

Medicine and early Irish law

F Kelly

Introduction

The Old Irish law texts, which date from between the 7th and 9th centuries AD, are a rich source for the legal and social historian. The authors of these texts were in the habit of treating the various legal topics in considerable detail, thereby providing a great deal of incidental information. The law texts are often accompanied in the manuscripts by glosses and commentary, mainly from the 11th and 12th centuries, which provide further assistance to the modern investigator.

High prestige for the physician

There are many references to early Irish medicine in legal documents. It is clear that the physician (Old Irish *liaig*) enjoyed fairly high prestige in early Irish society, as one law text states that he is entitled to an honour-price equivalent to three milch cows and a three-year-old heifer. This was the sum payable in the event of any affront to his honour, ranging from insult to murder. He was thus on the same social level as skilled manufacturers such as the blacksmith, coppersmith or silversmith, or the lowest of the three grades of lawyer. Physicians were generally male, but there is also mention of a female physician (*banliaig*) whose main work is stated in a legal gloss to have been midwifery. Some physicians achieved the status of *ollam* 'master' or *sui* 'expert'.

Supernatural cures

The Old Irish sagas contain many picturesque accounts of amazing cures by physicians with magic powers, such as Fingen the seer-physician of King Conchobar Mac Nessa who managed to restore a warrior's strength for three days by the administration of a marrow-mash of cattle bones, even though the sinews of his heart had been severed "so that it was rolling around inside him like a ball of thread in an empty bag". The law texts are much more scientific documents, and provide us with some insight into early Irish medical knowledge and practice.

The two main Old Irish medico-legal texts are *Bretha Crólige* 'Judgements of Blood-lying' and *Bretha Déin Cécht* 'Judgements of Dían Cécht (a legendary physician)'. These texts date from about the 8th century, but the only complete versions can be found in a manuscript in the National Library of Ireland which was mainly written by Donnchadh Ua Bolgaighe in the years 1468-74. Most of this manuscript consists of late translations into Irish of Latin medical works, but pages 439-456 contain medico-legal material in Old Irish, accompanied by later

glosses and commentary. Page 439 is reproduced on the following page: the material in larger letters is the Old Irish text, that in smaller letters is gloss or commentary.

Types of injury

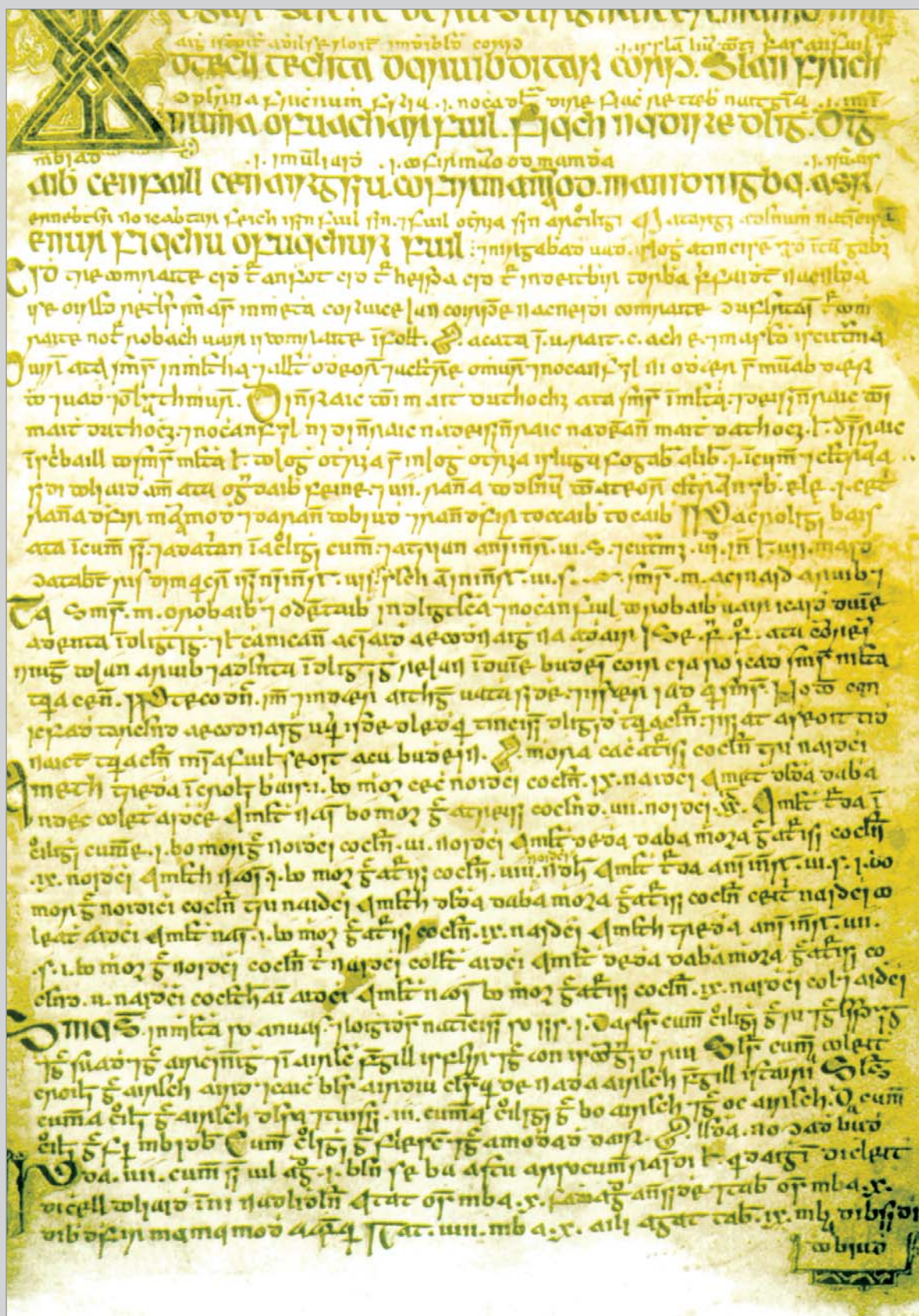
The law text *Bretha Déin Chécht* deals mainly with injuries of various types and assesses the fines payable if these have been illegally inflicted. The author clearly had access to medical expertise as there is considerable technical detail with regard to the different injuries. For example, he distinguishes six categories of dental-injuries, with fines ranging from two two-year-old heifers to six milch cows. His treatment of minor wounds to the face is likewise comprehensive. A wound in a less obvious place entails a lower fine: thus a wound between the ear and hair incurs a fine of only a yearling heifer.

A wound in the hollow of the jaw, on the other hand, entails a fine of a two-year-old heifer. This fine is doubled in the case of a wound between the eyelash and eyebrow. A milch cow must be paid for a wound between forehead and hair. Two cows are due for a wound between brow and hair, and two cows and a three-year-old heifer are required for a wound on the nose or chin. To qualify for legal recognition, a wound must be sufficiently serious to produce five drops of blood: this is defined in legal commentary as the amount which fills half a nut-shell (approximately 0.05 fluid ounces). *Bretha Déin Chécht* also distinguishes two categories of minor non-bleeding injuries. The less serious is defined as an injury which does not leave a lump or bruise or scar. The more serious is described as a 'lump-injury'.

Payment to the physician

Text explains that the fine paid to the victim of illegal injury is intended to cover "the fear of death, the gravity of the accompanying illness and the extent of the blemish". There are particularly heavy fines for injury inflicted on a person of a high status. For example, even a minor wound the size of a grain of wheat on the face of an over-king entails a fine of two milch cows and one three-year-old heifer. For the same wound, an apprentice is entitled only to a fleece of wool. A proportion of the fine for an illegally inflicted injury goes to the physician. In the case of a minor injury, one quarter of the fine is his. His share increases to one third if a wound in any fleshy part of the body measures more than two inches in length.

For the most serious types of wound, the physician is entitled



Page 439 of this late 15th century medical manuscript (G11 in the collection of the National Library of Ireland) contains part of an Old Irish law text on nursing (in larger letters) which was originally written in about the 8th century. The material in smaller letters consists of glosses and commentary from about the 12th century. (Reproduced by kind permission of the Trustees of the National Library of Ireland).

to half the fine. This applies in the case of an injury to any of the twelve 'doors of the soul' (*dorus anma*). These are evidently parts of the body where even what might seem a slight injury can have fatal results. They are listed as the top of the head, the back of the neck, the hollow of the temple, the Adam's apple, the hollow of the breast, the armpit, the breast-bone, the navel, the bend of the elbow, the popliteal fossa, the bulge of the groin (defined as the *tairbhéith* 'bull-sinew'), and the sole of the foot. A similarly serious view is taken of the seven major bone-fractures. These are of the teeth, upper arm, forearm, femur, shin, collar-bone, and point of the heel. The physician gets half the fine for such injuries, presumably on the grounds that if his treatment is inadequate there may be fatal consequences.

It is more difficult to explain why the author of *Bretha Déin Chécht* awards a similarly high proportion of the fine for an injury caused by two ploughteams colliding or an injury as the result of a fall from a tree. Another category of injury in which half the fine goes to the physician is when it is accompanied by persistent vomiting of blood or if there is an urinary infection (*galar fuail*). As in modern times, it is clear that the early Irish physician sometimes found it difficult to extract payment from his patients. To deal with this situation, early Irish law requires that a patient should leave a precious personal possession in the custody of the physician as a fore-pledge (*aurgell*). In the event of non-payment, the pledged item becomes forfeit to the physician.

Nursing after injury

The other major medico-legal text, *Bretha Crólige*, deals mainly with the legal implications of *othrus*, i.e. nursing back to health someone who has been illegally injured. This procedure is not deemed to be necessary in the case of the two categories of 'bandage-wound' (*inindraig*). In the case of a less serious bandage-wound, a physician is needed to apply the bandage, but the victim is well enough to travel about the territory without assistance. The victim of a more serious bandage-wound needs assistance in walking and must be propped up in bed with a pillow.

However, both categories of injury do not require further attention after a period of nine days. If the physician believes that the victim of an illegal injury needs a longer period of convalescence, the culprit must take him away in the presence of witnesses to the house of a third party (probably a kinsman of the culprit). He is nursed there until the physician gives a formal ruling (*derosc*) that recovery is complete. As well as paying medical expenses, the culprit must provide suitable food and accommodation, not only for the victim but also for an accompanying retinue appropriate to his rank. The text gives a vivid description of the type of accommodation required for an invalid:

There are not admitted to him into his house fools or lunatics or senseless people or half-wits or enemies. No games are played in the house. No tidings are announced. No children are chastised. Neither women nor men exchange blows. No hides are beaten. There is no fighting. He (the patient) is not suddenly awakened. No conversation is held across him or across his pillow. No dogs are set fighting in his presence or in the neighbourhood outside. No shout is raised. No pigs grunt. No brawls are made. No cry

of victory is raised nor shout in playing games. No shout or scream is raised.

The culprit has to provide a substitute to do the normal work of the victim. If the victim (male or female) is of reproductive age, the culprit has to pay an additional fine for 'barring of procreation' to compensate for the fact that the victim cannot reproduce while away from home. This is one of the few cases where the unsupported oath of a woman is legally acceptable: she is entitled to swear that she was away from the marriage-bed during suitable times for conception. In the case of an injury to a man who is known to be excessively lustful, he is allowed to bring his wife with him — presumably to protect the women of the house in which he is to be nursed.

Diet of invalids

It is clear that early Irish medicine devoted much attention to the diet of the sick or injured. One passage in *Bretha Crólige* states that horse flesh should not be given to any invalid, as "it stirs up sickness in the belly". Meat cured with sea-salt and the flesh of a whale are likewise banned on the grounds that 'the produce of the sea impels one to drink'. An invalid may only take beer under the direction of the physician. Honey is forbidden in cases where the invalid is suffering from diarrhoea.

In general, however, the consumption of honey is regarded as especially healthy. Indeed, one law text states that any invalid is entitled to a limited quantity of free honey from neighbouring beekeepers. Both medico-legal texts put great emphasis on the importance of herbs and vegetables in an invalid's diet. *Bretha Crólige* speaks of "the great service given by garden plants in nursing", and claims that the primary purpose of gardens is the care of the sick. There is frequent mention of two particular vegetables, *cainnenn* and *imus*, which are probably to be identified as onion and celery respectively. The latter is especially favoured on medical grounds, as 'it prevents sickness and does not stir it up, prevents thirst and does not infect wounds'. Sweet fruit are also recommended. A difficult passage in *Bretha Déin Chécht* refers to the use of three foreign herbs (*trí lubai gall*) which must be sought if a king is wounded in the face. Unfortunately, the identity of these herbs is unclear.

Medical equipment

Our texts provide us with some information on the equipment used by the early Irish physician. I have already referred to the use of the bandage (*indrach*) for binding and protecting wounds. There are a few references in the texts to the physician's bag (*linchor*): according to a legal glossator it contains various small compartments so that the medicinal herbs are not mixed up. There is evidence that the bag was viewed as a symbol of the physician himself: his earnings are described as 'the wages of his bag'. Similarly, if a person wishes to take legal action against a physician, he initiates proceedings by formally confiscating the bag, or placing a willow-wand across it to indicate that the physician cannot carry out his professional activities until he shows willingness to answer the charges against him.

The same text also refers to the removal by the plaintiff of the physician's horse-whip (*echlasc*) and lancet (*fraig*). The former is doubtless taken because the physician would have made many of his calls on horseback: to remove it would be the equivalent

of depriving a modern doctor of his driving licence. The lancet reflects the surgical duties of the early Irish physician. One of the sheddings of another's blood which are permitted in early Irish law is that which occurs during surgery carried out by a properly qualified physician. However, he is fined if he cuts a joint or sinew during the course of the operation, and is in such cases responsible for nursing the patient back to health at his own expense.

Gynaecological ailments

The law texts concentrate on illegal injury, and therefore provide little information on disease or its treatment. There are, however, a number of references to the legal implications of various gynaecological and fertility problems. One law text refers to a type of impediment to intercourse called *lecc diice*, which seems to have been an obstruction of the vaginal passage. If a husband entered into matrimony unaware of this defect in his wife, he was entitled to divorce her and reclaim the bride-price which has been paid to her father. Another law text adopts a remarkably harsh attitude to a wife who is too sickly to provide milk for her baby. She can likewise be divorced with refund of the bride-price.

The same applies to a wife who deliberately induces an abortion on herself. If either partner in a marriage is infertile, there is evidence that Irish law permitted the other to acquire a child elsewhere. The husband of an infertile wife may thus impregnate another woman in a lower form of marriage. The wife of an infertile husband may likewise leave him temporarily so as to become pregnant by another man. The resultant child is treated as belonging to the husband. A wife may divorce her husband with retention of the bride-price if he is impotent or becomes so fat that he is incapable of intercourse. If the mother of a child develops a wasting-sickness (*anbobracht*), the father is solely responsible for the rearing of the child, whether he is married to her or not. He is similarly responsible if she becomes leprous (*clam*) on the grounds that the child may become infected by her sores.

Mental illness and disability

There is much discussion of the legal implications of mental illness or disability, with a general distinction between the person who is mentally retarded (*drúth*), deranged (*mer*) or violently insane (*dásachtach*). The law texts contain no references to specific treatment for mental illness. Their main concern is that such individuals should not be exploited: one text states that "the rights of the insane precede all other rights". Hence a contract with a person of unsound mind is invalid, and anyone who incites a *drúth* to commit a crime must himself pay the fine.

A man who impregnates a deranged woman is solely responsible for rearing the offspring, as is anyone who mischievously allows two insane persons to mate. In most circumstances, responsibility for crimes by the insane devolves on his or her guardian, generally a close relative. Society must be protected from the dangerously insane, hence a *dásachtach* should be tied up when he poses a threat to others. An epileptic (*talmaidech*) enjoys full legal competence, provided he is of sound mind. However, he must be watched over by a guardian to prevent injury to himself or to others during fits. A heavy fine is levied

on anyone who mocks the disability of an epileptic, a leper, or one who is lame, blind or deaf.

Veterinary medicine

To conclude this brief survey of medicine and early Irish law, I turn now to the role of veterinary medicine. There are a few references which indicate that livestock were sometimes treated by professional veterinary surgeons, probably members of medical families. One legal commentary credits Dian Cécht with establishing the principle that the person who cures a wounded animal is entitled to one quarter of the 'price of the wound', i.e. the sum due for the wound if inflicted illegally.

Due to the crucial importance of livestock (especially cattle) in the early Irish economy, it is not surprising that the legal implications of animal disease are treated in detail in our sources. One law text states that cattle should not be driven into an enclosure in which there had been other cattle infected with *bó-ár* 'cattle-mortality', a disease which is possibly to be identified with rinderpest. Another text names various diseases and defects of cattle, sheep, goats, horses, pigs, poultry and dogs. It is not always possible to identify the various conditions listed, as there is practically no description of symptoms.

The texts deal in particular with the legal problems which arise if an animal develops a disease after purchase. In general, the buyer is entitled to some compensation if the symptoms appear within a fixed period after sale. The length of this period varies in accordance with the type of livestock involved: one year for a horse, nine months for a cow, four months for a pig, sheep or goat, and six weeks for a dog or cat. The amount of compensation may also depend on whether the animal has contracted an infectious disease or whether it suffers from an inherent ailment. The distinction may be legally and/or medically difficult to establish, so the category of a 'disease of doubtful origin' is also recognised in law.

The texts also allow for the fact that similar symptoms may be caused by different types of disease. For example, stomach-pain (*idu*) is included both among the inherent ailments and infectious diseases of cattle. As in the case of human ailments, a formal ruling (*derosc*) may be required that an animal has fully recovered. In cases where such a ruling is legally necessary, e.g. after a dispute between buyer and seller, it is likely that it must be made by a veterinary surgeon.

Transmission of animal disease to humans

Some diseases can afflict both animals and humans. For example, the Annals of Connacht record that in the year 1464 a man named Muirheartach Maoilsheachlainn and his wife, along with three others, contracted glanders from a horse. All five died within 24 hours of each other.

There may be special legal implications in the case of such diseases. Legal commentary rules that the owner of a rabid dog must put out a public warning of the disease. He must then ensure that the dog is killed, its body burnt, and the ashes thrown into a stream. These obligations on the dog-owner indicate awareness of the fact that the rabies virus can survive for some time in the body of the infected animal.