsin* ***fír*** *₇* ***dligid*** *conid roib cath nó chairdde* ('a hosting to the edge of the frontier [i.e. on the neighbouring kingdom's side of the frontier] to secure prerogative and entitlement [to a legal obligation], that he may have battle or a *cairde*').[596]

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[595] However, this possibility raises two complexities: firstly, the question of whether the term *sochraite* would be used of military obligations between an overking and his base client-kingdom and secondly whether it is even possible for a base client-kingdom and free client-kingdom under the same overking not to have a legal protocol in place between them. The question of what the legal relationship is between these two entities is not a simple one; however, one might infer that since a lord is understood to look after the dispute settlement process of his base clients, he may well be responsible for any claim one of his base clients becomes involved with, even if the offender is one of his free clients. If this may be extended to an inter-territorial level with an overking and his free and base client-kingdoms, he could be seen as representing his base client-kingdom, and thus the area of the *crích cairde*–the region within which the *cairde* with his free client-kingdom applies–may well include the overking's base client-kingdoms as well as his own, rather than just being limited to his own kingdom. The overking would therefore handle the matter according to the protocol of *cairde* that was agreed with his free client-kingdom. In such a way, the overking's kingdom and his base client-kingdoms could be considered in a relationship of *comchairde* with the overking's free client-kingdoms. However, it is not quite certain whether this is actually the case, and situation 2a) must remain a less certain possible situation for *cró ar medón*.

[596] *CG* ll. 511–12. Note especially the parallel between *fír ₇ dligid* and *cert ₇ dligid*. The legal narrative *Echtrae Ferguso maic Léti*, which is replete with illustrations of how legal situations are meant to work, portrays this precise situation of making a hosting to secure entitlement where there was no previous legal protocol for cross-border dispute settlement between the Ulaid and Féni of Tara, following which *ógcórae* ('full peace') was agreed in order to conclude such a protocol (see Binchy, 'The Saga of Fergus mac Léti', p. 37; McLeod, 'Fergus mac Léti', p. 5). We can see how the central idea in this type of *slógad* detailed in *Críth Gablach* is that the threat of military force will conclude in an offer of compensation, which subsequently may result in a cross-border legal agreement. This may be constructed on the legal paths in *Cóic Conara Fugill*; here, the path of *dligid* requires a *naidm* as guarantee (who may act with physical violence to compel compliance if necessary), and the paths of *fír* or *cert* require various kinds of pledges. The language used in *Críth Gablach* and *C₇D* may allude to these concepts, and symbolically indicate peaceful or military resolutions on an inter-territorial scale.

However, if situation 2c) were the case, then we may look to another kind of *slóg* in the same passage: *slógad tar crích fri túa[i]th asidluí* ('a hosting across the frontier against a kingdom that evades [a legal obligation to] him'), which is alluded to also in a later passage: *e(i)rrech ar thúaith asidluí oco[a] n-indriud* ('a requisition when he is harrying them on a [client-]kingdom that evades [obligations to] him').[597] It is worth mentioning that within the context of situation 2c), one of the statements in the oath of the *aitire* in *Berrad Airechta* may offer further insight: *Toing do dia do·n-airgife do dala fira hura cen dichell cin ailseth, acht taurbuith do bais no galair no thaulna(i)dmand tuath, co·n-arrastar cach fria gnimu cona ur iar taurbuith* ('Swear to God that you will effect your true prompt meetings without neglect [and] without negligence, except [if you have] a legal exemption because of your death or your sickness or [your obligation to perform the duties associated with] an immediate *naidm*-suretyship of kingdoms, so that each person may be bound to his responsibilities anew after [the expiration of] the legal exemption').[598] This *tulnaidm tuath* ('immediate *naidm*-suretyship of kingdoms') would appear to be a curious extension of the functions of a *naidm* to an inter-territorial level. On a localised level, a *naidm* may use brute force to compel a defaulting principal to fulfill a legal obligation; on an inter-territorial level, this could translate to a hosting executing military force to do the same to one kingdom which has a legal agreement with another.[599] As such, this would represent a logical response to a free client-kingdom's evasion of a legal obligation to an overking, as outlined above in situation 2c). This seems to evoke the *aitire nadma* referred to in the section of types of *aitiri* in *Berrad Airechta* §64: *Ceist, cis lir aitire do·chusin la Feniu? ni anse, a tri. Cadeat? Aitire luigi 7 aitiri foisma 7 aitiri*

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[597] *CG* ll. 512–13, 559–60; Note also the statement in *CG* l. 563 (trans. Charles-Edwards, *ECI*, p. 527) that the hosting should have just cause: *adgainethar húad do chách besa chethrae in dá n-e(i)rrech ndédenach, nád aithgainethar a toísech a ht mad indred n-indligthech* ('He pays compensation for the last two requisitions to everyone who owns the livestock; he does not pay compensation for the first unless it be an unlawful invasion'). This can be compared with some statements in the seventh-century *Cáin Ḟuithirbe* (ed. and trans. Breatnach 'The Ecclesiastical Element in the Old Irish Legal Tract *Cáin Fhuithirbe*', pp. 39–40): *Indles cach n-indred / íar cumalaib slóig segar. Díles cach forloscud / fedar i fithisib ríg* ('Every spoiling by a host which is pursued after *cumala* have been given up is liable. Every burning which is carried out in the circuits of a king when he has bewailed evasion is immune'). As a side note, the function of the *aire échta* in an act of *dígal* ('redress') would not be sanctioned here, as his function only is permitted where there is a relationship of *cairde* in place (for which see McLeod 'The lord of slaughter', pp. 109–11); and if there is a larger obstruction of justice, the *aire échta* would not be a viable legal option anyhow, since this would result in the dishonouring of the king who made the legal agreement on behalf of his kingdom and thus would require a larger action by means of a hosting.

[598] Ed. Thurneysen, *Bürgschaft*, p. 22; trans. Stacey, '*Berrad Airechta'*, p. 222, preferring 'kingdoms' to Stacey's 'tribes'; *CIH* 597.13–15.

[599] Kelly, GEIL, p. 171; note especially one of seven bloodsheds which do not entail payment of compensation in Heptad 6 (*CIH* 9.5): *fuil fir saiges naidm* ('blood spilt by a man who is enforcing his suretyship'). See Stacey, *The Road to Judgment*, p. 260n28, who notes, 'the word *naidm* can be used to refer to anyone involved in enforcing any type of claim'.

*nadma* ('A question, how many *aitire*-sureties are there according to legal custom? Not difficult: three. What are they? An *aitire* of oath, an *aitire* of warranty, an *aitire* of enforcing').[600] One might expect such a figure to be involved in a *tulnaidm túath*. According to the above analysis of legal procedure in *cairde*, the *aire tuísea* would act as a *muiredach* figure, and it could well be that the same grade of noble (who acts as a head of a wider noble kin-group) would similarly function as an *aitire nadma* in situations involving military enforcement of legal claims. If this were the case, we would have a neat distinction between an *aitire chairdi* (i.e. a kind of *aitire luigi*), a noble who serves as a guarantor for inter-territorial offences caused by his clients and more immediate kindred (either *gelfine* or *derbfine*) of which he is the head, and an *aitire nadma*, the military variant from the *muiredach* (or perhaps *muire rechtgi*), who acts in inter-territorial situations on behalf of the victim's kindred to settle claims, which may involve enforcing payment by force where no offer of law has been made.[601] Now that we have outlined the various kinds of situations for which *C7 D* details dispute settlement methods, we may now look at the methods of distribution of the compensation from such claims, which inherently provides additional detail on the enforcers themselves.

### 4.2. Methods of distribution

In *C7 D*, methods of distribution for the compensation emanating from a claim follow an overall pattern, which results in shares given to each involved party proportionate to their degree of involvement in settling the dispute. The method of fine distribution throughout the tract follows the same general paradigm, which will be investigated here in more detail than has been done previously. We will begin by examining the fine distribution methods in *rann ó bun*, *cró ó inn*, and *cró ar medón*, then examine some overall issues concerning fine distribution in *C7 D*. In *rann ó bun*, the fine distribution is as follows:

> *Secht*m*ad* as cét*amus* do gíall frisi tobong*ar*. Ran*ntair* i t*rí* íar sin. T*rían* as do*n* ardríg dond-boing 7 t*rían* do c[h]rú na derbf[h]ine 7 t*rían* do f[h]l*aith*i[b] ilibh huilibh. 7 b*er*id rí(g) in c[h]óic*id nó* na mórt[h]úaithi a cró n-uile leis *acht cui*t i*n*d ardrígh 7 is húadha b*erus* cách a c[h]uit itir fine 7

[600] Ed. Thurneysen, *Bürgschaft*, p. 22; trans. Stacey, '*Berrad Airechta'*, p. 221, but preferring 'enforcing' for *naidm*; *CIH* 597.5–6.

[601] In such a context, one would wonder whether the *aitire nadma* might be a similar figure to the *aitiri fechemain toicheda* of a passage from *Bretha Cairdi* (*CIH* 115.22–116.2), as an *aitire* representing the interests of the victim and collecting payment. As a general side note, one might compare a passage in *Córus Bésgnai* (*CB* §23) detailing that personal service includes support in both in legal matters and in military service, two sides of the coin for enforcing authority.

fl*aith*i .i. a t*r*ían tic na fl*aith*i, fácab*ar* a t*r*ían lais-[s]im 7 b*er*idh in f*h*l*aith*(i) is nesom dó-som na dá t*r*úan n-aile 7 fácb*aid* cach áe t*r*ían leis beos .i. cach tellugh asa t*ét* beos *con*á túa*r*at ní de et*ir*.

One seventh of it in the first place for the hostage who is taken for it. It is divided in three thereafter. A third of it for the high-king who levies it and a third for the *derbfhine*'s *cró* and a third for all the other lords. And the king of the province or of the *mórthúath* takes their complete *cró* with him apart from the share of the high-king and it is from him that everyone, both *fine* and lords, gets his share, i.e. [of] the third which comes to the lords, a third is left with him and the lord who is nearest to him takes the other two thirds and each of them leaves a third with him still, i.e. every household from which it goes until none of it remains at all.[602]

A central point here is that the share going to the victim's lords is not divided equally among all those lords. It is distributed in a very particular manner, which bears some semblance to a distribution method that also exists in the Old Irish *Córus Fine*, as is discussed further below. First, the king of the victim's kingdom takes the body-fine apart from the enforcers' shares (here the *gíall* and arbitrating overking) and delivers the the victim's kindred's share, then of the remaining compensation 'a third is left with him' of that remaining, referring to this local king, who then passes on the other two-thirds to the lord 'nearest to him' in status, within the hierarchy of lords over the victim's kindred. The phrase *fácbaid cach áe trían leis beos* ('each of them leaves a third with him still') indicates that this method of each progressively lower status lord in the hierarchy dividing the remaining *cró* in three, taking one third for himself, and passing on the other two-thirds to the next highest lord continues in iterative fashion until the most immediate lord of the victim's kindred receives his share.[603] At this point, if some amount of the *cró* remains, which will generally be the case, then the process cycles back to the highest lord in this group (the king of the victim's kingdom) and the distribution method continues until the amount becomes so low (probably less than a scruple) that 'none of it remains at all'. This is illustrated in Figure 22, using an example of a possible hierarchy of lords above the *flaith fine* (the most immediate lord of the victim's kindred).

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[602] *CIH* 600.14–20; ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', pp. 252–3, from which I depart only by keeping *mórthúath* completely in its original form.

[603] Here I differ from Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 257n20, who thinks that the phrase in question refers 'to the lords of the *túath* giving one third of their individual shares of the *cró* as tribute to the king'. I would rather interpret the pronoun 'him' here to refer to each successive lord leaving a third of the remaining *cró* with the last and taking the rest, dividing it in three, and continuing the process. This matches the parallel situation in *cró ó inn* in *C7 D* §5 where this is described more overtly: 'he [i.e. enforcing lord of the victim's kindred] leaves a third in the household of every lord' (*fácaibh trían i tellugh cacha flatha*), ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 253.

**Figure 22: Example of distribution to lords in *rann ó bun* when the *rí Érenn* is the arbitrating overking**

| **Recipient** | | *rí Érenn* | *rí cóicid* | *rí morthúaithe* | *flaith* | *flaith fine* |
|---|---|---|---|---|---|---|
| **Method of distribution** | | ⅓ of that which remains after the *gíall*'s initial share | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on |
| **Fraction of the total *cró*** | 1st share | $^{2}/_{7}$ | $^{2}/_{21}$ | $^{4}/_{63}$ | $^{8}/_{189}$ | $^{16}/_{567}$ |
| | Remaining amount | | $^{4}/_{21}$ ➤ | $^{8}/_{63}$ ➤ | $^{16}/_{189}$ ➤ | $^{32}/_{567}$ ➤ |
| | 2nd share | | $^{32}/_{1701}$ | $^{64}/_{5103}$ | $^{128}/_{15309}$ | $^{256}/_{45927}$ |
| | Remaining amount | | $^{64}/_{1701}$ ➤ | $^{128}/_{5103}$ ➤ | $^{256}/_{15309}$ ➤ | $^{512}/_{45927}$ ➤ |
| | 3rd share | | $^{512}/_{137781}$ | $^{1024}/_{314343}$ | $^{2048}/_{314343}$?* | |
| | Remaining amount | | $^{1024}/_{137781}$ ➤ | $^{2048}/_{314343}$ ➤ | | |

*If this amount were divided into thirds, each third would be less than $^{1}/_{432}$ of 6 *cumala*, which is less than $^{1}/_{72}$ of 1 *cumal*, which is less than a scruple. We presume that normally if a subsequent share would be less than a scruple, this would be too small an amount to be divided further, thus one would imagine the last beneficiary would receive the remaining sum.

In this way, the share of the next highest overking under the *ardrí* (be he *rí cóicid* or *rí mórthúaithe*) will be the highest of all the successive lords under him, with the *flaith fine* receiving the smallest amount. As McLeod notes within the context of distribution to the kindred, the cycling back of distribution to parties to receive second shares in the same order as before may have been done to ensure that each successive share, though each is slightly different in amount, is similar in quality to that before. Such a gradual division that cycles back again to the same parties for subsequent division would prevent, for example, all the best cattle or precious metals being chosen in the first share.[604]

However, in *cró ó inn*, since the most immediate lord of the victim's kindred is the enforcing lord, he receives the enforcing third of the compensation. The lords' third of the *cró* progresses in the opposite direction, so that those of progressively higher status in the hierarchy of lords receive progressively smaller shares, with one notable exception. While the author draws a parallel between the share of the lord of the victim's kindred in *rann ó bun* and the overking in *cró ó inn* with the phrase *in c[h]uit ro-saigh inn flaith na fine asin c[h]rú toísech, is ed ro-saigh in n-arddrígh asin c[h]rú-so* ('the share which comes to the lord of the *fine* there from the first *cró*, it is this which

[604] McLeod, 'The Distribution of Body-fine', p. 70.

comes to the high-king from this *cró*), this is of course a relative parallel rather than an absolute equivalency. The crucial difference in absolute amount is detailed in the preceding phrase: *téit beos frithrusc súas coruice in n-ardríg 7 is ann ar-[s]isestar a ndo-huartét de* ('it goes up then in the opposite direction as far as the high-king and it is there that which remains of it stays').[605] This key difference from the distribution method in *rann ó bun* results in the share of the *ardrí* in *cró ó inn* being proportionately larger than that of the *flaith fine* in *rann ó bun*, since there is no cyclical distribution in *cró ó inn*. Instead, the *ardrí* takes everything that is left over after each lord takes a third of that remaining and passes on two-thirds. This ensures that the *ardrí* will receive a larger share than most of the other lords than the *flaith fine*, and occasionally a larger share than all of them apart from the *flaith fine*. The only situation where the *ardrí* will not receive a larger share than all the other lords than the *flaith fine* is if there are at least two lords between the *ardrí* and the next highest lord over the *flaith fine*. So long as this is the case, the *ardrí*'s share will be slightly less than the lord just above the *flaith fine*, but still greater than all the subsequent lords. This is shown in Figure 23.

**Figure 23: Example of distribution to lords in *cró ó inn* when the *ardrí* is the *rí Érenn***

| **Recipient** | | *flaith fine* | *flaith* | *rí morthúaithe* | *rí cóicid* | *rí Érenn* |
|---|---|---|---|---|---|---|
| **Method of distribution** | | ⅓ of *cró* | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on | Receives everything that remains |
| **Fraction of the total *cró*** | 1st share | ⅓ | ⅑ (⁹⁄₈₁) | ²⁄₂₇ | ⁴⁄₈₁ | ⁸⁄₈₁ |
| | Remaining amount | | ²⁄₉ ➤ | ⁴⁄₂₇ ➤ | ⁸⁄₈₁ ➤ | |

As such, the only situation in *C7 D* where the king of the victim's kingdom might receive a greater share of compensation of the *cró* than the enforcing overking would be when the king of the victim's kingdom is himself under a *rí mórthúaithe*, who in turn is under a *rí cóicid*, who is himself under a *rí Érenn*, who is the enforcing overking. This will be the case regardless of how many lords are under the king of the victim's kingdom. Figure 24 illustrates how this would work.

[605] *CIH* 600.25–7; ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 253.

| Figure 24: Alternate example of distribution to lords in *cró ó inn* when the *ardrí* is the *rí Érenn* | | | | | | |
|---|---|---|---|---|---|---|
| **Recipient** | | *flaith fine* | *rí* | *rí morthúaithe* | *rí cóicid* | *rí Érenn* |
| **Method of distribution** | | ⅓ of *cró* | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on | ⅓ of the lord's share, passes ⅔ on | Receives everything that remains |
| **Fraction of the total *cró*** | 1st share | ⅓ | ⅑ (⁹⁄₈₁) | ²⁄₂₇ | ⁴⁄₈₁ | ⁸⁄₈₁ |
| | Remaining amount | | ²⁄₉ ➤ | ⁴⁄₂₇ ➤ | ⁸⁄₈₁ ➤ | |

Such a situation was not impossible: the victim's kingdom being a base client-kingdom of the Ulaid or Laigin when they were under Uí Néill overlordship would present one such situation, interpreting the *rí Érenn* as the Uí Néill overking. Admittedly, it is not certain whether such a situation was intended as a possibility in *C₇D*, as no grade of king lower than a *rí mórthúaithe* is mentioned. It may well be that the *ardrí* was always intended to receive a greater share than the king of the victim's kingdom in *cró ó inn*. Another notable difference between *cró o inn* and *rann ó bun* is the one overseeing the distribution among lords: in *rann ó bun* this is the king of the victim's kingdom, even though he does not receive the enforcing third proper, while in *cró ó inn* the lord of the victim's kindred both receives the enforcing third and oversees the distribution process among the lords. The main overall point here is that the distribution process is overseen by someone within the victim's kingdom, not by an external overking, even if he be the enforcing overking. So while *cró ó inn* was a method focusing on local jurisdiction, it still retained some priority for the share of the highest overking.

This naturally sparks the question of whether or not this was intended to be a local dispute settlement method for all kinds of inter-territorial situation. Normally, if an overking is receiving a share of the *éraic* for an internal dispute between members of the same client-kingdom of his, one would expect this to be a *base* client-kingdom. Just as a free client of a higher lord would not give a share of compensation to his lord for an offence against the free client himself, neither would a king of a free-client kingdom give a share of the *éraic* to his overking for an offence caused by someone from a kingdom with which the free-client kingdom has a *cairde*. In other words, the *cairde* is a legal protocol between those two kingdoms involved, and does not necessitate the involvement of higher lords.[606] As has been discussed above, *cró ó inn* is one of just three methods that was cast as

[606] As stated in section 2.2.4., the king of the offender's kingdom, who receives the *muiredach* from the victim's kingdom into his house, would normally seem to be the arbitrating official who would thus take part of the enforcing share of fines. For some detail on this, see Breatnach, 'Lord's share', pp. 11–12. See section 2.2.1. for a passage on the distinction between *éraic* in *cáin* and *éraic* in *cairde*.

representing archaic tradition and being essentially unchanged since the time of Christian conversion, but such an invocation of supposed legal authority often represents an attempt to justify legal innovation. We may recall that the early tenth century was a time after which the distinction between *cairde* and *cáin* had already become less pronounced and overkings were imposing greater authority over their client-kingdoms, irrespective of whether they were at one time considered more as distinctly free or base client-kingdoms.[607] This increasing consolidation would provide overkings with a reason to codify a legal innovation cast as and given the authority of archaic institution. Thus, one potential legal innovation that *C₇D* may be attempting to justify is that overkings should in fact get a share in all internal disputes in client-kingdoms regardless of the precise inter-territorial agreement in place.

The method of distribution in *cró ar medón*, in *C₇D* §7, is less clear because the language is less specific and may well have more implicit content. For one, the lords' third is detailed simply as *trían donaib flaithib, amail remind-érbartmmar isna(h)ibh cróaibh .ii.* ('one third to the lords as we have previously mentioned in the other two *cruí*').[608] Since, as we have seen above, the other two types of *cró* have inverse methods of distribution to the lords from one another, so this phrase does not reveal any specific detail regarding the direction distribution goes among the lords (and

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[607] See Stacey, *The Road to Judgment*, pp. 110–11; D.A. Binchy, *Celtic and Anglo-Saxon Kingship* (Oxford 1968), pp. 34–40; F.J. Byrne, *The Rise of the Uí Néill and the High-Kingship of Ireland* (Dublin 1969); Byrne, 'Tribes and Tribalism', pp. 151–62; Byrne, *Irish Kings and High Kings*, pp. 114–25; Ó Corráin, 'Nationality and Kingship', pp. 8–11, 22–6. Indeed, the Airgialla Charter Poem, *Frithfolad Caisil fri Túatha Muman*, and the political tract in the Laud genealogical material (sometimes termed the 'West Munster Synod') are all currently viewed as legal statements to limit the power of overkings, who–in the eyes of their client-kingdoms–were overstepping the boundaries of their rights, so we can see how this process may have already been happening to some extent in the eighth century. In all of these polemic texts, certain privileged free client-kingdoms (or those attempting to claim such status) are mentioned as exchanging hostages to establish a relationship of *comurradus*, the fullest form of cross-border relationship. This may have been a process by which kingdoms (base client-kingdoms at first, but perhaps later privileged free client-kingdoms also) became subsumed into larger consolidated kingdoms, which began to be called *mórthúatha*. By the time of the late Middle Irish glosses on *Di Ércib Fola* §1.10, all freemen who were regarded as *urraid* to one another included even *lucht an aoncóicidh ar mhedon dia ceile acht co ndamhdis dliged 7 dia mbetis fo smacht aonrigh do reir dligid 7 breitheman* ('the population of a single native province vis-à-vis each other, provided that they submitted to law and were under the rule of a single king according to law and judges'). Here a significant degree of consolidation within provinces had been achieved. See McLeod, 'Di Ercib Fola', pp. 164–5; Charles-Edwards, *ECI*, pp. 530–56; Stacey, *The Road to Judgment*, pp. 92–3, 98–9, 106; Gerriets, 'Kingship and Exchange', pp. 40–3. For a detailed example of this consolidation, see C. Swift, 'Follow the money: the financial resources of Diarmait Mac Murchada', in Emer Purcell, Paul McCotter, Julianne Nyhan and John Sheehan (eds.), *Clerics, kings and Vikings: essays on medieval Ireland in honour of Donnchadh Ó Corráin* (Dublin 2015), pp. 91–102.

[608] *CIH* 600.32–3; ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 254 (just retaining the plural of *cró* in the original).

overlords) of the victim's kindred.[609] However, we can be reasonably sure that the method of each successive lord receiving one third and passing on two thirds remains the same. Concerning the division of the enforcing third going to the host (presumably comprised of members of the victim's kingdom, the overking's kingdom, and perhaps others within the overkingdom, as stated above), the following statement is given: *íar n-airecas na ndaghdaíne 7 íar lín c[h]áich 7 íar mét a cumaing ranntair ó hísil co húasal, acht ní bí nec[h] díbh cin ní itir, cidh bec cuit c[h]áich díbh de* ('according to the legal status of the nobility and according to the number of each and according to the amount of their power, it is divided from the bottom to the top, but there is no-one of them with nothing at all, however small the share of each of them may be').[610] The second part of the statement, as Murray states, indicates that every person taking part in the hosting receives something, even if it is an extremely small amount.[611] The first part is slightly more difficult to interpret, because of the phrase *ó hísil co húasal*. Murray translates this as 'from the bottom to the top', indicating that he interprets it in a parallel concept to that in *rann* ***ó bun*** and *cró* ***ó inn***, but then he notes that 'Máire Herbert has suggested to me that *ranntair ó hísil co húasal* may be better translated as "it is divided from inferior to superior rank"'.[612] This would be the opposite of a division 'from bottom to top'–recalling the tree concept mentioned above–in which the highest status figure would receive the first and thus (usually) greatest share. Linguistically the former may make more sense, especially in the context of the preceding conditional phrase concerning the *airechas* ('legal status, rank') of nobility taking part in the hosting. However, conceptually it would make more sense that the higher lords organising a hosting would receive a greater part of the share as they would be the leaders of such a hosting.

We can continue examining the method of fine distribution by examining the final two passages of *C7D*, §8 and §9. *C7D* §9 has not been interpreted in any great detail.[613] Neil McLeod

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[609] Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 258 states that the lords receiving a share are 'the lords (and king?) of the *túath*', but if indeed it is a 'third to the lords as we have previously mentioned in the other two *cruí*', then it must include not only the king of the victim's *túath*, as Murray says, but also the external overlords as well, just as do the other methods.

[610] *CIH* 600.34–6; ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 254.

[611] Cf. the distribution to the lords in *rann ó bun*, which is carried out in the method of a third of the remaining amount given to the next eligible person and two thirds passed onwards, all the way *coná túarat ní de etir* ('until none of it remains at all'). Similarly we see the amount given to the *etarflatha* in *C7D* §9 distributed *co háenscrepal* ('down to one scruple'), i.e. as far as the amount going to the next person is still greater than one scruple. Such phrasing in *cró ar medón* may indicate an understood context that distribution among the host is similarly the method of taking one third and passing two thirds onward.

[612] Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 256.

[613] Thurneysen, *Bürgschaft*, pp. 61–2 briefly discusses the passage within the context of his general discussion of the *muire*.

has amply interpreted the distribution method of the third of the *cró* going to the *derbfhíne* in §8, following on from the work of Murray and others before him. He has explained the quotation from and relationship to *Córus Fine* in this passage, which helps illuminate the legal concepts on which *C7D* is built.[614] If we look at the passage as a whole, including the quotation from *Córus Fine*, we can see how the overall method of distribution is the same as with the lords. We may begin with the quote from *Córus Fine* in *C7D* §8.2:

> Aithair 7 mac cétamus, leth doibh dīnaise. Brāthair … [*omission*]. Athair 7 mac rainnait aithraind atherrugh co leth i[n] neth do-hurrtét ann.
>
> [The victim's] father and son first of all: half for them exclusively. The brother: [a third for the latter out of the other half]. Father and son make another division again of half of that which remains.[615]

Here we can already see a similar distribution method at work as elsewhere in *C7D*. Following distribution of an initial share (whether to a *gíall* or, as here, to father and son(s)), the remainder is divided in three. If these are still distinct allocations (e.g. lords, enforcers, the victim's entire *derbfhíne*, etc.), an equal share is given to each entity to distribute internally. The number of these distinct allocations is usually three, and as such the remaining portion of the *cró* is divided into thirds, as we have seen in the above three types of division in *C7D*. However, within each entity (e.g. among lords, a multitude of enforcers, etc.) the method of distribution usually follows the method of a third of the remaining amount given to the next eligible person and two thirds passed onwards, as in *C7D* proper (i.e. the rest aside from the *Córus Fine* quotation). According to *Córus Fine*, there are four entities in the *derbfhíne*:

> Cis lir co[n]-randat crō 7 dībad? Nī ansa. A cethair. Athair 7 mac, brāthair 7 fine.
>
> Question: how many share the *cró* and the deceased estate? Not difficult. Four: father and son, brother and [rest of the outer] kin').[616]

In *C7D* §8, just as in *Córus Fine*, these are grouped into three distinct allocations: 1) father and son(s), 2) brother(s), and 3) the rest of the *derbfhíne* outside the victim's *gelfhíne*, which, significantly,

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614 McLeod, 'The Distribution of Body-fine', pp. 72–5.

615 McLeod, 'Distribution of Body-fine', p. 73, who has supplied the missing words from *CIH* 742.4–9.

616 *CIH* 742.4–5; trans. McLeod, 'The Distribution of Body-fine', p. 68, with my addition in square brackets.

is referred to here simply using the term *fine*.[617] The initial share (a half of the available amount) goes jointly to father and son(s), then the remaining amount is divided in three: a third is given to the next eligible person ('the brother: a third for the latter out of the other half') and a third goes again to the father and son ('father and son make another division again of half of that which remains'), and the last third is distributed among all the *derbfine*, as stated in *C7 D* §8.3, where the method of internal division (one third taken, two thirds passed on) is used. Significantly, once the portion of the *cró* has been distributed in such a way through each generation in the outer *gelfine*, the remaining two thirds after the last share was taken comes back to the victim's *gelfine*, which resembles certain aspects of distribution of the lords' share in *rann ó bun* and *cró ó inn*; in the former, the remaining two thirds cycles back to the lord who received the first share (but then continues to be distributed until nothing remains), while in the latter, the full amount of the last remaining two thirds is given to the highest status lord.[618]

The main issue with *C7 D* §9 is how exactly it fits in with the rest of the tract, as this is not entirely clear and some difficulties need to be addressed. First each component will be taken separately, then how the entire passage relates to the rest of the tract will be considered. The passage may be organised as follows:

[§9.1] T*r*ían do c[h]rú c[h]óiccir i*n*d.

[§9.2] Ran*n*ait ait*irr*[619] a ndá t*r*ía*n* n-aile i t*r*í

[§9.2a] .i. t*r*ían do f[h]l*aith,*

[§9.2b] t*r*ía*n* do f[h]ine,

[§9.2c] t*r*ía*n* do et*ar*f[h]l*aith*i[b] 7 do it*ar*aibh.

[§9.3] T*r*ían na n-et*ar*f[h]l*aith*(i) 7 na n-et*er*i(bh)

[§9.3a] ran*ntair* t*r*ían de do muire re*cht*gi doda-f*ét* a tegh rí[g],

[§9.3b] a t*r*ían do ait*ir*ibh,

[§9.3c] a t*r*ían n-aill do aidhbenaibh na túaithi do roin*n* co háe*n*scre*p*a*l*.

[§9.4] Ní cró co cóiccir fo c[h]osmail*us* clíaro.

[§9.5] Athroin*n* si*n* ar c[h]ró.

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[617] For some discussion on different possible meanings of *derbfine*, see Charles-Edwards, *EIWK*, pp. 497–503.

[618] For discussion of the last share coming back to the victim's *gelfine* and the possibility of this being a legal innovation of *C7 D*, see McLeod, 'The Distribution of Body-fine', pp. 70–5. As we saw above, this is a element present in the lord's share in *rann ó bun* as well.

[619] Murray prefers to expand this as *aitherruch* (while noting *aitiri* is another possibility); here I follow Binchy (*CIH* 601f) and Meyer, 'The distribution of *cró* and *díbad*', p. 215.

[§9.1] A third of the *cró* for the five [holdings of the *gelfîne*] for it.

[§9.2] The *aitiri* divide the other two thirds in three,

[§9.2a] i.e. a third for the lord

[§9.2b] a third for the *fine*,

[§9.2c] a third for intermediary lords and for *aitiri*,

[§9.3] The third of the intermediary lords and *aitiri*,

[§9.3a] A third of it is distributed to the officer of *rechtge* who takes precedence in the house of a king,

[§9.3b] a third for *aitiri*,

[§9.3c] a third for the negotiators of the túath to divide down to one *screpal*.

[§9.4] It is not *cró* without five, as with a retinue.

[§9.5] That [above] is a re-division of *cró*.[620]1

As stated earlier in this chapter, *cóicer* can be used to refer specifically to the *gelfîne*, and that in this context, five refers to the number of holdings rather than a literal group of five people.[621] If this is so, then the *fine* in §9.2b must be the rest of the *derbfîne* aside from the *gelfîne*, and indeed *fine* is used in this way in the above passage from *Córus Fine* detailing to whom shares of *cró* and *díbad* go (*athair ₇ mac, brāthair ₇ fine*). Next the *etarflatha* deserve further examination. Murray gives the primary definition 'intermediate lord' and tentatively suggests that this may indicate an intermediate level of status between commoner and lord.[622] I would rather translate 'intermediary lord', after the concept in the term *aitire*, which is similarly formed using the preposition *eter*, and translated by Binchy 'he who stands between [two parties in a legal agreement]'.[623] These are lords who have clear legal functions, which is further supported by the examples given in *DIL*, as Murray has ascertained.[624] The *muire rechtgi* is clearly a legal officer, and the connection with a *rechtge* points toward an inter-territorial function. Thurneysen was inclined to draw parallels between the *muire rechtgi* and the *muiredach* of *Slán nAitire Cairde*, someone who acts on behalf of the victim's

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[620] *CIH* 601.7–11; ed. and trans. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 255, with my addition of material in square brackets and translation of 'intermediary lords' rather than Murray's 'intermediate lords'.

[621] Note in particular the analysis of McLeod, 'The Distribution of Body-fine', p. 67, and the Old Irish law text *D'fodlaib cineoil tuathi* ('On the divisions of the extended family in the kingdom') in *CIH* 429.27–28, 430.5; trans. McLeod 'Kinship', p. 1.

[622] Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 259.

[623] Binchy, *CG*, p. 74. Cf. the comments of Thurneysen, *Bürgschaft*, p. 62 regarding the *muire rechtgi* in *C₇ D* §9: 'Er gehört, zusammen mit den aidbena, offenbar den Vornehmen des Stammes, zu den 'Zwischenherren', d.h. zu den Herren, die zwischen dem König und den einzelnen Sippen stehen'.

[624] Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 259.

kingdom and goes to the king's court in the offender's kingdom to liaise with legal officials and follow legal process of obtaining compensation for the inter-territorial offence.[625] On that note, it is likely of significance that the *aire tuísea* is mentioned as acting in the following way in *Críth Gablach*: *lánchongnam i túaith do aidbdenaib, do noillechaib, do gi[u]ll, do gíall, do chairdiu tar cenn ceníuil tar crích ⁊ i tech flatha* ([he is of] full assistance in the *túath* [to the king] for pleadings [i.e. from a lord representing his kin or clients], for oaths, for pledging, for hostageship, for *cairde* on behalf of his *cenél*, across the border and into the house of [an external?] ruler').[626] The phrase *tar crích ⁊ i tech flatha* in *Críth Gablach* does have a similar ring to *muire rechtgi doda-fét a tegh rí[g]* in *C⁊D*. The *aire tuísea* has already been argued to have functioned as the *muiredach* in *cairde*, and this head of a noble *cenél* may well have similarly have acted as a *muire rechtgi*, which Murray connects with a royal *rechtaire* (notably mentioned in context of the *rí ruirech* in *Críth Gablach*).[627] Additionally it may be noted that the *aire tuísea* is accorded comprehensive functions for inter-territorial affairs of various kinds, as one would expect a *muire rechtgi* to have, including managing pleadings from lesser lords, pledging (which might involve a *rechtge* or hosting), hostageship (implying a *cáin*), and *cairde*. It has also been argued previously that from the models proffered in *Críth Gablach*, *Berrad Airechta*, and *Slán nAitire Cairde*, both an *aire désa* and *aire ard* (who may act as heads of *gelfíni*), might alternately function as 1) *aitiri chairdi* (if the offender is under their authority, being either kin or clients) or 2) as *aidbdena* (if the victim is under their authority), advocates who pass on legal pleadings for an *aire tuísea* functioning as *muiredach* or *muire rechtgi* to handle.[628] Thus, the term *etarflaith* can be viewed as a general term for the lords of various status who have legal functions, often (though perhaps not limited to) inter-territorial affairs.[629]

Next it remains to be determined how the distribution structure in §9 relates to the rest of the tract. One possibility is simply that §9 describes the actual process of distribution works all together in practice, whereas the preceding sections were describing the general models of distribution in different types of situation. Another possibility is it presents an alternate method of distribution

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[625] Thurneysen, *Bürgschaft*, pp. 61–2.

[626] *CG* ll. 386–7, 411–13.

[627] *CG* l. 484; Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 260. See sections 2.2.4. and 3.2.1.

[628] See section 2.2.4. In *CG* ll.411–12, the phrase concerning a function of the *aire tuísea*, *lánchongnam i túaith do aidbdenaib* ('[he is of] full assistance in the kingdom for pleadings'), uses *aidbdena* in an abstract sense to indicate legal pleadings, which would be the remit of an *aidbden* 'advocate, negotiator'.

[629] Cf. Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 259.

from §8.3, where the remaining amount–after the *cóicer* have taken their shares–is distributed to the rest of the *derbfine*. As such, §9.1 would summarise the distribution to the *gelfine* in §8.2, then go on to describe an alternate method of distribution. Indeed this might be an alternate form of distribution only in circumstances where the *etarflatha* (*muire rechtgi*, *aidbdena*, and perhaps *aitiri*) are used in legal process, since it is not entirely certain they are used in all three types of division.[630] Regardless of which of these is more likely, the fine structure described in §9 likely occurs after the enforcing third has already been taken. As we will see, proceeding in this fashion allows us to roughly reconcile the distribution method presented in §9 with the rest of the tract, which otherwise does not seem possible. The enforcing share is quite clearly taken first in *rann ó bun*, and if we combine this concept with the order of fine distribution in §9, then we would have shares going for the 1) enforcing third (and any prior shares, such as that going to a *gíall*), 2) *gelfine*, 3) *flaith*, 4) rest of the *derbfine*, 5) *etarflatha* and *aitiri*. If we remove the enforcing third, two thirds of the total *cró* remains. If we divide this amount according to the method in §9 we are left with the fractions of the total *cró* for each party detailed in Figure 25.

**Figure 25: Distribution in *C7D* §9**

| **Fraction of total *cró*** | **Receiving party** | |
|---|---|---|
| $^{2}/_{9}$ | *cóicer* (*gelfine*) | |
| $^{4}/_{27}$ | *flaith* | |
| $^{4}/_{27}$ | rest of the *derbfine* | |
| $^{4}/_{27}$ | *etarflatha* and *aitiri* | |
| | $^{4}/_{81}$ | *muire rechtgi* |
| | $^{4}/_{81}$ | *aitiri* |
| | $^{4}/_{81}$ | *aidbdena* |

In this way, the shares of the *cóicer* and rest of the *derbfine* added together total $^{10}/_{27}$ of the *cró*, while the shares of the *flaith* and *etarflatha* and *aitiri* total $^{8}/_{27}$. Both of these are nearly a third of

[630] Murray 'A Middle Irish tract on "cró" and "díbad"', p. 259, refers to a passage from *Di Gnimaib Gíall*, which reads: *ni beir eturflaith ni, uair na timurg a tuath* ('nothing goes to the *etarflaith*, when he does not enforce [claims concerning] his kingdom', *CIH* 1756.12–13. cf. *CIH* 1755.17.

the total *cró*, just as they are described in the three types of division. Since, as previously discussed, the *etarflatha* are likely lords somehow connected with the victim's kindred and fulfilling legal functions on their behalf, the *flaith* mentioned here likely refers to any higher lord who is not among the *etarflatha*, such as the king of the victim's kingdom in *rann ó bun* and *cró ó inn* and the *ardrí* in *cró ó inn*. Together these comprise all the lords connected to the victim, and so the *flaith* and *etarflaith* can be seen just as more precise divisions of the lords receiving a share of the *cró*.[631]

If §9 does in fact describe the order of distribution, then one would almost expect the *aitiri* there to be from the victim's kingdom–since that is where the *cró* is being distributed–rather than the offender's kingdom. Indeed, as discussed in the previous section (4.1), since one would not expect *aitiri chairdi* to perform any functions in any of the types of situation detailed in *rann ó bun*, *cró ó inn*, or *cró ar medón*, then it may well be a different kind of *aitire* referred to here. According to material from *Bretha Cairdi* discussed above, it may be possible that *aitiri* of the victim might have fulfilled some function as well in inter-territorial affairs.[632] In the previous section (4.1), these *aitiri* were compared to the *aitire nadma* of *Berrad Airechta* who might act as military leader in an instance of *cró ar medón*. This kind of *aitire* would represent another possibility for the *aitiri* mentioned in *C₇D* §9, since this would be an *aitire* acting on behalf of the victim's kingdom.[633] Within such contexts, it may be possible that the *aitiri* from the victim's kingdom could function as inter-territorial facilitators, as envoys who collect payment extracted from the offender's kingdom to distribute within the victim's kingdom.[634] If this is possible, we could be more confident in expanding *ait* in §9.2 as *aitiri* rather than as *aitherruch*.[635]

One further remark may be made concerning the distribution method within the *etarflatha*. In §9.3c, the share to the *aidbdena* is distributed *do roinn co háenscrepal* ('to divide down to one scruple'). As noted above, this echoes phrases elsewhere in the tract where the distribution within a

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631 In a legal passage concerned with the topic *frithaigid* ('counter-claim'), the *flaithi ₇ etarflaithi* are grouped together as an entity to which compensation associated with a *rechtge* or *cáin* goes, for which see *CIH* 1199.11–16; 1199.41–1200.8. In addition, an *ardflaith* ('overlord') appears alongside an *etarflaith* in *CIH* 1027.13 and 1199.27.

632 *CIH* 115.22–116.2. See section 2.2.4.

633 If, as mentioned in the previous section, the *aitire nadma* could be viewed as a military variant of the *muire rechtgi*, and that the two would not occur in the same inter-territorial situation, it is possible that part of the idea in §9 is that whenever these figures do occur, they receive a share as stated. Otherwise, their share is divided among the others at the same level of distribution.

634 If this is the case, one could resolve any potential contradiction with the statement in *C₇D* §3 that the king of the victim's kingdom takes responsibility of distributing compensation by proposing that the *aitiri* are the ones actually facilitating payment to kingdom and distributing at the king's behest.

635 However, as Murray, 'A Middle Irish tract on "cró" and "díbad"', p. 256 notes, it does seem rather strange having itaribh, eteri(bh), and aitiribh all as forms of the same word in the same passage.

group follows the method of a third of the remaining amount given to the next eligible person and two thirds passed onwards, such as to the lords in *rann ó bun* being distributed *coná túarat ní de etir* ('until none of it remains at all') or (likely) the distribution to the *slóg* in *cró ar medón* where it is stated *acht ní bí nec[h] díbh cin ní itir, cidh bec cuit c[h]áich díbh de* ('but there is no-one of them with nothing at all, however small the share of each of them may be').[636] As such, it may well be likely that the portion distributed among the *aidbdena* is done in like fashion, though this is not certain.[637]

Finally, the concluding line in §9.5 may offer a hint to answering the difficulties presented in this passage. *Athroinn sin ar chró* bears semblance to concluding phrases in material from *Bretha Cairdi*, such as *rith cairde seo anuas* ('this above is the extent of *cairde*') and *fiach maighne cairdi sin* ('this is the fine of [trespassing in] the precinct of *cairde*'). While it may function partly as such a concluding phrase, it might also be interpreted as 'that is how *cró* is **redivided**' in the sense of how it is more specifically divided and distributed in practice, while the divisions described in the three types of *cró* just provide the general principles.[638] Or, according to the other possibility mentioned above, §9 may represent a more specific division that only occurs in particular circumstances where certain figures of the *etarflatha* are used, and so this concluding phrase would have the sense of 'that is how *cró* is redivided when such attendant circumstances are in place'.[639]

In conclusion, while many uncertainties remain, *C₇ D* offers some additional detail concerning (at least the portrayal of) the methods of fine distribution and models of enforcement in inter-territorial situations in place by the early tenth century, particularly the arbitrating role of overkings. As has been discussed in the last chapter, this tract gives a later counterpoint for

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[636] As stated above in this section, this method partly would have served to ensure each successive share, though slightly different in amount, might nonetheless be similar in quality to that before (in terms of quality of livestock or precious metals chosen, for example).

[637] One might also compare *FCTM* §10 (*trian dib do rígaib ₇ do eclailsib, anaill do airegaib ₇ do boaireagdaib corice óenscrepal* 'a third from them to kings and to ecclesiastics and to commoners down to a single scruple') and *FCTM* §15 (*trian dib do ríg, anaill do thúaith, anaill do eclais, corice óenscrepal* 'a third from them to the king and to (i.e. throughout) the kingdom and to clergy down to a single scruple'), which are both payments made in the context of military protection between the king of Cashel and client-kingdoms. It may be that the form of distribution described in *C₇ D* may have been in existence as early as the eighth century.

[638] And while this may be a concluding phrase of sorts, it is important to bear in mind the words of Breatnach, *Companion*, p. 28: 'It may, in fact, have originated as commentary on *Córus Fine*, and the possibility that it is incomplete cannot be discounted'. Given the unclear nature of §9, there may have been parts missing that would have explained what precisely is going on here.

[639] Cf. the the concept in the phrasing in *CG* ll. 11–13: *mad a dligiud fénechais is menbu sunn fondáiliter na .vii. ngrá(i)d so* ('if it be according to entitlement under customary law, the seven grades are more minutely divided').

investigating this arbitrating role of overkings in the ecclesiastical *cánai*. That *C7D* included some legal innovations is not unlikely, suggested by the invocation of longstanding legal tradition of these three types of division. What exactly those innovations involve is a rather more complex question, of course, but some hints have been explored above. It may be notable that none of the types of division bear much semblance to what we see elsewhere as a protocol in *cairde*. However, that the *ardrí* in *cró ó inn* receives a share in an instance of local dispute settlement may often be greater than the local king's share may reveal an innovation that *C7D* may be attempting to justify: that overkings are due a share in all internal disputes in client-kingdoms regardless of the precise inter-territorial agreement in place.[640] If this is the case, it would be a statement of the political structure of overkingdoms by the early tenth century, continuing developments that began in the eighth: that the distinction between *cáin* and *cairde* had gradually decreased to such a stage as may be illustrated here.

[640] Unless the implication here is that this kind of division only applies in internal disputes in base client-kingdoms under the authority of an overking's *cáin*.

## 5. Conclusion

Inter-territorial legal relationships functioned both as a means by which political authority was asserted and as a protocol for dispute settlement, both of which would have economic effects on the kingdoms involved in them, either through food-renders or distribution of fines. Over the course of the previous chapters, a variety of inter-territorial dispute settlement methods have been investigated, within the political context of the time the relevant texts were composed. These have been administrated by kings, ecclesiastics, or poets across various kinds of borders, including between kingdoms within the same overkingdom, between overkingdoms, and between provinces, as well as across ecclesiastical and lay boundaries. These relationships were constructed on the models of free and base clientship between a lord and his clients, as previous scholars have contended. However, by more fully investigating inter-territorial law, we can appreciate how far this parallel may be drawn, as well as how inter-territorial dispute setttlement manifests itself in different ways under various circumstances.

### 5.1. A hierarchy of dispute settlement

With this greater understanding of inter-territorial law, a more comprehensive, hierarchical framework of dispute settlement protocol may be constructed. At the most local level of society were the arrangements of *comaithches* (‘neighbourhood’) and the basic territorial unit, the *fintiu* (‘kindred land’). As illustrated in section 3.2.1, issues concerning these entities were minor matters that a higher-status judge would not handle. As *Bretha Comaithchesa* (*SM2, 10*) discusses, kin-members (likely of the same *derbfine*) within a *comaithches* on the same *fintiu* would exchange *tairgilli* (‘fore-pledges’), as advance security that a kinsman would fence his land and that he would pay fines for any trespass onto another part of the *fintiu* his animals might commit. Kinsman neighbours were treated as a known local entity, as opposed to neighbours outside the kindred who were part of a different *comaithches* on a different *fintiu*.[641] Animal trespass across the boundary of one *comaithches* and into another were offences not guaranteed by fore-pledges and thus were

[641] Note also McLeod, ‘Jurisprudence’, p. 357: ‘In early Irish society, certain relationships (such as those of father and son, fosterage, and clientship) were so close and so important that it was considered inappropriate for ordinary disputes within them to be resolved by formal litigation’.

resolved by more formal litigation, processes such as distraint.[642] Looking comprehensively at the entire range of dispute settlement across boundaries, the following hierarchy emerges:

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1) Within a *comaithches*

Constraining measure: *tairgille*
Arbitrating official: presumably *cenn fine* ('head of kindred')

2) Between one *comaithches* and another

Constraining measure: distraint
Legal representative: *cenn fine*/*aire coisring*
Arbitrating official: judge of the kingdom or king[643]

3) On general affairs within a *túath*

Constraining measure: distraint, *trefocal*, pledge, or bell and psalm (depending on class of victim)
Legal representative: *cenn fine*/*aire coisring*, who gives a pledge *tar cenn a fine do ríg 7 senud 7 óes cherdd* ('on behalf of his kindred to king, ecclesiastical authority, and people of art'),[644] or ecclesiastical equivalent
Arbitrating official: judge of the kingdom, king, bishop, or *ollam* (chief poet)

4) Inter-territorial affairs

Affairs with an external *túath* with which there is a *cairde*
Constraining measure: *aitire*
Legal representative: *aitire* (offender's kingdom) and *muiredach* (victim's kingdom)
Arbitrating official: king (and judge) of the offender's kingdom (who receives the *muiredach*)

Affairs between *túatha* which are both under the *cáin* of the same overking
Constraining measure: *gíall* held by overking
Legal representative: *gíall* (offender's kingdom) and overking's *rechtaire*
Arbitrating official: overking

Affairs involving a *rechtge* within an overkingdom
Constraining measure: pledge to an overking[645]
Legal representative: king of offender's kingdom (and potentially *aitire* or *gíall*, depending on status of the client-kingdom) and overking's *rechtaire*/*muire rechtgi*
Arbitrating official: overking

Given the analyses in Chapters 2, 3, and 4, the legal administration of overkingdoms in the eighth century, before the increased consolidation that saw many kings of dynasties be reduced to *duces*/

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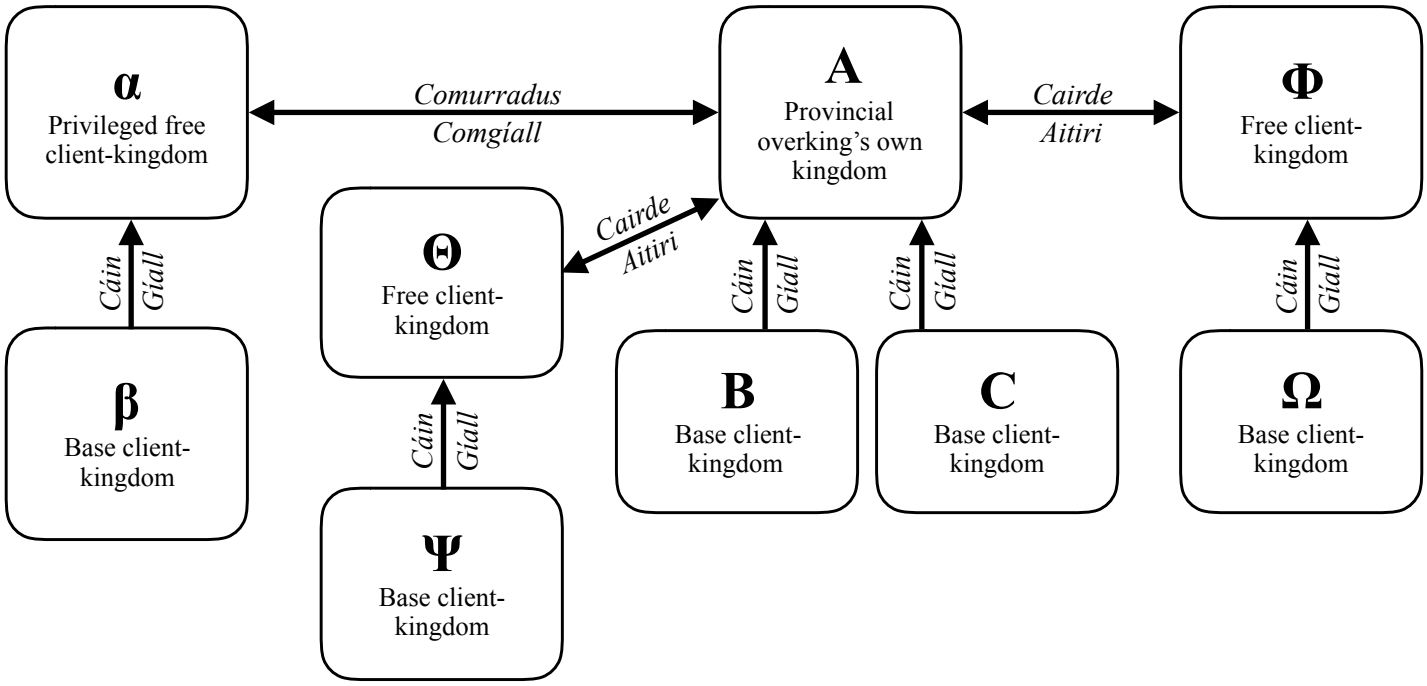
642 For this analysis of *Bretha Comaithchesa*, see Charles-Edwards, *ECI*, pp. 100–2, and *idem.*, 'Note from Dr. Charles-Edwards on Common Farming', in K. Hughes, *Early Christian Ireland: introduction to the sources* (London 1972), pp. 61–4.

643 In the Old Irish legal poem beginning *Ma be rí rofesser*, a king is expected to know *mórmaín mrugrechto* ('the great substance of land-law'), for which see Binchy, 'An archaic legal poem', *Celtica* 9 (1971), pp. 152–68, at pp 156.11 and 160. However, note *CG* l. 164 on the *bóaire* giving *brithemnasa for m(b)ruigrecht* ('judgement on [matters pertaining to] land-law'), though this may be referring simply to matters within a single *comaithches*.

644 *CG* ll. 280–1.

645 *CG* ll. 514–15.

**Figure 26: Model of inter-territorial legal relationships**




*toísig* and their kingdoms lose status as a *túath*, can be more fully explained through the model in Figure 26, representing various kinds of relationships that may occur within an overkingdom. In this diagram, we can now make a number of inferences on inter-territorial relations based on the analyses in the preceding chapters. Firstly, kingdoms B and C, by virtue of both being base client-kingdoms under the *cáin* of the same overking (in kingdom A) and thus both providing a *gíall* held by him, most likely would be considered in a relationship of *comurradus* between themselves and their overking, who also would arbitrate disputes between them. Kingdom α, which is a privileged free-client of kingdom A and thus in a relationship of *comurradus*, where both would exchange hostages (*comgíall*), would be considered, by extension, in the same relationship of *comurradus* with kingdom B as well, since the latter is a base client-kingdom of kingdom A, which as mentioned has a relationship of *comurradus* with kingdom B since the latter is under the direct authority of A. In the same sense, kingdom β, a base client-kingdom of kingdom α, would be considered in a relationship of *comurradus* with kingdoms A, B, and C. In the event of a dispute occurring among any of these kingdoms, *féich urraduis*, full entitlements of fines without any cross-border modification, would be paid between them.

Kingdom Θ, which is a free client-kingdom of kingdom A (and thus has a *cairde* with it) would also be considered in a relationship of *cairde* with kingdom B, since the latter is a base client-kingdom of A and thus would be regarded as in the same *crích cairdi* with respect to any kingdom with which kingdom A has a *cairde*. In the same sense, since kingdom Ψ is a base client-kingdom of kingdom Θ, it would comprise part of the same *crích cairdi* as Θ, and thus would be in

a relationship of *cairde* with kingdoms A, B, and C. Kingdoms Θ and Φ, both being free client-kingdoms of the same overking (A), might not necessarily have any legal relationship or dispute settlement protocol between them, but it would make logical sense that free client-kingdoms within the same provincial overkingdom would have a *cairde* with one another and thus be in *comchairde* among themselves as well as with their overking. If this were so, kingdom Ω would also be in a relationship of *cairde* with kingdoms Θ and Ψ. The relationship between Θ and α is similarly not entirely clear, since it is uncertain whether a privileged free client-kingdom in a relationship of *comurradus* with the same overking who has a *cairde* with another free client-kingdom of his would inherently create any relationship between the two free client-kingdoms. However, as just described, a relationship of *comchairde* between free client-kingdoms with the same provincial overkingdom would make logical sense.

However, a relationship of *cairde* consisted of more than whether it existed or not; rather, it was a multifaceted concept and a range of different degrees existed, as discussed in section 2.2.2.1. The basic level was, of course, where no relationship existed and where the kingdoms are described as *crícha imderga* ('hostile territories'). In this case, as detailed in section 2.2.2.3, poets enforced their *cáin enech* essentially creating an *óenchairde fon Eilg*. Various degrees of *cairde* are detailed even in fragmentary Old Irish material, and the coupling of these into various collective 'types' of *cairde* detailed in commentary seem to form a logical and comprehensive system such that one can hardly doubt that such a system existed as well in the Old Irish period. These range from 1) a *cairde n-imdílsi críche* and a *cairde n-airdbide*, 2) a *cairde n-imdílsi críche* and a *cairde féne*, 3) a *cairde n-airdbide* and a *cairde féne* (which collectively might be termed a *cairde ríg*), and 4) a *cairde féne* and *urradus* (which collectively seems to have been referred to as a relationship of *comurradus*). As previously mentioned, a relationship of *comurradus* would result in full legal entitlements in full forms of payment (such as *cumala*) being paid across borders without any modification that might otherwise happen in *cairde*. The process of establishing this fullest form of cross-border relationship may have been a process by which kingdoms (base client-kingdoms at first, but perhaps later free client-kingdoms also) became subsumed into larger consolidated kingdoms, which began to be called *mórthúatha*. This may be why we see exceptional rights granted to a *fear dun tuathgabail isin mortuaith* alongside the fosterling and adopted son in later commentary (section 2.2.3.1.4).

As we have seen, *rechtge* was a term used for several types of legal administration existing throughout an overkingdom, encompassing both regular administration as well as emergency situations. The two examples that *Críth Gablach* gives of regular administration is the *rechtga[e] ríg amail rongab rechtga[e] ríg Ca[i]sil la Mumain* and *recht(t) crettme adannai, amail ron(n)gab*

*recht Adomnáin*. A blueprint of *rechtge ríg Caisil la Mumain* can be seen in the eighth-century text *Frithf̓olad Caisil fri Túatha Muman*, where we see an underlying model of administration throughout a provincial overkingdom. As we have seen, *Cáin Adomnáin*, just as later *cánai* which followed it, was designed to work throughout provincial overkingdoms. As such, the *rechtge* can be viewed as a tool of overkings to standardise legal administration and consolidate bonds throughout their overkingdoms, regardless of the different kinds of relationships that existed among all of the hierarchy of kingdoms under their rule. This contributes to the aforementioned idea of *comchairde* being understood to exist between free client-kingdoms within the same overkingdom.

**5.2. Shifts in inter-territorial dispute settlement**

A marked difference exists between material such as that compiled into lawbooks like the *Senchas Már* and enacted legislation. The former often represents traditional legal processes that are well established, while legislation states contemporary legal measures which, while possibly deriving aspects from legal tradition, nonetheless are appropriated and used at a specific point in time. With such a premise in mind, we may view aspects of *cairde* in these texts concerning legal tradition rather differently from texts containing enacted law and later legal methods (nevertheless cast as legal tradition) such as *C7 D*. The concept of *cairde* was certainly still viewed as a contemporary legal agreement in *Frithf̓olad Caisil fri Túatha Muman* and the *Bretha Nemed* texts, which date to the first half of the eighth century. However, the concept of *cairde* may well have been rapidly changing over the course of the eighth century, with the imposition of ecclesiastical *cánai* and the greater consolidation of overkingdoms, which went hand in hand.[646] As such, the Old Irish texts detailing aspects of *cairde* may be seen as preserving legal tradition that was compiled in the late seventh and early eighth centuries. However, glossing and commentary from the Old Irish period and later illustrates continued engagement with the concept of *cairde*. This leaves one wondering how much this later engagement was simply a facet of legal education to learn the old legal precedents and explain them according to legal situations in the mythological past, the actual past, or sometimes present situations, given the high prominence accorded to legal precedents that can be seen throughout early Irish law, and given the reality that the composition of legal texts is mainly constrained to the Old Irish period and later periods see far less composition but plentiful gloss and commentary. Of course, this complicates matters when attempting to reconstruct the concept of *cairde* and thereby to evaluate later legal material for its usefulness in explaining earlier material

[646] As noted by Charles-Edwards, *EMGL*, pp. 53–62.

concerning *cairde*, but, as stated above, many of these later scribes had complete copies of many more original texts than we do today and were trying to understand it and apply the legal principles therein just as we are. Overall, however, if it could be determined how late the concept of *cairde* existed in political and legal reality, one might be able to say more concerning the usefulness of certain material of later date.

In spite of these difficulties, a body of information concerning *cairde* has been collected from Old Irish material, which provides details that may be contrasted with other methods of inter-territorial dispute settlement to enhance our understanding of the topic and how it may have changed over time (section 2). The legal procedure described in *cairde* and the information from Old Irish texts on clientship compiled in lawbooks inform us of kinds of legal relationship utilised in overkingdoms, which can be compared with those in ecclesiastical *cánai*, which represent a shift towards greater consolidation in the latter part of the eighth century. The *cánai*, which have been shown to represent, to some extent, a legal instantiation of ecclesiastical rhetoric in canon law and hagiography, effected this shift in a number of ways (section 3.4). The harsher penalties for joint liability (section 3.1.1) in ecclesiastical *cánai* reduced the chance of absconding offenders (and of offences occurring in the first instance), unresolved legal claims, and thus potentially violent feud (*dígal*) administered by the *aire échta*, and thereby prioritised church-mediated legal processes. The alteration of aspects of legal procedure in the *cánai* (section 3.2.2), such as the prevention of counter-claiming or swearing away evidence, instituted more of a penal fine structure and provided fewer opportunities for even higher-status individuals to avoid legal repercussions of offences covered by the *cánai*. In addition, some of these measures alongside the expedited timeline of procedure in *Cáin Adomnáin* further reduced the chance of *dígal* overseen by the *aire échta*, who clearly can be seen to have attracted ecclesiastical disfavour (section 3.4). Another result of this legislation jointly arbitrated by powerful ecclesiastical networks and overkings seems to have been an intensified involvement of external legal personnel (section 3.2.1). While only active for the temporary period and specific offences of the *cáin*, the use of these external personnel throughout an overking's base and free client-kingdoms increased centralisation of legal administration in such overkingdoms to some extent. In addition, the ecclesiastical *cánai* allowed overkings to build stronger affiliations with powerful church networks which naturally helped overkings consolidate authority within their overkingdoms.

This marked a gradual shift which can later be seen in *C*$_7$*D*, where a *muire rechtgi* appears to act throughout an overkingdom and no clear distinction is made between free and base-client kingdoms nor is a clear reference made to free client-kingdoms (section 4.1). This shift also had an

effect on fine structure, where centralised enforcers separate from the lords of the victim's kindred take shares of the fines. By the time of *C7 D*, this involves a number of different enforcers called the *etarflatha* with a complex method for the distribution of fines among them (section 4.2). An enforcer's share in fine distribution does seem to have existed in some form before the ecclesiastical *cánai*, but whether it came to be exacted by overkings before this time is uncertain. It is also uncertain when overkings began receiving a portion of fines for disputes even within a single client-kingdom of theirs, such as we see later in the method of *cró ó inn* in *C7 D* (section 4.2). The ecclesiastical *cánai* may have been a significant influence on both these developments, especially given the similarities in fine distribution between *Cáin Adomnáin* and *C7 D* (section 3.3) and that *Cáin Phátraic* (twice given the alternate name *Cáin Críche*) concerned itself with a wide range of legal areas, even reaching down to influence matters of local legal protocol in *urradus* such as distraint and *comaithches* (section 3.2.2). *C7 D* also describes an overking's military hosting as an inter-territorial dispute settlement method, presumably in the event of either an absence of legal protocol in place or non-compliance with such a protocol (section 4.1). This echoes both the mention of a *taulnaidmand túath* ('an immediate *naidm*-suretyship of *túatha*') in *Berrad Airechta* and that of a hosting by an overking detailed in *Críth Gablach* which could be taken *tar crích fri túa[i]th asidluí* ('across the frontier against a kingdom which evades [a legal obligation to] him'). These early examples of an overking's military actions in the event of non-compliance are analogous to an inter-territorial *dígal* in *cairde*, except that they are on a larger scale with an overking taking the lead rather than an *aire échta*. This may be significant in illustrating that *Críth Gablach* may have been composed in a transitional period where the shifts in dispute settlement were undermining the office of the *aire échta*.

In the eighth century, we see a relationship of *comurradus* existing in two rather different ways. The first was between an overking and his base client-kingdoms, in a sense of fairly direct subordination, which may have later led to amalgamation of the subordinate kingdom into his own, thereby creating a *mórthúath*. The second was between an overking and a privileged free client-kingdom with whom he exchanged hostages (*comgíall* or *coemchlud gíall*). However, the ecclesiastical *cánai* facilitated full legal entitlements as would occur in a relationship of *comurradus* thoughout an overkingdom, regardless of the preexisting mosaic of different protocols in place within that overkingdom. As stated above, *C7 D* makes no clear distinction between free and base-client kingdoms, and by the time of the late Middle Irish glosses on *Di Ércib Fola*, all freemen who were regarded as *urraid* to one another included even *lucht an aoncóicidh ar mhedon dia ceile acht co ndamhdis dliged 7 dia mbetis fo smacht aonrigh do reir dligid 7 breitheman* ('the population of a

single native province vis-à-vis each other, provided that they submitted to law and were under the rule of a single king according to law and judges').[647] So by the early twelfth century, it seems that *comurradus* could exist even throughout an entire provincial kingdom, indicating that a significant degree of consolidation had been achieved. We can see this as part of the process during which the distinction between *cairde* and *cáin* gradually became less pronounced and overkings were imposing greater authority over their client-kingdoms, irrespective of whether they were at one time considered more as distinctly free or base client-kingdoms, which gradually saw the growth of *mórthúatha* and even greater consolidation of overkingdoms (section 4.2).

### 5.3. Further Research

A number of additional avenues may be explored to enhance and build upon this research. Firstly, to further investigate *cairde*, a deeper examination of certain legal narratives that portray cross-border situations and how they were thought to work should be conducted. In addition, a deeper analysis of the *slógad* as a legal concept, including its legal conditions, purposes, and obligations due from client-kingdoms, as well as other military actions concerned with borders, would further contextualise the use and prevention of violence. Further investigation of the differences in the ecclesiastical *cánai* from contemporary lawbook material and a deeper comparison with canon law, prescriptive ecclesiastical texts (such as monastic rules), and early hagiography would outline in greater detail the degree to which the *cánai* affected lay society, how it marked a politico-legal shift in ecclesiastical settlements and networks as well as in authoritarian structures and ecclesiastical politics in general, and how it affected and shaped legal and political interaction between ecclesiastical and lay entities. It also would more deeply illustrate the processes and extent to which the *cánai* created a shift in legal practices, and thereby to which this shift affected kingship in general. Within this research path, a proper examination of the fragmentary stipulations in *Cáin Ḟuithirbe* may cast more light on the evolution of the 'saintly' *cánai* and church-mediated dispute settlement and law in general.

Using the framework of inter-territorial legal relationships established above, more detailed analyses of the perceived legal administration encapsulated in the Airgialla Charter Poem, *Frithfóolad Caisil fri Túatha Muman*, and the political tract in the Laud genealogical material (sometimes termed the 'West Munster Synod') would bring to light several aspects of legal administration in overkingdoms that have not received enough scholarly attention to date. While a

[647] McLeod, 'Di Ércib Fola', pp. 164–5; cf. the later commentary at *CIH* 1275.19–25, which mentions offences between members of different provinces.

recent edition, translation, and commentary of the Airgialla Charter Poem exists, more material here can be unpacked in the context of inter-territorial affairs. Much work remains to be done with the other two texts to make proper politico-legal sense of them. First, a full translation of both with proper understanding and idiomatic representation of the legal concepts therein still remains to be done adequately. For *Frithfolad Caisil fri Túatha Muman*, this is in preparation by Jim Reid (forthcoming). Despite the laudable work of various scholars, comprehensive analyses of both are necessary to understand more fully the underlying legal relationships at least claimed (if not also existing to some degree) within the overkingdoms. In the same vein, the idea that inter-territorial relationships based on the concept of a *fuidir* existed might be investigated more fully.[648]

A final avenue of further research would be to look more in depth at the political affairs and context of these texts in the annals, genealogies, and other relevant texts. In one sense, this would further contextualise the legal material in political realities that affected their composition, compilation, or innovation. In another sense, this legal framework could also help explain political events through the lens of the laws in practice at the time, expanding upon the laudable work of Francis John Byrne and Thomas Charles-Edwards (among others) on early Irish political history.

[648] Such as proposed by Gerriets, 'Kingship and Exchange', pp. 39–72, and suggested in Breatnach, 'Lord's share', pp. 8–13, and may be implied in *CG* ll. 321–4, where *senchomditiu thúaithe* may be an extrapolation of *senchléithe*.

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