# Early Irish Law

“Irish law particularly may seem odd and unapproachable to those who come to it fresh from the perusal of a modern civil code. What survives today is a bewildering conglomeration of old and new, text and commentary, plain prose and obfuscatory verse.”

(Stacey 1994 p. 15)

Ireland at the beginning of the fifth century was a pagan country with a rich oral literature and an elaborate legal system, also oral. The subsequent conversion to Christianity made possible the composition of written legal texts. Some scholars believe that the authors were secular writers creating a written version of the traditional law to balance the competing system of canon law, others attribute the legal texts to clerical authors attempting to create a workable synthesis of old and new.[[1]](#footnote-1)

Whoever the authors were, they showed a strong conservative bias, recording not only legal rules still in practice in the seventh and eighth centuries, when the texts were written down,[[2]](#footnote-2) but older rules as well.[[3]](#footnote-3) Their writing thus provides a somewhat blurred window on the pre-Christian legal system, which may have preserved institutions going back much further, possibly as far as the period before the different Indo-European languages separated. The evidence for that conjecture is in part linguistic, similar words in different Indo-European languages connected with the same legal/political institutions, and in part comparative, features that the early Irish legal system shared with ancient Indian law.[[4]](#footnote-4)

None of the legal texts have survived in their original form. What we have are manuscripts dating mostly from the fourteenth to sixteenth centuries that quote chunks of the earlier works, along with extensive commentary. From those it is possible to reconstruct much, but by no means all, of the original, with risk of errors in transmission over the centuries. The texts quoted can be dated by language, Irish having changed over time, but authors may sometimes have used deliberately archaic language. The commentary, beginning in the ninth century and continuing thereafter, provides additional information, but in many cases the commentators may have misunderstood the original rules in their attempts to explain and justify them. We also have non-legal texts such as the Irish sagas,[[5]](#footnote-5) biographies of saints, and wisdom texts, along with accounts of Irish institutions in Ireland under English rule, some of which may be survivals from the earlier period.

Our sources present a very imperfect picture of what must have been an elaborate legal system. The description that follows is based on interpretations of the evidence by twentieth-century scholars. We cannot be sure which legal rules applied when and where, since surviving sources combine material from at least four centuries, possibly longer. Apparent inconsistencies may represent different institutions existing at the same time, rules from different times, the different views of traditional law held by different scholars, or errors in transmission.

## *Túath* and *Fine*: Kingdom and Kin Group

The Ireland described in the law books was divided into a large number of small kingdoms (*túath*, plural *túatha*); modern scholars estimate that there were about a hundred of them, with a population of a few thousand in each. A king might recognize the overlordship of another and more powerful king. A king who is overlord of three or four *túatha* is referred to as a great king, one who is overlord of a large number of *túatha*, the provincial king of the Irish sagas, is a king of great kings. While the idea of a high king of all Ireland existed and the title was sometimes claimed, such a king is mentioned only rarely in the legal texts and nobody seems to have made the position a reality, had effective rule over the entire island, prior to the Norman conquest of Ireland in the twelfth century.[[6]](#footnote-6)

For the most part, an individual had legal rights only within his own kingdom, although some special categories, such as poets and hermits, had rights elsewhere. One exception occurred when the subject of one king was killed by the subject of another, both acknowledging a common overlord; the procedure for collecting the fine for the killing was initiated by the victim’s king taking a hostage, presumably a subject of the killer’s king, in the court of their overlord. Another occurred when the inhabitants of two *túatha* were given rights against each other by treaty.

Within the *túath*, individuals were divided into kin groups (*fine*), defined as the descendants in the male line of a common ancestor. The most important such was the *derbfine*, a kin group of four generations, the descendants of a common great-grandfather. Farming land was largely, although not entirely, held by the *derbfine*, allocated to its adult male members; an individual could sell part of his share only with the consent of his kin.[[7]](#footnote-7) He could obtain additional land with income from his share of the kin land, in which case one third of it would be entirely his, two thirds added to his share of the kin group land. If the purchase was made with income from his own exertions, half was entirely his, if income from his professional activities–blacksmith, poet, doctor or the like–two thirds. If the kin group went extinct, its land was redistributed within a wider kin group, descendants of a common ancestor farther up the genealogical tree.

The *derbfine*, like the much larger diya-paying group in the Somali system, was responsible for enforcing the rights of its members, if necessary by feud, sharing in the payment of damage payments by its members and the receipt of damage payments to its members. One result of this network of mutual obligations was to limit the ability of an individual to make contracts that might impose costs or obligations on the other members of his kin group or reduce his ability to fulfill his obligations to them.

Marriage law recognized a range of possible relationships, depending both on the resources each party brought into the marriage and the degree to which the marriage had or had not been approved of by the woman’s kin.[[8]](#footnote-8) The greater the degree to which the marriage had been approved by the wife’s kin, the weaker her subsequent ties to them, as reflected in who got how much of her possessions when she died and who was entitled to collect how much of the fine if she was killed or obligated to pay how much of the fine for her offenses. A man would normally have a chief wife but could also have a secondary wife or concubine.

A woman was under the authority first of her father, then her husband, then her sons, and had very restricted rights. She could not, with some narrow exceptions, serve as a witness, swear oaths, make contracts or serve as a surety to guarantee the contracts of others, and she had only limited rights with regard to the control of property.

Fostering of children was a common practice that established a form of pseudo-kinship; a man’s foster father had a claim to a fraction of the blood-money if his foster son was killed, and related responsibilities.

## Status and Honor Price

The legal system described in the surviving texts included an elaborate system of status reflected in the honor price of each individual. An individual’s honor price determined what he was owed for offenses against him but also the limits to his legal capacity, including the amount for which he could contract on his own authority and the weight of his evidence in a legal dispute.

The major categories of status were *nemed* (noble), non-noble freemen, and unfree. Within each there was a range of subcategories. The *nemed* class included kings, lords, clerics and poets–the honor price of a Bishop or the Abbot of a major monastery was the same as that of the highest category of king. One special category of *nemed* was a hospitaller (*Briugu*), a freeman sufficiently wealthy to undertake the obligation to offer unlimited hospitality to all comers. Sources describe the position as requiring from two to a hundred times the resources of an ordinary lord.

*Nemeds* had a variety of legal privileges, limiting the degree to which legal rights could be enforced against them and the mechanisms for doing so. Thus the ordinary procedure for distraint, discussed below, could not be employed against a *nemed*, although the alternative mechanism of fasting against him to enforce an obligation could be. One consequence of the legal advantages of high-status persons, due to both their high honor price and their *nemed* status, was to make contracting with them risky, since it might prove impossible to enforce the contract, a problem pointed out in the period sources.

The category of lord depended on the possession of clients, freemen who had agreed to a relationship in which the lord provided an advance of land and/or stock to the client in exchange for the client providing the lord with food rent and some services. Details varied with both the form of clientship, base or free, and the status of the client.

The distinction between base and free clients, along with the status of the client, determined the terms of the contract, including the duties owed and whether the fief eventually became the property of the client on the lord’s death (yes if base, no if free). In all cases the relationship could be terminated by mutual agreement. If a lord wished to dismiss a base client, he had to compensate him with half his honor price plus what he was owed for rent and services; if it was the base client who wished to terminate, he owed a substantially larger penalty to the lord. In the case of a free client, either party could terminate the relationship without penalty. The status of the lord depended on the number and type of his clients

In addition to free clients and base clients, a lord might also have dependents of lower status (*fuidir),* who could not make any legal contract without permission of their lord. The lord was required to support the client, to pay the fines for any crimes committed by him or his family, and entitled to collect the fines for crimes committed against him. The *fuidir* was obliged to carry out any tasks assigned him by the lord. He was thus a sort of temporary and voluntary slave, free to leave at any time,[[9]](#footnote-9) provided that he surrendered two-thirds of his produce and left no debts or obligations behind him. After three generations of clientship to a lord, however, the *fuidir* becomes a *senchléithe*, a client tied to the land and transferred with the land.

The main division among freemen was between the small farmer and the strong farmer, the latter having more extensive property and a higher honor price than the former. In this case as in many others, we do not know exactly how the categories were defined. Texts describe in implausible detail how many animals of what sort, what size of house, and what other possessions each category was supposed to possess, but do not tell us what the actual requirements were.

Dependents, such as a man’s wife or children, had an honor price based on that of the freeman whose dependent they were–typically half his honor price according to at least one of the texts. A son who farmed independently but on his father’s land was something between a freeman and a dependent, with his own honor price but limits to his legal capacity.

Among the unfree, the major divisions were between the semi-free (or “tenant at will”), who had no land of his own and no independent honor price, the hereditary serf, who was bound to the land, and the slave. Slaves might be prisoners taken in war, foreigners picked up by slave traders, people who had failed to pay a debt or fine and so been enslaved, or the descendants of such. They had no legal rights. The master was liable for the offenses of his slave and collected compensation for offenses against his slave.

Rank was largely but not entirely hereditary and fixed. At least in theory, a *nemed* who failed of his obligations, such as a king who displayed cowardice in battle, could be reduced to the status of a freeman, as could a lord who failed to maintain the required number of clients. A freeman could, by acquiring wealth and clients, achieve an intermediate status and a higher honor price; if his son and grandson maintained the position the grandson could enter the *nemed* class.

## Private Law

The legal sources describe mechanisms for making and enforcing contracts that do not appear to depend on either royal courts or any centralized mechanism for judgment and enforcement. But there are also references to what appears to be curial law, law enforced in the court of a king.

### Contract, Sureties, Pledges and Distraint

Private contract law depended on a system of sureties, third parties with rights and obligations connected to the contract.[[10]](#footnote-10) If you lend me money, part of the procedure is for us to agree on a *naidm* surety, someone who is a witness to the contract and has agreed to compel me, if necessary by force, to fulfill my obligation.[[11]](#footnote-11) We may further agree on a *ráth* surety, someone who has agreed to repay you, with an additional penalty of a third the amount due, if, despite the *naidm*, I default–at which point I owe him the money he has paid on my behalf plus additional damages. The *ráth* cannot go surety for an amount larger than his honor price. We may also agree on an *aitire*, a hostage surety, someone who agrees to surrender himself to you if I fail to pay and will eventually ransom himself back by making the payment plus an additional ransom payment, at which point I owe him for both plus an additional penalty that includes the *aitire’s* honor price.

It is unclear exactly how the *aitire* fitted into the system, with some sources suggesting that he was a standing surety, someone who had that obligation with regard to particular persons, such as members of his kin group, rather than someone appointed to be a surety for a particular contract, as seems to have been the case for *naidm* and *ráth*.[[12]](#footnote-12) It has also been suggested that the hostage surety may have been associated primarily with agreements between kingdoms rather than ordinary private agreements.[[13]](#footnote-13)

In addition to sureties to guarantee my fulfillment of my half of the contract, additional sureties are needed to guarantee your fulfillment of yours, for instance to prevent you from claiming I have not repaid you when in fact I have or, more generally, to force you to fulfill your part of a contract which entails mutual obligations, as many did.

Another mechanism used to guarantee the fulfillment of contracts was the giving of pledges, inanimate hostages. If the party who had received the pledge claimed the other had defaulted and the other was unwilling to agree to arbitration, the pledge would forfeit. Exactly what counted as a legitimate agreement to arbitration is unclear. It might have been defined as agreeing to accept someone regarded as qualified to be a judge, which was a recognized profession. The same issue arises in the context of distraint, discussed below, where legal consequences again depended on whether or not a party accepted arbitration.

In some cases a contract was bound by a mutual exchange of pledges. This raises a puzzle; if you claimed that I had defaulted and seized my pledge, could I respond by seizing yours? One possible answer is that, as in the case of hostages more generally,[[14]](#footnote-14) the pledge was something of more value to the person who gave it than to the person who held it, hence that mutual forfeiture could leave both parties worse off. That fits some descriptions in the sources of what sorts of things were suitable for pledges but not all. Thus possible pledges included a champion’s weapon and an embroideress’s needle but also cattle, horses, drinking horns, … .

Freedom of contract within the system was limited by the network of mutual obligations. We have seen a similar situation already in the context of Jewish law–a debtor whose land guaranteed his debt was not entirely free to sell the land, since if he defaulted the creditor could cancel the sale and seize the land. In the Irish system, similar restrictions appear in a variety of cases. A son was obliged to support his aged father, so a father could under some circumstances cancel a contract the son made that might reduce his ability to do so. For similar reasons, a dutiful son could dissolve his father’s disadvantageous contracts. Husband and wife had mutual obligations which gave each the right to cancel some contracts by the other, with the details depending in part on the nature of their marriage. If it was a marriage on joint property, meaning that husband and wife had contributed comparable amounts of the property that supported the couple, either partner could dissolve the other’s contracts, with the exception of a contract that was clearly beneficial and so posed no risk to the other partner. If it was a marriage on husband’s property, the husband could cancel his wife’s contracts, his chief wife could cancel his disadvantageous contracts, a lower-status wife only his contracts relating to food, clothing, cattle and sheep. If it was a marriage on wife’s property, the legal situation reversed.

The mutual obligations within the *derbfine* imposed a similar set of constraints. A contract that could threaten the kin group’s property, such as adoption into the kindred or gifts of land, could be annulled by the kin group.[[15]](#footnote-15) A contract that did not directly threaten the property but might impose obligations upon the kin could be objected to, after which the kin would not be liable for payments due to the principal’s default.[[16]](#footnote-16) Absent such objection, the kin were to some degree functioning as involuntary *ráth* sureties; a similar situation could exist between lord and client. Similarly, kin and lord could under some circumstances function as unappointed *naidm* sureties.

If one party ended up with an unfulfilled obligation to another there was a formal procedure, distraint, by which he could be forced to fulfill it. The claimant entered the defendant’s property with suitable witnesses to announce his claim. The defendant then had a fixed length of time in which to respond by fulfilling the obligation or agreeing to arbitration. If he did not, there was a second entry and, after a further space of time, a third. At that point the claimant was entitled to seize the defendant’s cattle and move them to a safe location. If the claim was not satisfied and arbitration not agreed to the cattle would forfeit one by one over time.[[17]](#footnote-17)

There was a different procedure if the defendant was a *nemed*: fasting, a sort of ritualized hunger strike. Details are not clear, but apparently the plaintiff fasted outside of the *nemed’s* house, possibly from sundown to sunrise, which would cover the main evening meal. While the fast continued the *nemed* was not entitled to eat until he had satisfied the claim by giving a pledge or appointing a *ráth* surety; if he ate without doing so, he owed double damages. In that case, at some point after the fast the claimant was entitled to distrain property to satisfy his claim.

### Offenses, Damage Payments and Feud

The Irish system for dealing with offenses such as robbery, assault or killing was, like the Icelandic system, based on feud and damage payments. In both, offenses were expected to be open rather than concealed.[[18]](#footnote-18) In Iceland secret killing was regarded as shameful and eliminated potential legal defenses, in Ireland it doubled the damage payment owed.

Just as in Somalia, there was a pre-existing coalition responsible for both pursuing feud on behalf of a wronged member and assisting with the payment of damages owed by a member–in the Irish case the kin group. The Icelandic wergeld, like the *diya* in Muslim and Somali law, was a fixed amount for the killing owed to the heirs of the victim. Under the Irish system the fine was a fixed amount for the life of the victim which was the same for all freemen[[19]](#footnote-19) plus payments to his kin based in each case on the honor price of the kinsman and the closeness of the relationship. The payment went to both paternal and maternal kin and to foster kin as well, so not limited to the *derbfine*. Until and unless the payment was made, the victim’s kin were entitled to hold the killer prisoner awaiting payment, to kill him, or to sell him into slavery.[[20]](#footnote-20)

Another feature that the Irish system shared with the Somali was the institution of sick-maintenance. Under Irish law, the party responsible for a wrongful injury was obligated to maintain the victim in the style to which his rank entitled him, including an appropriate retinue of attendants, to provide medical services and to provide him with an environment suitable for an invalid–no loud noises or children playing in the house. The obligation began nine days after the injury, until which time he was cared for by his kin, and continued until he was healed. According to at least one source, the practice was abandoned fairly early in favor of a monetary penalty. In addition the person responsible for the injury owed a damage payment based on the severity of the injury and the honor price of the victim.

The Celts, in the course of their history, occupied many different places, but it is hard to believe that they got as far as the horn of Africa, so the similarities between Irish and Somali institutions are presumably examples of parallel legal evolution–or, just possibly, common descent from some legal system in the very distant past. For a third similarity, consider that a favorite sport of both cultures appears to have been cattle raiding–in the Somali case camels.

## Curial Justice

The discussion so far has focused on the system of private law. It is clear from references in the text that kings had courts and that some cases went to such courts, although it is not clear what cases went there or to what degree the division of authority changed over time. It is possible that the king’s court was only for cases to which the king was a party or that it was the court of an overking settling disputes between the kings subject to him or between their subjects. Alternatively, the references may reflect a change over time from private to curial mechanisms for law enforcement.

It appears from non-legal sources that by the time the law books were written there had been a substantial shift of authority from the local kings of the *túath* towards provincial kings, a shift largely ignored in the legal material. The private law material may be a holdover from an earlier period retained due to the conservative nature of legal scholarship, which often included in the text older verses on the law. Robin Stacey has suggested that the statements on court procedure might have represented an attempt to bring existing private law procedures under the authority of the jurist class, possibly associated with the increase in royal power.[[21]](#footnote-21)

### Court Procedure

There were professional judges and professional advocates, both of whom played a role in a trial. According to one detailed description of a court, the participants included provincial king, overkings, bishop, chief poet, sureties, hostages, witnesses, judges, litigants and advocates. This cannot be a description of all trials, since most would not have included a provincial king and overkings and even in a kingdom of three thousand people the king and all of the important people around him would not have been present for every trial. It may be an idealized version of the most elaborate court procedure the author could imagine. But it does suggest that there was a procedure involving a judge and a king, although it leaves it unclear what role the king had in determining the verdict.

Both judge and advocate were recognized professions; although each king was supposed to have a judge, there is no suggestion that every judge was connected to a king. It may be that some sorts of trials were held in a royal court with the king and the king’s judge participating while others involved only the judge (or judges–for a major case there could be more than one), sureties, witnesses, and spectators.

The first step in a law case was for the plaintiff to publicly announce that an offense had been committed. Once the case commenced, it was up to the plaintiff’s hired advocate to decide which of several possible legal procedures to pursue.

The next step was for plaintiff and defendant to each give either a pledge or a surety, depending on the path chosen, to guarantee that he would abide by the verdict. The judge was also required to give a pledge–five ounces of silver–in support of his judgment and owed a fine of eight ounces if he left a case undecided. A judge who acted unjustly, for instance by giving a verdict after hearing only one side of the case, lost his honor price and his position as judge; such a miscarriage of justice was also supposed to bring supernatural punishment down on the *túath* where it occurred.

Each party’s advocate would then offer the argument for his side; presumably witnesses would also testify at that point. Each advocate would then get to rebut the other’s arguments, after which judgment would be given and then publicly announced.

As in Jewish and Islamic law, the legal procedure might include the swearing of oaths; under some circumstances someone accused of an offense could defend himself by swearing the charge away. Similarly, witnesses were expected to support their testimony by oath and a judge was required to swear to tell the truth.

In Irish law, the force of an oath was linked to the honor price of the person swearing it; a higher-status individual could overswear a lower-status. This appears to imply that an accusation sworn by an inferior against a superior could be cancelled by the superior overswearing it, that in the opposite case the superior’s accusation would stand despite the inferior’s oath to the contrary, and that a superior could rebut the testimony of an inferior in a case against a third party by overswearing it. If this reading is correct, it is not surprising that the literature contains warnings of the risk of lending money to, or in other ways contracting with, someone of higher status, especially a king.

It was possible for the oath of one party in a case to be supported by the oath of another person, up to the value of his honor price. It is not clear if the honor prices of the two oaths added, making it possible for two people of lower status to overswear one of higher, or whether the combined oath had the weight of the honor price of whichever of the two was of higher status. Someone who bore false witness in a case was supposed to lose his honor price; it is not clear how his guilt was to be determined.

Women’s rights, in this context as in others, were severely limited. Their oath was acceptable only for matters to which they were the only likely witness. Thus, for instance, one item in sick maintenance might be that the injured party had been separated from his wife during her fertile period, hence unable to permit her a chance to conceive; the wife’s testimony would be accepted as to when her fertile period had been. This is similar to the restriction on women as witnesses in Islamic law but probably narrower.

If the judge in a case was unable to determine which party was in the right, perhaps because there were no witnesses or the oaths on either side were evenly balanced, the verdict could be produced by a random process or by an ordeal. If, for example, it was known that one of the animals in a herd had committed an offense but not which animal, one would be selected at random and his owner held liable for the damages. As in other early legal systems, someone accused of an offense could offer to prove his innocence by submitting to an ordeal such as plunging his hand into boiling water. If the hand thereafter showed marks of scalding, the defendant was held to be guilty, if not, innocent.[[22]](#footnote-22)

A dispute could also be settled by a formal duel, analogous to the Norse *holmgang*. The terms had to be agreed to by both parties and confirmed by sureties on both sides. As in the Norse case, the duel did not have to be to the death.[[23]](#footnote-23)

One source describes five different procedures by which a case could be prosecuted, with different cases allocated, for reasons not entirely clear, to different procedures. It is not clear whether the description applied to all cases, some cases, or was a pattern the author was attempting to impose on a less precisely structured system.

## Conclusion

As I hope this brief account makes clear, early Irish law was an elaborate and sophisticated system about which we have very imperfect information. Its chief interest to me is in the ways in which contracts were enforced and offenses dealt with in a decentralized and private system of justice. One of its puzzles is the relation between that system and the system of curial justice, administered under the authority of at least local kings.

1. For a discussion of evidence for the alternative views, see Kelly pp. 232-237. [↑](#footnote-ref-1)
2. Since the contents of the texts have survived only as passages quoted in much later manuscripts, the dating is based mostly on linguistic evidence. [↑](#footnote-ref-2)
3. “The Irish as well as the Hindu jurists were ‘backward-looking’–men with a profound respect for antiquity. The more ancient a custom, the more venerable it became in their eyes, and the fact that it had long been obsolete in practice was quite irrelevant; far from being jettisoned, it was religiously reserved, often side by side with the later rule which had superseded it.” Binchy 1970, 2, p. 1. “Thus in the 'canonical' tracts which received their definitive shape during the seventh and eighth centuries, side by side with contemporary rules drafted in classical Old Irish we find passages which are more archaic alike in language and in content, and which doubtless go back to the oral teaching of the pre-Christian law schools.” Binchy 1970,1, p. 359. [↑](#footnote-ref-3)
4. As D. A. Binchy, one of the leading 20th century scholars of early Irish law put it in the context of one such institution: “I suggest, then, that the Irish law of suretyship may well reflect the various stages in the development of this institution throughout the Indoeuropean world.” Binchy (1970,1). [↑](#footnote-ref-4)
5. Like the Icelandic sagas, these are partly historical accounts mostly in prose. The Mythological, Ulster and Fenian cycles are set considerably earlier than the Icelandic sagas, the Historical cycle, which covers a very long span of time, overlaps them. [↑](#footnote-ref-5)
6. “We can then regard the ‘High-Kingship’ as a claim asserted quite early by Uí Néill propagandists, like Adamnán, but never realized in practice by any monarch of that race, nor even (as Professor Byrne rightly insists) by the ‘usurper’ Biran Bóruma or any of those provincial kings who during the eleventh and twelfth centuries fought for what was by then at least a national monarchy *im Werden*.” Binchy (1976) p. 19. [↑](#footnote-ref-6)
7. A similar pattern appears in a surviving Swedish law code from the Thirteenth century:
“No one may sell land unless pressing need arises. Then he is to inform those kin most closely related and the parishioners and the family members, and they are to test the need. But whoever gives money for land without this test, has forfeited his money and is to pay a fine of twelve marks to the authorities and another twelve to the close-related kin, who are invalidating the agreement.”

(Peel, Guta lag <28> p. 41.) [↑](#footnote-ref-7)
8. Ranging from marriage where the wife was betrothed by her kin through marriage forbidden by her kin. [↑](#footnote-ref-8)
9. Not true, however, of a lower category of fuidir, the dóerḟuidir or “base fuidir.” [↑](#footnote-ref-9)
10. “A contract without sureties is normally unenforceable. However, the texts provide a considerable number of exceptions to this general rule.” Kelly pp. 162-3. Guarantors in Bedouin law function like sureties in Irish law (Bailey p. 40). Sutherland 1986 describes the use of sureties by the Romani–pp. 136, 295-6. [↑](#footnote-ref-10)
11. “The three functions of a *naidm* are defined as 'holding in mind [the debt] for which he is invoked as surety, so that nothing be added to or subtracted from it, swearing to it without reservation, and enforcing it without negligence'“ Binchy 1970,1, p. 361. [↑](#footnote-ref-11)
12. Thurneyson thought that a *giall* was a standing hostage surety for all controversies, originally for his *túath* in controversies between *túaths*, later could also be for his kindred, while an *aitire* was a hostage surety appointed for a single transaction. Stacey (Chapter 4) argues that *Giall* may have been almost exclusively for inter-*túath* disputes and may have been an important person such as the tanist, the king’s heir, and that the exact role of *aitire* is unclear. If he stood surety for private contracts, it may have been as a standing surety not one appointed for the particular transaction, perhaps to deal with things such as tort suits for woundings. [↑](#footnote-ref-12)
13. Stacey 1994 pp. 82-111. [↑](#footnote-ref-13)
14. I discuss the use of hostages for contract enforcement in “[From Imperial China to Cyberspace](http://www.daviddfriedman.com/Academic/Course_Pages/analytical_methods_08/china_to_cyberspace.htm): Contracting Without the State,” *Journal of Law, Economics and Policy*, July 2005. [↑](#footnote-ref-14)
15. It is unclear how decisions for the kin group were made, possibly by an individual selected in some way to represent the other members. [↑](#footnote-ref-15)
16. *Road to Judgement* p. 67. [↑](#footnote-ref-16)
17. This is a simplified account–details of distraint varied with circumstances and there were different mechanisms used to distrain a professional, such as symbolically restraining him from practicing his profession until the obligation was fulfilled. See Kelley pp. 177-182. [↑](#footnote-ref-17)
18. True also of the feud system of northern Albania, as described in Fox 1989, p. 164. [↑](#footnote-ref-18)
19. This went to the kin, except that a third of it might go to someone outside the kin whose assistance had been necessary in collecting the claim, such as a lord intervening on behalf of a client unable to enforce his claim on his own. [↑](#footnote-ref-19)
20. *Gragas* describes an elaborate system of payments by kin of an offender to corresponding kin of the victim but I have been unable to find any reference to it in the sagas and it may not have been part of the actual law in practice. [↑](#footnote-ref-20)
21. Stacey, R., *The Road to Judgement*, Chapter 5. [↑](#footnote-ref-21)
22. See Peter Leeson, “Ordeals,” Journal of Law and Economics 55(3) 2012: 691-714. [↑](#footnote-ref-22)
23. For a discussion of holmgang, see Radford, R.S., “Going to the Island: A Legal and Economic Analysis of the Medieval Icelandic Duel,” Southern California Law Rev. 62 (1989) 615-44. [↑](#footnote-ref-23)