THE LORD’S SHARE IN THE PROFITS OF JUSTICE AND A PASSAGE IN CATH MAIGE TUIRED

The account of the reign of Bres mac Elathan in Cath Maige Tuired ‘The [second] Battle of Mag Tuired’ is a classic depiction of oppressive rule as seen by an early mediaeval Irish author, and has received due attention in recent studies of this important text.\(^1\) Towards the end of that account the following passage appears, as edited in Gray (1982, 32, § 38):\(^2\)

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\text{Ní roan trá fochnom nó éraic dona túathaib; } \text{7 ní tapradis séoit na túaithe a foicidh na túaithe oli.}
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Stokes (1891, 71) translated this as ‘Neither service nor wergild from the tribes continued, and the treasures of the tribe were not delivered by the act of the whole tribe.’ d’Arbois de Jubainville (1892, 414) translated quite differently: ‘Personne n’était déchargé de service ni d’amende, et pour les trésors qu’on donnait au roi personne ne recevait aucune rémunération’, as did Lehmacher (1931, 443): ‘Dienste und Zahlung hörten für die Stämme nicht auf, und die Wertsachen des Stammes wurden nicht für die Abwehr von Heimsuchungen des Gesamtstammes gegeben’, with the note ‘Als Almosen’. The most recent translation, in Gray (1982, 33, § 38), is however very close to that in Stokes: ‘But neither service nor payment from the tribes continued; and the treasures of the tribe were not being given by the act of the whole tribe.’

These translations are all supplied without comment, apart from the brief explicatory note by Lehmacher. Yet Stokes’s translation, and the similar one by Gray, in themselves signal that there is a problem here, and while the translations of de Jubainville and Lehmacher at least make some sense, it is difficult, indeed impossible, to see what relation they bear to the original text.\(^3\)

The only discussion of the difficulties involved in this passage I know of is by Ó Cathasaigh (1983, 16 n. 30):\(^4\)

Dumézil’s interpretation is borne out by the text, but not (as he thinks) by § 38, where he has been led astray by the translation

\(^{2}\)This differs from the edition in Stokes (1891, 70) only in the addition of length-marks.
\(^{3}\)Nor is the relation between Gray’s translation of § 38 and her summary thereof, cited in note 4 below, clear.
\(^{4}\)This is a note attached to the sentence: ‘It is in terms of the social contract that Dumézil [viz. Georges Dumézil, *Servius et la Fortune* (Paris 1943) 230-41] interprets what happens in CMT. Having levied rent on the Tuatha Dé Danann, Bres fails to provide them with hospitality; and so they withhold service and wergild from him’, Ó Cathasaigh (1983, 5). The text of § 38 is similarly interpreted in Gray (1983, 14), with ‘The exasperated Túatha Dé Danann begin to withdraw their support from Bres, while he continues to spend their wealth as if it were his personal property’, and in McCone (1989, 123), with ‘Finally Bres’s subjects cease to render their dues’.
of d’Arbois de Jubainville. The text reads *Ni roan tra fochnom no éraic dona tuathaib ñ ní tabradis séoit na tuaithe a foicidh na tuaithe oli*. The first part of this is clear: *fochnom* is for *fognam*, and Stokes translates ‘Neither service nor wergild from the tribes continued’, d’Arbois ‘Personne n’était déchargé de service ni d’amende’. The difficulty arises in the second sentence. Stokes gives ‘and the treasures of the tribe were not delivered by the act of the whole tribe’. It should be noted that in CMT sg. *tuath* and pl. *tuatha* (and the respective case-forms) are interchangeable and that Dé Danann is frequently omitted, so that for ‘tribes’ and ‘tribe’ we can (and probably should) substitute Tuatha (Dé Danann). But what is *i foicidh*? *Foicidh* is doubtless for *foichid*, but Stokes’s ‘by the act’ for *i foichid* is, to say the least, a long shot. *Foichid* is poorly attested, and it is suggested in *DIL*, s.v., that it may be a variant of *fochaic*. In that case we might translate ‘on account of the suffering of all the Tuatha’, For somewhat similar usage of *in-* see *DIL*, I, 6.71–7.26: an example with *do-beir* is *ca hindeochad do-béred in rí forru ind* ‘(in punishment) for it’ (*TBDD*, 196). Such an interpretation is less convincing in a negative sentence, but I think it preferable to Lehmacher’s (note 1) rendering of *i foichid* as ‘für die Abwehr von Heimsuchungen’ (p. 443). (If we were prepared to amend, we might think of *fochraic* and translate ‘in payment, as rent’, but we would expect the following genitive to denote that which is paid for rather than those who pay.) In any case, the sentence cannot mean ‘pour les trésors qu’on donnait au roi personne ne recevait aucune rémunération’, which rendering forms the basis of Dumézil’s interpretation of the passage. In short, it is not this paragraph which shows the king to be in breach of the social contract: it is § 36, which speaks of his failure to provide hospitality and entertainment. (I might add that CMT bristles with textual difficulties of one kind or another.)

Clearly another interpretation is needed, and one which is in keeping with the portrayal of Bres as an unremittingly oppressive king. There can be no doubt that *éraic* is a crucial word in the first of the conjoined sentences, and any interpretation of the passage as a whole will have to take due account of the meaning of this technical legal term. It is defined in Kelly (1988, 310) as ‘body-fine, fixed penalty for homicide’, and can also be used of compensation for injuries not resulting in death and for other offences (see *DIL* s.v. *éric*). It has the specific meaning of ‘payment in compensation for an offence’, and substituting the general term ‘payment’ for Stokes’s ‘wergild’ simply will not do. Here *éraic* is paired with *fognum* ‘service, labour service’, whereas elsewhere in the text it is paired with *cís* (see p. 12 below). In looking for an alternative explanation we may take into account two possible readings for *dona tuathaib*, namely as consisting of the article preceded by *de* ‘from’, or by
do ‘to, for; by (when used with the agent of a verbal noun)’. Regarding Níro an, the meanings given in DIL s.v. 1 anaid are (a) ‘stays, remains, abides’, (b) ‘resists’ (with fri), and (c) ‘ceases, stops, desists’. It is with the last of these that I would place the example in our text, taking fochnom ná [sic leg.] éraic as the subject. The closest parallel in the examples cited in DIL is that from Longes Mac nUislenn: Co cenn sé níblíadna dèc níro an gol na crith leu i nUtilaib acht gol ocus crith leu cech n-đen-aidchí ‘To the end of sixteen years neither weeping nor trembling ceased in Ulster through them, but each single night [there was] weeping and trembling through them’, edited and translated in Hull (1949, 48 §16, 66).

I suggest the following translation for the first of the conjoined sentences: ‘Neither [the rendering of] service nor penalty-payment by the [individual] kingdoms ceased’, and will elaborate on the import of this below, after addressing the translation of the second sentence.

In the second sentence the crucial words are fóidich and oli. As for oli, Stokes, Lehmacher and Gray took it as a form of uile ‘all’, while again it is not clear from his translation how de Jubainville interpreted it. I know of no example anywhere of o(i)le as an alternative form of uile. On the other hand, Oli aile ‘other’ has very well attested later variants in oi- (as well as ei-), for which see DIL s.v. 1 aile. Further examples with o(i)- from CMT itself are all of aile as the second element of alaile/araille, namely aole, § 84, co ‘role, § 37, orioile, § 87. The reading uile ‘all’, which entailed taking both instances of túath as referring to the same entity, must then be dismissed, and what the text actually has in na túaithe . . . na túaithe oli is a correlated pair meaning ‘of one kingdom . . . of another kingdom’. For the use of the definite article in both items in the construction in X . . . in X aile, where English has the indefinite ‘one X . . . another X’, see the examples cited in DIL I, 186.75–80, as well as those of ón tráth co raile cited in DIL T, 275.51–60. As for fóidich, it doubtless stands for foichid, as O Cathasaigh notes (see above p. 2), and the difficulties with the meaning ‘offence, attack, injury’ etc., a consequence of taking oli as uile, disappear once it is seen that the text is talking about two different túaths here.

I therefore propose that ní tapradis séoit na túaithe a fóidich na túaithe oli means rather ‘the chattels of one kingdom used not to be given [in compensation] for an offence against another kingdom’.

Having offered a new translation, it will now be necessary to explain what it means. As I see it, the gist of the text is that no fines were allowed to be kept within any kingdom, and no chattels were paid in compensation by

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5 DIL, however, cites the example (at A col. 321.32) from the edition in Windisch (1880).
6 For nó in fochnom nó éraic the MS has the compendium l, but this can also stand for ná and should be so expanded here.
7 The article is similarly used in the related constructions, in X . . . a chéile; in X . . . araile, both meaning ‘one X . . . another’.
8 To the examples in DIL s.v. foichid can be added iar foichid i.e. iarna mbriuaid, CIH 1542.15.
9 A possible alternative is ‘. . . of a member of one kingdom . . . against a member of another kingdom’, but this would not affect the substance of the argument presented here.
one kingdom to another: rather, Bres took everything. The first sentence is to be understood in terms of the relationship between lord and client, at the lower level, and the second in terms of the parallel relationship of overlord and kingdom, at the higher level. My explanation will therefore begin with some discussion of the nature of clientship, and will concentrate on those aspects relevant to the explication of our text, in particular why Bres’s behaviour is to be seen as that of an oppressive lord.\(^{10}\)

At this point a few comments on the date of *Cath Maige Tuired* will be appropriate, although a detailed study of the language of the text is beyond the scope of this paper.\(^{11}\) The opinions of previous scholars on the question of dating are summarised by Gray (1982, 11),\(^{12}\) and an outline of the linguistic features is given on pages 12–21. There are no grounds for seeing anything archaic in the text; all the features listed in Gray (1982, 12–13) are purely orthographical.\(^{13}\) While there are quite a few forms which are at the earliest MidIr,\(^{14}\) there is a sufficiently substantial number of specifically OIr forms to warrant dating the text to at least the ninth century, and seeing the later forms as arising in the course of transmission. Furthermore the OIr forms appear to be fairly evenly distributed throughout the text, so that it is not easy to identify any substantial passages of text as later interpolations.\(^{15}\)

The legal material used here is taken mostly from OIr texts, namely, *Senchas Már* (SM; 7th century, see Breatnach, 2011), *Cáin Úithirbe* (7th century, see Companion, 216–18), *Críth Gablach* (early 8th century, see Companion, 244), *OGSM* (mid-8th century, see Companion, 338–44), the OIr glossing of *Cáin Úithirbe* (8th or 9th century, see Companion, 348) and *Bretha Nemed Dédenach* (8th or 9th century). I have kept references to MidIr glosses and commentary to a minimum.

There is enough material in the surviving Old Irish law texts for a reasonably clear picture of the institution of clientship to emerge.\(^{16}\) Thus three tracts are devoted to the subject in *Senchas Már*,\(^{17}\) namely SM 5, *Cáin Sóerraith* ‘The regulation of noble fief’, SM 6, *Cáin Aicillne* ‘The regulation of base clientship’, and SM 18, *Di Dligiud Raith Í Somaíne la Flaithe* ‘On the due of fief and lord’s revenue’. Of these, the first survives in extracts only, the

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\(^{10}\)In citations from *CIH* below punctuation, capitalisation, macrons over long vowels and hyphens are supplied. The abbreviations for *acht*, *danó*, *didiu* and *nó* are expanded. Where ligatured *æ* represents a diphthong it is printed as *á̆r*.

\(^{11}\)The question is made all the more complicated by the outlandish orthography in which the sole copy, in the 16th-century MS British Library Harleian 5280, is presented.

\(^{12}\)See also Carey (1989–90), who regards the opening section as a later addition to a text which otherwise belongs to the ninth century.

\(^{13}\)Thus, for example, the instances of pretonic *di-* and *de-* for *do-* given on p. 13 are of no diagnostic value whatsoever, given the equally common spelling with *di-* or *de-* of forms which had *do-* in OIr resulting from earlier *to-*, e.g. *derocratar* (for *do-rochratar*), § 12.31, *decum tírei* (for *dochum tíre*), § 16.46, and *diloutar . . . dideochaid* (for *do-lotar . . . do-dechaid*), § 147.733–4.

\(^{14}\)Gray (1982, 20–1).

\(^{15}\)Apart perhaps from the opening section, which Murphy (1955, 195) and Carey (1989–90, 53–4) argue is later, but I am not sure that even this qualifies as an interpolation.


\(^{17}\)For the nature and dating of this text see Breatnach (2011).
second in an almost complete copy, and the third in a partial copy together with extracts.\textsuperscript{18} While two types of clientship are distinguished, \textit{aicillne} ‘base-clientship’ and \textit{sóerrath} ‘free (or noble) fief, free clientship’, nevertheless, as Kelly (1988, 33) notes, ‘both free and base clients are freemen of independent legal capacity’.

In base clientship the lord gives a grant or fief to the client, and in return the client provides a food-render to the lord, proportional to the amount of the fief. The amount of the fief in turn is dependent on the status of the client, as stated in \textit{SM 6} at the beginning of a section detailing the fief and the corresponding food-render for various grades:

\begin{quote}
\textit{Caité taurchrecc cach bésa ó biucc co mór as choir for cach ngrád? Ar ní torgaib nach discor na már; mided cach a choir ara torgaba a máma} ‘What is the fore-purchase of every render from small to great, which is proper for each grade? For no lowly person takes up anything great. Let everyone estimate what is proper for him, so that he may take up his obligations’.\textsuperscript{19}
\end{quote}

This is the core of the arrangement. The lord’s fief is called \textit{taurchrecc} ‘fore-purchase’, and he is thereby envisaged as paying in advance for the services of the client. The client’s render is called \textit{bés tige} ‘house custom’, or simply \textit{bés} ‘custom’, as it is a regular and defined render rather than a series of arbitrary exactions by the lord. It is, however, more than a commercial transaction, as it also establishes an ongoing relationship in which other services are owed by the client to the lord. Thus, in addition to the fief, the lord makes a payment equivalent to the client’s honour-price, by which he gains the submission of the client. This payment is called \textit{séoit turchluídeo} and it is defined as follows in \textit{SM 6}:

\begin{quote}
[\text{L}ójgh einech cach aín iss ed a s.a turcluíde, CIH 1780.9, ‘The honour-price of each individual is the equivalent of his chattels of prostration’].\textsuperscript{20}
\end{quote}

All of these elements of the contract of base-clientship are brought together in a passage in \textit{SM 6} which in addition supplies the important information that the lord is entitled to a third of the amount paid to his client as compensation for offences against him.

\begin{quote}
\textit{Turcreic ar bés bes coir amail bes a tothacht 7 a grád 7 a míadh ar trian a duinn 7 a meisce, CIH 1780.19, ‘Fore-purchase for a render which is fitting in accordance with his possessions and his
\end{quote}

\textsuperscript{18}See Companion, 288–9, 295.

\textsuperscript{19}Text normalised from \textit{Caite turcreic cach besa o biucc co mor as coir for cach ngrad Ar ní torgaib nach discor na mar mided cach a coir ara torgaba a mama}, CIH 484.5; for turgaib, the MS has torgaib. Ed. Thurneysen (1923, 358 § 14); see also Thurneysen (1925, 238).

\textsuperscript{20}Edited and translated in Thurneysen (1923, 342 § 4).
grade and his rank, for a third of [the penalty for] stealing from him and injuring him in a brawl’.

The term *mescae*, lit. ‘drunkenness’, has the extended meaning of ‘drunken brawl’, ‘injury inflicted in a drunken brawl’. Here *donn* and *mescae* are doubtless intended to be exemplary rather than comprehensive. The gloss on *ar trian a duinn* offers a slightly wider range of compensatory payments: *i.e.* no trian dō na hērc a atā i ngait as, no a crech, no a frihe, CIH 1780.23, ‘i.e. or a third to him of the penalty for stealing from him (viz. the client), or plundering him, or of his [gains from finding an] item of lost property’.

The lord’s entitlement to a share of *donn* is mentioned, with a wider meaning ascribed to it, in a glossed extract in a fragmentarily preserved list in SM 26. *Status-tract*, beginning *Atāit uii. ndīubarta x. a xx. 7rl-*, CIH 1545.22, ‘There are thirty-seven unequal bargains, etc.’, as *donn gacha flatha i. trian n-ērca a cuirp 7 a sēt, CIH 1545.28, ‘[the penalty for] stealing of every lord .i. a third of the compensation for his (the client’s) body and for his chattels’.

A longer, but still doubtless exemplary, list of cases where the lord gets a third is found in the status text *Críth Gablach*, which finishes its account of the *fer midboth* with *trian a duinn 7 a mesca[e] 7 a lesca[e] 7 a ērca do flailth*, Binchy (1941, 4.85), ‘a third of [the penalty for] stealing from him and injuring him in a brawl and incapacitating him (?) and of his wergild [goes] to the lord’.

21Edited and translated in Thurneysen (1923, 343), with discussion ibid. 343–5, 393, and Thurneysen (1925, 238).

22Cf. the explanation in one of the glosses on *a meisce*: *i. trian coirpd-ī tre na crech/air ar mesge, CIH 1780.25, ‘i.e. a third of the wergild for the wound which is inflicted on him when drunk’.

23That is, cases where an advantage accrues to one party in a relationship without them having to make up for it to the other party. An OIr extract cited as a gloss on *Gábretha Caratniad air ar mesge*, CIH 1780.25, ‘i.e. a third of the wergild for the wound which is inflicted on him when drunk’.

24This example can be added to those in *DIL* s.v. 3 *donn* ‘theft’ as well as one from *Di Astud Chor, Ni said dīlse for donn na dochur . . .’ ‘Immunity from legal challenge does not come into effect for stolen property, nor a disadvantageous contract . . .’, McLeod (1992, 182–3 § 48), and one from an unidentified source in Digest B 1, 1 is e fer in sin, i. rí. dígus eneclin, *dir e treibe 7 líogh enoch 7 dir e a tromgresa 7 a duinn, CIH 1291.9, ‘it is that man, i.e. a king, who is entitled to payment for an offence to honour, and compensation for theft from his dwelling-place, and honour-price, and compensation for a serious insult to him and for stealing from him’ (cf. Companion, 298 n. 81).

25This text, however, has no mention of the ‘chattels of prostration’ paid to the client.

26See Binchy’s note, ibid. 27. I tentatively take *lescae* ‘idleness, sloth’ etc. in an extended sense of ‘making idle, incapacitating’, that is, inflicting an injury which makes the victim incapable of working.
Binchy (1941, 80) commenting on the distinction between sóerchéile ‘free client’ and dóerchéile / céile gíallnae ‘base client’, notes that the former ‘retains his completely independent status, for the ties of “homage” and “service” that bind him to his flaith do not affect his legal personality’, whereas the latter ‘surrenders some of his status by accepting in addition to the fief (taurchrec) a payment equivalent to his honour-price’.

Although SM 5, the tract on free clientship, survives only in extracts, there is amongst these one extract which confirms that the lord of a free client did not take a share of the compensation due to the client.

Acht airer enechruice dē fadeisin, CIH 1774.9, ‘except for the fractional penalty of “face-reddening” on the basis of him himself (viz. by virtue of it being an attack on the lord’s honour)’.

A glossed extract from this appears in the OIr glossing of Senchas Már, where the gloss makes it clear that the text is talking about payment to the lord: Acht airer nenech i. airer sòn dìa marbthar (?) a chèilid, ar is ainechruice dó an eneclann dligius inn, CIH 902.21 (OGSM), ‘. . . i.e. that is a fractional penalty if his client is killed, for the payment for an offence against honour (lit. ‘face-cleaning’) to which he is entitled is, for him, “face-reddening”’. The MidIr commentary in CIH 1774.9–14 states that the lord is entitled to a seventh of his own honour-price for an offence against his free client, and not to anything else.28 That this was the only payment is also indicated by the fact that the extract in CIH 1774.9 is immediately preceded and followed by extracts beginning nì dìlig ‘he is not entitled to’, CIH 1773.29, 1774.15, where the subject of nì dìlig is unquestionably the lord. The word enechruce (DIL s.v.) is used as a specific term for the seventh part of a person’s honour-price, paid to a person not for an offence against himself but against someone connected to him. The entry in Sanas Cormaic s.v. enechruce29 gives examples of such persons, including mac do mìthar ‘the son of your mother’, mac do sethar ‘the son of your sister’, and, significantly for the question at issue here, the cèile fàesma ‘the client of acknowledgement’, which can only be another term for the sóerchéile ‘free client’.30 What is important for our purposes is that enechruce is a payment made to the lord which is calculated on the basis of the lord’s honour-price, and is not taken out of the compensation paid to the client; a free client will get all of the compensation due to him.

27See above pp. 4–5.
28nocho dìligenn nì .ii. i fogail do dènìmh ris, CIH 1774.11, ‘he is not entitled to anything else for an offence committed against him (viz. the client)’.
29Meyer (1912, 44 §532); see the comments in Thurneysen (1925, 247) and Breathnach (1987, 32).
30Compare the definition attached to an extract from the opening of SM 5, Cúin Sóerraith, in OGS (cf. Thurneysen, 1927, 211): Saonnaith.i. cin gíalln fría láímh, cin curu bèl, acht fuísitiu .i. aididis namá, CIH 902.15, ‘Of Noble Fief’, i.e. without submission along with it, without contracts, rather acknowledgement, i.e. acceptance alone’. In other words, base clientship involves submission to the lord together with a formal contract, whereas for free clientship (mutual) acknowledgement is enough.
The advantages in the arrangements pertaining to base clientship, however, are not all on the part of the lord. From the point of view of the client a powerful person now has a real interest in promoting his case when an offence has been committed against him. He will have the backing of his lord, and can expect him to act as an enforcer of his claims. The lord’s share is in effect the equivalent of the trian tobaig ‘third of enforcing’, the third share of the compensation due to a person who enforces a claim on another’s behalf.  

These belong then with various other payments, such as the lóg mbérlai, the judge’s fee, which can be considered together as the ‘profits of justice’.  

The lord’s entitlement to a share of compensation was clearly a generally recognised element of clientship, and this point is underlined by the scenario painted in yet another text regarding the potential for corruption inherent in this arrangement. It is found in a comment on the statement in the early law text Cúin Fúithirbe: Anflaith gach flaith léigis anbhtine fora túaith, CIH 764.24, ‘Any lord who releases chaos onto the people of his kingdom is an unjust lord’. In another copy of this text with glosses in OIr, the glossator supplies the extract Leirgeis ainbthine, CIH 771.24, with the gloss *i. is ferr leis deabaid *iter dí aigilline fo bhth érc do ‘i.e. he prefers there to be conflict between two groups of base clients for the sake of the wergild [which accrues] to him’.  

The glossator is envisaging a situation where members of two separate kin-dreds are base clients of a lord, and the lord encourages a vendetta between them to persist, since he will get a share of the wergild every time a member of either kindred is killed.  

In certain cases a high-ranking person will get a greater share of compensation, but the lower-ranking person directly affected by an offence still gets a share of the profits of justice; and indeed the second scenario in the passage below from SM 24, Bretha im Gatta ‘Judgements concerning Thefts’, involves a case where the total amount which the commoner gets will be more than anything based on his own honour-price. The tract as a whole is concerned with theft, and this particular passage is concerned with cases where the object is stolen in a house which is not that of the owner of the property. In other words, the cases discussed are instances of díguin, the term for an offence indirectly affecting another person, ‘violation of protection’.  

\[31\] See Kelly (1988, 126).  
\[32\] See Kelly (1988, 53). Lit. ‘payment for law’, that is expertise in the law. For the meaning of bérlae (later bérla) in the law texts see Binchy (1966, 66).  
\[33\] See also Charles-Edwards (2009, 69–72), who makes the important point that the extent to which kings take the profits of justice is a measure of the power and effectiveness of kingship in early Irish society. To the evidence that he adduces can be added the cases noted below pp. 9–10.  
\[34\] For Cúin Fúithirbe see Companion, 212–18, and for the OIr glossing of this text see ibid. 348–9.  
\[35\] See Kelly (1988, 141).
samlaid ní gatair a úasal-nemiud di-renar fo choibne trebe: da trian dond nemiud, trian do fir bess a sét la aithgin a sseóit.

Mad sét rig no neimid ro gatair a tig aithig nó bachlaig no no airíg lándiriu don rig no don nemiud acht lóg enech dond fir ara ngatar. Im-thá samlaid dno ní gatair a ttig briugad 7 eclais . . .

‘Anything that is stolen from a dwelling, full honor-price of everyone whose estate it is, is paid [for it], except for something from which a [too] small amount thereof is removed.

The sét of a commoner which is stolen from the house of a king, the full honor-price of the king is paid [for it]: two-thirds to the king [and] one-third to him whose sét it is, along with restitution of his sét. So likewise anything which is stolen from an exalted sanctuary is paid for according to the equivalent amount for a dwelling: two-thirds to the sanctuary [and] a third to the one whose sét it is, along with restitution of his sét.

If it is the sét of a king or of a sanctuary which has been stolen from the house of a commoner or a lay-brother or else a freeman, full díre-fine [is due for it] to the king or to the sanctuary, but the honor-price [is due] to the one from whom it is stolen. So too anything which is stolen from the house of a hospitaller and from a church . . .’, Hull (1956, 219–22, §§ 3–5).36

Although the provisions in this text are not related to clientship, they do serve to illustrate a general principle, namely that the affected person will not normally expect the compensation for an offence committed against him to go to another. In the contract of clientship, moreover, the lord’s share is strictly defined, and the rapacious lord who would seek to take more than his due share is condemned in SM 14, Di Astud Chirt 7 Dilgid ‘On the Establishing of Right and Entitlement’, where länéric in cèile 7 ēgh n-airbíd ò comarbaib, CIH 225.32, ‘[taking] the full wergild of the client and full refection from his heirs’37 is given as the final item in a list introduced with Atá t trí deigmírinda nádet usa a mbélait cach flaitha ná fadbad liubair na Féine a n-astad ‘There are three bloody portions which are not trivial in the mouth of any lord, which the books of the Féni do not accept being held fast’.

Although, as we have seen, the law texts devote a good deal of attention both to the lord’s share, and to the principle of justice that the victim must also get his share,38 there is one important proviso, namely that the victim is an adult freeman of independent legal standing.

In the case of certain people the king takes full responsibility, as pointed out in Breatnach (2010, 118–21). These are either mentally impaired people or minors, people without any independent legal standing. Thus, for example, in

37That is, the client has been killed and the lord allows none of the wergild to go to his heirs.
38Or, of course, his kin in the case of a fatality.
the case of an injury to a mentally impaired person the king takes most of the compensation, with a third going to the head of the victim’s kindred, as stated in SM 42, Di Brethaib Gaire ‘Concerning Judgements on Maintenance’:

Cond fine luaides gaire nō a māthan (?) is la suidiu trian a dīre. Othā suidiu is la rīg fallnathar taatha. Gach rīg lais fauchar fris, airchealla-side a dīre n-aire acht is gō flathā dō cen a trian dia fine, CIH 1276.28, ‘The head of the kindred who sees to maintenance, or the maternal kindred, a third of the compensation for him (the fool) goes to them. The rest (lit. ‘from that on’) goes to the king who rules the kingdom. Any king in whose territory an offence is committed against him (the fool), let him take his compensation on his behalf, but he is guilty of a sovereign’s falsehood if he does not pass on a third of it to his kindred. 40

More generally, lords take responsibility for members of the class of semi-free person known as fuidir (pl. fuidri). 41 Our main source of information on the fuidir is tract 16 of SM, a complete copy of which has survived. 42 While § 2 of this tract recognises an exceptional type of fuidir who surrenders only a third of fines for offences against his property to his lord, matters are quite different for the typical fuidir described in § 1 of the text. The former type is described as follows:

Fuidir laiss mbiat cōic treba dia cenūl fadeisin, is tūalaing ro n-icca a chinta 7 ara-rubíatha a flaith, is la suide dīre a sēoit acht trian do flaith, CIH 426.21, ‘The fuidir who has five holdings from his own kindred along with him, who is capable of paying compensation for his offences and of providing food-rent for his lord, the compensation for [damage to] his property, apart from a third to the lord, is his’.

In his discussion of the cóic threba, Charles-Edwards (1993, 319–24) suggests as one possibility that the term might be related to the ‘five men’ or categories of the gelfine, the three-generation kin group. This appears to me to be the correct explanation. What is being required of this type of fuidir is not only that he himself have resources, but that his whole gelfine have property so that anyone having dealings with him can be assured that should the individual fail to meet his commitments the debtor will have a fully

39 The translation is based on expanding MS math– as māthre, following Smith (1932, 68), rather than the mathar of CIH.
40 Cf. Breathnach (2010, 119); my translation differs from that in Smith (1932, 70). The particularly strong condemnation implied by the use of the term go flathu of a king who would attempt to take everything is noteworthy.
42 Ed. Thurneysen (1931, 61-83); paragraph numbers in the citations below are those of Thurneysen’s edition. Cf. Companion, 294.
solvent kin group against which he can proceed. This particular *fuidir*, then, is like a base client as far as the lord’s share in compensation is concerned. The situation however is quite different with regard to the typical *fuidir*, with an account of whom the tract opens.

_Cach fuidir cona thothcus tēchta, nī ēcca cinaid a meic nach a ī nach a ēarmui nach a indui nach a comoccus fine nac a cinaid fadeisin. Flaithe airíd-mbāatha, is ē ēccass a cinaid. Air nī lais dīre a sēoit acht colaum aithgena namā. Nī gaib dīre a maic nā ī nac a dībad nac ēraicc nach a māthar. Flaithe ara-mbāatha is sī nod beir 7 ēccas a chinaid 7 fo-lloing a cinta, CIH 426.5, ‘Every *fuidir* with his lawful property, he does not pay [compensation] for the offence of his son or of his grandson or of his great-grandson, or his kinsman or for his own offence. The lord for whom he provides refection, it is he who pays for an offence committed by him. For the compensation for an offence against his goods does not belong to him, only the object which makes up restitution. He does not receive the compensation for an offence against his son or his grandson, nor his legacy nor his wergild, nor that of his mother. The lord for whom he provides refection, it is he who takes it, and who pays for an offence committed by him and takes responsibility for his offences’._

From all of the above, then, it emerges that a distinctive characteristic of the non-servile classes is their entitlement to (a share in) the compensation paid for offences committed against them.

To return to *Cath Maige Tuired*, the first sentence in § 38, with which we began, is now explicable as further representing the humiliation of the Túatha Dé Danann, not only with its reference to *fognum* ‘[rendering] service’, but also to the less immediately obvious *éraic* ‘[rendering] penalty-payment’. In arrogating *éraic* to himself Bres certainly does not behave as a lord towards free clients, nor even as a lord of base clients, but rather he acts towards the Túatha Dé Danann as though they were servile *fuidri*. The second sentence continues with this theme, but on the higher level of relations between kingdoms. Although the text says only that the chattels of one *túath* were not given to another *túath*, the implication is that Bres took them.

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43This interpretation receives support in a passage in *Bretha Nemed Dédenach* on suretyship, which, in recommending the *bóaire*, the typical commoner, as the ideal surety, stresses not only the wealth of the *bóaire* himself and his ability to pay, but also the backup of his kin: _Do-tae [i.e. té] friot fer sainsealbha bunaidh, bēo a cheithirfine, . . . nī dleghar dhē, deichde a bhūtar bóaire fīor, bēo a chhumhne, saighidh, as-rean, nī diothoing, CIH 1122.34–7, ‘Let there come towards you (as a guarantor) a man who has his own original wealth, his four (categories of) kinsmen are alive, he is indebted to no one, his cattle are ten-fold, a true *bóaire* whose memory is alive; he pursues, he pays compensation, he does not absolve himself’. I take _ceithirfine_ to refer to the other four categories of his *geifine*. The translation differs from that of the copy in CIH 1382.6–11 (Digest B 56) in Smith (1932, 78).
For clarification of what is involved here we can look at the concept of *cairde* ‘friendship, treaty’. This is essentially an agreement between two kingdoms which allowed for the normal legal settlement of disputes to apply across both kingdoms. A number of different kinds of *cairde* are mentioned in our sources, and it is not always clear what the distinguishing features were. The issue is made all the more difficult by the fact that the *Senchas Már* tract devoted to this topic survives only in extracts.

For our purposes, however, the important thing is that *cairde* stands in sharp opposition to another relationship between kingdoms, that of *cáin*. Whereas *cairde* is an agreement between equals, *cáin* is a relationship between superior and inferiors; *cairde* is agreed, *cáin* is dictated. For a comprehensive discussion see Stacey (1994, 98–111), who notes that *cáin* is often associated with *cís* ‘tribute’. It is surely significant that in the two other occurrences of *éraic* in *CMT*, both in the context of exactions from the Túatha Dé Danann, it is paired with *cís*. What is explicit in those two cases is implicit here in § 38. The positive counterpart of the second sentence in § 38, the chattels of one kingdom being paid for an offence against another, would apply to a situation where a *cairde* or treaty had been concluded between two kingdoms allowing disputes to be settled between members of either kingdom just as if they were all in the same kingdom, namely through the offending party paying compensation to the injured party. When the text states *ní tapradis séoit na túaithe a foicidh na túaithe olí* ‘the chattels of one kingdom used not be given [in compensation] for an offence against another kingdom’, it can only mean that no *cairde* or treaty-relationship between kingdoms was allowed, and in consequence that all kingdoms were subjugated to Bres, under his *cáin*.

Thus Bres is represented as taking everything, within an individual kingdom in the case of *éraic*, and above the level of the kingdom by imposing his *cáin* or *cís*, and continuing his policy of reducing everyone to servitude, as in the preceding part of *CMT*.

There are then, no grounds for seeing in this passage a show of resistance to Bres on the part of the Túatha Dé Danann, as it has previously been interpreted (see above, note 4). Nor indeed, does the text even once portray Bres as relenting in his policy, although the edition would give this impression in the case of two further passages, in §§ 40 and 45. In § 45 Bres explains as follows to his father why his rule had been a failure:

44See Thurneysen (1925b, 326–7) on the passage in *CIH* 792.5ff. (part of SM 31, *Bretha Cairdi* ‘Treaty Judgements’, as argued in *Companion*, 302) and Binchy (1941, 80).

45See *Companion*, 302–3.

46See also the important comments in Charles-Edwards (2009, 76–9).

47In § 40 the Túatha Dé Danann seek *díolmaine do cíos* /GU* éruic* ‘freedom from [rendering] tribute and wergild’. For the instance in § 45 see p. 13 below.

48This is brought out in § 17 of *Gúbretha Caratniad* ‘The False Judgements of Caratnia’ (Thurneysen, 1925b, 335–7): *Rucus cairde cen éric* ‘I have adjudged that although a treaty exists no wergild is to be paid’ (lit. ‘I have adjudged treaty without wergild’). This judgement, like all the others in the text, is only apparently false (cf. *Companion*, 262), and in this instance the reason given for the exception is that it was a case of self-defence. What is relevant here is that the text at the same time acknowledges the general principle, namely that a treaty between two kingdoms allows offences to be compensated for by payment of penalties.
Gray (1982, 37), translates as ‘Bres answered, “Nothing brought me except my own injustice and arrogance. I deprived them of their valuables and possessions and their own food. Neither tribute nor payment was ever taken from them until now.”’ As it stands, the last sentence of the translation actually contradicts what precedes it, but, as Quin (1985, 100) pointed out, Níd-tallas . . . cosindiu in fact means ‘(payment of) cís and éric was not removed from them’, that is ‘they had no relief from [rendering] tribute nor [rendering] wergild’.

The opening of § 40 is edited and translated in Gray (1982, 34–5) as:

Íar sin trá dollotar Túath Dé a hóentai do agallaim a ngairmic .i. Bres mac Eladna, 7 condioachtutar cuca die n-áraighib. Tobett dóib tasíuc na flathae, 7 níbo sofoltach friu di sin. Gádhuis im anuth fris co cend .ví. mbliadhnae ‘Now after that the Tuatha Dé went together to talk with their adopted son Bres mac Elathan, and they asked him for their sureties. He gave them restoration of the kingship, and they did not regard him as properly qualified to rule from that time on. He asked to remain for seven years.’

Both text and translation follow that in Stokes (1891, 70–1), who has ‘Now after that the Tuath Dea went together to have speech with their fosterson, Bres son of Elatha, and demanded of him their sureties. He gave them the restitution of the realm, and he was not well-pleased (?) with them for that. He begged to be allowed to remain till the end of seven years’. de Jubainville (1892, 415) has ‘En conséquence, les gens de la déesse Dana allèrent tous ensemble demander à Bress, fils d’Elatha, leur fils adoptif, l’exécution de l’engagement qu’il avait pris avec garantie d’exiger son abdication et que lui n’avait pas moyen de la refuser; mais il les prié de le laisser maître de la différence jusqu’à l’expiration d’une période de sept ans’, and Lehmacher (1931, 444) has ‘Darauf kamen die Tuatha Dé gemeinschaftlich zu einem Gespräch mit ihrem angenommenen Sohn Bres, dem Sohn des Elathu, und verlangten von ihm, was sie auf Grund der Bürgen verlangten konnten. Er gab ihnen die Fürstenmacht zurück, aber das machte ihn mittellos. Darum bat er sie um einen Aufschub von sieben Jahren.’

There are many problems with these interpretations, including the fact that condioachtutar is left without an object (‘they asked him for their sureties’
is unjustifiable), the meaning of sofoltach, the fact that Bres is represented as relenting, and the very sequence of events. The problems can be resolved by removing the sentence break after n-áraighib, expanding the following word (abbreviated tob–t) as tobairt rather than Tobert, and taking tasıuc as an error (or peculiar spelling) for taisíc. Thus, condioachtutur cucae die n-áraighib tobairt dóib tasıuc na flathae ‘they asked him on the basis of their sureties to grant them the return of the sovereignty’. The following sentences can then be translated ‘and he did not behave well towards them in that matter. He asked them to delay it (viz. the return of sovereignty) for seven years’. In other words, Bres did not yield sovereignty, and moreover behaved dishonourably towards them in asking for a delay, which, as the text goes on to explain, allowed him to make plans for battle against the Tuatha Dé Danann.

I have considered it necessary to address these two passages in order to remove any potential discrepancies in the text’s portrayal of Bres, and to clarify the broader context within which § 38 of Cath Maige Tuired may be understood. All in all, this gives a more satisfactory representation, by reason of its consistency, of Bres as an oppressive ruler. In particular, the interpretation of § 38 offered here underlines again the importance of the law texts for the information they provide on the many aspects of early Irish society and its norms which are so often alluded to or taken as known in narrative literature. An understanding of the law texts can shed light on these societal norms, which in turn contributes greatly to a fuller appreciation of narrative literature. While the law texts show that it must have been the case that for a substantial proportion of the population it was lords and kings who

51The word sofoltach ‘of good conduct, properly behaved’ (cf. DIL S 313.39–47) occurs a number of times in Cään Aicillne (SM 6), where it is used of the behaviour of lord and client towards each other, and in Cään Lánamna (SM 7), where it is used of the behaviour of spouses towards each other. Some examples from the first tract are ar dilgid cach flaiht a réeir mąd sofoltach, CIH 496.11, ‘for every lord is entitled to his directions being carried out, if he be of good conduct’. Mąd in cèle tathcuiridter fair ar dimund lais, is hër sofoltach, CIH 499.20, ‘If it be the client who returns [the fief] to him out of contempt, and yet he is of good conduct’, and Nach cèle sofoltach 7 mąd anfoltach in flaiht esinric guach gábreathach, CIH 500.19, ‘Any client who is of good conduct, and if the lord is guilty of misconduct, unworthy, deceitful, falsely judging’; further examples are at CIH 488.26, 496.33, 499.12 and 500.23. Examples from the second tract (with paragraph references to the edition by Thurneysen, 1936) are at CIH 508.29 (§ 13), 516.25 (§ 30), and 516.30 (§ 31).

52The same spelling of the verbal noun of do-beir, namely with to in the first syllable and the second syllable abbreviated as bt with a suspension-stroke, is found in tobairt, line 161.

53For a list of peculiar spellings in this text see Stokes (1891, 53–6). This particular instance might be a hypercorrection resulting from the contrast between forms such as OIr dat. sg. cimn vs. MidIr cimm/cícin, although in such cases the final consonant is non-palatalised; cf. Doberidh . . . Nøberiuad, lines 161–2, or fri basic, line 80.

54The sureties are mentioned earlier in the text in: 7 dobert vii. n-aídirie di trénferub Érenn (i.e. a métri) fri basic na flaihtae iad má fìoirtis a mfholltae fesin, ‘and he gave seven guarantors from the warriors of Ireland (his maternal kinsmen) for his restitution of the sovereignty if his own misdeeds should give cause’, Gray (1982, 28–9 § 24). The type of guarantor specified here is significant; as Stacey (1994, 107–8) notes, the aïtre ‘hostage-surety’ is the guarantor of cairde, whereas the gíall ‘hostage’ is the guarantor of càin.

55Reading güdítus, 3sg. pret. of güdítid with a 3pl. suffixed pronoun.

56Some recent works which address this subject are Ó Cathasaigh (2005), Stacey (2005) and Breathnach (2010b).
took some or all of the profits of justice, it is also made clear that this did not apply to those who were fully free.\textsuperscript{57}

**Abbreviations**

\textit{OGSM}: The Old Irish Glossing of \textit{Senchas Már} (\textit{CIH} 874.35–924.31, etc.) see \textit{Companion}, Chapter 7.2.
\textit{SM}: \textit{Senchas Már}. See \textit{Companion}, chapter 5.50; the numbers accompanying the titles of the component tracts are as enumerated there.

**References**


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