

THE KELTIC LEGAL SYSTEM.¹

I.

The history of the Keltic legal system falls naturally into three periods. The first, to Julius Caesar's conquest of Gaul and Britain, is the period of political independence. The second, to about A.D. 1500, is the period of independence of the surviving branches of the Keltic legal system, the Welsh and the Irish. The third period sees the final dissolution of these two.

CHART OF PERIODS: KELTIC LEGAL SYSTEM.

600 B.C. 50 B.C.	I. Period of KELTIC INDEPENDENCE
— A.D. 1400 A.D.	II. Period of the Surviving Branches of the Legal System WELSH and IRISH
1500 A.D. 1600 A.D.	III. Period of their DISSOLUTION

PERIOD I. KELTIC INDEPENDENCE.

I. One of the most momentous days in all European history was the autumn morning in the 52nd year B.C. when Vercingetorix and the united Gauls surrendered to Julius Caesar. Caesar's victorious army had besieged Alesia (not far from Chaumont, where the American Expeditionary Force was headquartered two thousand years later). The gallant young chieftain of the defeated Gauls, the most brilliant leader in the history of his race (comparable only to Daniel O'Connell in modern times), realized that he had led his people to hopeless defeat; called together his chiefs; and offered either to surrender with them to Caesar, or to kill himself as a sacrifice to free them. They left the choice to Caesar, and he demanded surrender.

So Caesar took his seat on the rampart before the camp, and Vercingetorix came forward, threw down his arms, and made formal surrender to Caesar of the rebellious Keltic tribes. From that day,

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the political and legal destiny of the Keltic race was forever sealed. That race was to be absorbed by their Roman and Germanic successors. Out of the fusion two great peoples, the future French and British nations, were to be born.

Vercingetorix was the physical type of the ruling class among the Kelts—tall, light-complexioned, and reddish or yellow haired. But this type has become less common. When the Kelts had invaded the country from the East, they had conquered and imposed their language upon a native people, short, dark-complexioned, and black-haired. This latter type predominates among the modern survivors. But we shall never know to which of these two types in the composite race may be attributed the marked traits that have been noticed by observers in every age—its emotionality, its imagination, its cheeriness, its wit, its quickness, its eloquence, its versatility, its affectionateness, its deep family loyalty; and on the other hand, its warm temper, its clannishness, its perpetual clan-quarrelsomeness, and above all its incapacity to unite itself under a stable government and to maintain its political independence.

From about B.C. 600 the Keltic tribes had come to settle all Europe west of the Rhine and the Alps, and south to the Apennines. The Germanic tribes were then still dormant in the East and North. But after the Roman conquest, five centuries later, and the Germanic conquests, another five centuries later, that is, about A.D. 700, almost the entire Keltic race had been either extinguished or absorbed. There remained only four small areas where it survived in isolated and primitive purity—Wales, Ireland, upper Scotland, and Brittany. In Ireland it was the Irish Channel that protected them; in Wales and Scotland it was their mountain fastnesses, and to Snowdon Peak every Welsh king has retreated in time of distress. But these same mountains also served to keep the Kelts in their primitive tribal stage. Their sole occupation was cattle-raising and clan-warfare. They changed little in a thousand years; and they were fated economically to yield to the neighboring peoples who progressed in agriculture and commerce.

2. The Kelts possessed indeed a legal system, and a well-developed one. But in only two of these regions Wales, and Ireland, did it ever reach the stage of written records, and then too late to save it. For its earliest known stage we have to depend largely on Caesar's account. He tells us of the Druids as professional dispensers of justice: —

Book VI, par. 13: "Among the Gauls, the Druids decide all disputes, both public and private. If any crime is committed or vio-

lence done or any dispute arises over inheritance or land-boundaries, they are the ones who render judgment, and fix the compensation and the penalty. If any man or group of men fails to obey their decree, they excommunicate him, and this penalty is regarded as the most deterrent. *** At a certain time of the year, in the Carnutian region, which is deemed the center of all Gaul, they assemble at a consecrated spot; and here from every quarter resort all who have disputes, and the decrees and judgments of the Druids are obeyed”.

Such is Caesar's account.

These stone alignments at Carnac were typical of thousands of similar monolithic remains scattered all over Gaul and Britain. Stonehenge, near Salisbury, is the best known and the best preserved extant in Britain. Although they doubtless have a prehistoric origin, they are associated in tradition with the Keltic Druids; and they must have served as the local meeting-places for the Keltic assemblies and the religious ceremonies of the Druids. In their primitive religion, great stones played a mysterious part; there are three thousand of these stone dolmens in France alone. And even in modern times, in Brittany, a popular festival may be seen at these stone-monuments, paying reverence to the memories of two thousand years ago.

But among all the thousands of these mighty monolithic structures, the mystic center of the Keltic world was this plain of Carnac, which Caesar calls the center of all Gaul, where the annual assembly of all the Druids took place. And the modern lawyer, as he stands on this historic spot, goes back in imagination, not to the Keltic legends of King Arthur and the Knights of the Round Table, and the enchanter Merlin, and the loves of Geraint and Enid, but rather to the Druid Jurists; for the Keltic race, with all its economic primitiveness, had developed a unique professional class, not exactly paralleled in any of the other legal systems.

3. The Druid fraternity, that met at Carnac, combined the functions of priest, magician, teacher, physician, historian, bard, and jurist. These functions came to be allotted to different groups within the fraternity; there was a long period of training for neophytes; their knowledge was transmitted solely by memory, not by writing; and the graduates emerged as specialists in one or more branches of learning. The modern Welsh *eisteddfodd*, or song contest, is a revival of the ancient Keltic institution of the Druid bards; a chief bard, for example, was one qualified to recite at least 350 tales of heroic history, with which to entertain the chieftains on the long winter nights.

Now the Druids, with their possession of all knowledge, were the real masters of the early Kelts; the chiefs, or kings, were only their leaders in battle. The Druid jurists, in Ireland, were known as "brehons", from "breth", a judgment. These Brehons were the repositories of the customary law. When they spoke in the Assembly, their judgments were implicitly obeyed. The Druids' power lay, not in physical or political force, but in their influence as priests of religion and magic; for the Keltic race has always been most susceptible to the supernatural, and especially to religion. The judgments of the Druids were enforced by their own magic powers; they excommunicated the disobedient, and their solemn curse was the deepest dread of the Kelts. But an unjust judgment recoiled, with its own magical retribution, on the judge himself. For some judges, three large scabs would appear upon the face. For another judge, all the fruit would fall from the trees in one night. The most celebrated peculiarity was that of the Irish judge, Morann, who wore a gold collar; for when his judgment was just, the collar grew larger and fell to his waist, but if it should be unjust, the collar would grow smaller about his neck and choke him.

The Druids, as priests, presided at the sacrifices; and, in pagan Gaul at least, there were human sacrifices. And this practice led to their political downfall. It was this practice which excited the horror of the Roman conquerors, who had themselves abandoned it scarcely a century before. Julius Caesar himself did not interfere. But his successors Augustus, Tiberius, and Claudius, in the 1st century A.D., not only suppressed the religion of the Druids, but exterminated the entire fraternity itself. Presumably the political influence of the Druids over the Kelts could no longer be brooked by their Roman rulers. Roman praetors replaced the Keltic Druids, and for four centuries thereafter justice was administered in Gaul and Britain, not by Druids seated on stone circles, but by Roman praetors in basilicas.

Thus disappeared, with the Druid class, the Keltic legal system in Gaul and Britain. It had never been committed to writing; the Druids alone knew its rules; and so not a vestige remains. Thus only in Wales and Ireland do we know it as a written system, in later times. This brings us to the second period of the system.

PERIOD II. THE SURVIVING KELTIC LEGAL SYSTEMS.

4. Of these two branches, the Irish was earliest recorded and most fully developed.

The Irish history may be summarized in four stages:

PERIODS OF THE IRISH LEGAL SYSTEM.

Date	Period	Form of Law
I. to 400 A.D.	HEROIC AGE OF PAGAN DRUIDISM	Oral Transmission
II. 500 A.D. 700 A.D.	CHRISTIANITY and INTELLECTUAL EXPANSION	Formulation of Principal Codes of Brehon Law
III. 800 A.D. 1200 A.D.	INVASIONS of DANES and NORMANS	Treatises and Glosses on Codes
IV. 1300 A.D. 1600 A.D.	CONQUEST by ENGLISH	Brehon Law disappears

In the first period, or Heroic Age, pagan Druidism still flourishes, and the law is transmitted only by memory of the Brehon judges. In the second period comes Christianity, and the formulation of the written rules of law. In the third period the Danish and the Norman invasions gradually paralyze all political progress, but the Brehon jurists continue to practice their law. In the fourth period the political ruin of Ireland is followed by the disappearance of Brehon law.

5. But even had Ireland been spared by destiny from the Danish and Norman and English invasions, the Keltic legal system would probably not have proved equal to the needs of new times. It was originally and remained primitive, in the legal sense, because based on clan life, and not on political unity. A deep devoted loyalty to clan and chief, when transmuted into national patriotism (as it came to be with the Germanic peoples) makes one of the noblest human traits; but when it remains concentrated on family or clan, it merely hinders political growth. The Irish Kelts were essentially pastoral; their only wealth, besides their gold ornaments, was their cattle; of these the chief owned the most, and the clansmen, renting their cattle from the chiefs, were in large part virtually serfs; and many chapters of the laws deal with the procedure of suit by distraint of cattle.

Besides cattle-raising, the chief occupation was fighting between the clans and raiding each other's cattle. In this heroic age of pagan Druidism, and long after, the hero is the good fighter and raider. The mightiest darling of the Irish legends is Cuchulain, who fought to the death for four consecutive days with his friend Ferdiad, and they kissed each other at the end of each day's fight! For the spirit of fighting was not hatred; it was rather that of sport, dangerous adventure, and rivalry in manly prowess. It was a sociable thing to fight; in the west of Ireland a popular maxim still says, "It is better to be quarrelsome than to be lonesome". From the earliest period down to the gentlemen's duels of the 1700's, Irish annals are full of anecdotes of friends fighting to the death, or if perhaps they survive, then shaking hands and embracing. And when that greatest of Irish patriots, Henry Grattan, denounced his bitterest parliamentary opponent as "an unimpeached traitor" (in the celebrated invective beginning, "Has the gentleman done?"), and a duel followed, the historian tells us that "the bloodshed brought about a reconciliation between the parties, who separated better friends than they had been for years"!

6. The most renowned fighting clan was the Fenians, whose name was afterwards taken by modern Irish rebels. The Fenians were the body-guard of King Cormac MacArt. Now this King Cormac MacArt, who lived about A.D. 250, was an historic character, and is important to us because he was revered as the first Irish legislator-king. "Cormac" says the early chronicle—and it is perhaps the first recorded Irish "bull"—"Cormac was absolutely the best king that ever reigned in Ireland before himself".

Cormac MacArt typifies the traditional golden age of Irish political annals. His capital was at Tara, in Meath, the central spot, ever since, of Irish patriotic sentiment. In those days the hundreds of petty clan-chieftains were grouped under four local kings, or *ri*,—the kings of Ulster, Leinster, Connaught, and Munster; but these four kings were under a chief king, or *ard-ri*, who lived at Tara.

Tara was in the county of Meath, not so far from Dublin, the capital of the new Irish Free State. And "dail", the name taken by the Parliament of the Irish Free State, is identical with "dal", the ancient Keltic name for the assembly that met at Tara for declaring the law. On the hill of Tara were many edifices. One of them, called the "forradh", was the meeting-place of the "dal"; and the similarity of "forradh" and "forum" is an evidence from etymology of the prehistoric common origin of Keltic and Latin races.

7. But when an Irish king's assembly sat as a court, and listened to the judgments of a Brehon, it was usually called *airecht*; and the *Cul-Airecht*, or chief court of Tara, was the court of last resort in Keltic Ireland. Three famous judgments, of this legendary period, may serve to illustrate how cattle-wealth and clan-fights were the staple material for the law.

The first is the judgment of the Brehon jurist Fintan. Fintan was one of King Cormac's judges, and the lawsuit was over the fight of two clans in the banquet-hall. The chiefs of the clans were Finn and Goll. Finn's clan had 1100 casualties, and Goll's lost only 61. And the judgment of the Brehon in the suit for damages is that Finn was liable, for he started the fighting, but that he is freed from payment, having suffered such excessive loss in men.

The second judgment is that of Dermot, in the lawsuit brought by one of the early monks against St. Columba the missionary. St. Columba had borrowed from the monk a fine manuscript of the Gospels, and Columba had made a copy of the borrowed book, before returning it. The monk claimed the copy also as his; the saint disputed this. His argument in defence reads not unlike the defence made by modern infringers of copyright:—

"I confess that the book in question was copied from the manuscript of Finnen. But it was with my own industry and toil and burning of the midnight oil. And it was copied with such care that Finnen's manuscript is in no way injured by the act of copying. Moreover, my object was to preserve more surely the best parts of the book and employ them for the greater glory of God. Hence I do not admit that I have done any injury to Finnen; nor am liable for restitution, nor am at fault in any way".

But Dermot the judge, as manuscripts were then new in Ireland, had no exact precedent, and he cast about for the nearest analogy. He found the Brehon maxim, "With every cow goes its calf", "*Le cach boin a boinin*"; and so his judgment was in favor of the monk, because "*Le cach lebar a lebran*", "With every book goes the young of the book". But the saint, it is recorded, was very angry at this judgment, invoked the power of a rival chieftain against Dermot, and thrashed him well in battle.

The third judgment is that of Cormac himself, before he became the great legislator-king. There was a lawsuit by one neighbor against another for the trespass of some sheep who had eaten all the grass in his pasture. The people were assembled; and the judge was saying that the owner of the sheep should forfeit them to his neighbor, in payment for the grass consumed; when a youth

(this was Cormac) started up from the back of the hall, and shouted: "Not so! For the grass is only the fleece of the earth. Therefore let not the whole sheep be forfeited, but only the sheeps' wool be sheared, to pay for the grass; for grass and wool will both grow again". And the justice of this was so clear that the people shouted with one voice: "A wise young judge; he should be king". So they made Cormac a judge, and afterwards king.

8. The great King Cormac is said to have been the author of the earliest law-book, the *Lebar Aicle*, or *Book of Aicill*, a kind of criminal code. But 'twas not he that wrote it. That book must have been made centuries later. In Cormac's day, the Irish, like all Kelts, had no writing and no written records. They had indeed the runes, called in Irish "ogham"; but these were only crude symbols, used mainly for burial inscriptions and the like.

The first credible reduction of the customs to writing comes after Christianity had brought the Roman alphabet, and is attributed to St. Pathric himself. He arrived in Ireland as a missionary about A.D. 430, and a few years later, perhaps A.D. 440, is said to have persuaded King O'Leary to authorize the ancient customs to be written down. This was done by a commission of three chiefs, three bishops, and three *brehons*, or jurists. The code was drafted at Tara, mainly by Dubhtach, the chief *Brehon* judge, and was duly approved by King O'Leary. It was afterwards known as the "*Senchus Mor*", or Great Custom—a name like that of "*Grand Coutumier*" in Normandy. But in the early days it was often called "*Cain Pathraic*", or Code of Pathric. And at Tara, where it was done, a statue of the saint now stands. (Pathric, though a Kelt by birth, was a Roman citizen, and perhaps the son of a Roman magistrate, and he *may* have heard of the new code of the Roman emperor Theodosius, which had just been published in A.D. 438.) But though it owes its origin to the arrival of Latin Christianity, the book is purely Keltic throughout. The entire Irish legal vocabulary was native Keltic, and highly technical, in a class by itself.

9. This early acceptance of Christianity by the Irish, under St. Pathric, and under his equally famous successor St. Columba, came at a time when western Europe was being overrun by the pagan Germanic invaders. Christianity and Latin literature in Gaul were being overwhelmed. But the Irish had embraced the new religion with emotional enthusiasm. Whole clans were baptized at once. In the beautiful region known as the Seven Churches may still be seen some of the primitive churches built in this period.

They date from the 500's, and are the oldest buildings in Ireland. The Irish now became the pioneers of religion and literature in Western Europe. As missionaries, they planted the Cross as far away as Italy. For three centuries, from A.D. 500 to 800, until the time of Charlemagne, Ireland was the intellectual centre of the west, as all authorities agree.

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(To be continued.)

JUDICIAL SOMNOLENCE. Mr. Justice Eve, in confessing during the Marconi case that he had been alternately reading and having a nap, has revived pleasant memories of judicial somnolence. Coleridge must have suffered exquisite torture in trying to keep awake at times, for when at the Bar he had been known to go to sleep while taking down evidence, and he always slept between cases—sometimes, indeed, taking a nap on his arrival at 10.30 a.m. if he was not required till 10.45. On the Bench he nearly always tumbled off to sleep after lunch, and many were the ruses to wake him up. Once he woke up and at once entered judgment for the plaintiff though he had meant to decide against him, but he got himself out of the situation very skilfully. Cave had a great weakness for sleep, as he said, he only gave in when he had got the evidence on his notes and counsel was simply making an oration that did not matter. Wright was once complaining to Bowen about having to make a Divisional Court with a somnolent judge. "He comes into court late", he said, "goes to sleep, wakes up with a jerk and adjourns half an hour before time." To which Bowen replied: "My dear Wright, you should not be rough with him. After all he is only obeying the hymnal injunction, 'Shake off dull sloth and early rise'." *Manchester Guardian.*