

**EARLY IRISH**  

---

**LAWS ————— &**  

---

**INSTITUTIONS**

**PROFESSOR EOIN**  

---

**MACNEILL, D.LITT.**

**B. O. & W.**

# Early Irish Laws and Institutions

BY

PROFESSOR EOIN MACNEILL, D.LITT.

DUBLIN

BURNS OATES AND WASHBOURNE LTD.

*Publishers to the Holy See*

# CONTENTS

## I.—INTRODUCTORY :

The form of Celtic society—notions and theories in vogue—Dr. Goddard Orpen—Dr. P. W. Joyce—Sir Paul Vinogradoff—Mr. Christopher Dawson—Father David Mathew—Mr. Dawson's qualified notion—his distinction between barbaric and civilised society—the *Pax Romana* cult—the notion of immutability in Celtic society—decay of Irish institutions—Celtophobia—superficial evidence—Dr. W. F. Butler maintains the Clan theory—his examples disprove it—Irish freeholders numerous—their expropriation—changes of ownership under Irish rulers—problem of the expansion of ruling kindreds—a tentative explanation—cities of the fields—agricultural not pastoral—facts incredible—Cæsar and Commios—a false view of civilisation—Britain's Dark Age—Nationalism and Nationality—the West-European factor. ... .. page 5

## II.—LAWS AND INSTITUTIONS OF IRELAND :

Their European character—insular not isolated—the Celtic influx—the Celtic polity—the quest of the primitive—Pre-Celtic inhabitants. ... .. page 56

## III.—SURVIVAL OF PRE-CELTIC INSTITUTIONS :

The status of craftsmen—the status of women—Druidism of Pre-Celtic origin—the Druids were not priests—geographical range of Druidism—Greek estimate—Roman hostility—scope of Druidical culture—the Druids in relation to Law—survival of Druidism in Ireland—the Druids and the use of writing—the use of writing in Gaul—Meillet misunderstands—invention of the Ogham alphabet—transformed Druidism in Christian Ireland—the Jurists originally Druids—cultural background of Irish laws. ... .. page 63

## IV.—THE BEGINNING OF WRITTEN IRISH LAWS :

The story of Cenn Faelad—its implication—beginnings of written Irish literature—modern misconception—the Commission of 1852—merits and demerits of the Commission's work—Irish law national not local—explanation of its national character. ... .. page 84

## V.—THE POLITICAL FRAMEWORK OF ANCIENT IRELAND :

Early political groupings—imaginary tribal basis—the *Tuath* and its franchise—Law national in scope but local in operation—structure of the *Tuath*—succession of kingship—functions of kingship—rural character of the *Tuath*. ... .. page 91

## VI.—PUBLIC ASSEMBLIES AND KINGSHIP :

The assembly the chief social organ—its functions—hegemonies—the Assembly of Carman—political and cultural features—the National Assembly—kings as executive officers at law—complex structure of the *Tuath*—Cæsar's evidence. ... .. page 100

## VII.—CLIENTSHIP :

Cæsar's evidence for Gaul—Irish evidence—relations of Client and Patron—two kinds of Client—Client services—Roman analogies—advantages of Clientship—a king's Clients. ... .. page 118

## VIII.—THE PERIOD OF DECAY :

Early influence from Feudalism—introduction of Feudal institutions—legal aspect of the Anglo-Norman Invasion—the Plantagenet Lordship not based on conquest—illegal policy of Henry II—Henry's illegalities repeated by his grantees—the Treaty of Windsor—Henry's lawless policy continued by John—how Feudal judicial procedure commenced—the outlawry of the Nation. ... .. page 120

## IX.—LATER DEVELOPMENTS :

Development of town life—Irish law rehabilitated—the fiction of immutability—defects of Irish law—effects of its administration. ... .. page 145

## EARLY IRISH LAWS

## CHAPTER I

## INTRODUCTORY

When I was attracted to the study of Irish History it was natural that I should come to it imbued with the notions in vogue at the time, especially with the notions in vogue about the forms of government and society that were supposed to have prevailed in ancient and mediæval Ireland and among other peoples who were classed as Celtic. I soon discovered that these notions, so far as Ireland was concerned, were not based on anything that could be called study, on any kind of systematic investigation. I discovered also that the same notions were quite modern and had come into vogue among educated people in the course of the nineteenth century mainly. As they were not based on systematic study, so also they were not reduced to any form of intelligible description in detail. The whole account that one could find of the social and political structure in what was called Celtic Ireland could be summed up quite justly in the words of T. D. Sullivan's ballad :

“ Chiefs and clans in all directions,  
With their far and near connections.”

We were told on all hands that Irish social and political life took the form of the Clan System. As evolutionary theories regarding human society became more fashionable, writers who wished to appear learned sometimes preferred to say the Tribal System. Dr. Goddard Orpen's work, *Ireland Under the Normans*, was published in 1911. Its main thesis is an endeavour to show that the Feudalism forced upon Ireland in the twelfth century and later was justified by the primitive conditions obtaining in Ireland until then. In his first chapter Dr. Orpen says: "Ireland was still in the Tribal state. The allegiance of the free-born Irishman was given in the first place to the head of his family, kindred or sept (Fine), and through the family head (Cenn Fine) to the chief of the tribe of which his family formed an element related by real or supposed remoter kinship and connected by common ownership of land. The Irishman's country was the *tuath* or territory belonging to his tribe."

It would not be just to say that all this came out of Dr. Orpen's head, but it certainly all came out of the heads of his particular tribe, the class of writers who have written about Irish social history without having taken the slightest trouble to investigate it. Nor can it be regarded as mere fiction. It was as confidently believed, repeated, and accepted as was the fable of Hengist and Horsa in English history books within our memory.

One naturally turns for information to the work of Dr. P. W. Joyce, *A Social History of Ancient Ireland*, which was published in 1903. Joyce had a full acquaintance with the material upon which his work ought to depend, so far as this material had been published in his time. Much of what he writes is based on original and laborious investigation, and where he brings forward information of an unfamiliar kind he usually cites his authorities for it. He cites no authorities for the following account headed "Groups of Society," regarding it, no doubt, as a thing accepted and beyond question:

"The people were formed into groups of various sizes, from the Family upwards. The Family was the group consisting of the living parents and all their descendants. The Sept was a larger group descended from common parents long since dead; but this is an imported word, brought into use in comparatively late times. All the members of a Sept were nearly related, and in later times bore the same surname. The Clan or house was still larger. Clann means children, and the word therefore implied descent from one ancestor. The Tribe (*tuath*) was made up of several septs, clans or houses, and usually claimed, like the subordinate groups, to be descended from a common ancestor." (I, 166.)

This piece of classification assumes the aspect of constructive knowledge based on objective reality. When we look into it, we recognise that the only real information which

it purports rightly or wrongly to give is that the community called tuath was a tribe claiming descent from a common ancestor. The remainder we could have supplied for ourselves. Joyce does not tell us what Irish words corresponded to sept and clan, though these are printed as technical terms in heavy type with capital initials. He does indeed tell us that the Irish word clann does not mean what is called a clan in his apparently technical description. Further on he avows that "the theory of common descent became a fiction except for the leading families . . . the tribe became a mere local association of people, occupying a definite district and bound together by common customs, by common interests, by living under one ruler, and in some degree by the fiction of descent from one common ancestor." We note the use of the past tense in the word "became." Joyce does not suggest whether this change came about in remotely prehistoric or relatively recent times. He does not say that there was any known period in the social history of Ireland at which the change had not already taken place. He offers no evidence that the community technically known as a tuath was of common ancestry or was joined in a fictitious claim to common ancestry. Clear and compact as it is, Joyce's account of the tribe falls utterly to pieces when he goes on to exemplify it. He gives for an example Kinel-Owen (Cenél Eoghain) "who possessed the principality of Tir-Owen (Tir Eoghain)

(Tyrone), and were supposed to be descendants from Owen, son of Niall of the Nine Hostages." These, he says, included the septs of O'Cahan, MacQuillan, O'Flynn and many others. Now the territory of Cenél Eoghain comprised not one tuath only but many tuatha. The "sept" of MacQuillan was not included by descent under Cenél Eoghain. The MacQuillans were a Welsh family whose name took an Irish form, and they acquired their territory by grant under the feudal lordship of Ulster established by John de Courcy in the twelfth century. The "sept" of O'Flynn were not and were not supposed to be descendants of Niall.

Joyce, in short, in his endeavour to provide a notion in vogue with a semblance of structural features, is merely conforming to an opinion founded on knowledge much inferior to his own. The late Sir Paul Vinogradoff was one of the chief exponents in his time of a somewhat rigid evolutionary theory of the development of human society. The method tends to produce a passionate eagerness in the search for primitive examples. In his *Outlines of Historical Jurisprudence* (1920), under a heading "The Law of the Tribal Federation" (Vol. I, chap. 10), he deals with the example of Albania: "In Albania the system of social organisation is founded on the alliance of a number of clans in the larger body of the tribe." I venture to say that in this terminology Vinogradoff has allowed himself to pass tacitly from the meaning of tribe as it is commonly

understood to a very different meaning. The tribe so described by him is based on a political alliance and no longer on the fact or fiction of a common ancestry. In the same chapter we read: "In ancient history there are many instances of tribal federations and federal governments. Cæsar, for example, gives us a remarkable description of the political state of German tribes—a description in which every word counts, as it was used by a man of action and is free from the influence of rhetoric or political prejudice." This, indeed, is the general character of Cæsar's descriptions, and we may add that they aim at precision but suffer often from being too concise. Vinogradoff gives the passage from Cæsar in the original Latin, and makes upon it the following comment: "The most striking feature in Cæsar's account is that there is no common tribal authority in time of peace, though within the regional clans themselves disputes are settled by the chieftains. As soon, however, as war breaks out, a common authority is elected for the whole tribe, and this representative (*magistratus*) of the union wields power over life and death." Here Vinogradoff imports the technical vocabulary of the tribal theory into a passage of Cæsar in which not one word corresponds to the terms imported. Vinogradoff's tribe replaces Cæsar's *civitas*, his clan replaces Cæsar's *pagus*, his chieftains replace Cæsar's *principes regionum*.

When we come to the Highlands of Scotland,

where the Clan System is supposed to have lasted longest in this part of the world, historical investigation is satisfied for Vinogradoff by a quotation from *Waverley*. The very words spoken by the Highland chieftain in the novel are given as though they were taken from the record of a court of justice. I confess I do not know to what degree Sir Walter Scott's description of the Clan of Fergus MacIvor in 1745 may be accurate. If there be evidence outside of works of fiction, it is such evidence, and not its presentation in literary form, that we ought to look for in a work of history. Assuming however that Scott, who was an amateur antiquarian as well as a very great writer of fiction, has given us in this instance a true picture of a Highland clan, it is enough to say that nothing of the kind and nothing resembling it is described or implied as existing in Ireland, so far as my knowledge goes, in the whole range of relevant Irish literature.

Vinogradoff passes on to Wales and gives us what he calls one simple and characteristic example of a Welsh clan-unit. The example is merely the extension, by one added generation, of the Irish *derbfine* described by me in the following pages. It can only be called a clan by wresting that word away from any sense in which it is commonly understood.

In *Phases of Irish History* (1920), in the tenth chapter, I deal with this matter mainly to the extent of negative statement as regards the theory of a tribal constitution or clan system

in Irish society and the associated theory of a communal ownership of land. Writing before Vinogradoff's work was published, I said: "I think that the popular notion of a Gaelic clan is derived from Scottish writers like Thomas Campbell and Sir Walter Scott. . . . I do not know how far such pen pictures are true of Scotland and the time to which they relate. I do know that you will find nothing of the kind in historical Ireland." I go on to specify some of the things, mainly verbal usages misunderstood, upon which the illusion is grounded in the minds of certain modern writers. In *Celtic Ireland* (1921) I have dealt at length with the form and nature of the Irish family group, the *fine*, which, owing to the faulty translations of the Ancient Irish Law tracts, has often been mistaken for a tribal unit or clan. To what I have said there on the subject of joint ownership of land by such family groups I have to add, for I think it should be clearly understood, that within such groups each man was owner of his own land in severalty. It has come to my knowledge that when my study, imperfect as it was, of this matter became known to Sir Paul Vinogradoff, he avowed to more than one person on separate occasions that it called for a revision of the treatment of the matter in his published work.

For Mr. Christopher Dawson as an historian I profess great admiration. Not the least admirable part of his work has been making

war upon false and ill-founded notions of history which had obtained widespread acceptance so long as they were able to hold the vogue. When Mr. Dawson undertakes to deal with the structure of Celtic society he is not content with a blind acceptance of the vogue; he accepts it because he likes it, and with his eyes open. He is like the man who had spent a lifetime in prison and who, when he was released, begged to be put in prison again—he found it pleasanter. Mr. Dawson had read what I had written in refutation of the vogue so far as concerned the imagined clan system or tribal system in ancient and medieval Ireland. He had read the endorsement of my argument by Professor Macalister. He sets aside Professor Macalister's studies and mine, dismissing them with the hardly courteous description of "patriotic protests" (*The Making of Europe*, 1932, p. 69.) It is, I think, right and fitting to challenge Mr. Dawson, upon his reputation as an historian, to state where is the evidence upon which he bases his contrary opinion, and what and whose are the studies and investigations upon which that evidence is based. We have a proverb in Irish describing a certain kind of testimony: "Dubhairt bean liom go ndubhairt bean lei"—a woman told me that a woman told her. Has Mr. Dawson really any better evidence than this for a view which he seriously puts forward as an historian, and for imputing a certain obliquity of motive to Professor Macalister and to me?

Errors of this kind can lead to great falsifications of history. I have in my hand a book by Father David Mathew, *The Celtic Peoples and Renaissance Europe* (1933). Its main thesis is that a form of society existed among the peoples whom the writer classes as Celts, which refused to mix with Renaissance civilisation as oil refuses to mix with water. The Celtic tribal form of society, we are told, extended all the way from Cape Wrath to Cape Clear, and its incapacity for assimilating the European developments which began with the Renaissance offers a complete and sufficient explanation of "the fate of the Celtic peoples in the fifteenth century." The last phrase is taken from the introduction, which again is written by Mr. Christopher Dawson. No greater perversion of history is possible—the true explanation is pushed out of sight in favour of a figment sustained without evidence and in spite of evidence to the contrary.

Mr. Dawson is not content with adherence to a notion which has held the vogue by virtue of being a cheap and easy way of filling the vacuum of knowledge and enquiry. He proposes to consecrate this notion, raising it to the dignity of a principle, which enables him to distinguish between barbaric and civilised society. In *The Making of Europe* (p. 68) he writes: "The essence of barbaric society is that it rests on the principle of kinship rather than on that of citizenship, or that of the absolute authority of the State. It is true that

kinship is not the only element in tribal society; in practically every case the territorial and the military factors also intervene. But whereas in a civilised state the unit is the individual or the economic group, the unit of tribal society is the group of kinsmen. A man's rights depend not on his direct relation to the state, but on his position in the kindred, and in the same way crime is not conceived as an offence against the state, but as an occasion of feud or negotiation between two groups of kinsfolk. The guilt of blood lies on the whole kindred of the slayer and must be atoned by compensation to the kindred of the slain."

And now comes the qualification which enables Mr. Dawson to say when a tribe is not a tribe, and how a clan is usually not a clan. "It is true that the higher political unit of the tribe or clan does not necessarily consist of men of common blood, though they are apt to claim such unity by some genealogical fiction. It is usually a territorial or military union of groups of kinsmen." The word territorial is twice used in these passages as a means of disguising the idea which should have been represented by the word civil or political.

"Consequently, in spite of the protests of patriotic Irish scholars, such as Professor MacNeil(1) and Professor Macalister, it is legitimate to describe the social organisation of Celtic Ireland as a tribal one, since it was, no less than that of the ancient Germans, based on kinship groups, such as the sept or the clan."

The evidence is *Waverley*, and the value of "consequently" and "since" in Mr. Dawson's historical method may be assessed accordingly. A footnote adds: "But as we have pointed out, the tribe is not necessarily a union of kinsfolk. In the majority of cases it consists, as in Ireland, of a number of such groups or septs."

Mr. Dawson knows well that that is not the meaning attached to the word tribe for any purpose or in any use other than the support of an unhistorical and unscientific theory.

If the "tribe" in this new and convenient sense, the barbaric society in essence, is not shown by any evidence to have existed in Celtic Ireland, it will be found to be quite an accurate description of the democracy of ancient Athens or of the *populus* of ancient Rome. In both cases the whole free community consisted of a number of genealogical groups or septs. In the case of Celtic Ireland Mr. Dawson, although badly informed, and not too willing to learn, makes plain the kind of groups of kinsfolk that he has in mind. It is the group to which compensation must be paid in the case of homicide of one of its members. In *Celtic Ireland* (p. 119) I have shown what precisely was the extent and constitution of such a group. Those who were entitled to receive compensation were those who had the same father, grandfather or great-grandfather as the man who was killed. Further, I show (p. 165) that the same form and extent of the legal family group exists at present in India

under Hindu law. My study of this feature of ancient Irish law led me to the conclusion that it originated in a more ancient *patria potestas* such as existed in Roman law; that the Irish legal kin represented those who in an earlier stage of society would have come under the power of a *pater familias*, exercising all their legal rights through him; and that the community of rights thus created was continued in the group after the *patria potestas* had ceased to be their common bond. Quite independently the same explanation for the origin of the Hindu joint family is given by a recognised authority, John D. Mayne, in *Hindu Law and Usage* (Cap. VII). This is the kind of kin which was operative within an Irish tuath. For some purposes the operation of kinship extended two degrees wider. In Wales we find the same kind of kin, normally the descendants of a great-grandfather, in certain cases extending to a somewhat wider zone. Beyond these extensions kinship had no operation whatsoever. When I say that it was operative, this must not be understood to mean that the kin so constituted formed an organic part or performed any organic function in the structure and the functioning of the tuath. It is an error to say the tuath was composed of such kins. Under English law, if a man dies intestate, the group of persons who may be entitled to succeed to his estate requires to be ascertained. Before his death that group as a group might be regarded as non-existent. In

like manner under Irish law it was only when assets or liabilities required to be assessed among the members of a legal kin that such a kin existed in the sense of having any operation or activity.

To my mind Mr. Dawson's errors exemplified in the passages quoted are not confined to the facts. The very meaning of civilisation is involved in his argument. He contrasts two forms of society—the barbaric and the civilised.

It is not easy to see why individualism should be regarded as a higher form of civilisation than kinship. For my part I repudiate from my heart and mind any doctrine that proposes to base civilisation on State absolutism. It seems to me that this notion of civilisation, if it is indeed seriously entertained and not merely put forward as an interesting antithesis, is very closely akin to that pagan worship of the State against which His Holiness Pope Pius XI has recently warned the world. Shall we now be asked to believe that Marathon was a victory for barbarism over civilisation, or that Mexico as we see it to-day is more civilised than Attica was in the time of Pericles? In the same spirit Mr. Dawson is a wholehearted admirer of the *Pax Romana*. I shall probably be accused of denying that there was anything good in the Roman Empire when I say, as I have written in the following pages and repeat here with special reference to Mr. Dawson's attitude towards history and civilisation: the worship of success, the worship of bigness,

the worship of the State—we may say in short, the worship of the Beast and his image—it is in the spirit of this abasement that the history of the Roman power has been written, and no historian has yet faced the other side of the picture, the amount of steam-rolling of humanity that went to make up the *Pax Romana*.

With all that is to be said in its favour, the *Pax Romana* would have been an immense calamity for civilisation and for mankind if God in His providence had not made the Roman power a medium for the propagation of Christianity. Nowhere can the results of the *Pax Romana* be studied more clearly or in more detachment than in the island of Britain. Its general effect has been told in the words of a remarkable prophecy by the historian Tacitus, whose father-in-law, Agricola, completed the Roman conquest. Having detailed the measures adopted by Agricola to impose civilisation in the Roman manner on the conquered Britons, and having told of the rapid success from the Roman point of view that attended those measures, Tacitus goes on to say: *Idque apud imperitos humanitas vocabatur cum esset pars servitutis*, "and this by those who had not sense enough to know was called civilisation when in truth it was a factor of enslavement." The history of the Britons under Roman rule, to be distinguished from the history of Roman rule over the Britons, and the history of the Britons in the Post-Roman period remain yet to be written. When it is written, this sentence

of Tacitus will stand at the beginning and at the end of it.

The same sort of whole-hearted adulation has characterised the attitude of historians for the most part towards the Renaissance. Again I may expect to be charged with denying any good in the Renaissance when I say that in many ways it operated and still operates as a setback to European civilisation. It brought popular culture, the traditional and vital cultures of the peoples, into contempt and enthroned an artificial culture confined to a privileged few and imbued everywhere with a spirit of snobbishness and affectation. I could wish it had been true, as Father David Mathew professes to have found in his somewhat paperish vision of Ireland "under the Tudors," that the Renaissance in these governing respects failed owing to the clan system or any other system, to find a foothold in Ireland. Renaissance ideas, potent among the new conquerors and possessors, but able to make a strong lodgment among the conquered and dispossessed, overthrew in Ireland a rich national culture and replaced it by a pretentious and imitative vulgarity.

The Irish laws and institutions described in the following pages, taking them all together, as parts of the national framework, were at their highest development when they were first reduced to writing and during the century or two that followed before the pressure of the Norse invasions became intense. In the later

commentaries that are added to the law tracts we can see a progressive decadence in the outlook of the jurists themselves and in the laws and institutions which they describe. By the time of the latest commentators some of the early institutions had become wholly obsolete, and some had even become quite unintelligible to the juristic writers. The official editors were unaware of this kind of change. They treat the whole mass of material as if it were written at one period and should therefore be taken as affording a coherent description of a single and permanent state of things. Joyce, in his *Social History of Ancient Ireland*, handles this matter and many other matters in precisely the same way. A thousand years in expositions of this kind are the same as a day, and a day as a thousand years. What was written in the seventeenth century is supposed to hold good for the seventh. What is written in the seventh for the seventeenth. A page dealing with the learning of the early monastic period (Vol. I, p. 33) is illustrated by a plate exhibiting gold ornaments of the Bronze Age.

The decay of Irish institutions begins with the disturbances of the national order brought about by the Norse invasions. The first clear symptom of it may perhaps be discerned in a contemporary entry of the *Annals of Ulster* for the year 873: "The Assembly of Tailte was not held in the absence of just and worthy cause, a thing we have not heard to have

befallen from ancient times." Three years later, and again five years later, the failure to hold the assembly is recorded. After that there is no more about it until 916. In that year Niall Glundubh became King of Ireland, and the annalist writes: "The assembly of Tailte was held by him, which had not been held for a long time before." Considering the small amount of ground that the Norsemen during three centuries were able to gain in Ireland, it might at first sight appear hardly credible that their incursions and settlements should have produced any deep or lasting effect on the national life. Their chief permanent settlements were Dublin, Waterford and Limerick. They held a small stretch of territory along the seaboard northward and southward from Dublin, a still smaller territory between Waterford and the sea and probably not more than a few square miles of land adjoining Limerick. The extent of these settlements, however, affords no measure of the strain imposed by them on the entire country. What this must have been we can better estimate from their activities in neighbouring lands.

Let us go back four years before that first abandonment of the national assembly. In 870 Olaf and Imar, joint kings of the Norsemen of Dublin, fitted out an expedition from Dublin, sailed to the Firth of Clyde, besieged there the ancient fortress of the Britons at Dumbarton which they had held for centuries against the neighbouring Scots and Picts.

After a siege of four months, an operation unexampled until then in this part of the world, they captured and destroyed the fortress. The following year, the Irish annalist relates, they returned to Dublin with 200 ships, bringing a very great multitude of men, Angles and Britons and Picts, in captivity to Ireland. Norse armies in the same period literally walked over England in every direction. The Norsemen were in possession of all the islands of Scotland and of Caithness, Argyllshire and Galloway on the Scottish mainland, and the Isle of Man. Under a Norse leader from the Orkneys the "Normans" took possession of northern France from Flanders to Brittany. The wide plains of Ireland and her great sheltering harbours gave every opportunity for extensive conquests. The small amount of territory which the Norsemen were actually able to occupy, instead of indicating a small degree of strain on the people of Ireland, has directly the opposite significance. Only the most determined resistance and the most constant readiness to resist could have kept them within those small bounds. The Battle of Clontarf in 1014 was decisive in the sense of putting an end to the hope of a Norse conquest. The event was epitomised in the song of an Icelandic poet:

"Brian fell but saved his kingdom."

Brian's high-kingship, however, had been purchased at the cost of a great breach in the national tradition, and it was followed by half

a century of disruption. At the end of that time, when the high-kingship was restored, a strong influx of feudal ideas from the continent is already visible. In 1169 fully organised feudalism with a powerful military backing made its entry into Ireland, and within about half a century feudal lordships had been established here and there in regions covering two-thirds of the country. Apart from the permanent outlawry of the Irish, the presence of this rival system necessarily accelerated the decay of native institutions. It is therefore to be understood that the account of Irish laws and institutions here given applies in its fullness only to the earlier period, let us say down to the year 900 or thereabouts.

The modern figment of a Celtic form of society based on "the Clan System" recommended itself in the first instance by appearing to fill the vacuum of knowledge. To the patriotic mind it became an object of affection in Ireland and also, I think, in Scotland. I have read imaginative accounts of the imagined "system," in which its virtues and benefits have been held up to admiration. The figment was equally welcomed from the antipathetic standpoint. Dr. Orpen, who found in it the chief justification for the law-breaking and faith-breaking encroachments of Feudalism under Henry II and John, resulting in that secular tragedy, the outlawry of the Irish, is typical of a numerous school of modern writers, who seem to think that any kind of oppression

becomes virtuous if its advocates can propose a theory that the oppressed were in some sense less civilised than the oppressors.

The figment, indeed, was admirably fitted to sustain the sentiment of Celtophobia which, being the natural counterpart of Anglosaxonomania, has pervaded the views of history, as well as of contemporary affairs, expressed by publicists of various grade and kind in the English language during the past century. "Saxon and Norman and Dane are we," sang a Poet Laureate of the United Kingdom of Great Britain and Ireland, on a salary to which Scotland and Wales and the West Country contributed. Not that their existence otherwise than as taxpaying dependencies was ignored, for the same official State Poet celebrated in song "the schoolboy heat, the wild hysterics of the Celt." The official bard, apart from his merits in other respects, is generally believed to have held the mirror up faithfully to a large mass of popular sentiment. Lord Salisbury, Prime Minister of the same United Kingdom, a master of the contemptuous phrase, invented for a political purpose "the Celtic fringe," suggesting something tacked on to the main fabric of Saxon and Norman and Dane. I find the term adopted as a datum of history in recent works which profess to rectify much falsification and obnubilation in the vogue of historical writings. I suggest that nearly every generalisation that has passed current about things Celtic or things supposed to be Celtic—the Celtic

race, the Celtic temperament, Celtic art, the Celtic Church, Celtic society—stands equally in need of revision and rectification. The beginning is to be made by a rejection of all mere notions and assumptions of modern date, no matter how widely they may appear to have been accepted or how securely they may have been postulated in the schoolbooks and the magazines, the leading articles, the speeches and the histories. In passing, with a view to getting the truth in such matters, in disregard of the phobias and manias, I invite students and workers in history and ethnology, all and any of them, on this side of the Atlantic and beyond it, to produce evidence, historical or ethnological, which will give any intelligent and unprejudiced jury of persons reason to believe that the modern population of England—I do not say of Britain—is of Anglo-Saxon origin to the extent of twenty-five per cent.

It must be avowed that, for those who approach the study or the reading of Irish history already obsessed with the notion of the Clan System, and they are the many, there is much that rises to the superficial and external view to confirm them. The chief cause of this illusion is to be found in the Irish custom of naming territories and their inhabitants by the names of the family groups to which their rulers belonged. This custom was very ancient, in its origin prehistoric, and it continued to operate, giving rise to new territorial names,

down to nearly modern times. Thus the whole extent of the regions of Mide and Brega, comprising the modern counties of Meath, Westmeath and Longford, and large parts of some adjoining counties, is named Ui Neill, meaning "descendants of Niall," and this name is already in evidence in the seventh century, when the descendants of Niall could still be counted on the fingers. One of his later descendants was Aodh Buidhe Ua Neill, a king who died in 1280. Certain descendants of Aodh Buidhe invaded and took possession of a part of the feudal territory of the earldom of Ulster. That country was known by the name of Clann Aedha Buidhe as early as 1493 (*Annals of Ulster* III, p. 374). In these instances, which are typical of many, the territory takes its name from an intrusive dynastic family, who were not kinsmen of the older inhabitants, and who could not have displaced them to any considerable extent at the time when the name came into use. To a superficial observer, with "the Clan System" taken for granted, such names may well appear to support the notion of a territory inhabited by a population claiming to be of one kin.

The late Dr. W. F. Butler was one who took the Clan System for granted and refused to part with it. His work entitled *Gleanings From Irish History* (1925) provides a leading example for other regional histories for which materials abound and which remain to be written before any general history of Ireland,

worthy of the name, can be rightly undertaken. About two-thirds of the volume are taken up with the MacCarthy lordships in Munster. Clans, sub-clans, and clansmen are all over the pages, somewhat defiantly, I imagine, for Dr. Butler was well aware of what I had written on the subject. We may note in passing that for these terms, so adopted in measured language to describe what are represented as the main organic parts in the structure of Celtic society in Ireland, no corresponding terms in the Irish language are recognised. The word "clann" itself is not Irish or Celtic, being imported from Latin through a British medium. It means simply children and, by the usual metaphoric extension, descendants, and it is never employed in the technical sense attached to "clan" in modern English writings. Other words denoting a kindred comprising a group of families having a common ancestor are *cenel*, *ciniud*, *muintir*, *tellach*, *slicht*, *aicme*; but these, like *clann*, are not used in the technical sense of a structural part of the social or political organism. The words that are so used, *deis* and *fine*, belong in the precise technical sense to the older social order before decadence prevailed: *deis* carried no meaning or implication of kinship, and what *fine* signified is explained in the following pages. The theorists or notionists of the Clan System thus profess to recognise prominent structural features existing in Irish society from time immemorial—they are always proclaimed to be primitive

survivals—down to the seventeenth century, features of which the Irish themselves were not sufficiently conscious to endow them with names.

The terminology notwithstanding, Dr. Butler's book provides a complete demonstration that, within the period with which it is mainly concerned, beginning with the twelfth century and coming down to the establishment of the English régime in the seventeenth century, no semblance of that Celtic tribal society which elicits acts of faith from writers like Dr. Orpen, Mr. Dawson and Father David Mathew existed in the Irish territories of Desmond. The "sub-clans" or "subordinate clans" enumerated by Dr. Butler one and all bear Irish surnames. Let us consider what this signifies. Such surnames, formed with O (Ua) and Mac, make their first appearance about the end of the tenth century, and then only in a few instances. They begin to become numerous in the eleventh century, and do not become the general rule until the twelfth century. In general, then, they are formed from the names of ancestors who lived in the tenth or eleventh century. Some, especially in Scotland, are of much later formation. The "sub-clans" mentioned by Dr. Butler all bear surnames of families which held rule over the territories where they dwelt; they are the descendants of some ruler of the tenth century or of later date. It is evident that a "clan" of such recent origin could not have constituted the social com-

munity, and could not even have formed the community of freemen, the body politic, which met in assemblies in their respective territories. At the most, they could have been no more than an aristocratic crust.

The case is still clearer when we come to the superior "clans," bearing the surnames MacCarthy (MacCarthaigh) and O'Sullivan (Ua Suilliobhain). These were not even indigenous to Desmond. They are branches of an ancient dynastic sept of the overkings of Munster, the Eoghanacht of Cashel, who were seated in or around Cashel, in the east of Munster, from the fifth to the eleventh century. Their migration to south-western Munster cannot be precisely dated, but it was a sequel to the reign of Brian, who fell at Clontarf in 1014, having wrested the kingship of Munster from the Eoghanacht kindred. Their position in Munster was determined in 1118 by the king of Ireland, Toirdhealbhach Ua Conchubhair, who was also king of Connacht. This king, probably inspired by Feudal influences, pursued a centralising policy. In order to break the power of the descendants of Brian, he divided Munster into two co-ordinate kingships, a partition which continued operative until the seventeenth century. The northern part of Munster, known later to Anglo-Norman writers as the kingdom of Limerick, he left to the descendants of Brian; the southern part, the kingdom of Cork in Anglo-Norman parlance, he gave to Tadhg

MacCarthaigh, whose father, Muireadhach, had been king of the Eoghanacht of Cashel. Tadhg was succeeded in 1124 by his brother Cormac, who continued to reside in Cashel, where Cormac's Chapel commemorates his reign. Tadhg, Cormac, and their brother Donnchadh, are the first recorded bearers of the surname MacCarthaigh, derived from their grandfather Carthach, king of the Eoghanacht of Cashel, who was killed in 1045. Diarmaid, son of Cormac, was king of Desmond at the time of the Norman invasion. As the genealogical table at the end of Dr. Butler's volume shows, this Diarmaid, who died in 1185, was ancestor of the whole MacCarthaigh stock of Desmond in all their numerous branches. By maps numbered I and IV, Dr. Butler shows the distribution of these branches in subordinate lordship in various parts of Desmond. In page after page, all these branches jointly are a "clan" in Dr. Butler's terminology. A clan they are in precisely the same way as the Plantagenets or the Bourbons are a clan, differing from these in being more prolific; but there were many other clans of the same kind in Ireland which, like the Plantagenets and the Bourbons, tended to dwindle and die out.

Let us consider the relation of the MacCarthaigh clan to the population of Desmond over which its head, MacCarthaigh Mor, was ruler, and the relation of each branch of the clan to the population of the small region in which the head of the branch was ruler in subordi-

nation to him. The entire stock springs from an ancestor who died in 1185, and whose father and all his earlier ancestors, as far back as the fifth century, had not occupied an acre of land in or near Desmond, but had dwelt in the district of Cashel at the other side of Munster. In Desmond we are far away from the vision of Celtic society derived from *Waverley*. There is indeed a numerous kindred bearing the surname of the rulers, but it is an aristocratic upper stratum, rather a section of that stratum, and it is not connected by kinship, real or adoptive, with the community in general or with the freeman element of the indigenous population.

The same kind of research and synthesis that Dr. Butler brought to bear on "the MacCarthy Lordship" will show similar social and political conditions to have existed over the length and breadth of Ireland. There are differences indeed in date, and not every ruling kindred will be found so prolific as the MacCarthys and the O'Sullivans; but the position of these in Desmond, in relation to the population of that region from the twelfth to the seventeenth century, is a true replica of the "Nepotes Neill" in the midlands when Tirechan wrote of them, round about the year 700 and from the fifth to the twelfth century.

In the ancient order, as shall be more fully set out, the freeman element in an Irish *tuath* consisted chiefly of landed freeholders, but the same franchise belonged to men of liberal

vocations, that is, to men of learning in Irish or Latin and to skilled craftsmen. If the landed men had been few in number, they would have been outnumbered by the others and their franchise—their voice and part in the direction of public affairs—would have been diminished. That this was not so is evident on every hand. The freeholders were numerous, comprising not only the ruling nobles (*airig*) but all their clients (*celi*) and, since clientship was voluntary, others besides. This state of things existed before the oldest law tracts and continued until the final overthrow of the Irish order under Cromwell's régime, when the small freeholders were either exterminated or reduced to the condition of tenants at will, virtually serfs of the new proprietors. The change thus accomplished, which was a social revolution of a thoroughly retrograde kind, had been initiated under Henry VIII and continued under Elizabeth, in the operation of what is called "the policy of surrender and regrant." In his *Gleanings From Irish History*, Dr. Butler devotes a large chapter to a study of this operation, and has contrived in it to combine much valuable information with a mass of erratic statements. In brief, he sets out (page 195) to dispute the view that the policy of surrender and regrant reduced the main body of landowners to tenants, but the general effect of his statements is to leave that view substantially confirmed.

The obsession of fixed ideas about "Celtic

society" has had one manifest consequence on the minds of writers like Richey, author of two ponderous editorial treatises prefixed as "introductions" to Volumes III and IV of *The Ancient Laws of Ireland*; they see no need to compare one period of Irish history with another so as to ascertain whether the adopted picture reproduces itself in the facts century after century, and if not, why not. Yet, comparing successive periods, one may easily find, in almost every part of Ireland, evidence clear and abundant of changes in the ownership of land. As in Desmond, so in various other regions, we find at one time numerous land-owners whose ancestors did not own a foot of land in the same territory a few generations earlier. In other regions we find a particular kindred spread widely in the ownership of lands, whose ancestors, though indigenous, had not owned land except in a relatively small fraction of the territory. In both classes of case, it can be observed, that those who acquire the new ownership belong as a rule to collateral branches of the chief ruling kindred. In other words, Irish rulers in every part of the country found means of establishing their own kinsmen as new proprietors taking the place of older freeholders. The expansion of an exogenous kindred in this way is exemplified in the case of Desmond, where it is worked out in detail by Dr. Butler. The similar expansion of an indigenous family is exemplified in the instance of Fir Manach (Fermanagh). The

first king of Fir Manach who bore the surname MagUidhir (Maguire) reigned from 1303 to 1324. All his successors appear to have been of the same surname, and within three centuries a large part of the land of Fir Manach has passed in ownership to numerous freeholders of the same kin and surname. What is perhaps an extreme example of the process is furnished by the *Civil Survey* of 1654, in the first volume thereof published by the Irish Manuscripts Commission in 1931. The barony of Ikerrin, in the county of Tipperary, represents an Irish territory which was formerly a subdivision of the kingdom of Eli and was ruled by a line of chiefs bearing the surname Ua Meachair, written Meagher, Maher, etc., in English. The freeholders are sixty in number, and of these thirty-nine are of the surname Ua Meachair. All these are descendants of an ancestor Mechar, whom I cannot date, but who probably lived in the eleventh century, certainly not earlier than the tenth century, as the form of the surname indicates.

If it be asserted that the landowning groups bearing such surnames as MacCarthaigh, MagUidhir and Ua Meachair, may properly be called "clans," I do not propose to debate the propriety of the word. It is enough to recognise that they are in every instance kindreds of relatively recent historical origin, not primitive tribal communities and not sections or remnants of such; also that they are not

necessarily indigenous to the community in which they hold a dominant position.

The expansion of leading families at the expense of other freeholders is a problem of social history which has not been studied, mainly because the notions of a primitive tribal organisation or a static clan system have clouded it from view. It was present to the mind of Dubhaltach MacFirBhisigh the genealogist, in 1650, when he gave this explanation (*Genealogical Tracts* I, edited by T. O Raithbheartaigh for the Irish Manuscripts Commission, p. 26, 1932): "It is a usual thing in the case of great princes, when their children and their families multiply, that their clients and followers are squeezed out, wither away, and are wasted. Take Ireland, and even the whole world if you desire, and there is no limit to all the instances which you will find of that."

There are, indeed, a number of instances, recorded in the annals and elsewhere, of the violent expropriation of a body of freeholders to make room for the kinsmen of ruling princes. In general, however, oppressive action is not in evidence and cannot be taken to explain the spread of dynastic kindreds. A policy of expropriation, as soon as it could be perceived, would have roused the hostility of the freeholding class and brought the overthrow of the ruler who attempted it, for this class was the predominant power in every region—*is treise tuath ná tighearna*. The changes of ownership

must usually have come about in such a way as not to appear oppressive.

A tentative explanation of the problem may be offered. When a client (*céle*) died leaving no direct heirs, his property, in this case called *dibad* (wrongly rendered "legacy" in the official translations of the *Ancient Laws of Ireland*), was divided, one-third going to his patron (*flaith*) and two-thirds to his legal kin, the *derbfine*. The clients of a king comprised the leading landed nobles of the *tuath*, and much property must have passed from them to the kings and through those to their kinsmen, by the operation of the law of *dibad*. There is no evidence of a continuous increase of the population of rural Ireland in medieval times. Unchecked epidemics and probably a high rate of infant mortality must have tended to keep the number at a level in century after century. This would imply that, on the average, each man alive at the beginning of a century would have no more than one male descendant of the same age at the end of that century—a fact worth the attention of those who think to rehabilitate the clan theory on the basis of a collection of *derbfine* groups. Since some lines of descent expanded into collaterals in their successive generations, it follows that a still larger number became extinct; in other words, that instances of *dibad* were frequent, and that a dynastic kindred, if it continued long in possession of the kingship, must have constantly acquired a growing share of land in freehold.

A further explanation of the problem may be stated by hypothesis. The *Book of Rights* shows Ireland divided into seven major kingdoms, and each of these into a number of minor kingdoms, the *tuatha* of the lawtracts. The minor kingdoms are of two kinds, tributary and non-tributary. When the dynastic kindred of a minor kingdom was a collateral branch of the dynastic kindred of the major kingdom, it was free from tribute. This may be stated in another form: the ruling kindred of the major kingdom was entitled to receive tribute from every *tuath* therein, but when a *tuath* was ruled by a branch of the same kindred, its revenue was intercepted and retained by that branch.

In this way the *tuath*, while it came under a line of rulers of external origin, was laid under no additional burden of tribute. Something similar, it is suggested, may have taken place within the *tuath*. A king who desired to provide for one of his kinsmen would assign to him the regalities of a district, where he would become a chief magnate without laying the landowners of the district under a fresh burden of tribute or appearing to depress them in status. By the operation of the law of *díbad* as aforesaid and of the law of clientship (*celsine*) which I explain later, the descendants of such a man—for all offices and vocations tended to become hereditary in the Irish legal sense, that is, within the *fine*—would become in time the chief landowners in their district. This would undoubtedly involve the “squeezing,

withering, and wasting” of the older class of landowners, but by a process so gradual and insensible as not to provoke their discontent and resistance. We might perhaps compare it on this score to what has happened in the case of an old and a new class of shopkeepers within living memory.

The true distinction between the social structure in medieval Ireland and the social structure of the Mediterranean countries of antiquity can be discerned without having recourse to theoretical figments. In the Mediterranean area, the nucleus of the community was a town, which was usually walled to resist attack. In northern and middle Europe life was entirely rural, and the social and political nucleus was probably among all peoples, as we have it recognised and described in Ireland, the assembly of freemen. The duration of the rural community varies in the different regions. In Gaul it was already passing away before the Roman conquest: Plutarch says that the Galli defended 800 towns against the forces of Julius Cæsar. It is a significant fact that many of the cities of Gaul continued during the Roman régime, and after it, to be named simply by the name of the people whose chief centres they had formerly been: Langres was Lingones, Sens was Senones, Chartres was Carnutes, Ebreux was Eburovices. Nantes was Namnetes, Vannes was Veneti, Paris was Parisii, Tours was Turones, Rheims was Remi, Beauvais was Bellovaci, Treves was Treviri.

Chalons was Catalauni, Amiens was Ambiani, and so forth. The first towns in historical Ireland grew out of the fortified shipping resorts of the Norsemen, piratical strongholds, as Rome had once been. Prehistoric Ireland, too, has examples of how piracy is the potential mother of cities. The Aran Islands contain the well-preserved remains of a number of large fortified enclosures. Two of these, in the middle island, if they were furnished inside with dwellings, could easily accommodate the whole population of the island. It does not seem possible to explain the existence of these great fortresses on any other hypothesis than that they were, at some remote prehistoric time, the strongholds of a piratical population which lived on the plunder of the mainland. Ptolemy, in the second century, thought that there were a number of cities in Ireland. His information in this matter must have been based indirectly on accounts derived from continental traders. These, as in later times, when they sought a market for their wares in Ireland, would have resorted to the chief places of assembly at times of assembly, and such places at such times would have presented the aspect of cities. The chief ecclesiastical centres, such as Armagh, Kildare and Derry, were developing into cities as the stress of the Norse wars diminished; but further progress in this direction was made impossible for "Celtic Ireland" by the policy of perpetual outlawry maintained under the Feudal régime.

An Irish *tuath*, while it was based on a rural community and a rural economy, was nevertheless a veritable city of the fields. The small extent of the average *tuath* ensured that its freemen should maintain close relations to each other and should have a consciousness of common interests, less only in degree, not other in kind, than if they had dwelt together in towns. The kingdom of Dal Riada, out of which grew the kingdom of Scotland, extended in its greatest length to 30 miles, in breadth to 20 miles.

Regarding the rural economy of the *tuath*, the ancient laws are rich in details of information. Professional endowment took the form of estates in land, and one must think that the old juristic writers took a keen interest in the cultivation of their own lands, they so revel in all that concerns agriculture even to the smallest particulars. They also show that the typical Irish nobleman was what is called in our times a gentleman farmer. "The apparatus of his house" comprises "a cauldron (for festive use) with its spits and supports; a vat in which a boiling (for ale) may be stirred; a cauldron for ordinary use (and its) utensils, including irons and trays and mugs; a washing-trough and a bath, tubs, candlesticks, knives for cutting rushes, ropes, adze, saw, auger, shears, trestle, axe; the tools for use in every season, every implement thereof unborrowed; grindstone, mallets, billhook, spears for killing cattle; a fire always alive, a candle on the

candlestick without fail; full ownership of a plough with all its outfit"—the freeholder of less noble grade was part-owner of a plough and an ox-team. "There be two casks in his house always, a cask of milk and a cask of ale. A man of three snouts (he is): the snout of a rooting hog that smoothes the wrinkles of the face in every season"—this refers to the herd of swine kept at large in the woodland; "the snout of a bacon pig on a hook; the snout of a plough that cleaves the soil; so that he may be ready to receive king or bishop or doctor or judge from the road and for the visits of every company; a man of three sacks always in his house for each quarter of the year: a sack of malt, a sack of sea-ash against the cutting up of joints of his cattle, a sack of charcoal for irons. Seven houses he has: a kiln, a barn, a mill—his share therein so that he grinds in it for others—(another tract explains that those through whose lands the watercourse passes are entitled to share in the use of the mill, as also are the workers who work the mill), a dwelling house of twenty-seven feet, an outhouse of seventeen feet, a pigsty, a calf-fold, a sheepfold; twenty (milch) cows, two bulls, six oxen (of draught), twenty (sty-fed) pigs, twenty sheep, four hundred hogs (in the forest), two brood sows; a saddle horse, an enamelled bridle; sixteen sacks (of seed) in the ground. He has a bronze cauldron in which a hog fits. He owns a park in which there are

always sheep without (need for) change of ground."

What the writer of the lawtract (Crith Gablach), writing a century or so before the Norse incursions, has in mind in this description is an agricultural economy, not a pastoral economy. That Celtic society was pastoral, and that it was a "warrior" society (in contrast with the Roman order)—these are figments which accompany the figment of the tribal basis, being products of the same degree and kind of study and investigation. There are some who go so far as to pretend that they can discern a time when the Celtic inhabitants of Britain had not arrived at the condition of settled pastoral communities, but were still "nomadic." The basis for the whole set of notions, nomadism, warriorism, pastoralism, tribalism, is a crude *a priori* application of evolutionary theory, which turns the blind eye to the results of historical, ethnological, and archaeological research.

We have seen from contemporary evidence that Celtic society in Ireland was agricultural, not pastoral, in the seventh century. We have seen also that Irish institutions suffered a set-back from the protracted resistance to Norse invasion, and that, after a short respite, they had to encounter a more formidable enemy in Anglo-Norman Feudalism, firmly centralised in Dublin, an enemy who, reinforced by Renaissance statesmanship directed from England, was at last able to suppress them.

It might be supposed, if we were to be guided by the method of *a priori* notionalism, that the agricultural character of the Irish rural economy had been mortally stricken in the struggle, and that Celtic society had been driven back on a pastoral plane which was not imaginary. Let us call a witness who, not without motive, anticipates the modern school of Celtophobes in stating, as a fixed principle, that the Irish are naturally and in spite of any apparent evidence, however cogent to the contrary, essential barbarians. His testimony has reference to the Irish territory of Laoighis (Leix), which lay on the border of the English Pale, its centre being about fifty miles from Dublin: a remarkable territory which retained its autonomy from prehistoric times, throughout the whole Celtic period, and later through the Anglo-Norman period, though almost surrounded by Feudal lordships, all the time under an unbroken line of dynasts of Pictish origin. The policy of plantation, initiated under Mary Tudor, had sought to convert it into shireland with an English colony, and it was incorporated in the new "Queen's County," its capital, Port Laoighse, being named anew Maryborough in honour of this benefaction. Its rulers, surnamed Ua Mordha ("O'More, Moore,") held out, and it is of them and their people that Fynes Moryson writes in the last years of Elizabeth's reign and in the course of the longest war in

Irish history. He describes an expedition led against Laoighis by the Lord Deputy:

"Our captaines, and by their example, (for it was otherwise painefull), the common souldiers did cut downe with their swordes all the rebels corne, to the value of ten thousand pound and upward, the onely means by which they were to live and to keep their bonaghts or hired soldiers. *It seemed incredible that by so barbarous inhabitants the ground should be so manured, the fields so orderly fenced, the townes so frequently inhabited, and the high waies and paths so well beaten as the Lord Deputy here found them. The reason whereof was that the Queenes forces during these wars never till then came among them.*"

In a contemporary document (Gerrard Papers, *Analecta Hibernica* 2, p. 145), 3s. 4d. is the price of a peck of wheat, the same for a peck of malted barley; and 4,562 pecks of each are reckoned (p. 160), for the victualling of 1,000 men in garrison for a year. This gives £3,041 6s. 8d. in money of that time. The Queen's forces in the raid on Leix should at this rate have destroyed corn sufficient to provide more than 3,000 men with bread and ale, more than 6,000 with bread only, for a whole year.

This was no singular instance; soon after the end of the same war, in 1605, Sir Thomas Phillips made a journey through Ulster and

wrote about it to Lord Salisbury: "They now begin to grow rich, so that for the most part during peace they increase very fat in cattle, and for corn this year they have great plenty. He passed through the fastest (most heavily wooded) country in Tirone where he did not expect to have seen so much corn." Phillips goes on to recommend that King James should raid the country for cows and provisions.

In the case of Gaul, Mr. Dawson does not see eye to eye with Tacitus. "First the Germanic peoples and then the Celts have learnt to exalt the achievements of their ancestors—or rather of those whom they suppose to be their ancestors, and to minimise the debt that the Western people owe to Rome." In this respect, we are told, they depart from the vogue established by "our humanist predecessors," the sages of the Renaissance. "Like M. Camille Jullian, in his great *History of Gaul*, they regard the Roman Empire as an alien militarism that destroyed with brutal force the fair promise of a budding culture. And no doubt there is some ground for this view inasmuch as the Roman conquest was, in itself, brutal and destructive, and the imperial culture that it brought was stereotyped and lacking in originality." Fynes Moryson only went so far as to say that facts *seemed* incredible when they belied the pre-judgments of his upbringing. Mr. Dawson refuses to have the facts from Camille Jullian.

It is told that a County Down Orangeman once paid a visit to the Zoological Gardens in the Phoenix Park; when he came to the giraffe, he stood gazing at it for a minute then turned away growling resolutely, "There's no such animal." Mr. Dawson writes: "But it is very difficult to find any justification for M. Jullian's belief that Celtic Gaul would have accepted the higher civilisation of the Hellenistic world without the intervention of Rome." Shall we add, in the form of a stereotyped and sterilised imperial culture? If Xerxes had conquered Greece! The facts prove sufficiently that Celtic Gaul was well on its way to do something very much better than accepting the Hellenistic civilisation in a stereotyped and devitalised form; it was already receiving inspiration from Hellenic civilisation, taking what came to it as nourishment rather than as furniture.

Tacitus was not alone in thinking that Roman conquest was for the magnification and enrichment of Rome and not for the benefit of the conquered. Julius Cæsar himself has left us a clear enough indication of how he thought about it. After he had crushed the resistance of the Atrebates, whose name, worn down to Arras, still denotes their chief place, he appointed one of themselves as king over them. The Roman Senate found it sometimes more convenient to rule through a Herod than through a Pilate. Like Rome itself, the Gallic states, including the Asiatic

Galatia, had rejected monarchy and were aristocratic republics governed by senates; and the Romans, in setting up kings of their own choosing, were taking a step towards the suppression of the state. The man chosen by Cæsar to be king of the Atrebatas was one of their nobles named Commios, who had great influence among them, and was regarded by Cæsar from his own standpoint as courageous and trustworthy. Commios afterwards acted as an intermediary between Cæsar and other Belgic states, including some of those in Britain. "In recognition of these merits, (Cæsar) decided that his state should be free of tribute, *restored its rights and laws*, and placed the Morini also under the government of Commios (*quibus ille pro meritis civitatem eius immunem esse iusserat, iura legesque reddiderat, atque ipsi Morinos attribuerat*). Neither Cæsar nor Commios, nor presumably the Atrebatas themselves, regarded the possession of their own laws and institutions in the light of a penalty.

Historically and actually, civilisation has not a political origin or a political basis, even though a tendency to take that and impart that view of it has often vitiated the writing of history. Historians have made themselves the advertising agents of statecraft, and have done their utmost to root in the popular mind the idea of the all-comprising State, supreme and absolute. How shall we quarrel with this idea if we admit that civilisation is dependent

for its very existence on a form of government? At no time could the propagation of this idea, or any countenance given to it, be more unfortunate than at present, when, notwithstanding the "lessons" of the Great War, we see one country after another following the lead of politicians towards new and extreme forms of the all-comprising State. If many are right in thinking that European civilisation has been gravely imperilled in our time, where is the reason to be found if not in the fact that statesmen and politicians have succeeded beyond measure in our time in winning over, not merely a schooled minority, but large masses of the people to the cause of the absolute and all-comprising State?

Civilisation and barbarism are matters of degree. Between them, though it flattered the Hellenic mind and its Roman counterfeit to imagine it, there is no boundary line. Men are barbarians in the degree to which they are dominated by their non-human natural surroundings, and are civilised in the degree to which they succeed in dominating these, including among these all that lower nature within themselves that men have in common with animals. A wholly barbarous man or society of men has yet to be discovered, and some degree of barbarism, with the seeds of more, is always present in the most complete civilisation.

A centralised authority is an instrument of civilisation, not an essential. The absolute

State, the all-comprising State, is a thing specifically pagan. "The kings of the Gentiles lord it over them, and they that have power over them are called beneficent, but you not so." The true function of the State in the Christian order is to subserve the civilisation of the people, not to dominate it; and the moral authority of the State is increased by its fidelity to this function and diminished by exceeding it or departing from it. If centralised authority were to be regarded as the criterion of civilisation, militarism would become the acme, and we should have to consider the claims of Attila in competition with Theodosius.

*Pacis imponere morem.* If we are to identify the Pax Romana in conquered countries with civilisation, it was an imposed civilisation, imposed from without by a centralised military power, and comparable thus to the proverbial inverted pyramid. It needed shoring up, and the supports were naturally subject to decay. We may admire the efforts of statecraft made from time to time by some of the greater Emperors to strengthen the structure, and we may commiserate the failures. The Roman Empire was not overthrown by the Barbarians. It could have withstood the Barbarians if the main sustaining parts of its own structure had not been unsound. Roman culture, the gilding of Hellenism that ornamented the Pax Romana in the conquered regions of the West, was quickly succeeded by a Dark Age. The

darkness was not caused by the substitution of Barbarian for Roman rule. Roman Britain was not occupied by the Barbarians for a century and a half after it was abandoned by the Empire, and the darkness that came upon the imposed culture in Britain throughout that time was not exceeded in any country that the Barbarians invaded and controlled. In that darkness, and by reason of it, the decaying remains become phosphorescent in a form typified by *Hisperica Famina*. The least Romanised part of Roman Britain was Wales, and Wales was overrun and in part occupied by Barbarians from Ireland. Yet Wales, in the post-Roman period, is a land of light in comparison, let us say, with that great central stretch of Britain adjoining it, called afterwards Mercia, extending from the southern maritime shires to Yorkshire. Here the Romanised Britons remained in full possession during two centuries of complete darkness. It was precisely in Wales, and in that part of Wales where the Barbarian element was strongest, that Latin culture found its proper continuation in the form of scholarship and learning, until it passed into the hands of Barbarians who had never lived under the Pax Romana, and consequently it did not become *pars servitutis*.

Mr. Dawson expounds in several pages (70 *seqq.*) his notions about "the warlike tribal culture of the Celts and the Germans" in contrast with "Roman civilisation." Here

the conception of civilisation as a political thing is still dominant, and bigness is still glorified. The main defect on the Barbarian side is detected and exposed at length: "Barbarian culture was never a single or uniform thing." The idea of a single or uniform culture is so appalling that one must think something else to be intended. An explanation of the diversity and superficiality of barbarian culture follows, and let us adjure the reader to keep firmly in mind, as he reads sentence after sentence, that Mr. Dawson is writing about barbarian culture and not about the operation and effects of the Pax Romana. "Underneath the ruling society and the conquering warriors the life of the conquered peasants still went on, sometimes possessing its own language and religion, and always tending to preserve a distinct social and cultural tradition. Consequently, the more warlike a society is, the more superficial and disunified is its culture. Successive waves of conquest do not necessarily involve a change of population; in many cases they amount to no more than the substitution of one warrior aristocracy for another. The ruling class is often responsible for the introduction in (or?) the development of a new and higher type of culture, but it has no permanence and it may pass away without leaving any permanent impression of (on?) the life of the peasant population." As applied to the Barbarians, this is purely an *a priori* statement; it gives

the writer's notion of what ought to have happened, but what, if we take historical instances, is often just the converse of what did happen. If we apply it to the Pax Romana, it falls short of being quite adequate. Taking again the case of Britain, the superficial culture did indeed pass away, but not without leaving a permanent impression in the fulfilment of the prophecy of Tacitus.

I rejoice in the opportunity of protesting against a cardinal error in history and a mischievous error in effect: to represent civilisation as a political thing or as having a political origin or as resting on a political foundation. Throughout history, the kingdom of this world, the realm of statecraft and politics, has been the Devil's playground, swept and garnished for him by the ambition of statesmen and politicians to have a part in something that is supreme and absolute, a thing which has a code of ethics all its own. I would ask my readers to think and think again over what is implied in Nicholas Murray Butler's phrase, "the *fundamental* difference between the Nation and the State." Nationality is to be distinguished from Nationalism, which is a political doctrine, meaning localised Statism; it is a fact, not a theory; a nation is a species of the genus civilisation, a State is a species of the genus government. Nationality is the type of civilisation which a people has developed, which has become that people's tradition, and

is distinctive of that people. Nationalities, as such, do not hate each other, do not fear or suspect each other, do not war upon each other, do not circumvent each other, do not spy upon each other : these being the privileges of statecraft. Neither Europe nor the world suffers any detriment from the diversity of national civilisations. On the contrary, uniformity, if it were possible, would be calamitous.

The chapters which follow here reproduce almost word for word a series of lectures given in the New York University and under the auspices of its Law School, in the spring of 1931, but to audiences open to the general public. They describe certain aspects of one national civilisation, mostly, as it happens, the more political aspects : veritably a civilisation, notwithstanding what may be pretended to the contrary by the adulators of the Pax Romana and of the Renaissance. Though it was a localised nationality, it was more genuinely and typically European than the Roman civilisation was—I do not argue whether it was better or worse on that account. When I say it was European, I do not mean that it was Indo-European or that it was Nordic. I think it likely that, though the Celtic element which dominated was Indo-European in language and therefore mainly in social tradition, and was largely Nordic in racial composition, the social complex which is commonly spoken of as “ Celtic ” with refer-

ence to Ireland, Britain, and the western parts of the Continent was far from being purely Celtic, and derived much of its character from West-European antecedents. The West-European factor in the development of European civilisation has been left altogether to the archaeologists, but it did not cease to exist by coming under the political domination of men from the east and the north who carried iron weapons. It is time that some champion should come forward to claim justice for the Westerners. So long as Celtophiles and Anglo-philés, Romanomania and Nordomania, with their correlative phobias, hold the field, a vigorous campaign in the cause of Hesperomania should be welcomed as a corrective in the interest of truth and fair play.

While it has been my aim in the present chapters to provide for readers in general a clear if limited view of the Irish social structure, I also trust that students of Irish history will find here a useful introduction and summary. It is a matter of temporary necessity, as general readers and students will alike recognise, that space which in other circumstances would appear excessive in proportion, is taken up here with corrective criticism.

In the *Special Report on Surnames in Ireland*, by Sir Robert E. Matheson, then Registrar General for Ireland, in the second edition published in 1909 by H.M. Stationery Office in Dublin, the proportion of the most numerous surnames in the county of Cavan is given as indicated by the registrations of births for the year 1890 : Reilly, 137 ; Smith (Mac a' Ghobhann, Mac-Gowan), 108 ; Brady, 85 ; Lynch, 51 ; McCabe, 36 ; Clarke, 30 ;

Farrelly, 29; Maguire, 26; Sheridan, 26; Galligan, 20; Fitzpatrick, 19; Dolan, 18; McGovern, 18; Donohoe, 17; Martin, 15; McMahon, 15. Surnames showing smaller numbers are not given. The surnames Maguire and McMahon represent influx from neighbouring regions, probably for the most part later than the sixteenth century. There is no reason to think that among the indigenous surnames, that of O'Reilly or Reilly was more numerous in proportion to the others in 1598 than in 1890, and it is evident that, when Dr. Butler wrote of this county as inhabited by O'Reillys in the sixteenth century, he was providing an additional example of the distortions of historical fact which, under the dominance of a fictitious theory, could usurp the mind of an original and painstaking investigator in Irish history.

## CHAPTER II

### LAWS AND INSTITUTIONS OF IRELAND

1.—*Their European Character.*—The laws and institutions, in fact the whole civilisation of ancient Ireland, have an interest and importance passing far beyond the bounds of Irish history. They may be regarded as peculiarly and typically European. The great civilisations of the Mediterranean are in large part of Oriental origin. In Ireland the Oriental element first makes itself felt in a marked degree by the introduction of Christianity. The popular view of history regards the people of ancient Ireland as peculiarly Celtic. This, in a sense, is true, for the peoples who are designated by the name Celts in history are those who are known to have been Celtic in language. The

term Celtic has no definite racial significance. Ethnological study recognises no Celtic race. The inhabitants of Ireland in the earliest historical period, as later, were of mixed race, one might say racially composite as the people of the United States are to-day. As with their racial so with their cultural connections, Archæology shows intimate relations in pre-historical times between Ireland and the Scandinavian area, the middle and western parts of Europe and the Mediterranean area, especially Spain.

2.—*Insular but not Isolated.*—A glance at the map of Europe shows Ireland on its extreme north-western bounds. This position has led men in various departments of investigation to suppose Ireland in ancient times, both in the racial and the cultural aspects, to have been a very isolated country; the place in which to look for isolated racial and cultural types. We have here a good example of the danger of thinking in one dimension. An extreme geographical position on the map is taken to be the important deciding factor; other factors of equal or greater importance are ignored, especially the factor that movements of population and movements of cultural influence take place with greater facility along the sea coasts and across the narrow seas than over any stretch of continental land.

As Ireland is an island on the extreme north-west of Europe, so in the north-west of Ireland there is a habitable island named Cliara,

called, in English, Clare Island. A scientific survey based upon this island was carried out under the auspices of the Royal Irish Academy in 1912. The writer was requested to deal with that part of the survey which was concerned with the place names and family names. The study of the family names led to the conclusion that in this island alone one-half of the inhabitants derived their origin from remote regions, some from Norway, some from Scotland, some from Wales, and it appeared not unlikely that a large proportion of the remaining half, whose origin was not so easily traced, were no less exogenous.

In like manner it is certain that the population of Ireland, in general, from remote pre-historical times, has originated in various continental areas. But this mixed population, as has been said, until the introduction of Christianity remained largely aloof from Oriental influences.

By a singular fortune, Ireland remained from first to last outside the bounds of Roman imperial rule. Again, when the Western Empire sank under the waves of Barbarian invasion, the migratory hordes left Ireland untouched.

From all this, we see at a glance that the social and political and economic way of life in ancient Ireland while they are not to be considered isolated phenomena, are characteristically and typically European.

Already in the Bronze Age there was an

active commerce between Ireland and the neighbouring European countries. Gold ornaments recognised to be of Irish work reached various parts of the continent from Brittany to Denmark. The chief people of Ireland in that age appear to have been those who were afterwards known by the name Picts.

3.—*The Celtic Influx.*—That Celtic colonization and the introduction of the Iron Age reached Ireland and Britain at the same time was a view put forward by the writer some years ago on historical and archæological grounds. It implies that the Celtic colonization of Ireland as well as of Britain belonged to a relatively late period of the pre-history of both countries. An older theory, associating an early Celtic invasion with the introduction of the Bronze Age, is no longer accepted by leading archæologists.

The Celts, we have seen, were a people of a particular language and tradition, but not of a particular race. Racially they were very largely of what is called the Nordic type. That this was their own tradition has been well shown by Professor Macalister in his work on Celtic Ireland. He quotes personal descriptions from a large range of early Irish literature, and he shows that the dominant population rejoiced in being described as tall and fair complexioned, fair-haired and blue or grey-eyed, in contradistinction to a subject population which

belonged to a dark-haired and dark-complexioned type.

The Celtic tradition is a branch of the Indo-European tradition, not, as in the Mediterranean areas, crossed by powerful Oriental currents. Mixed with it, however, in Ireland, is the tradition of the old West-European populations of whom the most distinctive survival is found in the Basques.

4.—*The Celtic Polity*.—The colonization in Ireland established a number of small states—distinct political communities. The Irish name for such a state is *Tuath*. The central factor in each *Tuath* was the public assembly. At the head of each state was a king. He was the military commander, president of the assembly, the judge in matters of litigation, and possibly also chief priest.

These states were of small territorial extent, so that attendance at the public assembly was convenient to everyone and implied no length of travel or prolonged absence from home. In fact, the rural areas which have a common market centre would represent to-day the same notion of public convenience. In early historical times the number of such states in Ireland varied between 80 and 100, that is to say, the state on an average was about one-third of the size of the modern Irish county.

5.—*The Primitive Quest*.—The Pre-Celtic inhabitants of Ireland were good soldiers, yet skilled in the arts of peace. Some modern

writers have fancied that they can recognize a time, not altogether remote, when the inhabitants of Ireland, as well as of Britain, were pastoral nomads. To find them in that way of life we must go back to the Stone Age, and when we get there we must admit that we know very little about the social habits of the people, and the little we know does not carry evidence of pastoral nomadism. There shall be occasion later to refer to the overpowering effect of the quest after the primitive among modern investigators of antiquity. It is one of the ways of thinking in one dimension and it is a very natural weakness, for the infancy of the human race, if we could recover it, must be as charming to contemplate as the infancy of the human individual. It is not concealed that this natural quest after the primitive receives a powerful stimulus from the evolutionary idea. Taking that standpoint, one consideration is offered to the zealous primitivist. Associated with the earliest traces of mankind, archæologists find the remains of various animals. Some of these animals, for example, the mammoth, are now quite extinct, but other species are still existing, and when they are, they exhibit no evolutionary development whatsoever as compared with their ancestors of paleolithic times. Why, then, should we postulate an appreciable evolutionary development in the human race within the same period? It is true, there has been an immense development in the products

of human skill, and it is thought never in history or before history has that development been more rapid than within living memory. This wonderful modern progress in artifacts, to use a convenient term of the archæologist, we have not found it argued that it betokens or is necessarily associated with a commensurate development of the human intellect or of the moral sense or of the social order. Considerations of the kind may help to warn us against expecting quick results from our passionate quest of the primitive.

6.—*Pre-Celtic Inhabitants*.—The Bronze Age in Ireland—we need not go further back—has left abundant evidence of a settled population, forming organized civil communities, tilling the land, skilled in various crafts, and engaged in commerce with other countries beyond the seas. To the continental Celts, the Pre-Celtic inhabitants of Britain and Ireland were known in common by the name *Pretani*. The Irish equivalent of this name, *Cruithin*, was at one time in common use to designate their descendants, and it enables us to identify this ancient people with the people named Picts in Latin writings. If we call them Picts for convenience, let it not be held to imply any racial uniformity. The racial and linguistic affinities of the Picts remain an unsolved problem. The writer is strongly of the opinion that the Picts belonged to an old West-European stock.

### CHAPTER III

#### SURVIVAL OF PRE-CELTIC INSTITUTIONS

At least three outstanding features of the later Celtic civilisation of Ireland can be traced in all likelihood to a Pictish origin: the status of craftsmen, the status of women, and Druidism. Each of these features operated in time to bring about a fusion between the conquering and dominant Celts and the conquered Pre-Celtic elements, to break down the distinction between a dominant patrician stratum, possessors of the land and the political franchise, and a subject plebeian population. Traditions of Celtic and Pre-Celtic origin were very much alive in later ages, lasting down to modern times, yet no distinction of status based on real or supposed racial origin finds recognition in Irish law. It is quite possible that the ancient jurists were consciously hostile to hereditary class-distinctions, for in one law-tract dealing specifically with the law of status we find the maxim, "A man is better than his birth." In Irish law the skilled craftsman was a freeman *ex officio*, and this tradition of the law has become enshrined in the language: the word *saor*, meaning "free" or "a freeman," means also "a craftsman."

1.—*The Status of Craftsmen*.—To our modern

minds, the admission of craftsmen to the franchise of the ruling or patrician order in virtue of their craft might seem nothing surprising, but in the old Mediterranean civilisation the craftsman was often a chattel slave. It is thought that the explanation as regards Ireland is likely to be that the Celtic invaders obtained territorial control only gradually and slowly. As they obtained control they formed a land-owning, military and patrician class. The fact is enshrined in the name by which they are known in our oldest documents, the name *Feni*: it denotes the land-owning class, but by etymology it means the military class. There is evidence that the struggle for domination of the country between the older rulers and the Celtic invaders lasted well on into the Christian era, probably until about A.D. 250, in some parts later still. In its earlier stages, the Celts are likely to have held no more than a number of seaboard colonies. There it may be supposed they were eager to attract to their service the skilled craftsmen of the older native population by admitting them to their own communities on the basis of freemen.

2.—*The Status of Women.*—The status of women in ancient Irish law, and the social prominence of women in ancient Irish literature, have been found remarkable. This also can be explained through the influence of the older Pictish social order. It is a well-proven fact that, among the Picts, inheritance passed

in the female line. It was a fact so well known to ancient Irish writers that a special legend was invented to account for it. This is one of the indications that the Picts were not of Indo-European stock.

The Pictish custom of succession in the female line and its influence on the status of women are well and prominently exemplified in the ancient sagas of the Ulster Cycle. In these, the little states of Ireland are grouped into five chief kingdoms. Of the chief kings of these five groups three are brothers, sons of one father. Two at least of these three should have succeeded to the kingship, not through their own paternal line, but through marriage into the existing dynasties. That this was so in the case of one of them, the king of Connacht, is made clear in the sagas. How these sagas, written first in the seventh century, give in many respects a faithful reflection of traditions coming from a much earlier time, has been shown by modern research. In the seventh century and later, we find no such law or custom in operation as that which made a man king by reason of his becoming husband of a daughter of the preceding king. Those who told and wrote these sagas, when they told of such a man being king of Connacht, told a thing which their hearers and readers knew not to be possible in their own time, and therefore could tolerate only because it was believed to be in accord with the law and custom of an earlier time.

As for the practical influence of this custom, it is well exemplified in the same sagas and in the same instance. Though Ailill is king of Connacht, his wife, Medb, is the predominant partner—in the sagas she is able to dominate not alone her husband and his kingdom of Connacht, but four-fifths of the whole island. She directs the war and accompanies the armies in their march. She stands out as the chief protagonist of the king of Ulster and his heroes, and the champions who meet these in deadly combat are thrown at them one after another, so to speak, out of her right hand. One version of the *Tain Bo Cuailnge*, and not the oldest one, makes the great climax originate in a dramatic dialogue between this lady and her husband. Ailill begins the dialogue with a remark in which what we may call the Indo-European and the Celtic tradition is stated briefly and pointedly: "The wife of a man of worth is a woman of worth." Medb at once takes up the challenge and undertakes to show that her worth was as great as his before ever she married him and still remains as great, for in Irish law the wife remained mistress of all that she brought into the partnership and all that her ability as manager of the household might have added.

We may therefore say with safety that the favourable status accorded to women in Irish law originated in no small degree in the law and custom of the Pre-Celtic population.

3.—*Druidism of Pre-Celtic Origin.*—Druidism

was the chief distinguishing feature of early Irish civilization, and continued to exercise a dominant influence for centuries after the Druids themselves had passed away. Professor Pokorny, in a paper published by the Smithsonian Institute, was the first to point out that Druidism had not its roots in the Indo-European tradition, and should have originated among the Pre-Celtic inhabitants of Britain and Ireland. This, there is reason to think, was actually the ancient Irish tradition.

4.—*The Druids Were Not Priests.*—The only essay towards a comprehensive study of Druidism that has found publication is the work entitled *The Druids* by T. D. Kendrick, of the British Museum, published in 1927. Replete with valuable information, it falls short of being a full review of the evidence, and its author has allowed too much weight to the anti-druidical polemics of a number of Latin writers. He has succeeded in preparing the ground by clearing away the imaginative rubbish that accumulated during the period of modern romantic literature, except in one respect, and the exception is a very grave one, for it concerns the main character of Druidism. Mr. Kendrick, in common with many other writers and with people of romantic imagination, has allowed himself to be possessed by the notion that the Druids were an ancient Celtic priesthood. Yet in all the ancient evidence which he has so well cited, the Druids are never once said to be priests, never once

pictured as offering sacrifice or performing any other act of divine worship on behalf of the community. On the contrary, there is good and sufficient evidence that they were not priests.

Druidism was not known to exist outside of Ireland, Britain and Transalpine Gaul. There is no trace of it among the Celts of Spain, of Middle Europe, of Northern Italy, or of Asia Minor. If the Druids had been the priests of the ancient Celts, they would have been found among them in all those countries. Moreover, the Celts of Transalpine Gaul had priests who were not Druids, the Gutuatri. Shall we suppose that they had two distinct and separate orders of priesthood, and that ancient writers, including Cæsar, kept silence about it? Cæsar, indeed, is explicit enough. The Celts, he says, employ the Druids in their sacred rites—but in what capacity? Not as priests, *ministri sacrorum*, but as *administri ad sacra*, that is to say, in some external capacity. So one Greek writer tells us that the same Celts do not offer sacrifice without the presence of a Druid; another has it, without a philosopher. No ancient writer would have thought of saying that the Celts employ priests in their worship or do not sacrifice without priests. It is precisely because the Druids were known not to be priests that these things were written of them.

5.—*Geographical Range of Druidism*.—In order, then, to arrive at a true historical view

of Druidism, along with the rest of the imaginative fictions that Mr. Kendrick has so effectually swept away, we must sweep away the remaining fiction that the Druids were a Celtic priesthood. If they had been a Celtic priesthood, we should expect to find them among the Celts of Spain, of Northern Italy, of Middle Europe, and of Asia Minor. There is no trace of them outside of Ireland, Britain and Transalpine Gaul, now France. Moreover, in Gaul, their chief centre was in the territory of the Carnutes; in the middle of that part of Gaul which was nearest to Ireland. Add to this the testimony of Julius Cæsar, based on first-hand information, and among his sources of information we may recognize the Druid Diviciacus, whom he held in high esteem. Cæsar testifies that Druidism originated not anywhere among the Continental Celts, but in a country which he calls Brittainia, and that still in his time the headquarters of Druidical teaching were in that country. The oldest Irish evidence is to the same effect. We have writers of the seventh century, Adamnan and Muirchu and Tirechan, who have much to say about Druids and who must have been in touch with very fresh traditions of Druidism, and who never call the Druids by any name indicating the priestly office and never ascribe to them any priestly function.

6.—*Greek Estimate of Druidism*.—We first hear of the Druids from a number of Greek writers who came to know about them through

the Greek colonists of the western Mediterranean seaboard. Then we have a very concise but very instructive account of them by Julius Cæsar, written from first-hand knowledge. It is noteworthy that in Greek writings, before and after Cæsar, in Cæsar's account, and in the interesting passages in which Cicero tells us of his conversations with the Druid Diviciacus, there is not a word of depreciation, not a suggestion that the Druidical culture, regarded from the Greek or Roman standpoint, was in any respect deserving of censure or contempt. In fact, when we take into account the prevalent attitude of superiority taken up by the Greeks and Italians of that age towards all the other peoples of Europe, whom they classed in common as barbarians, we can only infer that the Druidical culture was such as to command their esteem. One Greek writer indeed, who thought the wearing of trousers could hardly be reconciled with a high degree of civilization, says that he could well believe these Gauls with their legs cased in breeches to be real barbarians were it not that they accepted the Pythagorean and Druidical teaching as regards life after death.

7.—*Roman Hostility*.—When the Roman power became established over Transalpine Gaul, we find a new literary attitude towards Druidism, but only in Roman writers—the Greeks remain respectful as before. Druidism is now marked out as an inhuman form of

religion, associated with the sacrifice of human victims. This charge of inhumanity now raised against the Druids by the literary henchmen of the Cæsars is plainly a piece of imperial hypocrisy. Rome itself, the imperial city, was accustomed to be entertained and filled with pride by gladiatorial shows, and by the spectacle of the most illustrious men of the conquered nations dragged through her streets chained to the cars of her triumphant war-lords, and at the day's end miserably strangled in a prison dedicated to the war-god Mars. The conquest of Transalpine Gaul was achieved by a war the like of which was not seen again in Europe until our time. Plutarch tells that the Gauls defended 800 towns against Cæsar and put 3,000,000 men into the field, of whom 1,000,000 were killed and another million made prisoners and sold into slavery. We need not be asked to believe that the Roman emperors and their literary followers who lived through the reign of Nero were shocked by the inhumanity of Druidism. The fact is that Roman statesmen recognised Druidism to be what would now be called a nationalizing influence, hostile to the denationalizing policy of the Empire, and measures of gradually increasing severity were adopted to suppress it, based on the pretext of humanity. Under Augustus the Druids and their disciples were excluded from citizenship. Under Tiberius, Druidism was made unlawful. Under Claudius it was "wholly abolished." Later Pomponius

Mela describes the Druids still endeavouring to carry on their work of teaching, still attracting to their schools the noblest of the nation, but these schools were in caverns of the earth and in the depths of the forest.

The imperial statesmen had a true instinct. Transalpine Gaul was at that time developing a high and progressive civilization. Druidism, ignoring political boundaries, was creating and organizing a sense of national unity. Its continued influence would have been a danger to the imperial idea. There was nothing easier for the Cæsars, if they wished to be apostles of humanity, than to make human sacrifice by itself unlawful under the most extreme penalties, but their purpose was not to abolish a cruel rite; it was to get rid of the Druids.

8.—*The Scope of Druidical Culture.*—What were the subjects of instruction in the Druidical Schools? According to Cæsar: the future state of the human soul; the stars and their movements, *i.e.*, astronomy; the magnitude—the extent and measurement—of the universe and the lands of the earth; the nature of things—physiology; the force and power—as we would say, the nature—of the immortal gods—theology. As experts in theology, not as priests, they interested themselves in matters of religion, laid down rules for public and private rites, interpreted auguries and the like. They also concerned themselves with history, for Cæsar says that the Gauls, on the

authority of the Druids, held themselves to be descendants of a god (as did many other ancient peoples), and Ammianus says that the Druids distinguished between an indigenous and an immigrant element in the Gaulish population and traced the latter element to an insular and a Transrhenane, *i.e.*, Mid-European, origin.

Pomponius Mela, in whose time the Druidical schools, though proscribed, continued to exist in secret, briefly confirms Cæsar's statement as regards the teaching of physical and theological science. A further confirmation is found in Cicero's treatise on divination. None of these writers, and no other known writings of that age, suggest that the learning of the Druids was backward or over-pretentious or contemptible in any way. This tacit testimony is all the more remarkable in view of the evident hostility towards the Druids and the desire to brand them with barbarity, on the part of the imperial writers, Suetonius, Lucan, Pliny, and Tacitus. Of the learning of the Gallic Druids, one monument alone survives, the Calendar of Coligny. The writer's published account of the Calendar shows it to be of complex structure, based on a calculated relation between the astronomical months and years, but not constructed in imitation of any other known system of chronography.

All this implies that the Druids were the leaders and teachers of a large and progressive culture, and so, in fact, they were. The

Roman conquest of Gaul crushed a young and promising Gallic civilization, as the earlier Roman conquest of Italy had crushed the highly developed civilization of Etruria. The worship of success, the worship of bigness, the worship of the State—we may say in short, the worship of the beast and his image, it is in the spirit of this abasement that the history of the Roman power has been written, and no historian has yet faced the other side of the picture, the amount of steam-rolling of humanity that went to make up the *Pax Romana*.

9.—*The Druids in Relation to Law*.—What has all this to say to the laws and institutions of Ireland? There is another aspect of the Druidical culture that so far has not been touched upon—its relation to laws and institutions. Gaul before Cæsar's conquest was divided into a large number of states, each of which in the modern expression would be described as sovereign and independent, though there was a tendency among them, as amongst the states of ancient Greece, to group into hegemonies, allied groups in each of which some one state held an acknowledged leading place. Not the least remarkable character of Druidism was that it formed a bond of union among all these independent communities.

The Druids of Gaul, we learn from Cæsar, had a common president, elected by vote, and met in annual convention at a fixed time and place. One of the functions of these conventions was to provide an international court

of law for the states of Gaul. "Hither come together from all parts all who have disputes, and they render obedience to the awards and judgments of the Druids." Their acknowledged jurisdiction extended not merely to disputes between individuals, but to disputes between states: "They lay down the law in almost all disputes, public and private (*i.e.*, between peoples or states as well as between private persons), and if any offence is established, if homicide has been committed, if there is a dispute about inheritance or about boundaries, they adjudicate on it and fix the compensation and the penalty. If their decree is not obeyed by any, whether private person or state (*populus*), they interdict from religious rites." And Cæsar goes on to say that their power of interdiction was fully effective, and deprived those who were in contumacy of both *ius* and *honos*, the right to the protection of law and the right to hold public office. We have seen that the general character of Druidism was to be recognized as experts and teachers in the higher branches of knowledge. When we find them acting as Cæsar describes in the application of law, we may infer that they also concerned themselves with the theory and teaching of laws—with jurisprudence. This inference is placed beyond doubt by the known facts regarding ancient Irish law.

10.—*Survival of Druidism in Ireland*.—A round-up and massacre of Druids in the island of Mona or Anglesea by the Roman forces

under Suetonius in A.D. 61 made an end of Druidism in the countries under Roman power. In Ireland, Druidism continued for centuries later, and was transformed, not abolished, by the introduction of Christianity. It cannot be claimed that Irish Druidism continued to exhibit the spirit of acquisitive and progressive learning and culture that characterized the Gallic Druids. On the contrary, it is thought likely that the suppression of Druidism under the Roman Empire had a narrowing and sterilizing effect in Ireland, making the Druids hostile and negative towards things associated with the Roman power.

11.—*The Druids and the Use of Writing.*—When Cæsar says that the Druids avoided the use of writing, he makes it quite clear that this observance was confined to teaching, for he goes on to give alternative explanations for it; the purpose was either to cultivate the memory and ensure remembrance of what was taught, or it was to prevent their doctrine from flowing out among the general public. All this implies that writing was at the command of the Druids if they desired to use it, but much more is implied. If doctrines delivered orally could be kept within a select circle of the learned, whereas doctrines delivered in writing were in danger of becoming common property, it could only be because the art of writing was in general use. That it was in general use among the Gauls in the time of Cæsar, he himself testifies very plainly, for

in contrast to the avoidance of writing in the Druidical schools he goes on at once to say that "they employ writing with the Greek alphabet in almost all their affairs, both public and private."

12.—*The Use of Writing in Gaul.*—The fact thus placed on record by a witness of the highest authority is not to be brought under doubt by reason of the scanty remains of writing in the Gaulish language. When the Gauls submitted to the Roman conquest, they speedily abandoned all their own distinctive culture and adopted the Latin culture instead, not merely adopted it, but excelled in it. Considering that not a single manuscript of Latin dating from the time when the Gaulish language still flourished has been preserved, it is not surprising that very little that was written in Gaulish is known to survive. Nevertheless, enough has survived to bear out the testimony of Cæsar that writing was commonly and widely used by the Transalpine Gauls in their own language, not by a limited circle of the learned, but for various public and private purposes, in religion, in affairs of state, and in the transactions of industry and commerce. Cæsar himself got possession of the written census of the Helvetii, containing 263,000 names of men, women and children—it was drawn up *nominatim*.

The Calendar of Coligny, graven on a bronze table, contained a tabulated ritual programme for five years, month by month, day by day,

over 1,800 days, with a separate line for every day. In the extant remains there are about three-fifths of the whole calendar. In about 1,000 entries, there are fewer than fifty words written in full. The remaining words are written in abbreviations of one, two, three or more letters. This free use of abbreviations implies the greatest familiarity with reading and writing on the part of those who drew up the Calendar and on the part of those for whose use it was drawn up. The language is Gaulish, and my published study of the Calendar shows that it exhibits an elaborate system of chronography, based on astronomical computation, not adopted from any known model, Greek, Roman, or other, and that its arrangement of the months is in accord with the Druidical method described by Pliny. In it we have evidence that the Druids used writing, and used it freely and familiarly, when they found it useful. But the most notable proof of the common and widespread use of writing in Transalpine Gaul is provided by the recently discovered *graffiti* of La Graufesenque.

This place, in Aquitaine, became the seat of a flourishing ceramic industry, which, a century or so after the Roman conquest of Gaul, supplied earthenware to the Roman armies in various parts of Western Europe, in Britain, along the Rhine, and in Spain—we know this from finds of pottery marked with the names of makers whom the *graffiti* show to have carried on their industry at La

Graufesenque. Besides these master potters, who directed the manufacture, there seem to have been a number of agents or contractors, who distributed the orders for the required pottery among the makers and collected and forwarded the goods to their destination. The *graffiti* contain lists of different kinds of pottery goods—cups, bowls, dishes, jars, ink bottles, etc.—the number of each kind required, the liquid measure of each kind, and the names of the makers by whom the orders were supplied. These lists are found scraped on fragments of pottery—about 40 have been found—which seem to have been thrown away when they had served their purpose. We may, therefore, conjecture that they were transcribed from the books of the contractor and given to a dispatch clerk for the purpose of collecting the goods. In one instance the clerk appears to have amused himself by scribbling a couple of verses. The language of the *graffiti* is Gaulish. Taken with the Helvetian census and the Coligny Calendar they exemplify the truth of Cæsar's evidence that the Gauls used writing in almost all their affairs, both public and private.

13.—*Meillet Misunderstands*.—If these are solid facts of history, they appear to be almost unknown, therefore almost without significance, to the learned world of our time. We might expect that, if anywhere, they should be known and appreciated in France. But in France, not less than in any other country, the history of the Roman Empire, written throughout the

ages in a one-sided spirit of adulation, appears to pass for the whole truth. In philological science no name among our contemporaries stands higher than the name of Meillet. The following passages are taken from a recent work of his, *Esquisse d'une Histoire de la Langue Latine* :

"The countries of Celtic and Germanic language, even in part those of Slavonic language, were civilised only by nourishing themselves from Latin."<sup>1</sup>

"The Gauls almost wholly avoided writing and what has survived of Gaulish is of small account."<sup>2</sup>

"As a matter of choice (*de parti pris*), they ignored the use of writing which, in the time of Caesar, the Druids continued not to employ. Inhabiting a territory which bordered on several Greek colonies, and having come down into Italy where everybody already wrote (*où tout le monde écrivait déjà*), the Gauls hardly wrote at all : Gaulish inscriptions are rarities and in general have no official character (*elles n'ont en général rien d'officiel*)."<sup>3</sup>

The last phrase is a curious revelation of the domination of cultured minds by the fact and idea of the Roman state. But what is M. Meillet thinking of when he says that every-

<sup>1</sup>Meillet, *Esquisse d'une Histoire de la Langue Latine* (1928), II.

<sup>2</sup>*Ibid.* 17.

<sup>3</sup>*Ibid.* 77.

body used writing in Italy at the time of the Gallic immigrations? As for what he says of the Gauls and their Druids, with special reference to Cæsar, it is to be feared that, as in the case of many a less brilliant intellect, the early stages of his learning must have suffered from such a concentrated diet of Cæsar as to leave only disagreeable impressions and a fixed reluctance to return to that source of nourishment. It remains to be said that a German professor of distinction has recently been accusing M. Meillet of *Keltomanie*.

14.—*Invention of the Ogham Alphabet*.—The Irish Druids, on the other hand, appear to have avoided the use of the Roman alphabet. No inscriptions in Greek or Roman characters have been found in Ireland of earlier date than the introduction of Christianity. But they were acquainted with the Roman alphabet and they devised an elaborate cipher, the Ogham alphabet, to take its place. Except for inscriptions and other statements of like brevity, this alphabet was not suitable and beyond this its known and its traditional use did not go. The fact that it was based on the Roman alphabet and that the Roman alphabet itself was avoided, the writer takes to be evidence that the Roman ban against Druidism evoked hostility on the part of Druidism against the apparatus of Roman civilisation.

15.—*Survival of Druidism in Christian Ireland*.—The adoption of Christianity did not abolish Druidism, but rather transformed it.

Except as regards religion, everything that Cæsar tells about Druidism in Gaul is found reflected in the learning of early Christian Ireland; schools to which the youth of the country flock in great numbers; teachers held in high honour; a class of professional men of learning, who form a common society in disregard of the division of the country into numerous separate political communities; this learned class exempt from military service; instruction given orally and in verse, and spread over a long course of years. The title of Druid was abandoned; it came to mean merely a magician and is translated in Latin by *magus*. For it is substituted the term *Fili*, usually translated "poet," but originally meaning "seer." The isolated Druidism of Ireland developed a pedantic spirit which has ever since been characteristic in greater or less degree of Irish learning and culture. You will find it well exemplified in the glosses and commentaries that accompany the ancient Irish law tracts.

16.—*Jurists were Originally Druids.*—The Irish jurists of the early Christian period held in direct succession to the Druids. This might be inferred from the historical facts that have been indicated, but it was also their own tradition. The legend of their transformation is told in the introduction to *Senchus Mor*, and will be found in the first volume of the *Ancient Laws of Ireland*. At Patrick's request a convention for all Ireland was held under the high-

king Loiguire, in order to bring the laws of Ireland into harmony with Christianity. "The fili Dubhthach was ordered to expound the jurisprudence and the science of the Filidh and all the laws that prevailed among the men of Ireland in the form of the natural law and the law of the seers and the judgments of the island of Ireland and the law of the Filidh. The judgments of the true natural law which the Holy Spirit had spoken through the mouths of the jurists and the faithful Filidh of the men of Ireland from the first occupation of the island down to the coming of the Faith, all these Dubhthach exhibited to Patrick." Another legend traces the origin of Irish jurisprudence to Amorgen, the first Druid of the Gaelic race in Ireland.

17.—*Cultural Background of Irish Laws.*—We see now how great has been the error of those modern investigators, beginning with Sir Henry Maine, who have approached the study of the ancient laws of Ireland under the impression that the Irish law tracts, when they emerged into writing in the seventh century, should present, as it were, a kind of phonographic record of primitive customary law. Irish law, when it emerged into writing, came forth not from the customs of the countryside or the practice of popular assemblies, but from schools of law and from a long tradition of teaching under a class of men who claimed to be and were recognised to be the authentic expositors of all high knowledge.

## CHAPTER IV

## THE BEGINNING OF WRITTEN IRISH LAWS

1.—*The Story of Cenn Faelad*.—Adamnan, in his *Life of St. Columba*, speaks of an event of his own time—the battle of Moira, in connection with a warning given by the Saint to his friend Aidan, king of Dalriada. A successor of Aidan, Domnall Brecc, in disregard of the warning, made war on the king of Ireland and was defeated in this battle in the year 637. The event became famous, and it is the subject of a great saga. A youth named Cenn Faelad, grandson of a former king of Ireland, was wounded in the battle, and in the sequel he, too, became famous. Here is his story as it has come down to us.

After the battle Cenn Faelad was taken for the cure of his wound to the monastery of Tuaim Recon, for the Abbot of this monastery was reputed to be a skilful surgeon. In Tuaim Recon there were three schools—a Latin school attached to the monastery, a school of *filidecht* or Irish learning in general, and a school of Irish law. Cenn Faelad attended the three schools and became a learned man—he is the only layman, so far as has been observed, to whom Irish tradition accorded the

title *Sapiens*. The main interest of the story is in his achievement as a student of Irish law. All that he learned by day in the school of law, he wrote down by night, writing it first on slates and waxen tablets and afterwards copying it into books.

2.—*The Implication of the Story*.—Those who related this story in later times no longer understood its original significance. They imagined that the main point of it was the feat of memory, and to explain this they told that the young man's wound required a surgical operation on the skull, and that in the course of the operation he had his "brain of forgetting" removed, and so became able to remember and record all that he had heard. But the real point in the original story was that in an Irish school of law, in the first half of the seventh century, instruction was purely oral and the laws themselves remained unwritten. Moreover, it is evident that when this story was first told, the writing of doctrines of Irish law by Cenn Faelad was surreptitious and that it was an innovation—what he learned by day he wrote by night. In the Latin schools reading and writing were matters of course, and the young warrior took advantage of the Latin school to acquire the art of writing. Cenn Faelad was no legendary person. His death is recorded by the annals in 679. He wrote a number of poems on events of Irish history. He undertook another daring innovation, a work on the grammar of the Irish language.

The little of his work that has remained cannot be called a marvel of philology, yet the undertaking itself was a noteworthy one, for if we except Latin and Greek, about a thousand years passed before any other European language was felt to require grammatical explanation.

3.—*Beginnings of Written Irish Literature.*—In applying writing to the record of Irish law, it is possible that Cenn Faelad was only one of a school of innovators, but the evidence of his story is corroborated by other evidence in so far as it indicates the first half of the seventh century as the time in which literature of various kinds in the Irish language began to be written. The story reflects historical reality in so far as it shows that Irish law came into writing not as a record of purely customary usage but as the subject of a learned tradition already ancient.

4.—*Modern a Priori Misconception.*—If certain modern investigators had been able to recognise that Irish law in its earliest recorded form had the historical background, a sketch of which has been attempted above, we may charitably assume that they would not have come to Irish law as to a happy hunting ground for primitive big game. The fashion was set by Sir Henry Maine, but his example in the candid confession of disappointment has not been universally followed. Sir Henry Maine took up the first published volumes of the *Ancient Laws of Ireland*, expecting to find in them

evidence of a primitive custom of tribal communism, and the result of his inquiry was the finding, which may be allowed both to amuse and to enlighten us, that the ancient Irish jurists, all of them, "seem to have a bias towards private as distinguished from collective property." Here at all events we find recognition of the juristic factor in the shaping of Irish law. But notwithstanding all the importance that has been shown to belong to Druidism, one shrinks from imagining the Druids at the height of their authority, much less the jurists who succeeded them, undertaking to supplant the prevalent conservative custom of collective ownership, by inventing and imposing a revolutionary and radical doctrine of private property.

5.—*The Commission of 1852.*—In 1852 the British Government appointed Commissioners for the transcription, translation and publication of the ancient laws of Ireland. The Commissioners, not being themselves in any degree experts either in historical jurisprudence or in the language of the Irish laws, employed O'Donovan and O'Curry to make the transcripts and translations. The transcripts made by these men amount to about 5,400 pages of manuscript. They also prepared preliminary English translations of almost all this material. But neither of them lived to revise or complete their work before it could be printed. Their task was enormous. The least part of it was the scribal labour of writing 10,000 pages or

more. They had to render into English a mass of material written in the ancient forms of Irish from the seventh to the seventeenth century and not in the common literary usage of any period, but in a highly technical diction. To determine the meanings of technical words and phrases they had no help but a number of ancient glossaries which were then still unprinted. Neither O'Curry nor O'Donovan had any philological training, and their knowledge of the old and middle Irish of the law tracts was based on a good knowledge of modern Irish supplemented by an extensive and intensive reading of older writings, mostly unprinted.

6.—*Merits and Demerits of the Commission's Work.*—When the facts and circumstances are borne in mind, we must admit that the "preliminary translations" are a great and admirable work. Those who have recourse to the published volumes should be careful to recognise that the English version of the texts consists throughout of these preliminary translations. None of the editors, except Atkinson, who edited the fifth volume and prepared the glossary which forms the sixth and last volume, had any competency to revise or criticise the work of the first translators. In fact, there was no editing in any proper sense of either text or translation, and the editorial contributions consist mainly of speculative essays, the chief value of which is to exemplify how not to do it.

The translations are gravely defective. It

was impossible to understand or explain writings, the chief of which were in the oldest form of written Irish, without the aid of modern philology. The foundations of the philological study of the Irish language had just been laid by Zeuss, whose *Grammatica Celtica* was published in the year following the institution of the Commission for the *Ancient Laws of Ireland*. The vocabulary and phraseology of the Irish law-texts are highly technical and peculiar, so that even a philological expert in old and middle Irish must make a special study of the language of these texts to be able to understand and explain them. The translators could not recognise the technical exactitude of the originals and did not seek to reproduce it. Their knowledge and their imagination did not rise to the conception of a system and form of law largely different from the English law under which they and their forefathers for generations had lived. So these preliminary translations contain very many errors, and some of the errors are based on fundamental misconceptions and have given support to fundamental misinterpretations.

7.—*Irish Law National not Local.*—When we regard the ancient laws of Ireland taken together, their most noteworthy aspect is, as Kuno Meyer pointed out, that they are the laws of Ireland. In all the texts that have been published or studied, the principles and provisions of law that are stated are equally applicable in every part of Ireland, and laws

of localised application find no place among them. This is all the more remarkable because, when Irish law prevailed, the country was divided into a number of small states, each state complete in itself, each having its own complete legislative, judicial and executive machinery. Moreover, the laws, as we find them, fully and explicitly recognise the existence of such states, and their theory throughout is that, while they are equally applicable everywhere in Ireland, they are carried into effect by the authority and through the action of each state separately. Where the need arose for common action between states in the application of law, that is to say, when the parties belonged to different states, special means were provided in the general law for joint action, judicial and executive.

8.—*Explanation of its National Character.*—It might be imagined that this institution, a common system of law operating through a number of quite distinct political communities, should have originated in an earlier condition of political unity. All the evidence is to the contrary. In short, the reason why there was a system and body of laws common to all Ireland was because the jurists, the expert and recognised custodians and exponents of law, formed a common society for the whole of Ireland, and their right to do so was not questioned. Here we see reflected clearly in Ireland, from the seventh to the seventeenth century, the position achieved by the Druids in Trans-

alpine Gaul, described by Cæsar in the first century B.C. It has already been shown that the jurists knew themselves to be the successors to the Druids, whom they held in such reverence as to declare that the justice of their jurisprudence was inspired by the Spirit of God. The proof is more complete. The Druids were not jurists only, but experts in all the higher branches of knowledge. So, in Irish history from the earliest recorded times down to the dethronement of Irish nationality in the seventeenth century, not only the jurists but all the other men of learning in like manner regarded themselves and were regarded by the people as belonging to all Ireland in common.

## CHAPTER V

### THE POLITICAL FRAMEWORK OF ANCIENT IRELAND

1.—*Early Political Groupings in Ireland.*—For the right understanding of Irish history as regards laws and institutions, as in other respects, the first thing necessary is to clear the ground of weeds. The fact has already been stated that ancient Ireland was divided into a number of distinct states. These always tended to form associated groups under the leadership of one state in the group, and the

groups tended to form larger groups. A firm tradition points to a time, about the beginning of the Christian era, when Ireland consisted of five main groups of states, each of which in the ancient writings is called a "*coiced*," which means a fifth part. Though the fivefold division or grouping had already disappeared before our oldest written records, the word *coiced* remained, and still remains to commemorate the fact. For example, the province of Ulster is known in Irish as *Cuig' Uladh*, which means the fifth of the *Ulaidh*. Of the single states which formed the groups, smaller and larger, the number varied in different periods. In general, their number may be estimated between 80 and 100. Those who have some detailed knowledge of Irish topography will grasp the fact more easily if we say that a modern Irish county, on the average, would be equal in extent to two or three of the ancient Irish states.

2.—*Imaginary Tribal Basis of Irish States.*—The notion has sprung up in quite modern times and among those who have approached Irish history from an English standpoint, that these small Irish states were what are called tribal communities. This notion has been popularised in Ireland, and the popular formula for it is "the clan system." To be brief about this theory or notion of tribal organisation or clan system, it is all moonshine. Partly it has grown out of Sir Walter Scott's poems and novels, partly out of the ardent quest

after the primitive, partly out of the sub-conscious idea that the old tragedy of English rule in Ireland is to be justified in some degree by depreciating the native Irish civilisation. Support for the erroneous notion is found in the old Irish custom of naming a territory by the name of the sept whose chiefs held rule in it. Connacht is an instance, it really means the sept whose ancestor was Conn, and it originally denoted a dynastic family, but the name is given to the entire region, one of the ancient Fiftths of Ireland, over which the kings of that sept held rule. The custom came down to relatively late times. In the thirteenth century, Ricard de Burgh was aided by the viceroy Maurice FitzGerald in invading Connacht and making himself feudal lord of the greater part of it, and a particular region over which his descendants held rule came to be called Clann Ricaird, Clanrickard. Maurice FitzGerald left some of his posterity in another part of Connacht, which is still called Clann Mhuiris, Clanmorris. We cannot infer from these names that the country called Clanrickard was ever inhabited mainly by De Burghs or Burkes, or that the country named Clanmorris was ever peopled with FitzGeralds, and the same applies in earlier periods wherever we find territories named in this way.

We are not concerned now with the theory that all human society passed through a primitive tribal organisation into the stage of political organisation not based on kinship. No reason

is seen for assuming an identity of process throughout the human race. Vinogradoff rather has in view a primitive political community formed by a grouping or alliance of different clans or kindreds, though he confuses the description by giving such an associated group the name "tribe," which, it is believed, is commonly understood to mean a grouping based on kinship only. At all events, the historical political community in ancient Ireland was not a tribe or clan.

3.—*The Tuath and its Franchise*.—The specific name for it in the laws is "*tuath*," and no indication has been found in the law tracts that the jurists imagined the *tuath* to be formed on a basis of kinship actual or fictitious. We find a maxim which implies the contrary: "A man is better than his birth (or kindred)," meaning that a man can acquire free status, or can rise in the grades of status, no matter how humble is his origin. Let us consider who they were who held the franchise or citizenship in an Irish state. First, there were those who had property in land—a numerous class. Secondly, there were all men of learning, which was classed as Latin learning and Irish learning. The men of Latin learning comprised the clergy of all grades and the teachers and pupils of Latin schools: "There is no Latin learning without franchise." The men of Irish learning comprised jurists and professional men of letters. Thirdly, there were men of the liberal crafts, enumerated thus: House-

builders, builders of ships and boats, and of mills, wood-carvers, chariot-makers, turners, leather-workers, fishermen, smiths and metal-workers, and some others; among musicians, harpers only.

Excluded from franchise were persons who had no property or possessions: The tenant class of occupiers of land; craftsmen of inferior grade; strangers to the *tuath*; and persons who lost their franchise by defying the laws. Within the *tuath* there were nobles who had political authority over smaller communities, and even these were not the heads of clans. A freeman became the subject of a ruling noble by a definite form of contract, which could be legally discharged and which in any case was terminated by the death of either party. The jurists, however, held that such a contract should preferably be between kinsmen. There was a clear preference for the hereditary nexus. The *novus homo*, the man who sought to enter a higher grade of status, to which his father and grandfather had not both belonged, was required to have qualifications in double measure. There was a prevalent belief in hereditary aptitude, and nearly every profession tended to run in families. As Dr. J. C. Kenney has seen, one reason for the tendency of professions and avocations to become hereditary was their endowment with estates in land. The sentiment sometimes called clannishness was very strong, particularly towards kinsmen, and the ruling

families had great opportunities of aggrandising themselves. How they used these opportunities is told very forcibly by a strong partisan of their order after its fall, one of their hereditary historians, Dubhaltach Mac Fir Bhisigh.

4.—*Law National in Scope, Local in Operation*.—Were it not for Julius Cæsar, his power of grasping the significant facts, and the brief yet lucid account that he has left us of Gallic Druidism, it would be hard to understand or explain that remarkable character of ancient Irish law—how it was in theory and in fact the law of the whole Irish nation, yet it operated normally, not through any common national authority, judicial or executive, but through the judicial and executive organs of each of the numerous little states of which the nation was composed. This twofold character of Irish law is expressly recognised in the ancient texts. It is exemplified in a formula frequent in the Heptads, *e.g.*: “There are seven gifts in a *Tuath* which are most insecure in the custom of the Feni.” Here the basis of the law is the custom of the freemen of all Ireland, but the operation of the law is within a single *tuath*.

5.—*Structure of the Tuath*.—Let us see what was the form and character of these little states. Their number seems to vary from period to period, but if we estimate eighty of them in the whole of Ireland, we shall not err to the extent of forming a deceptive view of their size. This would mean that the average territory of

an Irish state would contain about 400 square miles. The average population of each state is not easy to estimate, but we may put it at about 25,000. The political structure of these small states was naturally of the simplest kind. Political power belonged to the body of freemen, and was exercised through the assembly of freemen. Their chief man who presided over the assembly of freemen had the title of king. This office was partly hereditary, partly elective. A candidate to be legally eligible should be the son, grandson or great-grandson of a man who had already held the office, and when the kingship became vacant, the election was made from among the persons thus qualified.

6.—*Succession of Kingship*.—This combination of the elective with the hereditary principle was not a constitutional device. It was a logical application of the Irish law of inheritance, under which a man's heirs were a family group, the descendants of one great-grandfather. Moreover, it had a tendency to bring trouble. It tended to divide the royal kin into opposing factions, favouring the claims of this or that person, and to invite external interference. The feuds within the ruling kindreds and the advantage taken of their rivalries by ambitious outsiders are in every page of history.

7.—*Functions of Kingship*.—The chief functions of a king of a *tuath* were three: He was president of the assembly, commander of the forces in war, and judge in the public

court. In other words, he was the chief executive, judicial and military officer of the state. Notwithstanding this concentration of authority in one person, the kings were far from being autocrats. There were no standing military forces, no professional soldiers. Organised permanent bodies of fighting men, the *Fiana*, existed for a short period in the third and fourth centuries. Their formation was probably inspired by the example of the Roman legions, and supported by the plunder of Roman provinces, Britain and Gaul, during the decay and disorders of the Empire. When that period passed, the abnormal institution of standing military forces and the military profession passed likewise, only to be remembered and commemorated in the epic tradition of the *Fiana*. A professional and permanent soldiery under Irish kings did not reappear in history until the close of the thirteenth century, when the Hebrides and Argyle, no longer subject to Norway, began to pour men into Ireland, to do military duty for pay and lands, the "Gall-glasses." Before this time military service in Ireland was rendered by the men of the ordinary civil population, called out from their ordinary civil occupations when there was military duty to be done. The long resistance to the Norse invasions and the later resistance to the Anglo-Norman invasion were sustained altogether by such temporary civilian levies. In the Irish law tracts, where almost every profession and occupation is explicitly recog-

nised, the military profession finds no place. A ruler who depended for military power on the muster of his free people was not likely to encroach on their liberty.

The public function most regularly and frequently exercised by a king was the function of judge. The king as judge is all over Irish literature, from the earliest writings on St. Patrick in the seventh century down to the biography of the last Irish king, Aodh Ruadh O Domhnaill, in the seventeenth century. Yet it has been my fate to have to bring this outstanding fact to the notice of persons professing to write Irish history; persons, too, who show themselves no strangers to the contents of that literature as published. The *a priori* theory prevails, in much writing about Irish history, over the facts and the evidence.

8.—*Rural Character of the Tuath*.—So much is centred in town life in our times that those who have been brought up to it must exercise some force of imagination if they would recover a view of the old Irish form of state, the *tuath*. It is likely to have preserved or to have originated in a form once common, if not to the Indo-Europeans, at all events to their western group, the Germano-Celto-Italic group. Some of the old Italic languages akin to Latin had the same word which becomes *tuath* in Irish, with the same meaning, *civitas*, the complete political community. From the same original have come the common appellations Teutonic and Deutsch. We find the ancient Greeks

organised like the Irish in small political communities, but these under the influence of the older Mediterranean civilisations and commercial life are based in each case on a walled town. The Irish state remained a rural city, a city of the fields. Its chief occupation was agriculture, and all its magnates were agriculturists. The Irish law tracts may be said to revel in the details of agricultural industry.

## CHAPTER VI

### PUBLIC ASSEMBLIES AND KINGSHIP

The members of such a community, occupied with their daily and domestic concerns, became an organic unit when they met in their public assembly. The assembly was the chief organ and manifestation of their common life. The people rejoiced in their assemblies. When their poets and writers pictured the happiness of a life after death, the scene became an assembly. An ancient heathen tale tells how a woman of the other world came to Connla, son of Conn of the Hundred Battles, and carried him away. We are told how another prince was privileged to visit the other world, and there found Connla in the assembly of his fathers. The celebrated vision of Adamnan pictures in detail the Christian Heaven as

an assembly where the King of Kings presides. Matthew Arnold has given celebrity in English to the verses composed in memory of the poet-monk, Oingus Cele De :

“ Oingus in the assembly of Heaven,  
here are his tomb and his bed,  
here he passed away from sight  
on the Friday to holy Heaven.  
Here in Clonenagh he was reared,  
in Clonenagh he was buried,  
in Clonenagh of many crosses  
he began to chant his psalms.”

To have a voice in the assembly of his *tuath* was the characteristic right of every freeman. The old legal word *conn*, which means a freeman means also a head. The Latin word *caput*, a head, also means franchise. The freemen were those whose heads were counted. The right of freemen to take part in the assembly was probably the chief factor in determining the average territorial extent of the state. The territory was of such a size that a man might attend the assembly without becoming a wayfarer and a stranger.

1.—*Functions of the Assembly.*—The chief political power of the free community was exercised in and by the assembly. In it kings were elected and deposed, agreements and disagreements with external states were decided, lawsuits were heard, taxes imposed, laws enacted. Among the normal powers exercised was that of adopting an agreement with a neigh-

bouring state to establish a common jurisdiction between them. An ancient law tract on the subject of such agreements is known by name (*Bretha Cairde*) and by a number of references, but the tract itself does not appear to survive. Numerous references to the operation of joint judicature between states are found in the laws. We learn that the agreement was negotiated in the first instance between the kings of the two states and then submitted to their assemblies for ratification, that it held good for a year and required to be renewed in successive assemblies.

2.—*Hegemonies*.—There was a natural tendency, from various motives, for the states to group together under hegemonies, and these again under larger hegemonies which custom made permanent. An immemorial tradition divided Ireland into five principal hegemonies, the Five-Fifths of Ireland, still familiar in the tradition of Irish speech. In the time of the oldest documents and for centuries later, the ancient Pentarchy is replaced by a Heptarchy. We have in the *Book of Rights*, drawn up about the year 900 and revised about a century later, a detailed account of the Heptarchy and the states composing each section of it. These larger groups of states, when they became permanent, had their joint assemblies, held, of course, on a much larger and more imposing scale than the assemblies of the individual states. We are fortunate in possessing a fairly full description of one such major assem-

bly—Oenach Carman—held for all the states of Leinster under the presidency of the superior king of Leinster. It met once in every three years, and each assembly lasted for seven days. The place of assembly in this as in other instances, probably at one time in all instances, was the precinct of an ancient heathen cemetery. The time was in the beginning of August, the old heathen festival of Lughnasad. The first day, Sunday, was given to religious rites, the rites of Christian worship having taken the place of some earlier heathen celebration. It is thought likely that the priestly function on such occasions originally belonged to the presiding king—that the king, as he was president, and judge and military chief, was also the priest of his people. It is certainly noteworthy that the oldest documents, some of them written while the memories of heathenism must have been vivid, point to no distinct order of priests, and that no Irish word denoting the priestly function is known to have existed. Possibly the view suggested may have a bearing on a statement found in both of the documents that we have from the pen of St. Patrick. In evidence of God's favour, St. Patrick proclaims in both documents that he has succeeded in converting the sons of the Scots and the daughters of their kings. If he had succeeded in converting the kings themselves, it could have been still stronger evidence and more likely to be proclaimed.

The assembly of freemen was anciently an

assembly of spearmen, the right to carry arms and the duty of defence being, it is supposed, an element of every ancient franchise. The freemen of Leinster came armed to the assembly. When they arrived their arms were laid aside and stored while the assembly lasted, for it was a time of peace and any breach of peace during the assembly was a grievous crime. When the assembly ended, the freemen again took up their arms. Then they raised three great shouts and set off on the homeward march.

3.—*The Assembly of Carman*.—The account of the Assembly of Carman is contained in a poem written in the eleventh century. Since people do not always associate poetry with historical truth, we have to bear in mind that we are still in the Druidical tradition. The Druids gave their teaching, or parts of it, through "a great number of verses." Almost every kind of learning in ancient Ireland was presented in the form of verse. We have pedigrees in verse, church calendars in verse, numerous historical discourses in verse, a geography of the world in verse. The poem in question belongs to this didactic kind. Moreover, as it happens, this particular poem has a remarkable achievement to its credit. Some 25 or 30 years ago the distinguished Italian archæologist, Boni, was in Ireland. He was engaged at the time in investigating the antiquity of the Roman Forum, and it appeared to him that some light on the origin of the

Forum might be obtained from Irish records and traditions. The result is told in a brochure written and published by Sir Horace Plunkett, who was Boni's host during his visit. When Boni inquired about the history of Irish places of assembly, his attention was directed to this poem. The poem showed that the place of assembly was associated with a prehistoric cemetery and that funeral games continued to be a chief feature of the assembly down to the time of the poem. Boni inferred that the Forum should have had a similar origin. He returned to Rome, resumed his investigations, and discovered the remains of the ancient cemetery beneath the historic assembly place of the Roman people. It is submitted, therefore, that the poet's evidence may be taken.

"Hearken! Leinstermen of the monuments,  
host ruling Raigne of hallowed rights,  
till ye get from me, gathered on every hand,  
the fair legend of Carmun high in fame.

"Carmun, site of a hospitable fair,  
with level sward for horse-races,  
the multitude that used to come to hold it  
contended in its brilliant courses.

"A burial-ground of kings is its noble cemetery,  
the great delight of hosts of freemen;  
under the mounds of assembly many rest  
of its original ever-honoured people.

"To mourn the death of queens and kings,  
to lament revenges and illdeeds,  
came many a fair-haired throng in autumn  
over the noble smooth cheek of ancient Car-  
mun."

Then the poet tells the legend of the lady Carmun who died there and was buried "among the oaks of the straight graves," and how the first assembly was held in her honour. Then he tells of the long line of kings, Heathen and Christian, who presided. The Heathens of Ireland, he says, kept good order in the celebration.

"The Heathen of the Irish held  
often enough to be greatly vaunted  
an assembly free from tribute and from guilt,  
free from deeds of violence and foulness.

"Ye people of Christ's baptism, take note,  
hearken to it, for it is certain,  
all the more do ye earn a curse  
who transgress despite Christ and His Chris-  
tianity.

"The kings and saints of Ireland,  
Patrick and Crimthann<sup>1</sup> at their head,  
have banned every battle here,  
they have blessed the assembly."

In this way an institution which had undoubtedly been clothed with a strong religious character in Heathen times is commended to the piety and reverence of Christian people.

<sup>1</sup>Crimthann was the first Christian king of Leinster.

The poet voices the popular mind, for the first day of the assembly was set apart for religious rites—it is named the Assembly of the Saints.

4.—*Political and Cultural Features*.—Each succeeding day has its special funeral games, commemorating in order the kings of Leinster, the women of Leinster, the tributary states, the men of royal kindreds, the freemen in general. These games, which included horse-racing, formed the ceremonial framework. The public business is the next theme:

"There they discussed and debated  
the rights and taxes of the province:  
every legal enactment right piously,  
every third year it was settled."

All occasion of strife was forbidden, even to the initiation or execution of legal claims. For flouting the presiding king's authority the penalty was death. There was music to please and buffooneries to divert the throng:

"Trumpets, harps, hollow-throated horns,  
pipers, timpanists, unwearied,  
pipes, fiddlers, gleemen,  
bone-players and bagpipers,  
a crowd hideous, noisy, profane,  
shriekers and shouters."

The men of learning paid their tribute from the store of national tradition, and the poet tells us what themes could please:

- "The tales of Finn and the Fiana,  
sackings, forays, courtships,  
tablets inscribed in Ogham,  
satires, keen riddles.  
Proverbs, maxims of might,  
the truthful teachings of Fithal,  
dark lays of the Dinnsenchas,  
the teachings of Cairbre and Cormac.
- "The great feast of Tara and the other feasts,  
the assembly of Emain and the other assemblies,  
the annals of Ireland,  
the subdivisions of Ireland.
- "The tale of Tara's estate,  
the knowledge of every cantred in Ireland,  
the History of the women of Ireland,  
armies, combats, hostels, spells, captures.
- "Death-tales, slaughters, musical compositions,  
synchronisms, the pedigree of the king,  
his battles and his hardy valour.
- "They all raise up their efforts  
to the king of the seething Barrow,  
the noble king pays by measure  
for each art its due reward.
- "Three busy markets on the ground,  
a market of food, a market of live stock,  
the great market of the Greek strangers  
wherein is gold and fine raiment."

The last statement is taken to mean that Irish gold was exchanged for Eastern silks.

5.—*The National Assembly*.—The assembly described in this poem represents one of the large permanent groups of states—the provinces, as they are commonly called in modern English writings. At the head of all these groups was the high-kingship, an office and dignity which was not so much politically operative as expressive and symbolic of the sense of national unity. Notwithstanding the undefined and almost intangible powers of the king of Ireland, the primacy attached to his office was a valid historical fact from the third to the twelfth century, except in the half-century following the battle of Clontarf (1014), during which the high-kingship was in abeyance. Associated with it was the national assembly held annually at Tailte in the valley of the Boyne. When, during the height of the Norse aggression, it was found impossible to convene this assembly in the year 873, a contemporary chronicler notes that such a failure to hold it was a thing unheard of from the most ancient times.

6.—*Grades of Kings*.—It is thus seen that there were four grades of kings: the king of a single state, the king of a major state holding hegemony among a small group of states, the king of a larger group of states (what is called a province—in Irish the old traditional designation is preserved, "king of a Fifth"), and the king of all Ireland. The smaller groups were impermanent, depending on the vigour and the fortunes of local dynasties. The larger groups

over the greater part of Ireland were permanent. There is a full dated record of the succession of kings over Leinster, Munster and Connacht, from the fifth to the twelfth century. In the remaining quarter of Ireland, north of Dublin and east of the Shannon, containing four of the seven main groups, the grouping varies from century to century.

We can trace clearly in the Irish law tracts an older tradition which regards hegemonies and the subordination of kings to higher kings and of individual states to provincial headships as extra-legal and as matters of political transience, and recognises only one grade of king and one form of political community and jurisdiction, the *tuath*. Nevertheless rigid adherence to this theory would have brought the national law into conflict with actual facts and well-established and accepted customs, and we can see the older theory of the jurists adapting itself to the historical facts and giving express recognition to the grading and subordination of kings and states, and further making practical application of these realities. The adaptation of ancient theory to contemporary fact is made evident by variety of treatment.

7.—*Later Evidence*.—We learn much from one particular tract which was not included in the officially published volumes, but which was printed without translation or explanation by Kuno Meyer in the first volume of *Eriu*.<sup>2</sup>

<sup>2</sup>Kuno Meyer, *Eriu* I, 214.

It occupies less than two octavo pages, and yet is a document of exceptional value and importance. To begin with, it shows and warns us that we cannot depend on the material previously published for a full and adequate conception of ancient Irish law, even in its main features and fundamentals, and it suggests that this branch of European history demands the publication and study of every page of the laws of Ireland that still remains unprinted in manuscript. It was this brief tract that showed me the first clear light on the structure of the Irish joint family and the Irish law of inheritance and succession. It helps to crystallise a body of evidence which, there is good reason to think, involves a complete recasting of certain theories of historical jurisprudence and ancient social organisation shaped by a succession of writers from Sir Henry Maine to Sir Paul Vinogradoff. At present our concern is with what it tells us about the executive function of kings of different grades in giving effect to the processes of law.

8.—*Kings as Executive Officers at Law*.—The tract supposes a case of homicide, and supposes the facts not to be in dispute. The legal kin of the deceased have lost a man and are entitled to be paid his life-price, his honour-price, and compensation for any other losses incidental to his injuries and death. The purpose of the tract is to show in what proportions the sum of these payments is to be divided among the members of the legal kin,

and so incidentally we have a description and a definition of the family group such as has not been found in all the material previously published. The tract further supposes that the deceased man and his legal kin belong to one *tuath*, the party liable belongs to another *tuath*. It makes this supposition in order to provide a comprehensive statement, under which the simpler case would be regulated where both parties came under the same primary jurisdiction. The text further supposes that the conjoint jurisdiction known as *cairde*, which has already been mentioned, has not been established between the two states.

In these circumstances, the king of the state whose man has been killed resorts to the king next in rank above him—the ascending grades are named—and takes from him a hostage, thereby engaging the superior king to execute the claim. In case the superior king is not in authority over the state of the other party, there must be further resort to a king of higher grade, until a common authority is found, who in the last resort will be the king of Ireland. Whichsoever of these has the proper authority then forms an armed force, which enters the territory of the defendant party's state and levies there chattels sufficient to meet the entire claim, including the costs of this operation. It is presumed that redress has been refused and is still refused on the part of the defendant party and of the state to which he belongs. By the analogy of another

tract, which deals with litigation between persons under one primary jurisdiction, we may infer that demand is made and opportunity offered to the defendant party to satisfy the claim beforehand and to avoid the cost of a forcible seizure. Other texts imply that in such a case the state became answerable, and levy could be made on its chattels at large, leaving the apportionment of liability to be fixed, no doubt by rule of law, as between the defendant party and his own state. The text contemplates a very substantial seizure, which would normally be of the cow kind, already equipped with the means of sufficiently rapid transport. The apportionment of the amount levied is regulated in detail. One-seventh is paid to the hostage aforesaid. Of the remaining six-sevenths, one-third is paid to the king by whose authority the levy has been made, another third goes to requite all intermediate authorities between this king and the claimant kin, and the remainder, two-sevenths of the total, goes to the claimant kin and is divided in regulated shares among its members. Certain variations of the apportionment are explained, but these need not detain our attention.

In two ways, therefore, laws could be made operative between persons living under separate jurisdictions, by the adoption of "*cairde*," and by employing the authority of a superior king. This power and duty of a superior king in inter-territorial cases is developed

from a similar power and duty vested in an ordinary king in regard to his own territory. The law tracts generally regard the law as operative without calling in the power of the state, but they do not ignore the possibility of lawless resistance or contumacy. To refusal of law and right they attach the consequence of loss of status. "The man who resists a king's government," which means in the administration of law, not in arbitrary exercise of power, becomes an outlaw, and to afford him food or shelter involves liability. The habitual law-breaker is made a dangerous criminal. We read in a poem of counsels to a king :

"Every offender who is not restrained (by law),  
Every deliberate habitual law-breaker,  
From gyves to the dungeon,  
From the dungeon to the gallows."

To those who are not familiar with the hostile strictures passed upon Irish law, some of them centuries old, others in quite recent writings, it might seem as if the statement of things which might be expected to exist under any system of law and government is laboured. The wide range of the principles of compensation in Irish law offended the fine legal sense of ardent feudalists, who hanged men for petty theft and burned women on charges of witchcraft : they reproached Irish law with "compounding felony," and said that for that

reason it was "a law which was no law." In our own time, writers professing to have a knowledge of Irish law and the literature bearing on it, but who have contrived to turn a blind eye to both, have furbished up the old partisan cries in the language of modern jurisprudence : Irish jurists regarded breaches of law only as offences against particular rights, never as offences against the public order ; Irish law did not distinguish between crimes and torts ; or, if it did, according to one distinguished authority, it made a mistake and was merely adopting the principles of English law some centuries before their time ; Irish law had no sanctions, but depended for its effectiveness on the pressure of public opinion through some kind of boycott or social ostracism.

9. *Complex Structure of the Tuath.*—The *tuath* was not a simple homogeneous aggregation of freemen superimposed on an unfree population. There was a certain amount of complexity in its structure, bearing a certain outward resemblance to the feudal organization with its degrees of lordship and vassalage. It is possible that the resemblance is not merely accidental, but goes back to a common ancestry. It is suggested that the feudal system had roots in an ancient Celto-Germanic custom which was preserved and developed in the Irish *tuath* : let us say a Germano-Celto-Italic custom, for just as we can trace the name of the *tuath* among the Italic peoples,

so it seems permissible to trace a common origin for certain features of the politico-social organization in ancient Rome and in ancient Ireland. The analogy was observed and recorded centuries ago by a remarkable man in a remarkable way, and his testimony was recognised in our time by D'Arbois de Jubainville.

To the writer it has often been thought unfortunate that one of the first Latin textbooks to be placed in the hands of beginners, as it was in his school days, was Cæsar's *De Bello Gallico*. Our struggles with these first texts, and our efforts to give our teachers a maximum impression of our achievements, leave us rather cold towards the authors themselves and the merit and interest of their writings, and when we are through with it, we hope in our youthful heart of hearts that we are done for ever with "*Eo cum venisset*." Julius Cæsar was a man of might with a mind of might. His powers of observation and insight were exceptional, and his power of compact description was in full accord.

10.—*Cæsar's Evidence*.—The first episode in the account of the Gallic war is full of instruction for the student of Celtic antiquity. It came to Cæsar's knowledge that the Helvetii, occupying the modern Switzerland, being hard pressed on their frontiers by the Germans, with whom they had daily battles, were preparing to migrate in a mass and to seek a new territory in the already well-peopled regions

of Gaul. If this migration were carried out, its effects would be incalculable, but one result was certain, it would bring the Germans close to the borders of the Roman province. The migration was actually begun when Cæsar first commanded and then compelled the Helvetii to return to their own country. One of the most noteworthy incidents of the story is that the retreating Helvetii left behind them in Cæsar's hands a document which he thus describes: "In the camp of the Helvetii, tables were found drawn up in Greek letters and were brought to Cæsar, in which tables an account was drawn up name by name, enumerating those who had left their homes, who were capable of bearing arms, and also separately the children, the old men, and the women. Of all these, the total sum was 263,000 heads of the Helvetii." The incident and details are full of significance, but we must pass from them.

The chief promoter of this plan of migration was a noble of the Helvetii named Orgetorix, and he was put in charge of the scheme. Before it came to a head, an accusation was brought against Orgetorix of seeking to become autocrat. (We wonder what thoughts were passing in Cæsar's mind as he recorded this. The Helvetii, like all the other Gallic states at this time and like the Roman people, were a republic. In view of certain pet theories about Celtic society in relation to the state and the administration of law, I follow Cæsar's words as

closely as possible in telling the sequel). The magistrates of the Helvetii, according to custom (it was no exceptional procedure), required Orgetorix to submit to trial under arrest (*ex vinculis causam dicere*). If he were found guilty, the penalty was to be death by burning. On the day appointed for the trial, Orgetorix assembled from all sides and brought with him to the tribunal all those in his service, to the number of 10,000 men, and all his clients and debtors, of whom he had a great number, and by their means he saved himself from being brought to trial. While the state, roused by this event, endeavoured to enforce its law, and the magistrates collected a multitude of men from the lands, Orgetorix died: not without a suspicion, as the Helvetii think, that he contrived his own death.

## CHAPTER VII

### CLIENTSHIP

This narrative is commended to the attention of those who write or read that the ancient Celts had no conception of the state, no curial procedure, no distinction between crimes and torts, no penal enforcement of judicial decrees. At present, it is desired to concentrate attention on a single phrase in Cæsar's account. Besides his *familia*, his

slaves, and probably his serfs, Orgetorix brought with him to overawe the tribunal and the magistrates all his clients and debtors, of whom he had a great number. We note that Cæsar uses here a word which conveyed a very definite meaning to Roman readers, the word *clientes*. But debtors! Why should he gather up his debtors, of whom he had a great number, and why should his debtors flock to his assistance to enable him to defy the law of the state? The explanation was seen many years ago by D'Arbois de Jubainville. It is found in the Irish law of "*celsine*," clientship. By an idiom frequent in Latin, Cæsar uses the two terms, *clientes* and *obæratī*—clients and debtors—the more fully to describe one class of persons, who were both clients and in a peculiar sense debtors. As regards the corresponding class in ancient Ireland, we are fortunate in having a minute account preserved in the law tracts.

1.—*Irish Evidence*.—We are less fortunate in the published official translation. There the misuse of a single term has caused the whole order of things connected with it to be fundamentally misunderstood. The translators were born and lived under the shadow of a land law that dominated Ireland and everything in Ireland in their time, a law that represented feudalism carried to the last extreme. They could only think of land laws in the terms of the Anglo-Irish landlord system. There is an interesting passage in

the Irish laws which explains the procedure when the king of a *tuath* was a party in litigation. The king could not be both litigant and judge. Another person had to sue or to be sued in his place and to assume his claims and liabilities. The technical name of this attorney-general of a king was *aithech forthu*, which means a client or debtor, or client-debtor, of sub-security. The translators cast about in the terminology of their own experience for something that might appear to correspond, and gave this functionary the amusing designation of "steward-bailiff." But that is only a detail. A much more serious error of the same kind was committed in the rendering of the term *cele* by "tenant." By this word the Anglo-Irish agrarian system (since then abolished) was carried back from the nineteenth to the seventh century. With D'Arbois de Jubainville we can identify the *cele* of Irish law with the debtor-client known in Gaul to Cæsar. Thurneysen, in a revised edition of one of the tracts, was the first to recognise in print that the *cele* of Irish law was a freeholder, a landowner, and not a tenant. The correlative of *cele* is *flaith*, and in relation to the *cele* the *flaith* was political chief, not landlord. The Roman analogue, as Cæsar implies, was the *patronus* in relation to the client.

2.—*Relations of Client and Patron.*—The law tracts tell us clearly enough how this relation was established. A freeman of the

landed class acquires surplus wealth in live stock. "The surplus of his stock, his cattle, his swine, his sheep, which his own land cannot carry, and which he cannot sell for more land, which he does not need himself, he gives to acquire clients." The clients so acquired become his debtors, bound to pay him a substantial interest on the stock which he advances them, and to repay the principal. The term *cele*, which in the technical meaning is peculiar to the laws, has a synonym in general use, *aithech*, meaning literally one who repays; *cele* ordinarily means companion.

The first important fact to be noted with regard to the relation between the two parties, the *flaith*, that is, the patron or lord, and the *cele* or client, is that this relation in every instance was established by a formal contract made by them with each other. The act is invariably described in the laws by the legal term which means a contract, *cor*, and so frequent and usual were such contracts that when we find this term used and no other kind of contract specified or clearly implied, it usually refers to the contract of clientship. A second character was that the relation so established was terminable at will. The terms upon which the client could separate from the patron are expressly stated: they assume that the patron suffers a loss and is entitled to a measure of compensation. It appears to be presumed that the patron never desires to separate from the client—the reason

doubtless being that his own legal status depended in part on the number of his clients. Further, the relation automatically came to an end by the death of either party. It was a personal relation and had no force as regards their heirs or successors. Finally, the contract could be impugned and annulled by the legal kin of the client, if its terms could be shown to be detrimental to them.

3.—*Two Kinds of Client.*—There were two quite distinct kinds of client, distinguished by names which literally mean free companion and unfree companion, *soerchele* and *doerchele*. They were so distinct that the law in regard to them is stated in two separate chapters with distinguishing titles. It has been said in some modern writings that the conditions of payment or render to the lord were more onerous for the so-called "unfree tenant" than for the so-called "free tenant"—it is repeated here that "tenancy" did not enter at all into the relation in either case. From a detailed reckoning it appears that the scale of payment was much lighter for the so-called unfree than for the free client. The contrary statement is merely a superficial inference from the distinctive names. Let us consider first the case of the free client. The agreement and contract having been made, the lord advanced to the client a certain amount of capital, ordinarily in the form of live-stock. The amount was not variable at will, but was fixed in relation to the status of the client.

If, for example, he was of the grade of *boaire*, the amount was 12 cows or their equivalent. The technical name of capital advanced in this way was *rath*, which means grace or favour. The client was bound to render interest on this loan at the rate of one unit *per annum* for every three advanced,  $33\frac{1}{3}\%$ .

The unfree client paid interest to the lord at the rate of one unit for every 12 advanced,  $8\frac{1}{3}\%$ , but he was also bound to render a supply of food which is estimated to be about equal to the render of interest. In addition to receiving capital like the free client, the unfree client received his honour-price, the legal valuation of his franchise. In fact, he made a sale of his franchise to the lord while the contract lasted, and ceased for the time being to be a freeman, his franchise and all rights and duties pertaining to it being vested in the lord and exercised on his behalf by the lord.

4.—*Client Services.*—In addition to such renders in kind, quite improperly described as "food-rents," clients were bound to render various services and reliefs. Their honorific name, companions, doubtless has reference to the duty of forming the company of the lord on certain public occasions, especially when he attended an assembly or was called out on military service. Their chief service was the supply of agricultural labourers to do his work in seed-time and harvest-time. This service, even in the earliest texts, has a signi-

ficant name, *manchuine*, which primarily meant monastic service. One of the effects of monasticism was an increase and improvement of agriculture to meet the requirements of large communities. The early law tracts were plainly written in an environment of developing agriculture. They have much to say about the subdivision, enclosure, fencing, etc., of tillage land, and the name given to the service of agricultural labour seems to indicate that the example and stimulus came from the monasteries. Mr. Benedict Fitzpatrick's book, *Ireland and the Foundations of Europe*, touches upon the similar economic influence of the Irish monastic communities on the Continent.

5.—*Roman Analogies*.—It is, we trust, sufficiently clear why Cæsar used a word meaning debtor to describe the followers of Orgetorix other than his *familia* or bondmen. He also calls them *clientes*. What this designation conveyed to his readers may be learned from books of reference. The following is quoted here from the brief account of the Roman *clientes* given in Smith's *Smaller Dictionary of Antiquities* :

"In the earliest times of the Roman state, we find a class of persons called *clientes*, who must not be confounded with the plebeians, from whom they were distinct. The *clientes* were not slaves; they had property of their own and freedom, and appear to have had votes in the *commitia*

*centuriata*, but they did not possess the full rights of the Roman citizens; and the peculiarity of their condition consisted in every client being in a state of dependence upon or subjection to some patrician, who was called his *patronus*, and to whom he owed certain rights and duties. . . . The relative rights and duties of the patrons and the *clientes* were, according to Dionysius, as follows : The patron was the legal adviser of the client; he was the client's guardian and protector, as he was the guardian and protector of his own children; he maintained the client's suit when he was wrong, and defended him when another complained of being wronged by him; in a word, the patron was the guardian of the client's interests, both private and public. The client contributed to the marriage portion of the patron's daughter, if the patron was poor; and to his ransom or that of his children, if they were taken prisoners; he paid the costs and damages of a suit which the patron lost, and of any penalty of which he was condemned; he bore a part of the patron's expenses incurred by his discharging public duties or filling the honourable places in the state. Neither party could accuse the other, or give his vote against the other. This relation between patron and client subsisted for many generations, and resembled in all respects the relationship by blood."

There is hardly a clause in this description which has not either its exact parallel or its analogue in the rules of Irish law regulating the relations between *flaith* and *cele*. The last sentence, stating that the relation in Roman custom subsisted for generations, is on the surface an exception, since in Irish law the relation was based on a terminable contract. But the law tracts more than once lay stress on the propriety of adhering to a previous family connexion rather than going outside of it in contracts of clientship. To follow out the comparison in all its details would be to produce a special treatise. The outstanding benefit which the Roman clientship secured was the protection of legal interests. In Irish law, the lord or patron, we read, "protects the rights of his clients as regards breaches of law, justice, legislation, inter-territorial jurisdiction, and whatever injures his good name." The Irish noble, like the Roman patrician, was expected to know the practice of the law. "He is well grounded," says the jurist, "in the law of the joint family, and of the *tuath*, and of lordship, and of the church, and of government, and of inter-territorial jurisdiction."

6.—*Advantages of Clientship*.—To the client the chief advantage of his clientship was legal assistance and the protection of his interests by a man of high standing in the state. The capital advanced to him was plainly regarded as a bond rather than a boon. Thus the law

provides that the advance is binding if it is not promptly repudiated, and we read in the commentaries that no man can refuse to receive capital from the king of his *tuath*. To the lord or patron there were advantages beyond a very profitable investment of surplus wealth. By acquiring a sufficient number of clients, he could pass from the normal status of freeman to the higher zone of ruling noble, and by increasing the number he could rise from a lower grade of ruling noble to a higher grade.

If this institution, in some ancient form, was common to the Celtic and Italic peoples, it is almost certain to have existed also among the Germanic peoples, and the inquiry is raised if it were not the root out of which feudalism degenerated.

If we wish to understand the ancient world or any part, we must begin by guarding ourselves against interpreting the facts through modern abstract theories. In the modern democratic idea, all citizens are equally free; there is the same freedom for the rich and the poor, for the weak and the strong. In the ancient world we can find a similar theoretical view of liberty, but the practical view amounted to this, that the degree of liberty which anybody possessed was measured by his power to do things or get things done. The weaker man or the poorer man had not the slightest doubt that he could increase his practical liberty by diminishing his theoretical

liberty, by acquiring the protection, on terms, of a stronger or a richer man. The Irish system safeguarded the liberty of the citizen by making the relation contractual and terminable. The feudal system, on the contrary, made the relation a matter of permanent status, binding all future generations. Its most effective inroad on liberty was its combination of the idea of property with the idea of political direction. When a man became a vassal, he became a tenant; he surrendered the superior ownership of his land to the person whom he took for lord, and to that person's heirs to the end of time.

It is clear from various evidences that clientship was the normal condition of land-owning freemen in Ireland. The landed freemen were thus organised in groups under the headship of nobles. Ten clients formed the minimum group which gave the status of *flaith* or ruling noble to its head. The highest grade of ruling noble had forty clients or upwards. This grouping amounted in effect to a rudimentary representative system in the direction of public affairs. The public assembly was not so much a meeting of individual freemen as a convention of small associations of freemen, each group acting as a unit through its chief.

7.—*A King's Clients*.—There was a body of clients attached to the king of a *tuath*, and these, beyond doubt, were drawn from the principal nobles of the territory. They formed

collectively the *airecht*, the *curia regis*, a kind of senate, and, no doubt, historically identical with the body which Cæsar calls the senate in the case of the republican states of Gaul. It was unlawful to refuse to become free client to the king—and this was equivalent to a constitutional provision by which the king could require any noble of the *tuath* to become a member of his court and attend it. The court combined two functions. It was a social gathering and it was the ordinary judicial tribunal of the territory. When the court was a court of law, even though the king himself were learned in the law, he had associated with him his official judge, an expert jurist, as legal assessor and adviser.

## CHAPTER VIII

### THE PERIOD OF DECAY

#### EARLY INFLUENCES FROM FEUDALISM

There are signs of the influence of feudalism in Ireland before the feudal invasion. The spread of feudal institutions over a large part of Europe is one of the most noteworthy things in history. The traditional institutions of a people are not easily changed, but in this case a new form of politico-social organization was able to establish itself in

face of and instead of long-established older forms among a variety of peoples, in France, Spain and Italy, which had been thoroughly adapted to the Roman order, and in all the Germanic countries, including Scandinavia, which had remained outside of the Roman order. As regards Celtic countries, we can trace the Irish kingdom of Scotland becoming feudalised from the time of Malcolm Ceannmhor, contemporary with William the Conqueror. In Wales, the so-called laws of Howel Dha, purporting to date from the tenth century, but likely to have been recast in the twelfth century, show William the Conqueror's system adopted by the ruler of Wales—all land in Wales is declared to be "held of" the king of Wales.

No such doctrine appears in Irish law, even after the feudal invasion, but there are things recorded in the annals and otherwise which may well betoken the influx of feudal ideas. There is an evident tendency towards a centralized autocracy on the part of the chief kings, and there are various instances of their active interference in local affairs and the assumption of powers which normally belonged to the local assemblies. The high kingship fell into abeyance for about half a century after the battle of Clontarf in 1014. It was revived in the year 1070 or thereabouts by Toirdelbach O'Briain. One of the earliest acts of his reign was to force a king of his own kin, Conchobhar O'Briain, on the petty

state of Tulach Og. This state belonged to the North-Western group, with the king of Ailech at its head, and its own dynastic kindred was a branch of the superior dynastic kindred of Ailech. The new king was a complete outsider from a distant part of the country, and his intrusion violated the law of succession and over-rode the elective power of the local assembly. If the experiment had succeeded, it would no doubt have been widely repeated, and would have led towards feudalism. It was defeated by a revolt of the people in Tulach Og.

A later king of Ireland, Toirdelbach O Conchobhair, renewed the experiment. He appointed one of his sons king over the Norse-Irish kingdom of Dublin. Again there was a revolt, the intruder was driven out. His father did not venture to reinstate him, but did not abandon the policy. He found another kingdom in Meath for the young prince. This also was an intrusion. Once more there was a revolt, and the intruding king was killed. The high king sent a punitive expedition, and the annalist says that his vengeance on the men of Meath was like the Day of Judgment, but we hear no more of this kind of experiment. In the same line of policy, but in a less lawless manner, the same high king dealt with Munster. He himself was king of Connacht, and he had secured the kingship of Ireland against the rivalry of the Munster kings of Brian's line. The group

kingdom of Munster had existed from time immemorial. Toirdelbach undertook to break its power, and succeeded by dividing it into two group kingdoms, north and south. This division held until the invasion of Munster by the Normans.

These are outstanding examples. There is much more on record that points in the same direction, towards a centralizing autocracy. The sentiments of potentates are naturally reflected in the writings of poets who looked to kings for rewards, and we have a number of poems of this period in which the major kings are encouraged to rule with a high hand, and in particular to exercise control over the *tuatha*. The spread of feudalism is mainly to be explained by its appeal to the self-interest of rulers. The persistence of Irish law for centuries after feudalism had been widely established in Ireland is without parallel in other countries, and the reason is to be found in the rooted position of Irish law in the national culture.

1.—*Introduction of Feudal Institutions.*—Feudalism gradually established a new order among the wreckage of the Roman Empire, but it would be no mark of respect for the intelligence of an educated public to ask them to accept seriously the pretence that Henry of Anjou, his son John and their filibustering barons introduced the reign of law into a lawless and anarchical Ireland. We may read in the Anglo-Saxon Chronicle what sort of

law and order prevailed in their own country at the time in which these men were brought up. In various histories we find described the character and conduct, as regards law, peace, and good government, of Henry, his sons, and their noble adherents. Bearing the facts in mind, we wonder what miracle transformed these men into apostles of law and order when they crossed the Irish Sea. When the records of Irish and English history are examined, we learn that the real miracle is the transformation of the historical rod into the unhistorical snake.

In 1155, Pope Adrian IV, an Englishman, granted the feudal lordship of Ireland to his friend, Henry the Second. In making this grant, Adrian asserted his own feudal sovereignty over Ireland. In that time, outside of Ireland, feudalism passed in Western Europe for a part of the natural order, and feudal law was thought to hold good not only for all countries, but for all times. The basis of Adrian's lordship over Ireland was the fabulous Donation of Constantine. The Roman emperors were imagined to have been supreme feudal lords of the whole earth, and Constantine was held to have granted to the Bishops of Rome the feudal lordship of all the islands of the ocean. There can be no doubt that Henry accepted this grant as valid. We have for that the testimony of John of Salisbury who acted as intermediary. "Pope Adrian," he writes, "at

my prayer granted Ireland to Henry as an inheritance, as his letter to this day testifies, and also sent by me a golden ring adorned with an emerald for the purpose of investiture, and this is still ordered to be kept in the State archives."

In face of this and other testimonies, the evidence of the grant is not at all dependent on the *Laudabiliter* controversy, which has been going on for more than three centuries. The act by which the grant was made was the act of investiture, the giving and taking of the emerald set in a golden ring, and the Pope's letter, as John of Salisbury recognizes, was merely corroborative evidence.

2.—*Legal Aspect of the Anglo-Norman Invasion.*—Though this grant, in fact and from the standpoint of Irish law, was null and void, it was not so for Adrian and Henry, who not only acted under feudal law, but believed beyond doubt in its validity. The legal position created for them by the grant was this, that Henry, as lord of Ireland, became the Pope's vassal, and that those who held rule in Ireland became Henry's vassals.

For reasons that may be recognized, the grant appears to have been kept secret until the opportunity came for acting on it. Eleven years passed before the opportunity came. In 1166, acting under Henry's authority the Earl of Pembroke undertook to restore the exiled Diarmuid to his kingdom of

Leinster, Diarmuid having agreed to become Henry's vassal. After a certain amount of fighting, in which the chief incidents were the captures of the Norse cities of Wexford, Waterford and Dublin, and the defeat of an attempt to retake Dublin, Diarmuid was effectually restored. It should be borne in mind that after Diarmuid's restoration there was no war of conquest, and that the war up to that point was not on behalf of Henry's claim to be lord of Ireland. It is necessary to be clear on this point, for Giraldus Cambrensis, in whose time these things were done, and who could have had no doubt about the legal aspect of the transactions, laboured to create the impression that Henry acquired the lordship of Ireland by conquest. If that had been true, Henry, according to the ideas of his time, would be lawfully entitled to dispose of the conquered land at his pleasure.

Diarmuid died in 1171. His ally, the Earl of Pembroke, commonly called Strongbow, had providently married a daughter of Diarmuid, and now claimed that she was her father's sole heiress, and that he, as her husband, was in feudal law the rightful successor to the lordship of Leinster. The claim had no validity in Irish law, but it was confirmed by Henry, who made haste to come to Ireland.

3.—*The Plantagenet Lordship was not Based on Conquest.*—Henry fought no battle in Ireland. He made no pretence of an armed conquest and the title which Giraldus

Cambrensis gave to his history of the events, *Hibernia Expugnata*, was a title with a purpose. On the contrary, Henry received the peaceful submission of the kings of the greater part of Ireland, and accepted them as his vassals, assuring them of his protection, as even Giraldus testifies. The only outstanders of importance were Ruaidhri, king of Connacht, who claimed to be king of all Ireland, and the kings of Western Ulster. In their case, Henry was content to bide his time, and he made no attempt either to enforce their submission or to claim default and forfeiture. Henry returned to England in 1172, and in the same year he obtained a confirmation or renewal of Pope Adrian's grant from Pope Alexander III, who also addressed a letter to the kings and princes of Ireland, commending them for having received Henry as king of their own free will, that is, without any conquest.

4.—*Illegal Policy of Henry II.*—Henry was now at the pinnacle of his power and fortune. Up to this point, his main proceedings in regard to Ireland were at least formally legal from the feudal standpoint. From this onward he threw legality to the winds, and good faith along with it, and his principal agents in Ireland followed his example. In the new lordship of Leinster, the Irish princes who had done homage to Henry were dispossessed and the lands ruled by them granted to new adventurers without any pretence of legal

forfeiture or escheatment. The same process was extended to every part of Ireland where it could be enforced and to many parts where it could not be enforced.

Professor Curtis, in his *History of Mediæval Ireland*, says: "Henry had not won Ireland by the sword. 'There was scarcely anyone of rank or name in the island,' says Giraldus, exaggerating the numbers indeed, 'who did not in person or otherwise, pay to the king the homage due from a liegeman to his lord.' He makes the submission a legal and constitutional one by saying that the princes of Ireland voluntarily submitted to the king of England, doing him fealty and taking oaths of allegiance. . . . Finally, papal authority completes and confirms Henry's title. Thus, either the Irish kings were feudal vassals in the sense that the Scottish king was for a time vassal of the English one, or else the whole Irish people by free contract had been secured in the same rights as the people of England. But, in fact, Ireland was treated as an annexed, conquered, and therefore rightless country, and this was immediately shown when Henry, before leaving Ireland, granted 'the land of Meath, as fully as Murchard Hua Melachlin or any before him had held it,' to Hugh de Lacy, though he (Henry) had but lately received the homage of the reigning O'Melachlin." Only a few weeks separated the two transactions. De Lacy, thus rewarded, had accompanied Henry

to Ireland, and was left by him Justiciar—that is, viceroy—of Ireland and Governor of Dublin. "This," Professor Curtis goes on to say, "was more than a mere feudal grant. It was the giving away of a kingdom, a matter of handing over nearly a million acres of the richest land in Europe to a subject, with the rights of a native 'Ri' and full feudal regalities all at the petty service of fifty knights. The rights of O'Melachlin were extinguished, and the evil precedent was successively followed in Ulidia, Oriel, Connacht, Desmond, and portions again of these." It was not merely the rights of the provincial king that were thus lawlessly extinguished, but the rights of his subordinate kings and nobles and of the entire freeholding population.

5.—*Henry's Illegalities Repeated by His Grantees.*—From this time, Henry's fortunes were on the decline, and De Lacy was called away from Ireland to uphold him against his rebellious sons. When De Lacy returned to Ireland he proceeded to carry out what Dr. Orpen sonorously calls the "subinfeudation of Meath," which means subjecting the freemen of Meath to the same lawless treatment to which Henry had subjected their king. It seems somewhat of a reflection on De Lacy's fellow-adventurers to say, as Orpen says, that De Lacy was no filibuster. When is a filibuster not a filibuster? When his filibustering is done on the grand scale, and when it is successful. The Irish chronicle

known as the Annals of Tigernach was written year by year in the celebrated monastery of Clonmacnois. In the year 1178, De Lacy made a filibustering raid on Clonmacnois, and the chronicle came to an end. Tighearnan O Ruairc, king of Breifne, had rival claims to the overlordship of Meath. He was invited to a conference by De Lacy and murdered. The monastery of Durrow, founded by St. Columba, was turned by De Lacy into a fortress, but while De Lacy was one day superintending this item of civilization, an Irishman rushed upon him and ended his career with a stroke of a battle-axe.

Giraldus qualifies his eulogy of Henry by the admission that from the time his sons turned against him, Henry ceased to have any regard for even the most solemn treaty obligations. The rebellion of his sons began in 1173, the year following the grant of Meath. In that same year, Henry sent the Archbishop of Rouen and the Bishop of Lisieux to Louis, king of France, offering to make Louis umpire in the quarrel with his sons. The reply of Louis, reported by the envoys, is on record, and may be compared with the statement of Giraldus. "Louis," they write to Henry, "spoke of your character with freedom and asperity. He said that he had been too often the dupe of your artifice and hypocrisy, that you had repeatedly, and on the slightest pretence, violated your most sacred engagements and that after the experience which he had

had of your duplicity, he had determined nevermore to put faith in your promises."

6.—*The Treaty of Windsor*.—Not long after Henry had received this testimonial, he set about making another of his most sacred engagements. The Treaty of Windsor between Henry and Ruaidhri, former king of Ireland, was concluded in October, 1175. By this treaty, Ruaidhri acknowledged Henry's overlordship and abandoned his own claim to authority over Leinster, Meath and a small part of Munster near Waterford. Henry acknowledged Ruaidhri's authority over the rest of Ireland, about three-fifths of the whole, subject to a tribute in the form of a tax on hides, and undertook to maintain Ruaidhri in this position, with the specific assistance, if required, of Henry's Constable or chief military officer.

Henry's manner of observing this treaty fully justifies the opinion formed of him by the king of France. The recorded facts indicate that he planned without delay a systematic violation of the treaty as opportunity might be furnished. He made a grant of all Ulster to John de Courcy and of Munster to a group of barons. Though no record of a grant of Connacht at this time has been preserved, the attempt made by Henry's agents to seize that province points to such a grant also having been made. His plan to tear up the Treaty of Windsor began to operate with the appointment of FitzAudelin

as Viceroy, about a year after the treaty was concluded. Giraldus, who is significantly silent about the treaty, shows that four men were sent on a particular commission with FitzAudelin, but the purpose of this commission he leaves to be revealed by the course of events. One of the commissioners was De Cogan, appointed Constable of Dublin, whose duty under the treaty was to assist Ruaidhri in maintaining his authority over Ulster, Connacht and Munster. De Courcy was another commissioner. There was no delay. With a force provided by FitzAudelin and De Cogan, De Courcy made a sudden raid into Ulster and captured Downpatrick, ousting the local king, who was an accepted liegeman of Henry. This exploit was a violation both of feudal law and of the recently concluded treaty. A few months later a similar invasion of Connacht was attempted, but it was ignominiously defeated. Its failure led to the recall of FitzAudelin who, we may suspect, was to have been rewarded with Connacht for his portion. Henry did not abandon his design. At the Council of Oxford, a year and a half after the agreement with Ruaidhri, he conferred the lordship of Ireland on his son John, who was not in rebellion, being only ten years of age; he renewed the grant of Meath to De Lacy; he granted southern Munster to two of the commissioners—the Constable de Cogan and FitzStephen, thus condoning and rewarding the invasion of Ulster and the

attempted invasion of Connacht; and he granted northern Munster to Philip de Braose. These Munster grants were in violation of the treaty and of the rights of Henry's liegemen, the kings of Munster.

7.—*John Continued his Father's Policy.*—In 1185, John, aged 17 or 18—visited his lordship of Ireland. Then and later he continued the lawless and faithless policy of his father, even so far as to earn the disapproval of Giraldus who accompanied him. "Our own Irishmen," Giraldus writes, "who from the first coming of FitzStephen and the Earl had been faithful, now had their lands taken away and given to Norman courtiers." One of those who accompanied John was the founder of a great Irish family, William de Burgo. There is evidence that William about this time received a secret grant of the kingdom of Connacht. By every art of war and intrigue at his disposal, he kept Connacht in turmoil for twenty years, but failed to obtain a foothold in it. Ruaidhri was succeeded as king of Connacht by his brother Cathal, and during a long reign Cathal was able to defeat every attempt to deprive him of his kingdom or of any part of it.

The tradition established by Henry and continued by John is still in evidence under John's son, Henry III. In 1215, the year of Magna Charta, John appeared to recognise Cathal's right by a new grant of the kingdom of Connacht. In his ideas of keeping law and keeping faith, John was his father's son. He made a simultaneous grant of Connacht to

Richard, son of William de Burgo. In Knox's *History of the County of Mayo* we find the gratuitous assertion that "the grant to Richard was to provide for failure of Cathal to accept his grant in accordance with agreement." Unfortunately for this attempt to whitewash a piece of lawless duplicity, the grant to Richard records the fact, kept secret otherwise, that William his father, then ten years dead, had previously obtained a grant of "all the land of Connacht" from the same John.

8.—*How Judicial Procedure Commenced.*—Cathal died in 1224, and was succeeded by his son Aedh. Henry III was then king of England. In 1226 Geoffrey de Marisco was appointed Justiciar or viceroy of Ireland, and the orders made for his guidance included an instruction to summon "Oethus, son of Kathal, late king of Connacht, to be before the Justiciar at the king's court, to surrender the land of Connacht, which he ought no longer to hold on account of his father's and his own forfeiture," and a further instruction to put Richard de Burgo in possession of the land of Connacht with the exception of five cantreds to be retained for the king of England. This patent travesty of judicial procedure, half a century later than the Treaty of Windsor, is the first instance that the writer has been able to find of any pretence to provide legal grounds for the dispossession of an Irish lord.

9.—*Evil Consequences.*—Such was Ireland's introduction to law and order under Feudalism. The facts do not exemplify mere arbitrary

breaches of law by the autocrat. They show a settled policy of negation of law. And they led to miserable consequences. For the feudal settlers in Ireland at that period no history of the course of events was necessary and no argument or exposition of the legal aspect of the events was required. Their daily bread was not more familiar to them than the principles of law regulating feudal ownership of land, its creation and its extinction. In short, the majority of them, and in large tracts of the country every one of them, knew that their titles were bad, that they held illegally lands which, even by *their* law, belonged to men of the older native stock. Out of the systematic illegalities of Henry and John and the effects on those who benefited by them, there grew a doctrine and a practice that did violence to human nature and poisoned for centuries the life of Ireland. The doctrine, inevitable if these illegalities were by any means to be clothed in a show of legality, was simply this: that the population of Ireland, except the settlers and their descendants, was outside the law. This doctrine appears already in operation about the time when that first pretence of legal escheatment was enacted which has been mentioned; that is to say, during the second generation of feudal settlers in Ireland. In 1227 the whole process of English law, which by that time had taken shape, was extended by royal decree to Ireland, and the accompanying writ or proclamation declared a general indemnity for all who might otherwise

be impleaded for the death or chattels of an Irishman. The example came from King John himself. Heir to his father's commission from Pope Adrian to reform the Irish in matters of religion, John, in 1217, issued an edict forbidding the ecclesiastical promotion of men of Irish origin. The logical outcome of the doctrine was the last degree of barbarity, a perpetual state of war, and this in effect was made law, the strangest law perhaps that was ever made, by the celebrated Statute of Kilkenny in 1366, which enacted that, in order to make joint resistance to the Irish, parleys and treaties with them must be in common by legal permission, and that there should be but one peace and one war throughout the whole of the king's land of Ireland. This was the spirit that animated government. Needless to say, it was too much for human nature. In fact the main object of the Statute of Kilkenny was to force the desired state of perpetual hostility not on the outlawed Irish but on the reluctant settler element. These it failed to compel. They continued to become *Hibernis ipsis Hiberniores*.

## CHAPTER IX

### LATER DEVELOPMENTS

The principal positive achievement of the feudal regime in Ireland was the development of town life, a sort of paradox, for the stimulus

of town development under feudalism was the exemption from feudalism which towns were able to secure either by special charters or by force of custom. The early Irish laws take no cognisance of town communities. Ptolemy, in the second century, names a number of towns in Ireland, but some of these appear to have been the places of residence of important kings, others may have been places of assembly, others landing places on the coast. At all events, in Irish records, the first towns are monastic and academic centres, such as Armagh, Derry, Kildare, Cork. The first fortified towns were established by the Norsemen, and they soon became emporia of trade, chief among them being Dublin, Waterford and Limerick. It is likely that Norse traders established a number of smaller port towns around the coast, for we find Norse names for a number of Irish harbours, such as Ulfreks Fjord at Larne, Strangford, Carlingford, Wexford (a fortified trading centre which comes into history through being besieged and captured by Strongbow), Helvick near Dungarvan, Smerwick in Kerry. The Norse settlements were governed by their own laws and customs, and did not come under Irish law or cause any special development of Irish law. Many of the towns under the feudal regime grew out of older monastic centres, but they became settlements of new comers. The natural opposition between townsmen and feudal magnates caused the towns to rally to the monarchy and look to it for support. The monarchy in turn favoured the towns, which

were the best sources of revenue, supplies and transport by land and sea.

I.—*Irish Law Rehabilitated*.—In the course of the thirteenth and fourteenth centuries the Irish recovered much of the territory which had been occupied by the grantees under Henry II, John and Henry III. The position of the Irish rulers of such recovered territories was once more regularised from the feudal standpoint by Richard II, who accepted them as lieges without questioning the validity of their lordships. The feudal magnates meanwhile found it politic, despite enactments to the contrary, to adopt Irish law and to employ the services of Irish judges and lawyers in dealing with their own subjects. Much of the material in the extant law tracts\* dates originally from this period. In the theory of the jurists, the laws, in the form in which they were first committed to writing, were supposed to have originated

\*The Irish law tracts normally contain three strata of material:

I. Ancient text, purporting to show the doctrine of Irish law in the form in which it was first committed to writing.

II. Glosses.—Brief explanation of words in the ancient text. Though often extremely pedantic, they throw much light on the archaic vocabulary and sometimes enable the correction of errors. The custom of glossing the older texts goes back to the ninth century.

III. Commentaries.—In these the application of the ancient texts is developed by later jurists, and the law itself undergoes development notwithstanding its theoretical immutability. The method naturally involved pedantic treatment, and some of the later commentaries seem to be mainly exercises in pedantic ingenuity.

A curious feature is the effort, already visible in the oldest writings, to fix by regulation an arithmetical measure for rights, dues, liabilities and qualifications of almost every kind, and also for general conditions modifying these.

in St. Patrick's time and in a formal revision of the whole body of Irish law by a joint commission of kings, bishops and jurists—a demonstrable fiction. This ancient code, the *Fenechus*, was in theory immutable. All later juristic writings were held to be of the nature of commentaries, however much they might depart from the ancient texts by way of development, innovation or desuetude. As late as the last decade of the sixteenth century we find the law school of O'Davoren in full activity. From this school, and from about this time, come many of the extant manuscripts and the most important extant glossary of legal diction. A few years later, under James I, Irish law ceased to operate, and English law was formally established in every part of Ireland.

2.—*The Fiction of Immutability*.—The immutability of Irish law was, of course, no more than a professional convention. The law tracts themselves furnish proof to the contrary in every period. The annals, continuous contemporary records from about A.D. 600 to the seventeenth century, though they deal with events rather than institutions, afford corroborative evidence. For example, the institution called "tanistry," under which a king's successor was elected in the king's lifetime, has often been supposed to have been of immemorial antiquity. The annals show that it originated more than a century after the Anglo-Norman invasion, and it does not appear to have ever become quite general or legally necessary.

About the same time the influx of mercenaries from Argyle and the Hebrides brought about the establishment of permanent military forces, no doubt legalised on a basis of contract. In a proclamation by O'Neill in 1598 for the raising of an Irish force, the terms of engagement are very minutely specified.

3.—*Defects of Irish Law*.—The writer has no belief in the assurance of those, whether they be learned or unlearned, who pretend to be able to base a knowledge of the character of a people on racial origins and distinctions, which also they pretend to know but which no ethnologist of repute will recognise. Even in these times of wide franchise and elected legislature, the proportion of any people that takes an active part in the shaping of the body of law is very small, but the share that the body of law takes, especially the administration of law, in moulding the general character of a people may be incalculably great. The feudal law of primogeniture which allowed no exercise of discretion by anybody in the selection of ruler and no way of getting rid of a bad ruler, might appear in abstract theory to be far excelled by the Irish law which allowed a considerable range of selection and a full right of subsequent rejection. Yet in this very respect the feudal law tended towards stability and civil peace, the Irish law towards internal strife and external danger. No student of the history of law will accept the notion that the existence of these provisions, one or other, was

an index of national character. Nor will any student venture to deny that their prolonged operation had a distinct influence on national habits, which are really national character.

Let us observe another consequence. Under the Irish law, in one of the small states that has been described, no person plainly incompetent to perform the functions of ruler was likely to be elected. Under the law of primogeniture it was inevitable that the lawful successor should sometimes be too young or in some way too deficient to be an effective ruler, and this, even in the smallest principalities, made ministerial government a necessity. Necessity thus arising from defect became perhaps the most potent of all forces for political development, for ministerial government, even though it be government by ministers of an autocrat, implies development in various directions.\*

4.—*Effects of Just Administration.*—We may regard a system of law in two aspects—as a human culture-product apart from its results, or in the light of its results without regard to its own structural features. In the first of these

\*E.g. Continuity from reign to reign. Change of policy made possible without change of ruler. Censure of policy made possible without direct hostility to the ruler. Consequent increase of public interest and participation in government. On the other hand, a tendency to control the magnates. In general, a popularization of the idea of government detached from persons. Any page of the Irish Annals will suffice to exemplify how from the sixth to the sixteenth century the personal fortunes of rulers and magnates counted in public affairs above everything else.

aspects one must be content to say that ancient Irish law is a subject of extraordinary interest. In the second aspect it has already been shown that in one particular and important outcome, the prevalent form of government, Irish law was gravely defective, at all events it neither produced nor fostered a political organisation capable of withstanding the hostility of a centralised enemy. Perhaps, however, the historians have been allowed to force unduly on us their own favourite standpoint, the standpoint of the state. In another respect we have evidence that Irish law worked well, that it produced among the common people a feeling of satisfaction with its operation and with the measure of justice and peace that it brought into their lives. On that point there could be no clearer testimony than we have from two English writers, one of whom, Payne, was an eyewitness of Irish law in operation within a short time of its abolition; the other, Sir John Davies, Attorney-General of Ireland under James I, was perhaps the principal agent in bringing about the extinction of Irish law. Payne writes from Connacht in the reign of Elizabeth: "As touching their government in their corporations where they bear rule, it is done with such wisdom, equity, and justice, as demerits worthy commendations. For I myself divers times have seen in several places within their jurisdiction well near twenty causes decided at one sitting, with such indifference that, for the most part, both plaintiff and

defendant hath departed contented ; yet many that make show of peace and desireth to live by blood do utterly mislike this or any good things that the poor Irishman doth." Again, he says : " The Irish keep their promise faithfully and are more desirous of peace than the English ; nothing is more pleasing to them than good justice." So also Finglas, Chief Baron, that is, chief judge of the court of exchequer : " It is a great shame and reproach that the laws and statutes made in this land [he refers to English law] are not observed nor kept after making of them eight days ; which matter is one of the destructions of Englishmen of this land ; and divers Irishmen doth observe and keep such laws and statutes which they make upon hills in their country firm and stable, without breaking them for any favour or reward." Still more remarkable is the testimony of Davies, who denounces the Irish laws in general, the land laws in particular, being so different from English law, as barbarous. Yet he says : " There is no nation of people under the sun that doth love equal and indifferent justice better than the Irish, or will rest better satisfied with the execution thereof, although it be against themselves, as they may have protection and benefit of the law when upon just cause they do desire it."

From **BURNS OATES'** List

---

# **THE IRISH VOLUNTEERS**

## **AND**

# **CATHOLIC EMANCIPATION**

**PATRICK ROGERS, D.Litt.**

In this most important contribution to Irish historical research, Dr. Rogers throws full light for the first time upon a critical period. The Irish Volunteers who won the Independence of Grattan's Parliament in Dublin were exclusively Protestant; yet it was their leaders, inspired by the new idealism of America and France, who forced the reluctant Protestant Ascendancy to make the first big concessions to the Irish Catholics. From diligent searching of the contemporary records in the newspapers, Dr. Rogers has obtained a much clearer view of the early Catholic leaders and their Protestant supporters. For students of Catholic Emancipation history, this book will be indispensable, and it throws much light on that curious alliance of Catholics and revolutionary atheists which helped to restore the Church's freedom in Ireland.

**Cloth, 12/6**

---

**BURNS OATES & WASHBOURNE**

**22 D'OLIER STREET, DUBLIN**