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Unravelling Time In Early Irish Law

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This paper explores a possible framework for a nuanced understanding of the development of the early Irish legal system and early Irish society through a close engagement with a small sample of early Irish legal texts. It applies methodologies from the sociology of law to analyse details in the texts which may be combined to suggest underlying stages of social development and chronological signposting. The paper aims to model a previously unexplored method of analysis for the relative dating of significant texts and commentaries within the corpus of early Irish law. It suggests that the laws may be seen to be developing over time from a written record of legal aspects of a kin-based social system to the documentation of a self-maintaining, self-conscious legal system.¹

SOCIOLOGICAL JURISPRUDENCE

The sociological theory upon which this project draws is primarily the theory of operatively closed systems propounded by Niklas Luhmann (1988; 2004). The theory revolves around the notion that a social ‘system’ develops in an autopoietic manner, in which operative closure exists: that is, the system operates with reference only to its own past operations. An operation may be a response to stimulation from outside the system, but the nature of the response will be one which refers only to the system’s past operations. In this way, norms are established, which enable the system to form expectations about the future. The most significant aspect of the theory for the purposes of this paper is an early stage in this process, where the social system ‘selectively increases its own complexity by differentiating (specialising) communication operations which, in turn and as operatively closed systems, create their (own) environments within

¹ I wish to record my gratitude to Neil McLeod for his generous and helpful suggestions and corrections, and also to Klaus Alex Zeigert and the anonymous referee of this paper. Of course, none of them is responsible for any errors or shortcomings that remain.
society’ (Ziegert 2002, 64). In other words, this paper is interested in the process by which the early Irish social system developed a legal sub-system, and the extent to which legal texts may reflect a simultaneous development of other social sub-systems, including political and economic sub-systems.

Henry Maine, in the nineteenth century, advanced the influential notion that the development of law was a movement from status to contract, by which he meant that legal systems, early in their development, base the legal capacity of any individual involved in a transaction on his status. Over time, legal systems move to basing the legal capacity of individuals on their ability to make contracts, where transactions are influenced by free market forces (Maine 1861, 163–165). This concept appears to foreshadow Luhmann’s observation (mediated by Ziegert 2002, 63) that social systems develop from status societies to class societies. It might be argued that an individual’s ability to make contracts derives from his social role, or class. If that is so, then both Maine and Luhmann argue that legal operations are based, initially, on person-concepts (status, deriving from an individual’s entire performance across all of their social roles), and then, as the system develops and specialises, on role-concepts (class/contractual ability, deriving from performance by all individuals who perform that role, eg ‘client’, ‘lord’, ‘woman’).

Maine also asserted that law was not made, but rather ‘discovered’ (Maine 1861, 30–33). Although apparently in direct contradiction, this notion in a sense foreshadowed Luhmann’s theory, where the operatively closed legal system, in continuously reproducing its own operations, refers to its previous operations as the basis for each new operation (Ziegert 2002, 64). Hence, tradition or custom (or, in modern common law, precedent) is advanced as the reason for a particular legal decision or communication. This feature is seen in early Irish law, in frequent references to Fénéchas ‘the lore of the Irish’ and when Uraicecht Becc (see below, x–x) informs us that truth is based for roscaidaib ‘upon legal maxims’, fásaigib ‘precedents’ and tesdemnaib firaib ‘true testimonies’ (Binchy 1978 v 1591.13–14).

Ziegert (2002, 64) asserts that law ‘is always created and never “found”’. I suggest that by this he means something quite different from Maine’s use of the concepts ‘found’ and ‘made’. Maine seems to have wished to convey the idea that laws are never ‘made’ in the sense
of presenting an entirely new idea, but are rather ‘found’ in the sense of re-presenting previous operations of the system, adapted as necessary to the present circumstances. This, it seems to me, is precisely what Ziegert means when he places the words in reverse positions. For Luhmann and Ziegert, what is important is that the law does not come from the environment, but is a self-referential product of the system. This also seems to be what Maine wished to convey, albeit without the framework of social systems theory to surround it. Luhmann’s observation, that each communication or operation of the legal system creates law by adding further normative communication to what has gone before, emphasises the centrality in his theory of the communication as the fundamental building block of the system, reflecting a difference in perspective and theorising from Maine and others, rather than a fundamental disagreement.

The hypothesis explored by this paper is that the early Irish legal system, in the seventh and eighth centuries, is an example of the moment during which a social system increases its complexity by developing sub-systems. I argue that the development of legal, political and economic systems can be inferred from the early Irish legal texts, and further that those texts contain evidence that assists us in establishing their relative positions in that process of development. This approach aims to complement previous scholarship on the nature or structure of early Irish society (eg Mac Neill 1923, 96–113, Mac Neill 1981, Charles-Edwards 1986) by deliberately setting out to exploit points of difference within and between texts to explore nuances, rather than to synthesise points of commonality between texts to gain an overall understanding of the society as a whole.

Texts that I will suggest are early display characteristics of a minimally differentiated social system, where features which are recorded as law appear to be functions of the broader social system, referring in their operations to other operations not of a specifically legal nature, and involving authorities other than legal ones. These texts also reveal economic and political operations which similarly lack that degree of operative closure and thus differentiation. The texts, as communications making up the social system, are characterised by person-concepts, laying strong emphasis on the status of certain persons within the *túath*. This is paralleled by the texts’ insistence on the kin-group as the important unit in society, and on the
duties of kin, individually to each other and collectively to other kin-groups.

Texts that I will suggest belong to a later stage show signs of a social system marked by greater differentiation and clearer sub-systems. References to precedents and precepts from within a noticeably differentiated legal sub-system are more frequent than references outside the legal system. They reveal, in their descriptions of persons and objects, traces of political and economic systems which can be seen to have differentiated themselves within the social system. Person-concepts are increasingly replaced by role-concepts, with a corresponding increase in the occurrence of relationships defined by clientship or contract rather than kinship. Behaviours are often described and prescribed in terms of contractual obligations, although kin responsibilities also continue, as would be expected where one of the differentiated sub-systems of the social system is the family system (Ziegert 2002, 62).

The role of the legal system as the social system’s ‘immune system’ (Ziegert 2002, 65) is based on its norm-establishing quality. Norms are a function of operative closure, whereby expectations can be created. Since the legal system is self-referential, there can be an expectation of how the law will rule on any given situation. Whether actual events comply with the legal prescription is unimportant: it is the ability to predict the outcome of a future action that is important, including the ability to predict a range of events that might happen if norms are not complied with (Ziegert 2002, 63). Our reading of early Irish law is probably improved by an understanding of this theoretical concept. As with Ziegert’s example of a speed limit ‘guaranteeing’ a certain range of outcomes, amongst which ‘all drivers obeying the speed limit’ does not appear, so we might be well-advised to approach early Irish legal texts as normative communications, guaranteeing certain outcomes which might not necessarily include, or at least privilege, that which is overtly stated. In my opinion, texts which seem to suggest that the death penalty was a likely outcome in certain circumstances would reward being read this way (cf O’Neill 2006).
Críth Gablach

Críth Gablach ‘the branched purchase’ consists of a transcription of one text (which I will call the canonical text), with a certain degree of editorial intervention including the insertion of a short extract from another text and some editorial interpolations (Neil McLeod personal communication; for Críth Gablach generally see Kelly 1988, 267 and Breatnach 2005, 241–244). Its provenance is not known: it is apparently not from either of the two major groups of early Irish legal texts in Munster and the northern midlands respectively. The absolute date for the compilation of Críth Gablach is discussed by Binchy (1941, xi) in the critical apparatus to his edition of the text. Acknowledging the difficulties of linguistic evidence as a dating tool, he declined to comment on the age of the language of Críth Gablach, except to say that it might ‘be safely assigned to the early Old Irish period’ (Binchy 1941, xv). Although he did not explain what years he thought this might include, it seems safe to assume that he meant after approximately 600 and before approximately 750. Binchy also opined that Críth Gablach dated to the ‘early years’ of the eighth century (Binchy 1941, xi), but his basis for this was not the language, but rather an internal reference to another text, Cáin Adomnáin (see below). Críth Gablach survives in three incomplete copies, all transcribed into what is now the same composite manuscript in or around the sixteenth century (Breatnach 2005, 26–41).

Apparently more significant for the dating of this text than language or manuscripts is the content of the text itself. In describing the petty king’s capacity to make a rechtge ‘proclaimed law’, Críth Gablach refers to two examples. The first of these is a rechtge for the expulsion of a foreign race, which the text helpfully illustrates with the example fri Saxanu ‘against the Saxons’ (Binchy 1941, 21.523). Since the Anglo-Saxons are recorded as having only once ventured into Ireland and therefore required expulsion, it seems safe to take this as a reference to the incursion of Ecgfrith of Northumbria into Brega in 684 and his subsequent repulsion (Bede iv.26; Mac Airt and Mac Niocaill 1983, 685 recte 684). This appears to give a terminus post quem for the composition of the text. There is, however, for present purposes, a far more important example of a rechtge, which is the ecclesiastical law, Cáin Adomnáin (‘Adomnán’s law’, sometimes referred to as Lex Innocentium: see below, x–x), named here as ‘recht
Adamnán’ (Binchy 1941, 21.524). We have secure evidence that Cúin Adomnán was promulgated in 697 (Ní Dhonnchadha 1982, passim), which appears to give an amended terminus post quem.

It is possible, though, that Críth Gablach’s use of Cúin Adomnán and the Saxon incursion as examples are glosses added to the canonical text of Críth Gablach, which means that the question of dating should not be discharged solely on this basis. The form of the first, *i. fri saxanu* ‘ie against the Saxons’, is the same as that of many glosses; the second, *amail ron(n)gab recht Adomnán* ‘as is Adomnán’s recht’ (Binchy 1941, 21.524), perhaps less so. However, if the compiler of the extant version of Críth Gablach were working in the eighth century, these would both seem to be perfectly sensible insertions for him to make, given recent events. That he was not averse to sensible insertions is clear. Críth Gablach is concerned with the ranks (grád/gráda) of various persons within society. One of the ways in which it describes these ranks is by listing in detail the various entitlements of each when they are removed on othrus (nursing and maintenance of a wounded person). Despite this, the compiler of Críth Gablach states that othrus was obsolete at the time of writing (Binchy 1941, 2.47). There is no glossing distinguished by size or layout in the extant copies of Críth Gablach, so it must be at least possible that some glosses (maybe even glosses added after the compiler’s work) have been incorporated into these later copies as though they were original to the canonical or compiled text.

Críth Gablach’s primary purpose is to enumerate the various (secular) social ranks or classes, together with their defining characteristics. Hence, the seven (or so) ranks of commoner and the seven (or so) ranks of noble are listed, and the othrus entitlements of each are detailed, together with details of such property qualifications as the size of his house and his key possessions. For example, the ócaire ‘young lord’ had a house of 19 feet, with an outhouse of 13 feet, and sufficient land to maintain seven cows. He owned a cauldron, a quarter-share in a ploughing outfit, and a share in a mill, a kiln and a barn (Binchy 1941, 4.91–104). Additionally, Críth Gablach details the amount of livestock which a lord gave to a member of each class when entering into a clientship arrangement with him, and the food-rent which must be paid in return. It also prescribes the entitlements of
classes to give evidence, swear oaths of compurgation, or stand surety (eg Binchy 1941, 2.42–44).

This assemblage of information suggests several features of the social system in which Críth Gablach may have operated. Most noteworthy is the presence of detailed and codified clientship arrangements. These suggest a social system in which differentiation has begun to take place. A person may enter into clientship, either as lord or as client, for economic and/or political purposes. Economically, the relationship gives the opportunity for each party (but particularly the lord) to increase his personal economic benefit: it is a form of exchange relationship (cf Zeigert 2002, 62). Politically, the relationship gives the opportunity for the lord to increase his power base and military muster, and for the client to receive protection: it is a way of making actions and purposes collectively binding (cf Zeigert 2002, 62) by ensuring that various individual interests are served by a single outcome.

The stage of emergence of an economic system is also implied by the sometimes shared ownership of means of production. The ócaire’s quarter-share in a plough team (one ox to join with three of his neighbours’) and its equipment enabled him to cultivate land and generate his own household food requirements, renders for his lord, and possibly a surplus, as long as he maintained a cooperative relationship with three neighbours. His part-share in grain storage and processing equipment gave a similar result. However, the fact that such productive equipment was sometimes owned in a cooperative arrangement, rather than always owned by an individual or a corporate entity who had amassed sufficient wealth by transacting beneficial exchanges (and could potentially then transact further beneficial exchanges using privately-owned equipment), argues for a fairly early stage in the differentiation of the economic system. It also suggests that Críth Gablach significantly predates the industrial complex at Raystown, Co. Meath, excavated early this century and radiocarbon-

2 Críth Gablach also describes other classes of bóaire who individually owned the equipment needed to process their own primary produce: the important fact for present purposes is that this was not universally the case, and that even greater degrees of centralisation were not recorded at this time. On the processing of grain in early medieval Ireland, see Kelly 1997, 240–245.
dated to between the seventh and tenth centuries. At least eight mills, together with kilns and significant quantities of wheat, oats and barley were found (Seaver 2005). The site’s concentration of simultaneously operating mills is so far unique for the period (Seaver 2005, 12) and implies an innovative industrial model. This and other forms of industrialisation, apparently introduced after Críth Gablach’s compilation, assisted the development of a specialised economic system, which worked to further differentiate social classes in a snowballing sort of effect.

The legal system appears not to be significantly differentiated in Críth Gablach. There is minimal reference to previous legal operations, or legal precedent, or even tradition (although there are occasional la Féniu references: eg Binchy 1941, 4.92). This conclusion must be a cautious one, however, since, despite its usual classification as a legal text, Críth Gablach may perhaps be better viewed as a communication of a political or economic system. The proscriptions concerning compurgation, evidence and surety may not necessarily be legal communications: they pertain to a person’s social standing, albeit with reference to legal transactions, rather than to specifically legal matters.³

The text does display some characteristics of a social system in which a legal system is differentiated: the detailed prescriptions of property, possessions and allowable behaviour seem very much like normative statements. They set expectations that do not necessarily coincide exactly with the fulfilment of each stated requirement. For instance, it seems unlikely that every member of one of the more common social classes would have had a house measuring exactly 19 feet, but the text might establish the expectation that a person of the rank of ócaire with a smaller house might be left open to certain consequences, such as the possibility of being unable to meet his clientship obligations, or of being left unprotected by a lord with whom he had entered into a clientship arrangement.

A significant feature of Críth Gablach, particularly in the context of an attempt to chart the development of social systems through the

³ The essential nature of Críth Gablach as ‘social analysis’ is highlighted by Charles-Edwards (1986, 73). Transmitted by lawyers, it may nonetheless be open to interpretation as a communication outside the legal system.
early Irish law texts, is its descriptions of mobility between social
grades. Downward mobility is perhaps to be expected in a relatively
undeveloped society, where instant demotion could reward such
mishaps as being satirized or disfigured or breaking a pledge.
However, Críth Gablach describes a system where downward social
mobility could also occur far more slowly. The fuidir ‘semi-freeman’,
for instance, whose descendants were tenants of the same family of
nobles for three generations fell in status to become a senchléithe, who
was bound to the lord, or rather, technically, to the land (Binchy 1941,
13.326–327; Kelly 1988, 35). More interesting yet, though, is the
upward mobility extended, for example, to the bóaire ‘cow-lord’ who
amassed sufficient wealth to attach clients and became a fer fothlai
‘man of withdrawal’ in a sort of limbo for three generations, with all
of the appurtenances but not the honour-price of an aire déso ‘lord of
vassalry’ until his descendant finally acquired the higher grade
(Binchy 1941, 14.335). This process by which persons of one social
rank could move to another suggests sophistication in the social
system, and that person-concepts and reliance on status had begun to
give way to role-concepts and reliance on class, in that the social
grade could derive from property and the resulting role of ‘attacher of
clients’.

Uraicecht Becc

Uraicecht Becc ‘the small primer’ is a canonical text with extensive
glosses and commentary, surviving in five copies, of which only two
are complete. Binchy (1958) discussed the dating of this text in some
detail. Linguistically, he was convinced that Uraicecht Becc ‘passes
all the tests [...] to determine whether a text belongs to the Old Irish
period’ (Binchy 1958, 46). Breatnach (1996, 119), however, is of the
view that its language is ‘perfectly in keeping with a date in the ninth
century, or even perhaps as late as the early tenth century’. He does
not comment on whether it is also in keeping with an earlier date, as
there are other reasons, discussed below, for establishing a terminus
post quem for this text.

Discussion of the dating of Uraicecht Becc inevitably turns to the
text’s claim that the king of Munster is greatest among kings (Ollam
uas rígaib rí Mumun: Binchy 1978 v 1617.33). Rudolf Thurneysen (cited in Binchy 1958, 44) believed that this statement dated the text to after 1001 (despite the lack of linguistic support for such a date), since that was the year in which a king of the province of Munster first claimed high-kingship of Ireland. Binchy very sensibly pointed out that the high-kingship of Ireland need have no relevance to the statement, but rather, if the text is taken as having been composed in Munster, it implies that the king of Munster is pre-eminent amongst the petty-kings within Munster. Given the linguistic evidence, and the consequent need to date Uraicecht Becc to the early tenth century at latest, the statement seems to clearly situate the text in a Munster provenance. A Munster provenance is further argued by the citation of two Munster locations as examples of great ecclesiastical foundations (ollam morcanach a cumut amail rogab Imlech Ibair nó Corcac Mor Muman: Binchy 1978 v 1618.7–8; see Breatnach 2005, 316). This agrees well with the popular suggestion (eg Kelly 1988, 246; Patterson 1994, 38) that the Bretha Nemed ‘judgements of privilege’ group of legal texts originates in Munster, since Binchy (1958, 51) pointed out strong textual connections between Uraicecht Becc and Bretha Nemed Toísech.

The social system implied by Uraicecht Becc seems quite different from that in Críth Gablach. Críth Gablach’s social ranks can be discerned in Uraicecht Becc, with some slight variations. However, what is most striking is that they are just one subset amongst a large number of additional groups. Whereas Críth Gablach allocates social standing based on property qualifications (ownership of land, livestock and equipment) associated with a farming economy, together with pedigree, Uraicecht Becc allocates social standing based on skill or craft. For example, the briugu ‘hostel-keeper’ was accorded the same class as the rí túaithe ‘petty-king of a single túath’. The equivalence was subject to the hostel-keeper maintaining sufficient property to ensure his ability to carry out his duties of hospitality (Binchy 1978 v 1608.8–22), which is best seen as a vocational, rather than a strict property, requirement. The breitheam tri mbérla ‘jurist of three languages’ was of the same class as the aire túiseo ‘lord of precedence’ (Binchy 1978 v 1614.32–33). The builder of a strong church (sær drondurraigí), the shipwright with competence in a range of vessel types (sær lerlong ocus baircc ocus curach ocus lestra), the
yew-worker (sær ibroracta) and the mill builder (sær muilind) were all of the same class as the aire déso (Binchy 1978 v 1615.22–38).

I suggest, based on this evidence, that the social classes which are based on land and livestock qualifications in Críth Gablach (the aire classes) were viewed by the writer of Uraicecht Becc as being just another of the skilled classes, and their particular skill was farming. The qualification for social rank is here not property (supported by pedigree), but skill, whether that be in manufacture, learning, farming or service provision. This impression is perhaps supported by the fact that a person who maintained more than one skill received a corresponding increase in his honour-price and social standing (Binchy 1978 v 1616.1–12). This is also stated in maxim-like terms: ‘He who has one skill, he will have one honour-price. He who has many skills, he will have many honour-prices. It increases nobility’ (Beas àndanach bid àndireach. Beas illdanach bid illdirech. Doformaig sairi: Binchy 1978 v 1617.5–6). In the society which this text reflects, nobility or social standing did not derive primarily from property, nor from pedigree, but from skill.

Entertainment was not considered a skill. Musicians and other performers were not to have their own social standing, but to attach to the retinue of another person, whose rank would accommodate them and whose financial affairs would include theirs (Binchy 1978 v 1617.11–20). The exception was the harper. This was apparently considered a more skilful (or at least a more valuably skilful) occupation, as the harper was equivalent to the bóaire tuiseo ‘cow-lord of precedence’ (ie the upper of two subclasses of bóaire).

The most important difference between Críth Gablach and Uraicecht Becc for the purposes of this paper is the latter’s increased recognition of skill as the basis for social standing or class. This suggests a social system in which person-concepts had been almost entirely replaced by role-concepts as a basis for social operations. Further, it suggests a social system in which an economic system had been differentiated, enabling individuals to exchange the products of their skills for the means of subsistence and profit. Some individuals within society had apparently exercised this ability to exchange to such an extent that they were able to attach other individuals to their retinue, whose sole purpose was entertainment.
According to the theoretical framework applied in this paper, *Uraicecht Becc* seems to belong to a later stage of development of the social system than the canonical part of *Críth Gablach*. For *Críth Gablach*, person-concepts were still important. A person’s social standing derived from his property, but this alone was not sufficient: he must also have sufficient pedigree, in that the property qualification must have been met by three generations of his family. For *Uraicecht Becc*, role-concepts were more important. A person’s social standing derived from his skills. In both texts, evidence for exchange transactions marks a certain development of an economic system. Neither has much evidence to offer concerning the situation of a legal system, except that in *Críth Gablach* there appears to be a background of normative expectation, probably engendered by a legal system, and in *Uraicecht Becc*, there is significant acknowledgement of the importance of legal precedent and doctrine, both presumably products of an autopoietic legal system, perhaps in its early stages.

The economic distinction between the two texts, and the greater recognition of role-concepts in *Uraicecht Becc*, suggest that the canonical part of *Críth Gablach* may predate *Uraicecht Becc*. There is an additional piece of evidence which is crucial in establishing a chronological relationship between these two texts. This involves the text *Bretha Nemed Toísech*. *Uraicecht Becc* paraphrases and quotes from *Bretha Nemed Toísech* quite extensively (Binchy 1958, 45). *Bretha Nemed Toísech* can be approximately dated by the fact that a good part of it consists of translations from the *Collectio Canonum Hibernensis*, which latter must have been completed in the first half of the eighth century (Breatnach 2005, 190). *Bretha Nemed Toísech* makes a crucial reference to another text: *gradh flathemuiin congraduib feine cotacerta crich gablach a fenechus* ‘the grades of lords together with the grades of commoners, *Críth Gablach* in the Fénechas adjudicates on them’ (Breatnach 2005, 244; Breatnach’s translation cited here). This makes it quite clear that *Críth Gablach* predates *Uraicecht Becc*. What is not clear is whether this is a reference to the *Críth Gablach* that is known today, or to the canonical text within it, which might also have been known contemporaneously by the title *Críth Gablach*. I suggest that the relationships amongst the texts militate toward the latter conclusion.
I suggest, therefore, that we should be open to the possibility that the canonical part of *Críth Gablach* may date from any date in the seventh or early eighth centuries. The compilation may date to within a reasonable period after 697, when the promulgation of *Cáin Adomnáin* (if the reference is by *Críth Gablach*’s compiler) would have been fresh in memory. *Críth Gablach*’s statement that *othrus* is no longer practised may date to this eighth-century time, whereas the enumeration of *othrus* provisions, which it also includes, is most likely from the seventh century, together with its other elements discussed above. *Uraicecht Becc*, on the other hand, must be dated to the eighth century or later. It may be approximately contemporary with the compilation of *Críth Gablach*, if we accept Bretha Nemed’s reference as being to the canonical part of *Críth Gablach*. It seems likely that the society reflected in *Uraicecht Becc*, with its skill-based social classes and developed economic system, would be less attached to the institution of *othrus* than the society of the canonical part of *Críth Gablach*.

**Bretha Crólige**

*Bretha Crólige* ‘judgements of blood-lyings’ is generally held to date from the seventh century, on linguistic grounds (Binchy 1975-6, 15; for *Bretha Crólige* generally see Kelly 1988, 271; Breatnach 2005, 303). It survives in a single, apparently complete, copy and a few fragments (Breatnach 2005, 181). *Bretha Crólige* is specifically about the provision of *othrus*. It is part of the large and influential legal compilation assembled in the north midlands in the eighth century, *Senchus Már* ‘the great tradition’ (see Kelly 1988, 242–246). *Bretha Crólige* sets out the various requirements for nursing and maintenance in cases of unlawful wounding. The general procedure was that the victim was to be taken care of by his kin for nine days, after which he would be formally examined by a physician. If he had died in the meantime, the perpetrator would pay the compensation for unlawful killing. If he was still alive and no further treatment was required, the perpetrator would pay compensation for any remaining disability or blemish. If the physician felt that the victim was in danger of death, a special payment for *crólige báis* ‘blood-lying of death’ was required
from the perpetrator (McLeod 2009, 29). If further treatment was required, the perpetrator was responsible for providing the appropriate medical attention, nursing, accommodation and upkeep in premises provided by the perpetrator’s kin. Additionally, the perpetrator had to provide a substitute worker to continue the victim’s normal work while he was incapacitated (Binchy 1938a § 6 and § 41; Binchy 1938b, 115).

In an undeveloped and undifferentiated subsistence economy, this would be a very practical solution to the problem of temporary incapacitation due to unlawful wounding. The victim’s work could not be left unattended, with farm work requiring daily attention, and the duties of any such specialists as smiths, brewers and even the learned classes requiring ongoing attention. If both perpetrator and victim were unskilled farm workers, the perpetrator himself might have provided the substitute duty, perhaps sharing the burden with members of his kin group. The perpetrator and his kin group would be unlikely to have the disposable wealth to pay outright for the victim’s treatment and upkeep, so to provide this within the kin group and the family home would doubtless entail some stinting for family members but could be manageable. It is clear that care within the home was the intent of the law, as various noisy activities, such as fights between dogs or people, rowdy games, and squealing pigs, were to be excluded from the house in which othrús was provided (Binchy 1938a, § 61).

An important aspect of the provisions of Bretha Crólige connects with the notion of restorative justice. It seems likely that the society of Bretha Crólige may have placed some importance on the capacity for othrús to repair relationships within a small, closed community, where it would be important to provide opportunity for the establishment of a basis for ongoing interaction without any loss of face. By ensuring that the perpetrator and victim remained in continuous close proximity throughout the healing period, the law did everything possible to ensure that the two established a way of dealing together in the future. Similarly, both kin groups were engaged in this process: the perpetrator’s kin were responsible for assisting with both the nursing and the substitute labour, and the victim’s kin had to host the substitute worker. As well as laying the groundwork for future relations, this process afforded an opportunity for each party to gain
an understanding of the other, and of the effect of the incident on his life.

Possibly to minimise the chances of this process being impeded, \textit{Bretha Crólige} sets out copious details about the conditions. The precise entitlements of the victim are enumerated, so that there can be no disagreement over them, although the text does not rule out additional voluntary \textit{cuipre} ‘kindness’ from the perpetrator to the victim (Binchy 1938a § 24). The entire process is also hedged about by contracts and sureties (Binchy 1938a § 55). \textit{Bretha Crólige} allows for a payment to replace sick-maintenance in certain circumstances, such as for poets, judges and advocates, whose work could not be performed by a substitute (Binchy 1938a § 12). Similarly, kings, bishops and hostel-keepers were also excluded from the scheme, on the basis that the retinue that would have to accompany them in consideration of their status would be an excessive imposition on the perpetrator’s kin (Binchy 1938a § 12). Finding the payment required to substitute for \textit{othrus} in these rare cases would presumably have left most commoners with nothing, forcing them into an unfree state.

The compilation of \textit{Críth Gablach}, as we have seen, states outright that \textit{int othrus ní fil indiu isind aimsir seo} ‘the othrus is not [ie does not exist] today in this time’ (Binchy 1941, 2.47). Instead, it explains, everyone receives, according to his honour-price, payment for physician’s fees, company and food, and all grades in the \textit{túath} have the same right to sick-maintenance at law.

In the canonical text, though, the extensive description of each social grade’s qualifications, honour-price and rights includes details of the food to which he is entitled when on \textit{othrus}. The entitlement is in broadly similar terms to that in \textit{Bretha Crólige}, differentiated according to class and therefore honour-price.

In terms of social systems, the implications of this development appear to be that in the society in which \textit{Críth Gablach} was compiled, it was expected that a perpetrator would be able to collect sufficient disposable wealth to make his payment to the victim directly, rather than fulfilling the obligation by sharing his own resources. It seems likely that in the relatively less differentiated and less developed society envisaged by the provisions of \textit{Bretha Crólige} such an amassing of wealth would be prohibitively difficult for at least a large proportion of perpetrators. However, it also seems that between
Bretha Crólige and the compilation of Críth Gablach a transformation had taken place in attitudes to social relationships. By the time *inthothrus ní fil inidu isind aimsir seo* was added to Críth Gablach, the restorative approach to social relationships had been abandoned, replaced by an approach more focussed on perpetrator and victim as isolated individuals or kin groups, and less interested in the restoration of relationships and the harmonious functioning of the community in a wider sense than the strictly legal.

In the glosses and commentary on Bretha Crólige, the same transformation can be observed. The glossators were apparently unable or unwilling to comprehend the original intention of the law’s drafters. They interpreted the provisions as applying only to inadvertent wounding (Binchy 1938a, §17 gloss 1), they added more categories of persons to whom *othrus* did not apply (Binchy 1938a §29 gloss 1) and they suggested that *othrus* was to be carried out in a house other than that of the perpetrator (Binchy 1938a §23 gloss 2).

I would argue strongly that Bretha Crólige must pre-date the compilation of Críth Gablach by at least a generation. For the social restoration function of the original *othrus* provisions to be not only abandoned, but also apparently forgotten, would take time. Even more so, for the economic system to further differentiate to the point where it was envisaged that the general population would have disposable wealth to pay off their obligations, rather than sharing their resources, would be a lengthy process. Presumably, for the society to reach the stage where individuals’ places in society were more frequently dictated by their skills, as in Uraicecht Becc, would take even longer. Certainly that society would seem even less compatible with Bretha Crólige, with substitute labour provisions an even more remote possibility.

**Bechbretha**

Bechbretha ‘bee-judgements’ survives in one full copy and several fragments with glosses and commentaries (on Bechbretha generally see Kelly 1988, 274; Breatnach 2005, 296). Like Bretha Crólige, it is part of the Senchus Már collection (Breatnach 2005, 296). It claims that the blinding by a bee-sting in one eye of King Congal Cháech
‘one-eyed’ was the first offence by bees to incur judgement. Congal, whose wound, according to *Bechbretha*, resulted in his removal from the kingship of Tara (Charles-Edwards and Kelly 1983, 68–71 §§ 31–32), is known from annal entries to have been a king amongst the *Dál nAraide*, in the north-east of Ireland, from around 626 until 637, when he died in battle (Charles-Edwards and Kelly 1983, 123–126). This evidence suggests that the *terminus post quem* for *Bechbretha*’s composition is 637, which accords with the opinion of Charles-Edwards and Kelly (1983, 13) that its language dates from the middle of the seventh century.

The compensation for Congal’s impairment was established by drawing lots amongst the nearby hives. The owner of the hive that was drawn was responsible for compensating the victim. This became the standard procedure for the offence of blinding by bee-sting. This process of drawing lots, as *Bechbretha* itself notes, was frequently applied in early Irish law when individual responsibility for an offence could not be established from within a group of animals or humans (Charles-Edwards and Kelly 1983, § 34).

The only distinction as to social standing that may be present in the text is a putative *úasalnemed* ‘noble dignitary’ (Charles-Edwards and Kelly 1983, 72–73 § 36 and 86–87 § 52). However, I believe that this term may be more appropriately translated as referring to a place than a person—‘noble sanctuary’—as too may all of the occurrences of *nemed* in this text. This absence of reference to social distinctions may suggest that the complex social structures found in *Críth Gablach*, *Bretha Crólige* and *Uraicecht Becc* were not yet fully developed at the time of writing of *Bechbretha*.

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4 *Dictionary of the Irish Language* lists *neimed*’s primary meaning as ‘a consecrated place’ or ‘a sanctuary’, with other meanings secondary. The note on *nemed* at Charles-Edwards & Kelly 1983, 107–109 discusses the possible meanings of *nemed*, preferring the meaning associated with a person for the instances in *Bechbretha*. Their reasons for this preference are not fully explained. Kim McCone (1984, 47–50) concludes that in this text *nemed* is more likely to refer to a place than a person.

5 *Bechbretha*’s concerns are with matters other than the rank of individuals, and therefore extensive discussion of rank would not be expected. However, the complete absence on any passing reference to, or distinction based on, rank is noteworthy.
An important social construct in *Bechbretha* is *comaithches* ‘neighbourhood’. Since bees are not easily confined, detailed stipulations are made as to how they can be introduced into a neighbourhood without causing unnecessary disturbance or inconvenience. This involves a complex arrangement between the bees’ owner and his four nearest neighbours, requiring him to deposit a physical pledge to cover the contingency of the bees damaging the neighbours’ property or persons, and then after a settling-in period of three years the neighbours are entitled to share the swarms (Charles-Edwards and Kelly 1983, 63–65 § 19–24). This may situate *Bechbretha* in a society with a minimal economic system, since the bees’ owner is not required to make any payment per se. He must lodge a returnable pledge at first, and then when the bees swarm, he must give up a share of the increase to his neighbours. It is to be noted, though, that *smachtu* ‘penalties’ are payable if obligations are not fulfilled.

*Bechbretha* uses an analogy to kin-groups to determine the order of receipt of swarms amongst the four neighbours. The nearest neighbour, being like the *derbfine*, gets the first swarm, whereas those at a greater distance have a more remote entitlement, like the *iarfine* ‘after-kin’ and *indfine* ‘end-kin’. Indeed, the statement *is sí derbfine i mbechbrethaib tír bes-da nesam foda-loing* ‘the land nearest them which supports them is the *derbfine* in bee-j judgements’ (Charles-Edwards and Kelly 1983, 60–61 § 18) might be interpreted as suggesting that the adjacent holdings were in fact occupied by the beekeeper’s kin group. Given the system of land division and inheritance in early Ireland (Charles-Edwards 2000, 87), this might be the case, particularly early in the period when the social system was more strongly family-based, before the more widespread adoption of extra-familial clientship.

It seems, then, that *Bechbretha* reflects a social system much less developed than those in *Bretha Crólige*, *Críth Gablach* and *Uraicecht Becc*. There is a complete absence of reference to social classes. There is no apparent expectation of easy access to disposable wealth for up-front payments: while compensation and restitution for crimes in the form of payments are implied, the prescription for an individual who acquires bees, which are likely to inconvenience his neighbours, is in the form of a returnable pledge and a share of the swarm after the hive is well established. This suggests that an economic system, with its
attendant mechanism of exchange, has not established itself. There is some hint of a legal system, in that legal norms are stated: the liability of an entire group for the offence of an unidentified member, for example. Likewise, the case of Congal is referred to as a precedent. There is also a reference to the *bríthem* class (Charles-Edwards and Kelly 1983, 72–73 § 36). In terms of the extent of development of the legal system portrayed, that in *Bechbretha* is certainly not more specialised or developed than those in the other two texts. It is arguably less developed, since there seem to be fewer widespread normative expectations. *Bretha Crólige* differentiates between social classes and roles to a far greater extent than *Bechbretha*, and it seems likely that it too represents a point in societal development considerably later than *Bechbretha*. It is also noteworthy that *Bretha Crólige* invokes contracts as a means of guaranteeing the *othrus* process, indicating at least some progress towards a differentiated economic system, whereas there is no indication in *Bechbretha* that contracts are such a prominent feature of social relations.

**Cáin Adomnáin**

*Cáin Adomnáin*, as already noted, was promulgated in 697, with guarantors drawn from the highest ranks of church and state throughout the Gaelic and Pictish areas of Ireland and Britain. It was the first ecclesiastical *cáin* law to be successfully promulgated in Ireland or Scotland, although others followed soon afterwards (Grigg 2005, 47). It is concerned with punitive fines for certain crimes. These are crimes of violence against women, youths and clerics, for which a super-levy was to be paid to Adomnán’s church, in addition to the requirements of secular law being fulfilled. The law also codifies the requirements for communities to accommodate and extend hospitality to the agents of Adomnán’s church who were placed in the community to administer the law and collect the fines. To ensure that the community fulfilled these requirements and upheld the law, pledges and hostage sureties were taken by the church. The text contains 33 opening sections which are not integral to the substantive legal text, and will not be considered here.
Cáin Adomnáin claims to be primarily concerned, not with the person-identity or status and therefore honour-price of victim or perpetrator, but with the role of the victim as a non-combatant (woman, youth or cleric). This suggests a social system which has already begun to differentiate, where person-identity is less important than role-identity. However, I suggest that Cáin Adomnáin is not overly concerned with victim or perpetrator at all, but rather with a perceived means of filling church coffers (a view also held by Richard Sharpe, who suggests (1995, 78–79) that Cáin Adomnáin financed the creation of the costly Book of Kells, and by Neil McLeod in this volume). This would suggest a differentiated economic system, where economic gain and control of wealth by individuals or groups are facilitated by a system which encourages exchange.

The other significant aspect of Cáin Adomnáin which must be considered is its identity as an ecclesiastical, rather than a secular, law. We may therefore expect its imperatives to be somewhat different. The church was by nature an international institution, and therefore militated towards some measure of international homogeneity in its responses to certain crimes. It is quite likely that the church exerted normative pressure on the ‘native’ social system to establish laws and legal processes with greater conformity to its international norms.

Cáin Adomnáin’s promulgation taking the form of proclamation and guarantee by political and ecclesiastical leaders, and its enforcement taking the form of visitations by a representative of Adomnán’s church, suggests that a distinct legal system had become entrenched: law was no longer managed within a community, and the (secular) legal system was such that the imposition of law-makers and enforcers from outside a community was apparently unremarkable.

Cáin Adomnáin represents a very different social system from that found in our earliest text so far, Bechbretha. In Cáin Adomnáin, any perpetrator is expected to have the capacity to assemble sufficient disposable wealth to pay fines to a third party as well as the existing compensation based on honour-price to a victim. Cáin Adomnáin realises a provision for rechtge laws to be proclaimed by kings and created, maintained and invigilated by agents from outside the tuath. The role of the church, an international institution far outside the bounds of the tuath, in setting social values is highly visible. Thus Cáin Adomnáin would also appear to be later in date than Bretha
**Crólige** and the canonical text in *Críth Gablach*. Its chronological relationship to the compilation of *Críth Gablach* and to *Uraicecht Becc* is perhaps a little more difficult to postulate based on social systems theory. I suggest tentatively that *Cáin Adomnáin* postdates the compilation of *Críth Gablach*, because it shows marginally more markers of social system differentiation. In particular, its portrayal of a community which is ready to accept the imposition of law and law officers from outside suggests that the legal system is more developed than that of *Críth Gablach*’s compiler, where relationships are still somewhat more local, and the legal system, while at work in establishing norms, is perhaps not quite so entrenched. *Uraicecht Becc*, on the other hand, with role-concepts firmly established and clear acceptance of a self-referential legal system and a functioning economic system, seems closer in date to *Cáin Adomnáin*.

**Relative Chronology**

This paper, limited as it is in scope, has considered five early Irish legal texts and their relationships to each other in terms of linguistic dating, internal dating evidence, and stage of societal development. The outcome may be presented as a series of tables.

**Table 1: Linguistic Dating**

<table>
<thead>
<tr>
<th>Text</th>
<th>Approximate Date</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bechbretha</td>
<td>640–660</td>
<td>(Charles-Edwards and Kelly) very early linguistic forms</td>
</tr>
<tr>
<td>Bretha Crólige</td>
<td>600–700</td>
<td>(Binchy) similar date to other Senchus Máir texts</td>
</tr>
<tr>
<td><em>Críth Gablach</em></td>
<td>600–700</td>
<td>(Binchy) detailed dating not attempted because of reference to <em>Cáin Adomnáin</em></td>
</tr>
<tr>
<td><em>Críth Gablach</em></td>
<td>600–750</td>
<td>(Binchy) see above: separate dating of canonical text and compilation not attempted</td>
</tr>
<tr>
<td><em>Uraicecht Becc</em></td>
<td>up to (?920</td>
<td>(Breatnach) linguistic dating not attempted because of historically firm promulgation date</td>
</tr>
<tr>
<td><em>Cáin Adomnáin</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 2: Internal Dating Evidence

<table>
<thead>
<tr>
<th>TEXT</th>
<th>APPROXIMATE DATE</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bechbretha</td>
<td>after 637</td>
<td>Congal Cáech ob 637</td>
</tr>
<tr>
<td>Bretha Crólige</td>
<td>–</td>
<td>no recognised evidence</td>
</tr>
<tr>
<td>Cáin Adomnáin</td>
<td>697</td>
<td>promulgation date noted in historical sources</td>
</tr>
<tr>
<td>Críth Gablach (canonical text)</td>
<td>before 750</td>
<td>quoted in Bretha Nemed Toisech, which quotes Collectio Canonum, Hibernensis which is dated</td>
</tr>
<tr>
<td>Críth Gablach (compilation)</td>
<td>(?after 697)</td>
<td>(possibly interpolated) reference to Cáin Adomnáin</td>
</tr>
<tr>
<td>Uraicecht Becc</td>
<td>after 750</td>
<td>quotes Bretha Nemed Toisech, which quotes Collectio Canonum Hibernensis which is dated</td>
</tr>
</tbody>
</table>

Table 3: Stage of Societal Development

<table>
<thead>
<tr>
<th>TEXT</th>
<th>APPROXIMATE DATE</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bechbretha</td>
<td>640-660</td>
<td>minimal differentiation, person-concepts, no economic system, signs of legal system, family system dominant</td>
</tr>
<tr>
<td>Bretha Crólige</td>
<td>660-680</td>
<td>restorative elements, person-concepts, partial economic system, partial legal system</td>
</tr>
<tr>
<td>Críth Gablach (canonical text)</td>
<td>680-695</td>
<td>restorative elements, role-concepts, social mobility, partial legal system, normative expectations</td>
</tr>
<tr>
<td>Cáin Adomnáin</td>
<td>697</td>
<td>role-concepts, economic system, disposable wealth, strong legal system, international dimension</td>
</tr>
<tr>
<td>Críth Gablach (compilation)</td>
<td>after 700</td>
<td>restorative elements obsolete, role-concepts, economic system, disposable wealth, legal system</td>
</tr>
<tr>
<td>Uraicecht Becc</td>
<td>after 750</td>
<td>role-concepts, skill-based classes, strong economic system, disposable wealth, legal system</td>
</tr>
</tbody>
</table>
It is immediately obvious that the tables are not in complete agreement. However, most of the date ranges given for linguistic dating are so broad as to overlap considerably, and, indeed, to be of limited usefulness in seeking to establish a relative chronology. Similarly, the dates given for internal evidence may be less than useful. Críth Gablach’s reference to Cáin Adomnáin has often been used as the principal tool to diagnose its date, and yet if this is an interpolation, it is entirely useless for dating purposes: it should at least be treated cautiously, in a text whose layers of composition are not marked by obvious signs such as physical layout.

The societal development comparisons, while still underdeveloped here, may prove to be a useful addition. This is particularly so in light of the fact that more precise information is gradually emerging about material culture matters of relevance, such as the dating and locations of penannular brooch manufacture and the use of agricultural technology such as mills. Penannular brooches, which had been used for centuries as a means of fastening clothing, began in this period to display a wider range of elaboration. Some examples were taken to impractical extremes, such as the psuedo-pennanular Hunterston Brooch, whose utility as a clothing fastener must have been virtually nil, but whose utility as a marker of wealth and rank is unmistakeable. Brooches were manufactured in significant numbers at centralised sites (such as Dunadd in Scotland and Moynagh Lough in Ireland: Laing and Laing 1995, 101; Grigg 2007, 161), gifted, and displayed as indicators of rank. Large ones are ostentatiously worn by the seemingly high-status individuals depicted in stone sculpture such as the Hilton of Cadboll stone in Scotland. Grigg (2007, passim) has mounted a convincing argument for penannular brooches reflecting status and allegiance in Pictland, and this seems also to have been the case in the Gaelic regions (Swift and Etchingham 2004, passim).

REGIONAL VARIATION

The factor which this analysis has not adequately addressed is the matter of regional variation. Although the legal system of early Ireland can legitimately be considered to be a single system, yet at any given historical moment, different regions may have been at different
stages of the differentiation of the system. It is not reasonable to expect that the social system of the entire Gaelic zone developed in absolute synchronicity. A reasonable model would be to suggest that some areas, perhaps those more densely populated or with more productive soil and climate, began the process of differentiation before others. The following table shows the provenance of the texts considered in this study.

**Table 4: Provenance**

<table>
<thead>
<tr>
<th>TEXT</th>
<th>APPROXIMATE DATE</th>
<th>PROVENANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bechbretha</td>
<td>640</td>
<td>north midlands (<em>Senchus Már</em>)</td>
</tr>
<tr>
<td>Bretha Cróilege</td>
<td>670</td>
<td>north midlands (<em>Senchus Már</em>)</td>
</tr>
<tr>
<td>Críth Gablach</td>
<td>680</td>
<td>not Munster, possibly north-east</td>
</tr>
<tr>
<td>(canonical text)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Críth Gablach</td>
<td>690</td>
<td>not Munster, possibly north-east</td>
</tr>
<tr>
<td>(compilation)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cáin Adomnáin</td>
<td>697</td>
<td>Western Scotland (Iona)</td>
</tr>
<tr>
<td>Uraicecht Becc</td>
<td>700</td>
<td>Munster</td>
</tr>
</tbody>
</table>

Most of the texts considered here have a likely provenance in or near the north-east of Ireland. It is likely that two of them belonged to the great *Senchus Már* collection. Of these, *Bechbretha* names a king of the *Dál nAraide*, and this people had a close association with the west of Scotland, and even specifically with Iona, where *Cáin Adomnáin* originated. The provenance of *Críth Gablach* is by no means settled.

In any case, *Uraicecht Becc* is distinctive in being firmly attributed to the south-west of Ireland. This must have some bearing on the differences of its social system, and in particular its distinctive skill-based class system. I do not believe that Patterson (1994, 40–42) is correct in attributing this distinction to a regional variation which was eventually overwhelmed by a system from elsewhere in Ireland. I suggest that it belongs on the same trajectory of societal development.

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6 Máel Rubai, founder of Applecross in Scotland, was from the Dal nAraide establishment at Bangor: Mac Airt & Mac Niocaill 1983, 142–143. So was Comgell mocu Aridi, who visited Columba (on Hinba, rather than Iona): Anderson and Anderson III 17.
as the systems seen in the other early Irish law texts discussed here. It is probably true, though, that this stage was reached in Munster at a different time from other regions. A clearer understanding of the regional origins of more texts would certainly assist this question. It is possible that some texts have more internal evidence to offer in this regard than has been discovered thus far.

APPLICATIONS AND IMPLICATIONS

One aspect of this analysis which is of particular interest for the study of Irish society in the early medieval period is the possibility of a relatively short timeframe in which the laws appear to have changed, from reflecting an undifferentiated, undeveloped social system with strong overtones of family system domination, to representing a differentiated, developed social system with increasing social mobility and established economic and legal systems. This appears to have occurred in a shorter time than most historians have assumed applies to the development of economic and political systems which gave rise to the emergence of nation-state polities in early medieval Ireland. If the indications from this analysis were developed and tested further, they might have the capacity to cast useful new light on the development of early Irish society.

This paper has presented a limited demonstration of the sort of analysis that is possible when a framework of sociological jurisprudence is applied to the corpus of early Irish law. I believe that the potential usefulness of applying the same methodology, with some refinement, to a larger sample of texts and in greater detail, is demonstrated here. In particular, being able to apply this kind of analysis to a broader range of texts might further illuminate the precise path of the development of the early Irish social and legal systems. It might also allow for the variations caused by regional differences to be more clearly understood.

Luhmann’s theory of autopoietic social systems and Ziegert’s elaboration and explanation of it have much to offer the student of early Irish law. The early Irish laws have been studied for well over a century, with linguistic evidence the primary basis for attempts at dating. To date, there is no reliable, broadly applicable picture of the
chronological development of early Irish law. The results of this small sample analysis seem to show that sociological jurisprudence might be useful to the legal historian.

The study of early Irish law began in the wake of Henry Maine’s publications on ancient law, and it seems likely that it was influenced by his work. As discussed above, I do not think that, broadly conceived, Maine’s theories are directly opposed by Luhmann’s theory, but rather, I believe that Luhmann gives a much more useful framework in which to observe the development of legal (and social) systems. Maine’s theories do not assist in coming to grips with the finer details of what the early Irish legal texts reveal about development, in the way that Luhmann’s theory may do. The concepts of autopoiesis, operative closure and self-referential system operations may assist in observing the development of the early Irish legal system that is so richly illustrated with surviving texts.

The research for this paper has not explored the full extent of Luhmann’s theory, as developed by him and by others. It is likely that a more complete and nuanced understanding of that theoretical framework would enable refinement of the processes sketched in this paper, allowing more detail in the texts to reveal more of the picture of early Irish legal development. The applicability of Luhmann’s theory to the study of modern legal systems and processes has been the subject of some scholarly discussion (e.g. Ziegert 2002; Teubner 1983). Much less seems to have been written concerning its usefulness in the study of early legal systems. I hope that this paper has shown that it is worth exploring as an additional tool in the study of early Irish law.

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