

# From *Gelfine* to *Indfine*

The Organisation of Kin in Early Irish Law

Kristine Kvam



Master thesis in Medieval Studies,  
Celtic Language and Literature.

Department of Linguistics and Scandinavian Studies,  
Faculty of Humanities.

UNIVERSITY OF OSLO

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## The Organisation of Kin in early Irish Law

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## The Organisation of Kin in early Irish Law

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## Abbreviations and notifications

The illustrations in this thesis are all modelled on the illustrations in the works I am citing through the thesis, and all rights belong to the authors. Illustrations nr. 1, 2, 4 and 5 are modelled on the illustrations in Thomas Charles-Edwards, *Early Irish and Welsh Kinship*, Clarendon Press, Oxford, 1993. Illustrations nr. 3 and 9 are modelled on the illustrations in Eoin MacNeill, *Celtic Ireland*, Dublin, 1921. Illustrations nr. 6, 7, 8, 10, 11, 12 and 13 are modelled on the illustrations in Neil McLeod, 'Kinship', *Ériu LI*, Royal Irish Academy, 2000, pp.1- 22.

AL– Ancient Laws and Institutes of Ireland

CIH– Corpus Iuris Hibernici

DIAS– Dublin Institute for Advanced Studies

EDIL– Electronic Dictionary of the Irish Language

EILS– Early Irish Law Series

PRIA– Proceedings of the Royal Irish Academy

RIA– Royal Irish Academy

TCD– Trinity College Dublin

UCC– Univeristy College Cork

ZCP– Zeitschrift für Celtische Philologie

## The Organisation of Kin in early Irish Law

## Summary

This object of this thesis is the organisation of kin in early Ireland. The Irish law tracts describe the role of the kin in Irish society, both as a working unit, a legal unit and as a family-group. The way that the kin was organised in sub-groups based on proximity is also described. But as part of the legal material is fragmentary, and the rest only touches the surface of the rights and responsibilities of the kin-groups we must rely on good interpretations of the system to be able to understand it.

The law text *Fodlai fine* tells us that the Irish kin-groups were organised in four sub-groups. The smallest unit was the *gelfhine*. It consisted of five categories of persons, the next group was the *derbfhine*, which consisted of nine categories of persons, the *iarfine* of thirteen persons and the *indfhine* of seventeen persons. These numbers are mentioned in several legal sources through the ages, and are not disputed. But there are several questions that are not answered in the legal texts, such as, who belonged to the different kin-groups? How were the persons in the kin-groups counted? These questions need to be answered before we can establish other legal matters, such as who would inherit lands and goods should an entire family be killed? The interpretations need to account for cases such as this.

In this thesis, opposing views of the interpretations of the Irish kinship-system are examined and compared, first with each other and then with relevant passages in the legal material. The object of the discussion in the thesis is to find a model that can satisfy the evidence in the different legal sources, and also constitute a template of a *fine* that can fit any kin in early Ireland through the period that the legal texts cover, as well as clarify the legal rights and responsibilities of the kin.

The models that have been proposed have different ways of achieving these goals. This thesis looks at the differences between the models and how they approach the evidence of the legal material. The early models of interpretation are marked by some common myths about early Irish society, but they are nonetheless valuable and inspiring, and this thesis will describe four of them. The 'modern' models all have the same approach to the basic organisation of the kinship system, but their methods of uniting the models with the textual evidence vary. The thesis will examine six modern interpretations, with an emphasis on four of them; these four all agree on the same basis for their interpretations, but they have very different approaches to the models' compliance with the legal material.

## List of Illustrations

The extent of the <i>gelfhine</i> that O'Donovan proposes .....	30
The extent of the <i>fine</i> that O'Donovan proposes.....	30
MacNeill's <i>fine</i> .....	33
Ó Buachalla's <i>gelfhine</i> .....	35
Ó Buachalla's <i>fine</i> .....	36
McLeod's <i>fine</i> , living members are below the horizontal line.....	42
The <i>íarmue</i> in McLeod's <i>íarfine</i> .....	47
The <i>indue</i> in McLeod's <i>indfhine</i> .....	47
MacNeill's <i>fine</i> with numbering of the members of the <i>derbfhine</i> .....	58
Ratio of inheritance between the <i>derbfhine</i> and <i>íarfine</i> in McLeod's model.....	60
The ratio of inheritance between the <i>íarfine</i> and <i>indfhine</i> in McLeod's model.....	60
McLeod's model of the <i>fine</i> .....	62
McLeod's <i>fine</i> .....	66



## Table of contents

<b>Acknowledgements.....</b>	<b>4</b>
<b>Summary.....</b>	<b>5</b>
<b>1 Introduction.....</b>	<b>9</b>
1.1 The legal material.....	10
1.1.1 The kin-groups.....	11
1.1.2 Primary sources.....	12
1.2 Definition and translation of terms. ....	14
<b>2 State of the art.....</b>	<b>18</b>
2.1 Previous research on the organisation of the fine.....	22
<b>3 The models of interpretation.....</b>	<b>26</b>
3.1 The early interpretations.....	27
3.2 The modern interpretations.....	29
3.2.1 MacNeill.....	30
3.2.2 Ó Buachalla.....	32
3.2.3 Binchy.....	34
3.2.4 Charles-Edwards.....	36
3.2.5 Patterson .....	37
3.2.6 McLeod.....	38
<b>4 Debating the models of interpretation.....</b>	<b>42</b>
4.1 The changes made by Binchy to MacNeill's model.....	42
4.1.1 Semantic shift in familiar terms.....	43
4.1.2 The <i>gelfhine</i> as a new invention.....	46
4.1.3 On the social changes in early Ireland.....	51

## The Organisation of Kin in early Irish Law

4.1.4 Evolution of the kin-groups.....	53
4.2 Other issues related to the models of interpretation .....	54
4.2.1 Inheritance.....	54
4.2.2 Age in the kin-groups.....	58
4.2.3 Redistribution of land .....	61
4.2.4 The <i>ingen ar méraib</i> (the 'nail-upon-fingers').....	62
4.3 A fine of twelve.....	64
4.3.1 Textual evidence.....	64
<b>5 Conclusion.....</b>	<b>68</b>
<b>Bibliography.....</b>	<b>72</b>

# 1 Introduction

The object of this thesis is to analyse the early Irish kinship system. The analysis will be based on a comparison of the different models of interpretation that have been suggested for the organisation of the extended kin-group, the *fine*. I will present four of the earliest models of interpretation, and six of the later interpretations in this thesis.

The source material for the organisation of the kinship-system in early Ireland is diverse. Much of the information can be found in specialised legal documents dealing with kinship, but these give us only a superficial understanding of the system as they do not go into any great detail of the organisation of the kin. In addition to this, one of the main legal texts on the kin is only preserved in fragments and it is hard to reconstruct the text with any degree of certainty.

Because kin and kinship was an important part of society, there are many legal matters that involve the kin, and that rely on the organisation of the kin for its performance. The kin was the group of people that one relied on in everyday life, and it was the smallest unit of power in society as the kin-group possessed considerable legal power over the individuals. At the same time, the kin-group was responsible for its members, and paid any fine for their crimes or debts. Any member who ran from his obligations in the kin would lose all rights to protection, which was a very serious punishment that would effectively make him an outcast. The legal texts that can be consulted for information on the organisation of the kin-group, the *fine*, are the ones dealing with any of these obligations. They include legal material on the payment of fines for a crime committed by a member of the kin, legal material on the receiving of fines upon the unlawful killing of a member of the kin, laws on the responsibilities of two neighbouring kin-groups and rules surrounding inheritance. These are all themes that abound in the saga literature. Some of these texts can also give us valuable insight into the organisation of the *fine* as this is a prerequisite for the actions in the texts. The important position of the kin in early Irish society can give us much information on the society, and on the textual material we have preserved. This is the background for my thesis.

In this thesis I will present the different models of interpretation, with emphasis on the later interpretations. I will debate the models against each other, and against the textual evidence on the *fine*, my criteria being that the models must be able to satisfy the evidence in the different legal sources, and also be able to give a template of a *fine* that can fit any kindred

## The Organisation of Kin in early Irish Law

in early Ireland through several centuries, as well as clarify the legal rights and responsibilities of this kin.

### 1.1 The legal material

The Irish law texts are preserved mostly as quotes and excerpts which originate in the 7<sup>th</sup> to 8<sup>th</sup> centuries AD, but they have survived as copies in later manuscripts, often incompletely or incorrectly copied (Kelly, 1998, 1). Most of the manuscripts are concerned with only one law text or one main theme of jurisdiction, like the *Uraicecht Becc*<sup>1</sup> which is concerned with the rank of poets, and the *Bechbretha*,<sup>2</sup> on laws pertaining to bee-keeping. Some gatherings of texts have a more general content, the *Senchas Már* (lit. 'great tradition') being the most famous. One also talks about the collection of *Nemed* texts, thought to be continuing on an older tradition where poetry and legal material had not separated (Kelly, 1998, 47). The Irish law texts does not give any, as far as we can tell from the preserved material, account of actual legal proceedings. Material like charters, trial records or judicial transcripts are not to be found in the Irish tradition, either because they were never made or because they have not survived (Stacey Chapman, 2007, 7-8). Those cases presented in the texts as actual happenings are mostly moral guidelines where kings and jurists debate over the proper judgements in certain cases, like the *Gubretha Caratniad*.<sup>3</sup> This makes it easy to discard the law texts as representing a fictional legal system, constructed by the jurists and representing little of the actual legal system of the time. We can not expect the law texts to give us a wholly reliable account of Irish society, but if treated with caution they are valuable as they present us with the ideals of the upper grades of society and the general morals of the era.

Because the texts are copied from older texts, which have been transferred orally for some generations before the initial writing down, there are several difficulties in using the texts as reliable sources on Irish society at any given point in history. One must consider the great changes that occurred in society both from the time of the oral tracts until they were first written down, and from the first texts to the later copies and compilations. From the time

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1 *Uraicecht Becc*, CIH 1590-1618; 2318-2335, translated in *Ancient Laws and Institutes of Ireland (AL)* vol. 3, p. 115, and by MacNeill in *Proceedings of the Royal Irish Academy (PRIA)* 36 C, 1923, pp. 272- 81.

2 *Bechbretha*, CIH 444.12- 457.10, edited and translated by Thomas Charles-Edwards and Kelly, Early Irish Law Series vol. 1, 1983.

3 *Gubretha Caratniad*, CIH 2192-9, edited and translated into German by Thurneysen in *Zeitschrift für Celtische Philologie (ZCP)* 15, 1925, pp. 302-70, and into English by Liam Breatnach in *A Companion to the Corpus Iuris Hibernici*, Dublin Institute for Advanced Studies (DIAS), Dublin, 2005.

## The Organisation of Kin in early Irish Law

when legal texts only existed orally, to the period between the 7<sup>th</sup> to 8<sup>th</sup> centuries AD when most of the material was committed to paper, Ireland went through a change of religion. Without Christianity, the legal texts might never have been written down, but at the same time we have to accept that the 'new' religion will undoubtedly have affected the texts. Both the earliest texts from the initial Christian period and the late commentaries and glosses are influenced by the religion, in different ways and with the main pressure to conform on different issues. Nevertheless, the texts are undoubtedly Christian, even if they do mention practices that were common in Ireland before the 5<sup>th</sup> century AD, and uphold practices against the wish of the Church on the continent.<sup>4</sup>

Even though the Christian influence on the law texts must be taken into account when interpreting them, the first difficulty one is faced with is the language of the tracts. It is no surprise that the changes in the Irish language from the earliest strata of legal texts to the latest commentaries and copies are great. This is also reinforced and complicated by the status of archaic language in the early Irish arts. Using a more or less artificially archaic language which mimics an older state of the language was the proper way to compose and write legal material at the time, as the perceived age of the texts gave them authority (Stacey Chapman, 2007, 195). This implies that the author, whether he was the mind behind the text or simply the writer carrying out the task of committing the words to paper, would have taken pride in composing legal texts in a language that his contemporaries would have a difficult time understanding. When these law tracts were later copied, the scribes would understand even less of the text, thus making the risk of errors occurring in the copy great. I will present the manuscript sources relevant for the kinship system in a separate section below.

### 1.1.1 The kin-groups

Kin is important in all of human societies. In the early Irish texts we have several indications of this importance, both in a purely social setting, but also in the juridical sphere. The crime of *finngal*, 'kin-slaying', from *fine*, 'kin', was one of the hardest punished in Ireland. It could deprive a king of his honour-price and thus overthrow his kingship, or set a commoner adrift on the sea, in practice banishing him from any legal status and protection (Kelly, 1998, 18, 220). The kin was a unit, with a leader as head, separated into four categories based on

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<sup>4</sup> For example, the author of *Bretha Crólige* argued that the practice of polygamy was justified in the Old Testament, even if it was against the wishes of the Church, see *Corpus Iuris Hibernici* (CIH= 2301.35-8, translated by Daniel A. Binchy in *Ériu* 12, Royal Irish Academy (RIA), 1938, pp. 1-77.

## The Organisation of Kin in early Irish Law

proximity. The two closest levels of the kin-group was responsible for the crimes committed by its members who could not pay for themselves, it received the *éraig*, 'body-fine', for the unlawful killing of its members, and shared the inheritance from the victim. Such inheritance was distributed by intricate legal procedures amongst the appropriate levels of the kin, most of it going to the closest level, and a smaller amount to the more distant relatives.

The members of the kin that had not yet reached legal maturity, those could not enter into contracts independently, were not counted as members of the *fine*. They were dependants of the *fine* until they reached legal maturity at approximately 14 years. An adult's extent of legal capacity was affected by his rank, his honour-price, his profession and his age. At the age of 88 he would lose the ability to contract independently, and would revert to a status as dependant in his *fine* (McLeod, 1992, 88, n. 18).

The division of the four types of kin, and the types of inheritance and fines due to the respective parts of the kin would have been common knowledge in a society where war and conflict easily could have wiped out entire kin groups. Unfortunately, this means that the scribes might not have bothered with writing down the everyday knowledge of the organisation of the kin. However, absence of evidence is not evidence of absence, so it might be that this is material that simply did not survive till our time. Still we are left with only pieces of the puzzle.

We have some indication of how the kin was organised, and how inheritances and fines were distributed within the kin, but the overall system of kinship is not necessarily clear to us. This is where the models of interpretation are needed. They are all meant to give us an understanding of which persons the different kin-groups consisted of, how many generations were counted in each group and how many collateral relatives were counted in the different groups. The answers to these questions must be able to satisfy the evidence in the different legal sources, and be able to constitute a system of kinship that can describe any *fine* in early Ireland through several centuries, and clarify the legal rights and responsibilities of this *fine*.

### 1.1.2 Primary sources

'The key to the medieval Irish kinship system is found in an extract (§4-7) from the Old Irish law text *D'fodlaib cineoil tuaithe* "On the divisions of the extended family in the kingdom" (McLeod, 2000, 1).<sup>5</sup>

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5 CIH 429.27- 430.16, translated by Thomas Charles-Edwards in *Early Irish and Welsh Kinship*, Clarendon Press, Oxford, 1993, pp. 515-16.

## The Organisation of Kin in early Irish Law

These paragraphs in the text are concerned with the division of kin-lands on the death of several members of the kin. It tells us how the entire kin was separated into subsequent groups of different numbers. The division that is presented in *D'fodlaib cineoil tuaithi* is not exactly the same as is found in other legal texts on the *fine*, but it is the most extensive text on the subject.

As I mentioned in the introduction, the information we have from the primary sources is not necessarily dealing directly with the organisation of the kin, it is more frequently concerned with the different aspects of society where kin played a major part, like inheritance rights and rules regarding kin land. There is also a wide diversity in the age of the primary sources that discuss the *fine*, which often gives us contradictory accounts of the kinship system. This also makes it possible for scholars to present several theories on how the kin would have been organised, based on the different legal texts and their glosses and commentaries, some of which I will present in later chapters. Another aspect is the disagreements between scholars on the dating of the texts, Colmán Etchingham goes as far as to describe the dating criteria used by one of the models as 'dubious' (Etchingham, 1994, 655).

The law text that I mentioned at the beginning of the chapter, the *D'fodlaib cineoil tuaithi*, is also referred to as the *Fodlai fine*,<sup>6</sup> 'The divisions of the kindred'. This name can not be ascertained with certainty, but Thomas Charles-Edwards proposes that this was the original name of the text. It is also translated by Charles-Edwards in *Early Irish and Welsh Kinship*, 1993, pp. 515-16.

Another legal text that discusses the division of kin-lands and assets on the death of a kin-group is called *Kinship Poem* by Charles-Edwards.<sup>7</sup> This short poem, parted into 16 verses, is also concerned with inheritance rights in different forms, most notably the inheritance rights of a female heiress in the case where her father had no sons. The verses differ in theme from women's inheritance rights to the offence of stealing kin-land and the obligations of a head of the kin.

The last text that is directly concerned with kin is the *Córus Fine*<sup>8</sup> 'The regulation of the kin-group'. This text exists only in fragments. The text is mentioned in several glosses and

6 *Fodlai fine*, CIH 429.14- 432.15, translated in *AL iv*, pp. 283- 91.

7 'Kinship Poem', CIH 215.15- 217.23, edited and translated by Dillon in *Studies in Early Irish Law*, Dublin, 1936, pp. 135- 59, normalised edition by Thomas Charles-Edwards in *Early Irish and Welsh Kinship*, Clarendon Press, Oxford, 1993, pp. 516-519.

8 *Córus Fine*, CIH 728.17- 746.16.

## The Organisation of Kin in early Irish Law

commentaries, but here by another name, *Finebretha*, 'kin judgements' (Kelly, 1998, 270). The amount of glosses and commentaries makes the text hard to interpret and translate.

The last texts I will mention in this section are all texts that have another main theme, but that touches upon the organisation of the *fine* through their dealings with another topic. I will discuss the evidence given in these texts below in later chapters, focusing on how the different models relate to the evidence of the texts. The text called *Cró and Díbad*,<sup>9</sup> 'The distribution of *cró* and *díbad*' by Meyer deals mainly with the king's rôle in law-enforcement across borders. It describes the use of a hostage, *gíall*, to procure payment of body-fine, *cró*, by a killer from another *túath*, and it further deals with the division of the dead man's property, *díbad* (Kelly, 1998, 279). When paying the body-fine, one third of the fine goes to the dead man's kin, to be further distributed among them.

Another text that gives us valuable information about kinship is the one on *Díre*.<sup>10</sup> This text has no name in the manuscript sources, and has been named after its main theme *díre*, honour-price. It defines the various amounts due to the different family members in case of the death of a kinsman, and it also touches upon inheritance rights, both topics where the organisation of the fine is of great importance (Kelly, 1998, 267).

The tract on neighbourhood laws, *Bretha Comaithchesa* is very helpful as it relates the usual organisation of the farms, and how neighbouring farms have rights and responsibilities to each other. The main interest of the tract in this thesis is the statement that neighbourhood comes 'from plurality of heirs',<sup>11</sup> implying that neighbouring farms helping each other in farm-work were more often than not related through the same lineage.

## 1.2 Definition and translation of terms.

'There is only one excellent safeguard against confusion (...): it is always to use Irish technical terms in naming the facts of Irish social history.' (MacNeill, 1921, 156).

The Irish legal terms can in no way denote exactly the same as any modern legal institution, and I feel it is better to explain their meaning instead of simply giving the translations. In this section I will give an overview of the terms I will be using often throughout the thesis, and

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9 *Cró and Díbad*, CIH 600.1- 601.11, translated by K. Meyer in *Ériu I*, RIA, Dublin, 1904, pp. 209-15.

10 Text on *Díre*, CIH 922.12- 923.17; 436.33- 444.11, edited and translated into German by Rudolf Thurneysen in *Irischen Recht*, 1931, pp. 1- 37.

11 *Bretha Comaithchesa*, CIH 64.18-20.



## The Organisation of Kin in early Irish Law

that are fundamental to early Irish society and to early Irish kinship. This is to avoid having to give the translations and explanations throughout the thesis.

The *túath* (pl. *túatha*) is translated in general as 'a people, tribe, nation',<sup>12</sup> and in legal context as 'territory, petty kingdom and jurisdictional unit of ancient Ireland'.<sup>13</sup> The *túath* was the basic territorial unit according to the law texts, and as such it also denotes the people living within the unit, or a people bound together by a certain characteristic, such as a common heritage or occupation (Kelly, 1998, 3-4). The obvious example is the *Túatha Dé Dannan*, translated as 'the people of the goddess Danu'. The *túath* can be said to have been the limit of the world for an ordinary free person in early Ireland. Outside one's *túath*, an 'ordinary' free person had no rights and no status, and was regarded as a *deorad*, an 'outsider'. There are many types of outsider, and the one most relevant here is the *cú glas*, lit. 'grey dog', who could gain some measure of social standing if he married a woman in a new *túath* and was recognised by her kin. The *túath* was ruled by the *rí túaithe* (gen.), the 'king of the *túath*', or if said king had gained control of three or four *túath*, a *ruiri* 'great king' or *rí túath* (gen. pl.) 'king of *túatha*', according to *Críth Gablach* (Kelly, 1998, 17).

I will not go through the entire system of rank here, but I will give a translation of the basic division of nobles and commoners. Irish society was basically inegalitarian, and distinctions of rank is mentioned in the greater part of the law texts. The legal texts that deal with rank exclusively are detailed to such an extent that it is certain that most of it is made up. In his article *The Linguistic and Historical Value of the Irish Law Tracts*, published by the British academy in 1943, Daniel Binchy points out that the rank system could hardly have had any practical significance outside the law schools. He argues that in the older strata of the texts, there is only evidence of a rough division corresponding to 'King, Lords and Commoners' (Binchy, 1943, 32). Fergus Kelly, in *A Guide to Early Irish Law*, first published in 1988, sees the rank system as basically a division of, first those who are *nemed*, 'lit. sacred, holy' but should be understood as 'noble', and those who are not, and second between those who are *sóer* 'free' and *dóer* 'unfree' (Kelly, 1998, 9). There is no doubt that rank and honour-

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12 Definition from *The electronic Dictionary of the Irish language*, "1 túath, I (a) people, tribe, nation", (visited 30.10.2012): [http://www.dil.ie/results-list.asp?mode=BAS&Fuzzy=0&searchtext=t](http://www.dil.ie/results-list.asp?mode=BAS&Fuzzy=0&searchtext=t%C3%BAath&findlet=+&findcol=&sortField=ID&sortDIR=65602&resperpage=10&bhcp=1&respage=7)

13 Definition from *The electronic Dictionary of the Irish language*, "1 túath, II (b) In Laws 'territory, petty kingdom, the political and jurisdictional unit of ancient Ireland", (visited 30.10.2012): [http://www.dil.ie/results-list.asp?mode=BAS&Fuzzy=0&searchtext=t](http://www.dil.ie/results-list.asp?mode=BAS&Fuzzy=0&searchtext=t%C3%BAath&findlet=+&findcol=&sortField=ID&sortDIR=65602&resperpage=10&bhcp=1&respage=7)

## The Organisation of Kin in early Irish Law

price were critical matters for Irishmen, but the detailed system where both nobles and commoners were split into seven grades each 'by analogy with the ecclesiastical grades' (Binchy, 1943, 32), and each of these further split into 'highest', 'middle' and 'lowest' by the commentators of the text, seems nearly impossible to have been a practised system.

One's entire life was affected by status in the early Irish society. Status determined how much a person's *lóg n-enech*, his honour-price (lit. 'the price of a person's face') was, which again affected his capacity to perform legal acts such as making contracts and giving evidence in court (Kelly, 1998, 8; 317). This was the amount of money he was due for any serious offence done to him, like a serious injury, satire performed against him, theft and ultimately, murder. In the case of murder, the honour-price would decide the value of the *éraig*, 'body-fine' that the culprit had to pay for the offence, and this fine would be divided amongst the members of the *fine* of the deceased. Within the *túath*, a person would thus be defined by the rank he or she had and his or her honour-price.

Most closely was the person connected with his *fine*, his kin group. Kinship in early Ireland was parted into several groupings, first there is the difference between the agnatic kin, the lineal male descendants of a common ancestor, and the *máithre*, the mother's kin. Both had an interest in a child, but with different legal responsibilities. The word *fine* would have had at once a wider familiar meaning and a concrete legal meaning. The concrete meaning of the word is the four kin groups of seventeen 'persons' referred to in the law texts, and this is the interpretation of the word I will be using throughout this thesis. As the *fine* was counted by the person's male ancestors, and women belonged to the father's *fine* in her youth, and then her husband's *fine*, it is most appropriate to use the masculine pronoun when discussing the kin, with the exception of the later sections in the thesis concerned with the *benchomabae*, the female heiress of kin-land. The *fine* is recognised in the law texts as the primary legal unit (Binchy, 1943, 30), consisting of the agnatic descendants of an ancestor. The *fine* is liable for the crimes and debts of its members, and the members have responsibilities concerning the *shintiu*, the 'kin land'. Not all land is owned within the *fine*, but the pieces of land that belongs to the kin can not be sold of without the express permission of the kin and the head of the kin, the *ágae fine* or *cenn fine* (Kelly, 1998, 13-14).

I mentioned that the law text *Fodlai fine* discusses the division of the kin into different kin-groups. The smallest of these groups, the *gelfhine*, considered to be the primary unit of

## The Organisation of Kin in early Irish Law

kin in Irish society. The name can be translated as 'bright kin', 'white kin' or 'certain kin', and the group consisted of five 'persons', or categories of persons. The next group was the *derbfhine*, the 'true kin', consisting of nine categories of persons, followed by the *iarfhine*, the 'side kin' of thirteen 'persons', and finally the *indfhine*, the 'end-kin', of seventeen 'persons'.

As I mentioned above, much of the information we have on the Irish *fine* comes from law tracts and other texts whose main focus is not kinship, the text on the distribution of *cró* and *díbad* for example, and the text on honour-price called *Díre*. *Cró* is translated by Kelly as 'wound, violent death, execution, body-fine, compensation for death' (Kelly, 1998, 307). It denotes both the crime of unlawful killing by violence, and the honour-price due to the kin and the lord of the victim. Other assets left by the victim as inheritance is called *díbad* (Kelly, 1998, 309). The division of these payments, fines and entitlements between the members of the *fine* is described in several of the law texts, and the division is based on a parting of the *fine* into sub-groups. In the models of interpretation I will be presenting there are several familiar terms in Irish. These will be addressed and translated throughout the thesis.

The last term I will mention is the *comaithches*, the neighbouring families that are joined together in joint-farming (Kelly, 1998, 101). The term can both mean the state of being a neighbour, and the cooperating farming-team from neighbouring farms.

## 2 State of the art

The study of early Irish law is closely related to the study of early Irish history. There is a lot to be gained from looking at the early law texts, for the historian, although this has not always been the general opinion. Because of several misunderstandings and mistranslations, the law texts were regarded as a dangerous field of study with little to contribute to other fields in Irish studies (Binchy, 1943, 4). The early students had to overcome the formidable challenges that the manuscript sources presented, and they had to avoid the pitfalls of the first diplomatic editions. They also had to have a solid linguistic knowledge of Irish from the 5<sup>th</sup> to the 16<sup>th</sup> century, an impressive feat before the publication of a solid grammar of old Irish.

The modern students have a much wider range of works on which to base their studies. The first work on Irish law to consult is Fergus Kelly's *A Guide to Early Irish Law* (henceforth Kelly's *Guide*), published in 1988, and the other works in the Early Irish Law Series published by the Dublin Institute for Advanced Studies (DIAS). This publication gives an introduction to most of the topics covered by early Irish law texts, and prints samples from the texts. Further, the student of today can use both Rudolf Thurneysen's *A Grammar of Old Irish*, reprinted with additions by DIAS at the latest in 1998, and the online dictionary of Old Irish, the electronic Dictionary of the Irish language (eDIL).<sup>14</sup> There are also a broad range of articles and books on language, history and law, too vast to be explored in any significant detail here.

For the novice student of early Irish law, there are a number of articles that give a thorough introduction to the material of the sources and the scholarly interpretations of the law texts. A general overview of the study of early Irish law is found in Daniel A. Binchy's article *The Historical and Linguistic Value of the Irish Law Tracts*, published by the British Academy in 1943. This article includes details on what has been done up to that date on diplomatic editions of the manuscripts, translations and interpretations of them. His opinions on the structure of early Irish society might be somewhat outdated, but many of his thoughts are still very much preserved in the views of today. The most notable for this thesis being his view on the organization of the early Irish kin, which has been continued by Thomas Charles-Edwards and others.

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<sup>14</sup> *The electronic Dictionary of the Irish language*, (visited 30.10.2012): <http://www.dil.ie/index.asp>

## The Organisation of Kin in early Irish Law

Daniel Binchy states in this article that the study of the Irish law texts was 'prematurely born' (Binchy, 1943, 5). The work of making the early Irish law texts accessible, perhaps not to the general public but to the general scholar and student of early Irish literature and history, started in the middle of the nineteenth century with the work on transcribing and translating the *Ancient Laws and Institutes of Ireland (AL)*. This work was Commissioned in 1852, aiming at giving a full account of the early Irish legal system, transcribed from the necessary sources and translated to English (*Ancient Laws and Institutes of Ireland Volume 1*, 1865, 3). The year after, in 1853, Johan Kaspar Zeuss published the last of two volumes of the monumental *Grammatica Celtica*. However, in Ireland the effects of this publication would not be felt for many years after (Binchy, 1943, 5). The transcription and translation of the law texts for the *AL* was done by John O'Donovan and Eugene O'Curry, both native Irish speakers with a theoretical knowledge of Old Irish; the work was done without the help of a grammar of the language in the manuscripts. Their work is often inaccurate or supplemented by guesswork, however as Binchy puts it, 'the wonder is, not that they made so many mistakes, but that they were so frequently right.' (Binchy, 1943, 5). The publication of the first four volumes in 1865, was marked by the deaths of O'Donovan and O'Curry, and by the appointment of an editor with a limited knowledge of Irish.

The consequences of this appointment have been many for the publication. The editorial work is in itself unremarkable, with lengthy editorial introductions and little proper organisation of the material. Binchy believes that the editions have even served to mislead students because of the many claims made in the introductions (Binchy, 1943, 5). What Binchy is referring to is the fact that these volumes have been used as reliable sources to the Irish law texts, and further to the state of the early Irish society, with few if any critical questions asked. The most cited example is how Irish society was regarded as 'tribal' for a period of time, as in the *AL*, were the *tíath*, had been mistranslated from 'kingdom' or 'country' to mean a 'tribe' (Binchy, 1943, 5). This, and the mentioning in the legal material of the practice of co-ploughing, gave rise to beliefs that land in Ireland was collectively owned by a tribe.

The fifth volume of *AL* was edited by Robert Atkinson, a Professor of Sanskrit at Dublin University. Atkinson had a much better knowledge of philology than his predecessors, but he knew less Irish and thus made mistranslations that no native Irish speaker would have

## The Organisation of Kin in early Irish Law

made (Binchy, 1943, 6). His further contribution to the study of early Irish law is a sixth volume consisting of a dictionary of Irish legal terms. Though leaving much to be desired, the dictionary was nonetheless a breakthrough for the student of the law texts at the time.

These diplomatic editions have linguistic as well as historical pitfalls for students. Mimicking the manuscript when transcribing the text, the law text is written in large print, the glosses in small and the commentary in medium. Unfortunately, the writers of the manuscripts only made this distinction in letter size when they transcribed a text with glosses. Texts without glosses, or un glossed collections of excerpts from various tracts were written without such distinctions (Binchy, 1943, 9). A text from perhaps as early as the 7<sup>th</sup> century is intermingled with an excerpt from the fifteenth, in some extreme cases (Binchy, 1943, 9). This generated confusion both about the age of the law texts and of the institutions they described. Whitley Stokes put the redaction of the great legal collection, the *Senchas Már*, in the eleventh century, three centuries too late, because the intermingled glosses and commentaries were regarded as a *terminus post quem* for the entire text (Binchy, 1943, 9).

Binchy himself published a collection of law texts in 6 volumes in the *Corpus Iuris Hibernici* (CIH), at DIAS in 1978. These official editions of the law texts are not translated in the publication, but many have been translated in journals and articles later. The CIH has become the standard reference point for studies on the Irish law texts, with the AL still acting as a second reference. In 2005 Liam Breatnach published *A Companion to the Corpus Iuris Hibernici*, also at DIAS, to rectify the lack of a table of contents in CIH, and to add a few texts that were left out of it. Both the CIH and the AL aim to give a full transcription and translation respectively of the entire corpus of early Irish legal material. Given the problems I have outlined with using these editions without the necessary knowledge of Old Irish, one often has to look for more modern editions of the law texts published in various journals.

The pioneer work of Eoin MacNeill in early Irish history have benefited jurists and historians alike, with his studies of the early Irish society. His book *Celtic Ireland*, published by Martin Lester LTD in Dublin, 1921 gives an account of the political framework of ancient Ireland, with references to, and translations of, mythological tales, historical sources and earlier works like Joyce's *Social History of Ancient Ireland*. Here MacNeill outlines the first

## The Organisation of Kin in early Irish Law

modern interpretation of the organization of the early Irish kin group, which I will analyze in later chapters.

Rudolf Thurneysen published his *Handbuch des Alt-Irischen* in 1909; it was translated into English by Daniel A. Binchy and Osborn Bergin (*A Grammar of Old Irish*), and has been added to in many stages after the translation. The book had a strong impact on the entire field of Celtic studies, and it is still being reprinted. For the legal studies, his work on translating and interpreting several difficult passages was just as important. 'Before his unrivalled knowledge of Old Irish even the crabbed and highly technical language of the jurists had to yield up many of its secrets, and for this alone his work would well deserve to be called epoch-making.' (Binchy, 1943, 8).

The Early Irish Law Series was published by the School of Celtic Studies at DIAS, and consists of Thomas Charles-Edwards and Fergus Kelly's *Bechbretha: An Old Irish law-tract on bee-keeping* in 1983, Liam Breatnach's *Uraicecht na Ríar: the poetic grades in early Irish law* in 1983, Fergus Kelly's *A Guide to early Irish law* in 1988, and Fergus Kelly's *Early Irish farming: a study based mainly on the law-texts of the 7<sup>th</sup> and 8<sup>th</sup> centuries AD* in 1997. These publications give an in-depth study of the field of law texts, from their respective angles, and represents a new phase in the study of Irish law.

In her book *Dark Speech: Performance of Law in Early Ireland*, Robyn Stacey Chapman argues that the essence of the Irish legal tradition lies in performance. This is what makes it natural for an Irish writer to refer to the Christian Latin legal codes as *recht litre*, written law, and separating it thus from the native law written down in the vernacular. Not, of course, because the writer regarded his own language and laws as subordinate, but because the essence of his tradition was not something that could be written down. One of the questions Stacey tries to answer in her book is, how did the old Irish laws gain the authority necessary to become effective in early Ireland? Her in-depth analysis of Irish society at the time gives a fascinating and down-to-earth view of how such a society might have actually worked. This book is the framework for my understanding of the legal workings of early Irish society.

Dr. Neil McLeod, an Australian jurist, currently at Murdoch University, has published several articles on early Irish law, as well as on aspects of the modern Irish legal system. His

## The Organisation of Kin in early Irish Law

book *Early Irish Contract law*, University of Sidney, 1993, gives an overview of the legal texts pertaining to contract law, and includes a discussion on the subject making it a valuable source for anyone interested in this aspect of law and early Irish society in general. It is because of his article 'Kinship' published in *Ériu LI*,<sup>15</sup> however, that he features as an important part of this thesis. The article proposes a new interpretation of the kinship-system, and examines some of the previous interpretations.

### 2.1 Previous research on the organisation of the fine

'Since the law-tracts generally used these terms (*fine, gelfhine, derbfhine* etc.) without offering clues as to the precise kinship model used by the writer, the interpretation of the kinship terms has long been one of the banes of medieval Irish history.' (Patterson, 1991, 216)<sup>16</sup>.

There is still disagreement on how the kin group was organised, although the later models all agree on the basic principles of how the *gelfhine*, the smallest kin group of close family, and to an extent also the *derbfhine*, the more extensive kin group, was organised. Several theories have been proposed on how to decipher the law-tracts that outline the system of kin in early Ireland. One of the earliest attempts at understanding the texts was made by John O'Donovan and was based on the manuscript called Trinity College Dublin (TCD) H. 3. 18 (Charles-Edwards, 1993, 486). A different interpretation of the kinship system was presented by P. W. Joyce in *A Social History of Ancient Ireland*, vol. I and II in 1903. Joyce adopted all earlier claims that the early Irish society was organised on a tribal basis in a 'clan-system' (MacNeill, 1921, 152). Joyce does not go into much detail on the intricacies of the organisation of the kin, but merely reports that it was 'then well recognized, but now hard enough to understand.' (Joyce, 1903, 188).

In his editorial introduction to the AL Vol. IV, Alexander George Richey discusses, over 45 pages, 'The 'Fine' and 'Geilfine' System' (Richey, 1879, xlix), where he understands the explanations of the kinship system given in the primary sources as literal. Richey admits however that the system he outlines is entirely artificial and must be viewed as fantastic. Other early works do not show the same introspection; W. K. Sullivan's interpretation of the

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<sup>15</sup> Neil McLeod, 'Kinship', in *Ériu LI*, RIA, Dublin, 2000, pp. 1-22.

<sup>16</sup> I have added the parentheses and the examples therein.



## The Organisation of Kin in early Irish Law

largest recognized kin group, the *indfhine*, stretches over seventeen successive generations, which means a family unity subsisting for more than six centuries (MacNeill, 1921, 170).

The next theory on kinship was presented by Eoin MacNeill in his book *Celtic Ireland*, published by Martin Lester LTD in 1921. He was more thorough in his analysis of kin than the earlier scholars and *Celtic Ireland* was a solid work on the early Irish society in general. In *Celtic Ireland*, MacNeill first introduces kinship as an extension of the law surrounding dynastic succession. The range of eligibility was one of the areas affected by the 'tribal' myth of early scholars, as the range of eligibility was calculated from the current king's, or an earlier king's *fine*. He then goes on to describe the practices connected to ownership of land, and then the kinship system. Seen with modern eyes, the book is rather vague, as the use of references is sparse and the discussions brief. His kinship model gives a dynamic explanation of the kinship system, where more distant collateral relatives are exchanged for common ancestors (MacNeill, 1921, 152-176). Though his model on kinship is vague and arbitrary, it was an immense breakthrough for the field of Irish law at the time of publication and for several decades after.

There have been written several articles both critical to MacNeill's theories, and building on them. The next to publish his interpretation of the kinship system, and building on MacNeill's model was Daniel A. Binchy, in the article *The Historical and Linguistic Value of the Irish Law Tracts* in 1943. The innovations in his theories belong more to the historical aspect of Irish law, but they nonetheless influenced the later research on the kinship system. For several reasons Binchy believed that the primary legal unit of kin was originally the larger *derbfhine* group and not the *gelfhine* as MacNeill and the earlier scholars believed. In Binchy's model, this changed in the 8<sup>th</sup> century, at about the same time as the legal texts were written down and/or composed, giving us the same system that MacNeill outlined, where the *gelfhine* was the smallest kin group and the primary unit of society. This shift in social order makes the kinship model fit more smoothly with the many contradictions in the legal material and their glosses and commentaries.

A different take on the kin group was made by Liam Ó Buachalla in the article 'Some Researches in Ancient Irish Law', published in the *Journal of the Corc Historical and Arcaeological Soc.* 2<sup>nd</sup> ser. 52 in 1947. Following the early interpretations that I outlined

## The Organisation of Kin in early Irish Law

above, he reads the sources literally and interprets the Irish *gelfhine* as a five generation line of agnatic descendants and their brothers. This makes a system where familiar bonds are unimportant, and the *fine* simply exists in a legal context.

In Fergus Kelly's *Guide*, 1988, the organisation of the kin is examined. He does not go into specific detail on the kinship system, but it is clear that also he regards the *derbfhine* as the 'original' kin group, consisting of the male relatives all descended through the male line from the same great-grandfather, thus using the same model that MacNeill outlined with the additional modifications made by Daniel A. Binchy.

The proposed change in legal organization that was introduced by Binchy is also mentioned in Kathleen Hughes' *Early Christian Ireland- Introduction to the Sources*, published by Hodder and Stoughton Lt.d in 1972. She does not go into more detail on the organisation of the kinship system, but she states that the original primary legal unit of kin was the *derbfhine*, and that during the period covered by the law tracts this had narrowed to the *gelfhine* (Hughes, 1972, 46).

Nerys Patterson, in her article 'Patrilineal kinship in early Irish society' in *Bulletin of the Board of Celtic Studies* 37, 1990, agrees with the proposed change in social organisation. However she also criticises both MacNeill's and Binchy's models for being too focused on the individual, and not being able to constitute an 'organised group with permanent social significance' (Patterson, 1990, 135). Her own model does not contain any innovations beyond that of the existing research.

In Dáibhí Ó Cróinín's *Early Medieval Ireland: 400- 1200*, published by Longman History Of Ireland in 1995, the *derbfhine* is also understood to have constituted the primary social, legal and economic unit, citing Kelly's *Guide*. But Ó Cróinín adds, with reference to the law text *Bretha Comaithchesa*, that 'there are occasional traces of the older system' (Ó Cróinín, 1995, 143). This older system he refers to is explained as the *gelfhine*, constituting the primary unit in society. Thus his understanding of the 'social change' first outlined by Binchy is turned upside-down, with no sources to prove his statement, one might add. This could mean that there is some disagreement on which of the kin groups, the *derbfhine* or the *gelfhine*, was the oldest, but as this view is not expressed elsewhere as far as I can tell, we are most likely in the presence of a misunderstanding.

## The Organisation of Kin in early Irish Law

Both MacNeill and Binchy published their works during the first half of the twentieth century. After this there have been a small number of attempts at redefining the organization of the Irish fine. Most notable of these, and also most cited, is Thomas Charles-Edwards' *Early Irish and Welsh Kinship*, published by Clarendon Press in 1993, which discusses both different types of legal kinship in early Ireland and Wales and succession to the kingship. Even if *Early Irish and Welsh Kinship* seems to produce a new interpretation of the kinship system, Charles-Edwards agree more or less fully with the model proposed by MacNeill as modified by Binchy. He does not, however, agree with MacNeill on all points, especially not where MacNeill has used the glosses as his sources (Charles-Edwards, 1993, 499).

The last of the interpretations of the kinship system is made by Dr. Neil MacLeod. In the article 'Kinship', published in *Ériu LI* by RIA in 2000, he proposes an interpretation of a system where many of the problems the earlier models encounter are solved. This is the article that inspired this thesis, and I will discuss it in greater detail in the next chapters.

Further discussion on the kinship system seems to be almost non-existent. Rolf Baumgarten discusses the existence of the different kinship models in his article '*Co nómad n-ó: an early Irish socio-legal timescale*' in *Peritia* 17-18 (2003—2004). However, although he calls MacLeods model 'the most elegant' of them all, he proceeds to use MacNeill's model anyway. As I mentioned above, the modern models all agree on the basic principles of how the *gelfhine*, and to an extent also the *derbfhine*, was organised, so in the case of Baumgarten, the choice of model would be irrelevant to the subject of his article. However, I find it curious that the emergence of a new interpretation of the kinship system has yet to generate a debate on the consequences of it.

### 3 The models of interpretation

The object of this chapter is to present an overview of the existing interpretations of the Irish kinship system. The chapter is split into two parts. In the first part the focus is on the earliest interpretations that have been made of the organisation of the *fine*, and in the second part the focus is on the modern interpretations. The interpretations I describe as 'modern' are the ones starting with Eoin MacNeill's model published in *Celtic Ireland*, 1921, and ending with Neil McLeod's model published in *Ériu LI* in 2000. After this there are, as far as I know, no new interpretations of the *fine*.

There are some fundamental features of the kinship system that all the modern interpretations agree on. The basic division of the kin-groups into units of five, nine, thirteen and seventeen categories of persons is outlined in the law text *Fodlai fine*, also called *d'fhodlaib cineoil tuaithi*,<sup>17</sup> which describes the four kin-groups in the Irish kinship system in reference to the inheritance of kin-lands upon the death of a kinsman. This same parting of the kin-groups can be found in several legal texts, and is not restricted to any one age. This excerpt is from *Fodlai fine*:

[§4] *Gelfine co cuicer. Isi-aide gaibes dibad cach cind comacuis di neoch diba uaid.* 'The *gelfhine* ('bright-kin') extends to five persons. It is the latter that claims the inheritance of each individual relative from any that perish out of it without heirs.'

[§5] *Derbfhine co nonbor. Ni daba huaide cobraind fo lin cenn comocuis.* 'The *derbfhine* ('true-kin') extends to nine persons. It shares any uninherited estate [i.e. of an extinct *gelfhine*] according to the number of individual relatives.'

[§6] *Iarfine co tri feraib dec. Ni beir-ide acht cethramthain ... di orbu ...* 'The *iarfine* ('after-kin') extends to 13 persons. It takes only a quarter ... of the estate ... '

[§7] *Indfine co .uii. firu dec. Conranna cadeissin fínteda di neoch diba uaide ...* 'The *indfhine* ('end-kin') extends to 17 persons. It also shares the kin-lands of that which perishes out of it [i.e. the extinct *gelfhine*] ... '<sup>18</sup>

All the interpretations are based on more or less the same material of legal texts, but the emphasis on different parts of the legal material differ, as well as the emphasis on glosses and commentaries. The models I will outline in this section have different ways of approaching

17 CIH 429.27- 430.16, translated by Thomas Charles-Edwards in *Early Irish and Welsh Kinship*, Clarendon Press, Oxford, 1993, pp. 515-16.

18 Neil McLeod, 'Kinship', in *Ériu LI*, RIA, Dublin, 2000, pp. 1-22.

the organisation of early Irish kinship. The way one looks at kin as a whole is the first point to take into consideration. If the kin is seen as a straight line of descendants traced back to one common ancestor, the counting of the 'persons' in the different kin groups will have to start with this ancestor and continue lineally down through his descendants. This is what I will be referring to as ancestor-focus through this chapter. The other way of looking at the kin is through ego-focus. All terms denoting relationships within a family in everyday language is based on a point of reference, 'my son', 'her aunt' and so on, and this person around whom the family tree at any given time is constructed, is the ego. With an ego-focus, the kin is not a straight line from oneself to the common ancestor, it is a group of collateral relatives of different proximity.

### 3.1 The early interpretations

The early models show a very literal sense of interpretation, as will be shown in the examples of this section. I will not outline every one of them, but rather look at some different approaches to gain a perspective of the different ways to interpret the primary sources.

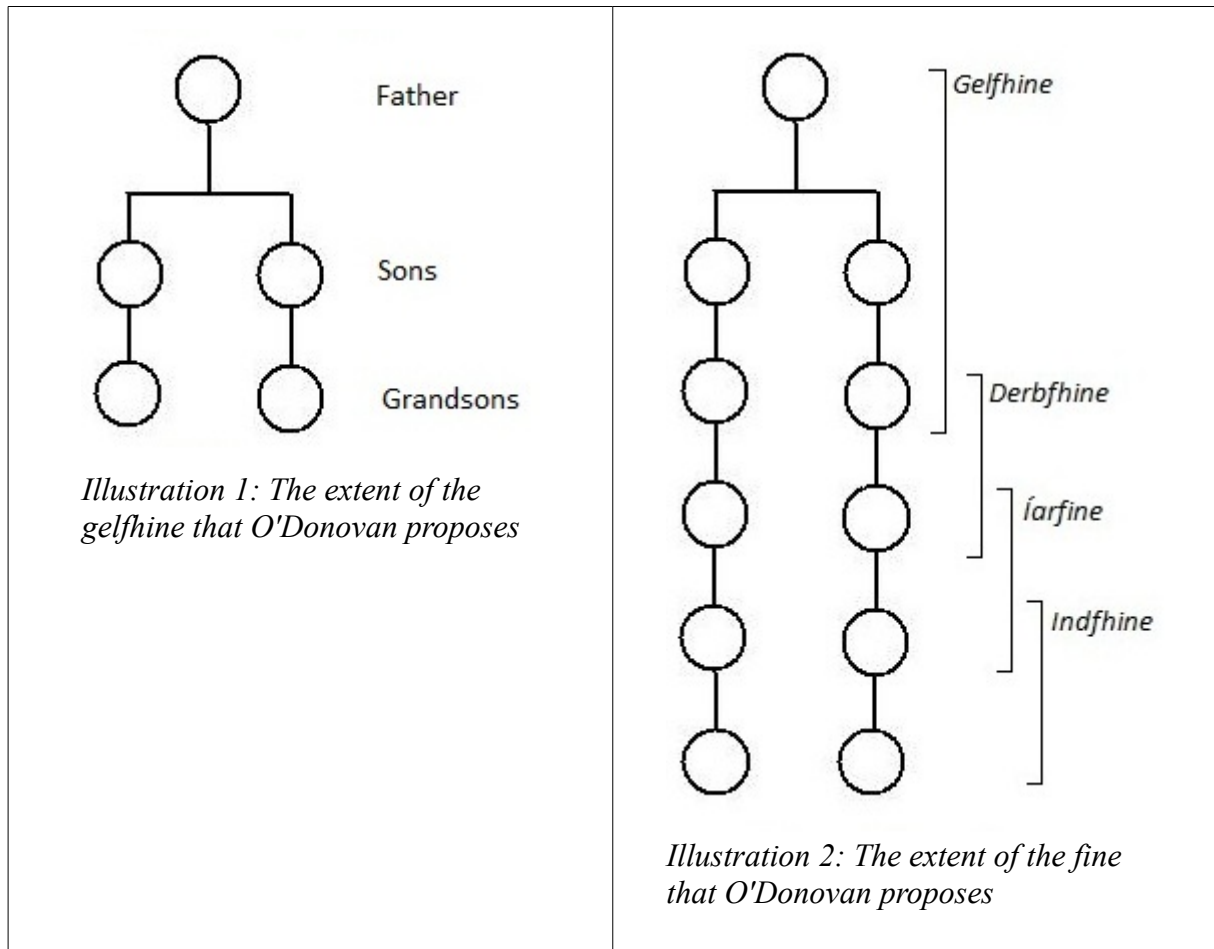
One of the earliest interpretations of the terms of Irish kinship was made by John O'Donovan. In his supplement to Edward O'Reilly's 'An Irish-English Dictionary', published in Dublin 1864, he translates the terms *Fine*, *Geill-Fine*, *Deirbhfine*, *Iar-fine*, and *Innfine*, with accompanying interpretations and descriptions of the kinship system. His translations reinforces some of the myths common in the field of Irish law, namely that the *fine* could be translated as a 'tribe' and that there was a practice of 'tribal ownership of land' in early Ireland. The source for O'Donovan's model of interpretation is the manuscript TCD H. 3. 18, here it says: '*da mac in fir thoisigh do geilfine 7 a dha ua 7 se fein, geilfine ar ut sin; 7 a dha nua 7 a da niarmua, derbfine ar ut sin*',<sup>19</sup> 'the two sons of the first man in the *geilfine* and his two grandsons and himself, it is the extent of the whole *geilfine*; and their two grandsons and their two great-grandsons, that is the whole *derbfine*'.<sup>20</sup> Following this excerpt, O'Donovan translates the *geilfine* as the 'first or direct family', and goes on to interpret it as consisting of 'a father, his two sons, and two grandsons', that is, a man, two of his sons, and one son of each of them again, adding up to five people (see Illustration 1).

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19 CIH 956.22- 23.

20 Translation is my own, as well as any errors.

## The Organisation of Kin in early Irish Law



The *derbfhine* consisted, then, of the two grandsons of the *gelfhine* plus one son of each of these, the *íarfine* consisted of the two great-grandsons from the *derbfhine* and a son of each of these, and so on (see Illustration 2) (O'Reilly and O'Donovan, 1864, 617; 636; 642; 660; 663).

This interpretation largely ignores the fact that the law tracts frequently uses idiomatic expressions like 'five persons' to indicate 'five classes of persons', and fails to take into account that the *derbfhine* is said to consist of nine 'persons', the *íarfine* of thirteen and the *indfhine* of seventeen. O'Donovan seems to have believed that the last three kin-groups consisted of four people each, all overlapping with the previous, translating the passage of TCD H 3. 18, quoted above, literally (O'Reilly and O'Donovan, 1864, 617; 660; 663).

In AL vol. Iv, published in Dublin in 1879, under the heading 'The 'Fine' and the 'Geilfine' System', A. G. Richey makes an equally literal interpretation of the kinship system, while at the same time stressing that the structure he is proposing must be regarded as

## The Organisation of Kin in early Irish Law

artificial and fantastic (MacNeill, 1921, 171). Equally fantastic, but not recognised to be so by the author himself, is W. K. Sullivan's interpretation of the Irish *fine*. It is to be found in his introduction to the gathering of lectures of the late Eugene O'Curry, *On the Manners and Customs of the Ancient Irish*, published in 1873. His interpretation shows a strict ancestor-focus, with the counting of 'persons' following the family tree backwards. He suggests that the seventeen men of the *indfhine* was to be read as seventeen successive generations, to which Richey comments in the introduction to AL that it would mean that the Irish kin had a span of over more than six centuries (MacNeill, 1921, 170). This model also has a basis in ego-focus, as the person one counted generations from at any given time was not the common ancestor, but the ego at the ultimate or penultimate joint of the family tree.

One of the early scholars that published a great amount on the early Irish society, and the *fine*, was Patrick Weston Joyce. In his *Social History of Ancient Ireland*, published in two volumes in 1906, he examines a number of issues, from the government and military system to the domestic customs and general life in early Ireland. MacNeill references in some length to the writings of P. W. Joyce on the subject of the *fine* in *Celtic Ireland*. Joyce's definition of the *fine* is this: 'it meant a group of persons related by blood *within certain recognised degrees of consanguinity*, all residing in the same neighbourhood.' (MacNeill, 1921, 156). The quote is italicised by MacNeill to show which part of the interpretation he believes to be correct. Joyce is careful not to go into any detailed discussion on the divisions of the *fine*, saying that the regulations of the kin-groups were 'then well recognised, but now hard enough to understand.' (MacNeill, 1921, 157). Such a detailed discussion is then introduced by MacNeill, and I will look at his model in the following section.

### 3.2 The modern interpretations

I have divided the discussion of the interpretations before MacNeill's model from *Celtic Ireland*, 1921. This is because of the great impact his interpretation had on the later writings on the *fine*. The first two modern interpretations that I will outline, represents two different approaches to the organisation of the *fine*.

## The Organisation of Kin in early Irish Law

The first is that of Eoin MacNeill,<sup>21</sup> and the second is that of Liam Ó Buachalla.<sup>22</sup> The rest of the models I will present are all building on the interpretation made by MacNeill. I will then present the innovations by D. A. Binchy, which he presented in the article *The Linguistic and Historical Value of the Irish Law Tracts*, in 1943,<sup>23</sup> and the model of kinship that Thomas Charles-Edwards builds on these innovations.<sup>24</sup> I will then outline the thoughts of Nerys Patterson's on the organisation of the *fine*,<sup>25</sup> before the last section of the chapter which will be on Neil McLeod's interpretation of the kinship system.<sup>26</sup>

### 3.2.1 MacNeill

MacNeill sees the 'persons' of the kin according to the idiomatic expressions found elsewhere in the law texts, with the meaning 'category of persons' rather than 'a specific person'. This view of the 'persons' of the *fine* is consistent through all the later theories. MacNeill proposes an ego-focused model based on a four generation subset of a six generation lineage, where the *gelfhine* is a three generation group consisting of five groups of men that are closely related from ego's point of view (see Illustration 3). This is compatible with the figures laid out in *Fodlai fine*.

MacNeill's 'true kin', the *derbfhine*, is based on a four generation group, ego, his father, his grandfather, and his great-grandfather. To this four generation line is added the rest of ego's great-grandfather's descendants: ego's granduncles, his uncles, his first cousins, his father's first cousins and their sons. This group is the *derbfhine* that MacNeill proposes. After the *derbfhine*, the line stays at four generations. This means that to make the *iarfine*, MacNeill does not count ego's great-great-grandfather, instead he counts the brothers of ego's great-grandfather and his three groups of descendants, all the while including both the persons of the *gelfhine* and the *derbfhine*. To make the *indfhine*, he counts ego's great-grandfather's first cousin and his three groups of descendants, including all the previous categories of persons adding up to seventeen 'persons' in ego's 'end-kin' (see Illustration 3).

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21 MacNeill, Eoin, *Celtic Ireland*, Dublin, 1921.

22 Ó Buachalla, Liam, 'Some Researches in Ancient Irish Law', *Journal of the Cork Historical and Archaeological Soc.* 2<sup>nd</sup> ser. 52, 1947.

23 Daniel A., Binchy, *The Linguistic and historical value of the Irish law tracts*, The Sir John Rhys memorial lecture, British Academy, 1943.

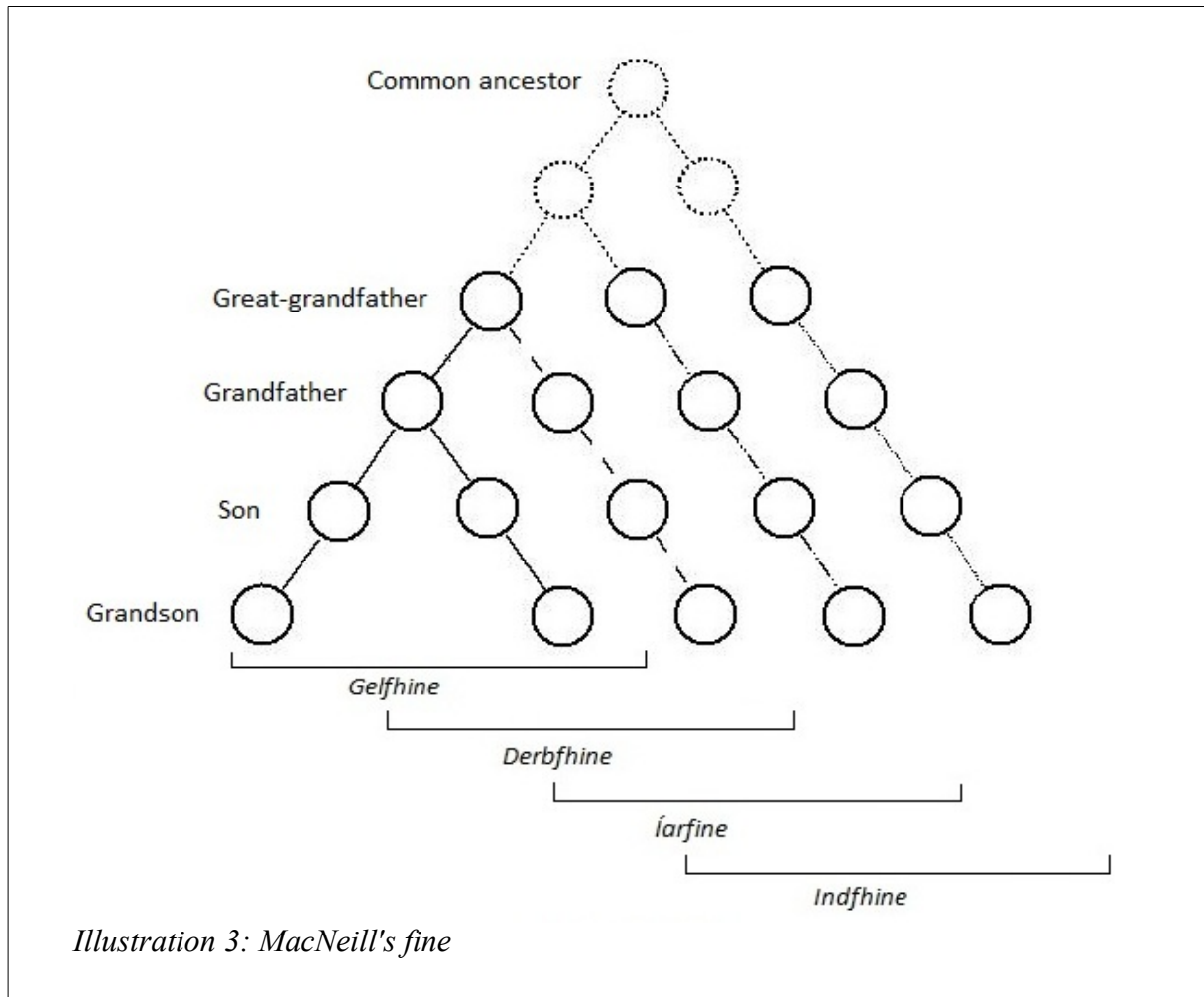
24 Thomas Charles-Edwards, *Early Irish and Welsh Kinship*, Clarendon Press, Oxford 1993.

25 Nerys Patterson, 'Patrilineal kinship in early Irish society', *The bulletin of the Board of Celtic Studies* 37, 1990, pp. 133- 65.

26 Neil McLeod, 'Kinship', in *Ériu LI*, RIA, 2000, pp. 1- 22.



## The Organisation of Kin in early Irish Law



The model is difficult to apply in practice, as the entire kinship system is a set of overlapping personal relationships, where one person's kin-groups are calculated with that person in the centre. According to MacNeill, each man would have a full set of kin-groups at the time he reached maturity. The legal material leads us to believe that the kin-groups were supposed to fulfil several legal functions, like the distribution of kin-lands and inheritance, which would be difficult when every man had a separate *gelfhine*, *derbfhine*, *íarfine* and *indfhine* to relate to.

The evidence presented by MacNeill is less extensive than later scholarly interpretations, but more thorough than the research current to and earlier than his own. His focus is on the Irish legal texts and on comparative evidence from Hindu laws, but he only quotes the legal tract from the manuscript TCD H 3. 18, later entitled *Cró and Díbad*,<sup>27</sup> never

<sup>27</sup> CIH 600.1- 601.11, edited by K. Meyer, 'On the distribution of *Cró and Díbad*', in *Ériu* 1, RIA, 1904, pp. 214- 15.

## The Organisation of Kin in early Irish Law

discussing the passage in *Fodlai fine* that clearly explains the division of the kin-groups that he tries to explain. The *Cró and Dibad*-tract is dated by Meyer to the period after the death of Cormac mac Ciullenáin in 908 AD, according to the evidence of the *Annals of Ulster*. If this dating is correct, it makes the text a less than reliable source to the conditions of the 7<sup>th</sup> and 8<sup>th</sup> centuries. His use of Hindu laws of succession shows that the Irish kinship system was far from peculiar in an Indo-European context, and even though the comparative aspect does not show that MacNeill's interpretation is right, it does show that it is sensible (Charles-Edwards, 1993, 492).

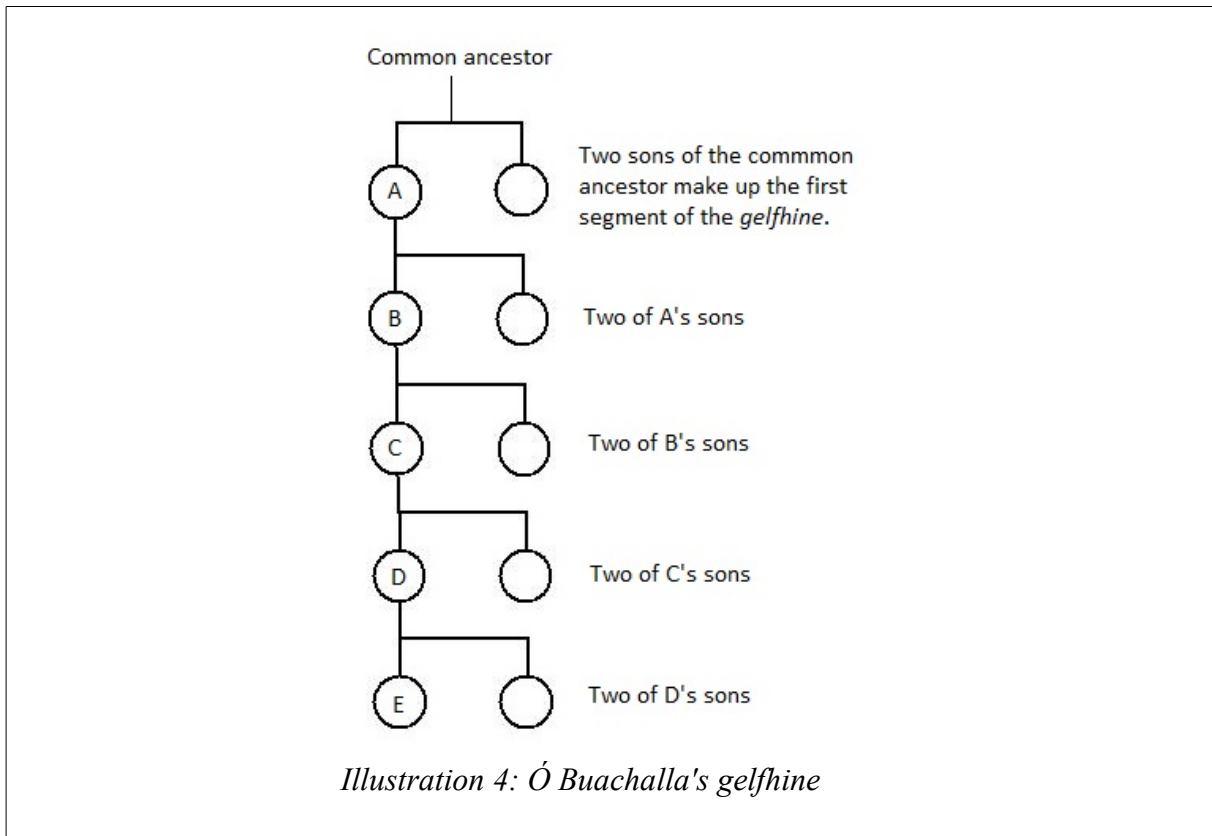
### 3.2.2 Ó Buachalla

The second main school of thought on the Irish kinship system is that of Ó Buachalla. His theories are ego-centered, but his system of counting is distinctly ancestor-focused. Ó Buachalla sees the *gelfhine* as a lineal group of five generations of agnatic descendants and their brothers, shown in Illustration 4 below.

This means that even though the focus is on ego (E in illustration 4 and 5), meaning that it is from ego that the five generations are counted backwards, the fact that he interprets the five 'persons' of the *gelfhine* as five generations is a distinct feature of ancestor-focus. Unlike W. K. Sullivan, Ó Buachalla does not believe that the seventeen men of the *indfhine* is to be counted as seventeen successive generations, he stops after the five generations of the *gelfhine*, and proceeds to count four more 'persons' collaterally in his *derbfhine*. These are the sons of the four brothers in the *gelfhine*, the sons of ego's uncles, his grand-uncles his great-grand-uncles and his great-great-grand-uncles, the agnatic first cousins up to three removes back from ego. The *iarfhine* consists of all the persons of the *gelfhine* and the *derbfhine*, plus the agnatic second cousins up to three removes back from ego. The *indfhine* thus consists of all these, plus the agnatic third cousins four removes back from ego (see Illustration 5 below).

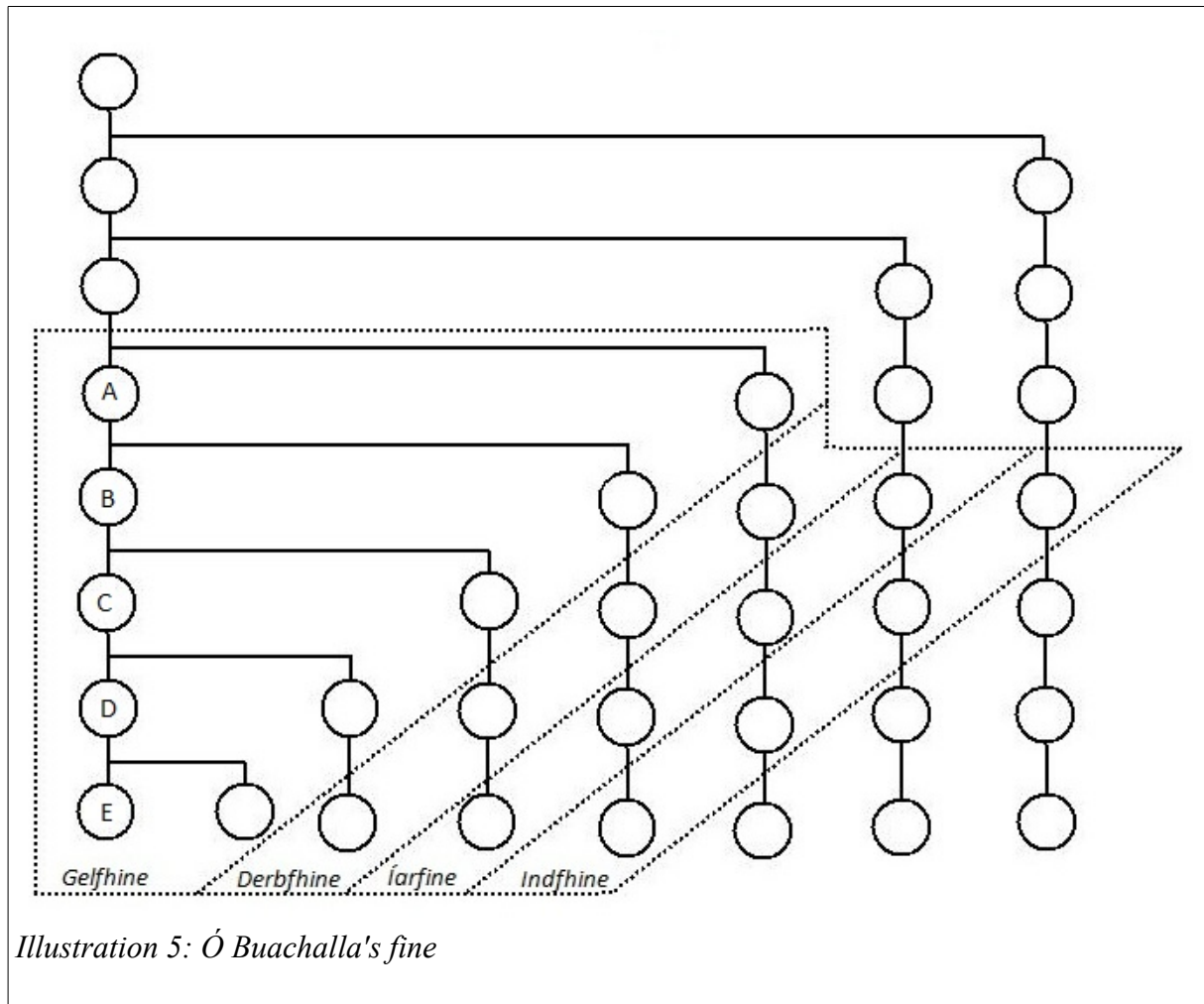
This gives a model of kinship where the categories of kinship consists of different numbers of generations so that the number of 'persons' in each category can meet the required numbers, 5, 9, 13 and 17. A result of this is that a man is not part of the same category of kin as his father in relation to ego. A man can also be outside of ego's kin, even if his father is a part of it, and the man belongs to the same generation as ego. The focus is thus on categories of kin rather than on familiar bonds which does not matter in this model when counting kin.

## The Organisation of Kin in early Irish Law



The evidence Ó Buachalla presents to support the first point of his model, that the *gelfhine* consists of five generations, is a commentary in the manuscript H. 3. 18, called *Comroinn Coirpdire*. This commentary states that '*athair 7 mac 7 uadh 7 iarmua 7 innua aithfegthar a ngeilfine*', as translated by Charles-Edwards: 'father and son and grandson and great-grandson and great-great-grandson are considered to be in the *gelfhine*' (Charles-Edwards, 1993, 492). This fits nicely with the model I described above, however there are several reasons why this comment should not be used as evidence when describing the Irish kinship system. The language of the comment shows no signs of having been made earlier than the fifteenth or even the sixteenth century, making the probability of it recounting actual practice slim. In addition to the language being of a later date, Charles-Edwards points out that the multiplication of distinctions used in the comment is characteristic of a later and more unrealistic type of commentary (Charles-Edwards, 1993, 492). The evidence for the shape of his model, where a man belongs to the kinship-category one step further from ego than his father, is a late commentary in the manuscript TCD H. 3. 17, with no support from the classical tracts.

## The Organisation of Kin in early Irish Law



### 3.2.3 Binchy

Building on and revising MacNeill's theories, Daniel A. Binchy formulated his own interpretation of the Irish kinship system in the article *The Linguistic and Historical Value of the Irish Law Tracts*, published in 1943. Here Binchy proposes that the kinship system was organised in a different manner before the 6<sup>th</sup> century than that which is described in the legal material. Because of this change in organisational practice, there would be a certain amount of confusion surrounding the kin when the law texts were written, causing the writers to leave us with differing accounts of the organisation of the kin, and making the later glossators and commentators categorically add glosses to the texts to fit the later practice.

There are two main points that Binchy adds to MacNeill's theories and to the previous thoughts on the *fine*. First Binchy proposes that the *gelfhine* originally did not exist in the

## The Organisation of Kin in early Irish Law

Irish legal system, but was an invention made during a period of change in the 6<sup>th</sup> century. He proposes that the *derbfhine* would have been the primary familiar unit of society before this change, and that the *gelfhine* took over its responsibilities as a result of a series of social changes that took place in the same period (Binchy, 1943, 31).

The next point in Binchy's theories is closely related with the last one, either being one of the reasons for social change or caused by it. The word for grandson, *aue*, is proposed by Binchy to have meant both grandson and great-grandson at the earlier stage in the organisation of the *fine*. Therefore, the *íarmue* was the great-great-grandchildren, and the *indue* the great-great-great-grandchildren. This theory is very interesting because of the relation between the words *íarmue*, *indue* and *íarfine*, *indfhine*. The terms for the four kin-groups were used mainly by jurists in early Ireland, while the terms for different degrees of kinship were in wider use in society. This indicates that the jurists coined their terms on the more widely recognised words. I will be discussing the implications of this theory more closely in the next chapter.

Just like MacNeill, Binchy proposes a system of kinship with a lineage of six generations, but this line would now be ending in the common ancestor's *indui*, his great-great-great-grandsons. This was the framework for ego's kin, his *indfhine* or 'end-kin'. Further, the descendants of ego's great-great-grandfather was his *íarfine*, ending in the ancestor's *íarmue*. Next the *derbfhine* consists of a four-generation line ending in the *aue*. This explains the correspondence between the *indue* and *indfhine* and the *íarmue* and the *íarfine*. The model also avoids the change in the counting of generations that is necessary in MacNeill's theory, where the *gelfhine* consists of three generations while the *derbfhine* consists of four, as from ego's point of view, the *fine* would be a group of related lineages of four generations descent. The *derbfhine* would be the descendants of ego's great-grandfather, the *íarfine* the descendants of his great-grandfather's brother, and the *indfhine* would be the descendants of his great-grandfather's brother's son. The model is still basically the same as MacNeill's, the only change is the meaning of the familiar terms (see Illustration 3 above).

The model Binchy suggests, based on MacNeill's, but with the shift between the older and newer practice, is the one that Thomas Charles-Edwards champions in his book *Early Irish and Welsh Kinship*. Therefore I will let the discussion on whether the *gelfhine* was an

## The Organisation of Kin in early Irish Law

invention of the 7<sup>th</sup> century or not wait until the next chapter, and only present the remaining models of interpretation here.

### 3.2.4 Charles-Edwards

According to Charles -Edwards, the only satisfactory interpretation of the organisation of the Irish *fine* is the model proposed by MacNeill, as it is modified by Binchy (Charles-Edwards, 1993, 49). The main point of this model is an assumed change in Irish social and legal practice that happened in the 8<sup>th</sup> century, causing the *derbfhine* to lose some of its traditional responsibilities to the new level of kin, the *gelfhine*. Charles-Edwards argues that this change can be seen in the 8<sup>th</sup> century text *macshleхта* where the 'white kindred' of the *gelfhine* was contrasted with the 'dark' or 'black kindred' of more dubious descent (Charles-Edwards, 1993, 55). This addition of the *gelfhine* to the original *fine* is regarded by Charles-Edwards as reflecting a real social change where the *gelfhine* assumed the responsibilities of the late *derbfhine*.

This makes the shift in counting of generations of the kin-groups that was necessary in MacNeill's model irrelevant, as the groups that were originally counted would only consist of four generations. He also points out that, as one of the primary functions of the kinship system was to provide mechanisms for the redistribution of kin-land, 'the *derbfhine* only comes into play when the *gelfhine* is extinct' (Charles-Edwards, 1993, 499). If this is the case, MacNeill's model, where the five members of the *gelfhine* was added to the four additional members to make up the *derbfhine*, would have a problem as the *gelfhine* was extinct and could not be counted any more.

Another main point in Charles-Edwards' interpretation of the kinship system is the difference between the legal text *Fodlai fine* and the *Kinship Poem*. These texts both discuss the processes involved in inheriting kin-lands, specifically in cases where entire kin-groups were extinct. Upon a man's death, his sons would inherit their shares of the kin-land. If the man did not have sons, his closest kin-group, the *gelfhine*, would inherit it. In a situation where this entire group was extinct, there had to be rules deciding who should inherit the different portions of the kin-lands.

In laying out these rules, the *Fodlai fine* grants three quarters of an extinct *gelfhine*'s lands to its *derbfhine*. The remaining quarter of land, the text tells us, belongs to the *iarfine*,

## The Organisation of Kin in early Irish Law

but shared with the *indfhine*. The specifics of this sharing of the last quarter can be found in later commentaries.<sup>28</sup> This was divided after the same ratio, the *iarfine* getting three quarters and the *indfhine* one quarter. We can see this sharing of the last part of the kin-land in two ways. Either the *iarfine* takes the remaining quarter and redistributes a share of it to the *indfhine*, as it is expressed in the commentaries, or we can say that the entire quarter is shared between the *indfhine*, which is what the *Kinship Poem* seems to suggest.

In the *Kinship Poem* the remaining quarter of kin-land, after the primary kin has been extinguished, an outside branch inherits the kin-lands, except for a quarter belonging to the *indfhine*, 'So that it is not the inheritance of lesser kin' (Charles-Edwards, 1991, 517). A further subdivision of the land is not mentioned in the *Kinship Poem*, and this is the main reason why Charles-Edwards supports Binchy in the belief that the *gelfhine* is a new invention. Since the *indfhine* did not need to subdivide the kin-land, Charles-Edwards believes that there were only these two 'outside branches' in addition to the primary kin, which would then be the *derbfhine*.

### 3.2.5 Patterson

Patterson's interpretation of the kinship system returns to the basic model of MacNeill. She defines the *gelfhine* as a group consisting of all the agnatic descendants of a common grandfather following this model (Patterson, 1991, 182). Her choice of using MacNeill's model is explained by her disregard for the theories of an 'original and primitive' system of kin and tribal organisation shining through in the law texts. More precisely, she does not agree that a narrowing of the basic unit of kin in society to the five groups of men of the *gelfhine* necessarily was a sign of advancing modernity, or that the *derbfhine* can be seen as a prehistoric social formation (Patterson, 1991, 27). She believes that the reasons Binchy presents for claiming that the *gelfhine* was a newer invention are not good enough, and points out that some of the cases where the mentioning of the *gelfhine* in the manuscripts are dated to a 'later period' by Binchy might actually be earlier than assumed (Patterson, 1991, 27). The evidence presented by Charles-Edwards for this shift in social order, she dismisses as a *deus ex machina* (Patterson, 1991, 28). She draws attention to the very ego-focused nature of the interpretations of MacNeill, Binchy and Charles-Edwards. The kinship system was supposed

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<sup>28</sup> *Cóic conora fuigill*, CIH 1034.34-5.

## The Organisation of Kin in early Irish Law

to constitute an 'organised group with permanent social significance', which she believes these models can not be (Patterson, 1990, 135).

Her own interpretation of the organisation of the kin-groups is also ego-focused, but not as rigidly as the others. The main point in Patterson's model is that the terms for Irish kinship were meant to be vague and ambiguous, thus leaving room for a number of systems based on different criteria (Patterson, 1990, 163). This allows her to bypass the problems encountered in the other models and accommodate a number of texts and later commentaries. It is questionable whether such a system, where the terms of kinship were ambiguous, could constitute an 'organised group with permanent social significance' (Patterson, 1990, 135).

### 3.2.6 McLeod

The last model I will outline in this chapter is that of Dr. Neil McLeod, the last in the line of modern interpretations of the early Irish kinship system. The model he presents agrees with the basic organisation of kin-groups that was presented by MacNeill and that has been continued by both Binchy and Charles-Edwards. However, McLeod disagrees with the idea that the *gelfhine* was a late invention of the 8<sup>th</sup> century born out of social disorder and change, which is the basic idea in these models. He also disagrees with the idea of calculating the members of the kin-groups solely on the basis of 'ego', which changes according to the point of view. This degree of ego-focus makes the *fine* incapable of functioning in the way that the legal material outlines, where the *fine* is the foundation of calculating compensations for wrongdoings, inheritance after diseased family groups and members, and general inheritance of land.

McLeod thus proposes a system of kinship where a man's kin-groups are dynamic, and change according to his stages in life, while at the same time leaving no doubt about which members of the extended family will inherit his assets in the case of his death, violent or otherwise. In this system, the people in his *fine* are the people closest to him, and as the relationships within his family changes, the *fine* evolves. Basing itself on MacNeill's model of kinship, McLeod's model has only half as many members as MacNeill's, even though the same family members are counted in the *gelfhine* and the *derbfhine* of both models.

In McLeod's model there are three stages in life that determine a person's *fine*. First, a boy is a part of his father's *fine*, as he has yet to reach maturity and is unable to legally hold



## The Organisation of Kin in early Irish Law

land and contribute to the kin. A child would reach such a maturity at approximately age 14 (McLeod, 1982, 61). At this time he (i.e. 'ego') will become a part of his first *gelfhine*, forming, together with his brothers and cousins, the bottom layer of the kin-group headed by their grandfather. Upon the maturity of his own children, or the children of one of his brothers, a new bottom layer is added to the *gelfhine*, and ego's father takes over as head of the kin-group. Should ego's grandfather still be alive and well, his status changes, according to McLeod, back to being a dependant of the *gelfhine*. When ego's grandchildren reach maturity, ego is himself made head of his *gelfhine*, if he is trusted with the leadership by his closest kin (McLeod, 2000, 3). Through this process, the *gelfhine* evolves as new layers come to at the bottom and the outermost branches of the family tree are dislodged from this kin-group.

The *gelfhine* consists of the descendants of a common grandfather in this model, while the *derbfhine* consists of the descendants of a common great-grandfather. Ego's first *derbfhine*, which he becomes a part of upon his maturity, contains these nine categories of persons: his great-grandfather, his grandfather, his granduncles, his father, his uncles, his 1<sup>st</sup> cousins once removed, his 1<sup>st</sup> cousins, his 2<sup>nd</sup> cousins, and himself and his brothers.

The same process occurs in ego's *derbfhine* as the one I described in the *gelfhine*. Upon the maturity of the bottom layer, an outer branch of the kin-group is no longer accommodated in the *derbfhine*, and these four groups of persons, (ego's great-grandfather, his granduncles, his 1<sup>st</sup> cousins once removed and his 2<sup>nd</sup> cousins) together with the members of the *derbfhine*, make up ego's *iarfine*. Upon the maturity of ego's grandchildren, the same branch of the *derbfhine* is dislodged again, in ego's point of view, to become his *indfhine*. The branch consisting of his grandfather, his uncles, his 1<sup>st</sup> cousins and his 1<sup>st</sup> cousins once removed, has become his *iarfine*, and the branch consisting of all the descendants of his father has become his *derbfhine*.

## The Organisation of Kin in early Irish Law

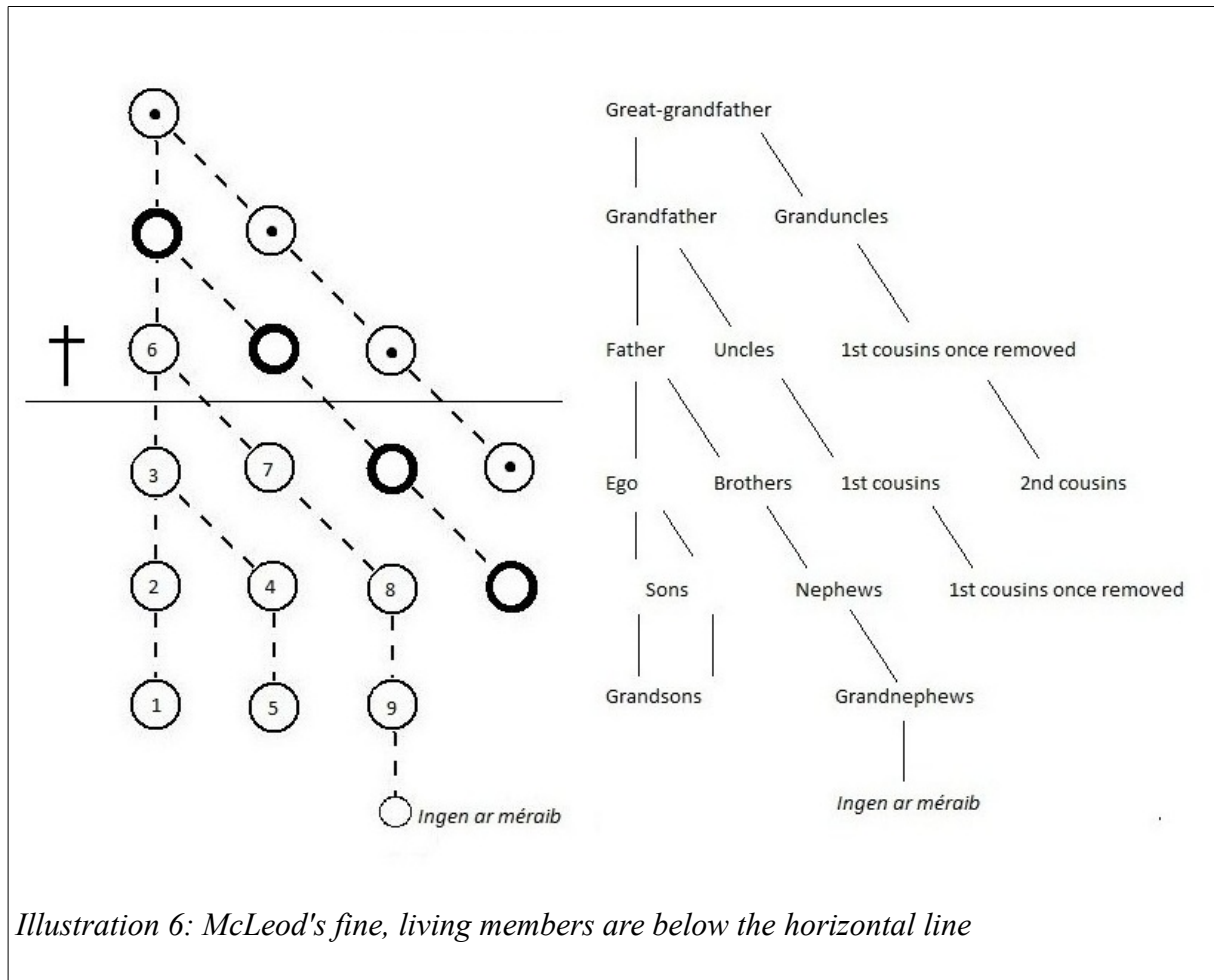


Illustration 6: McLeod's fine, living members are below the horizontal line

All the people that has been a part of ego's *derbfhine* through his life, are a part of his end-kin, his *indfhine*, as can be seen from illustration 6, which outlines the entire kinship system proposed by McLeod. From the illustration, we can see that McLeod's model counts the great-grandfather just like MacNeill does, but his model does not expect him to be alive and well. The *derbfhine* would then have no formal head like the *gelfhine*, as the only person fitted for such a role, the great-grandfather, is unlikely to be able to perform the task as his time is limited. Not only because it was unlikely that he would live to see his great-grandchildren reach maturity, but also because at the age of 88, a person would loose his legal capacity, his ability to perform legal actions such as contracting and to hold land. This is incompatible with the responsibilities of the head of the kin, the *cenn fine* (McLeod, 1992, 88, n. 18).

## The Organisation of Kin in early Irish Law

As the great-grandfather is counted into the *fine* together with his father and grandfather, a note on death in the kinship system is appropriate. Including the great-grandfather in the counting of the nine members of the *derbfhine* is no stranger than including a granduncle who died early in the counting, or ego's uncle and his descendants even though the uncle never had children. The model is a template, and the categories of persons is a guide, as there can be as many *gelfhine* in a kin-group as there are male children of the common ancestor. There can also be none, should the family be unfortunate.

## 4 Debating the models of interpretation

In this chapter I will look closer at some of the issues that have been presented in the discussions on the various interpretations of the kinship system. I will not go into any detailed discussion on the models published before *Celtic Ireland* by Eoin MacNeill, or the one presented by Ó Buachalla, as I have already established that these models do not meet the criteria of the legal material. The models that will be discussed in this chapter are the ones by MacNeill, Binchy, Charles-Edwards and McLeod.

The first section of this chapter will deal with the difference between these models; the changes made to MacNeill's model by Binchy. First and foremost is the theory that the *gelfhine* was a newer invention that replaced the original primary unit of the Irish society, the *derbfhine*, in the wake of some great demographic crisis. Next there is the theory that the familiar terms for great-grandson, great-great-grandson and great-great-great-grandson changed meaning in the same period, following the change in primary kin-unit and demographic crisis. These theories are very much connected, but as they are used by Charles-Edwards and Binchy as two separate arguments for social change in the 8<sup>th</sup> century I will debate them in separate sections of this chapter. The last section of the chapter will deal with various other issues relating to how the models explain various aspects of the legal material in very different ways.

### 4.1 The changes made by Binchy to MacNeill's model

Change in legal practice and social order is put forth as the reason why the *gelfhine* lineage is of a different depth than the other kin-units for no apparent reason; the *gelfhine* consists of three generations while the larger kin groups consist of four in the models of MacNeill, Binchy and Charles-Edwards. In these models there is a need to explain why such a change in counting occurs in an otherwise very meticulous legal system. Thomas Charles-Edwards points out that there are two ways of proving that this change took place in early Ireland; either we can prove that the meaning of the word *aue*, commonly translated 'grandson', has changed during the 7<sup>th</sup> century or earlier, or we can find evidence of an early stage where the *derbfhine* was the primary kin-unit (Charles-Edwards, 1993, 503).

## The Organisation of Kin in early Irish Law

### 4.1.1 Semantic shift in familiar terms

The terms *gelfhine*, *derbfhine*, *iarfhine* and *indfhine* were legal terms used by lawyers to define the inner workings of the kin; they were not in general currency and can not be found in sources that are not dealing with legal matters (Charles-Edwards, 1993, 50). The more common way of talking about kin was from an external point of view, where one saw the lineages as descendants of an ancestor, with little need for the legal terminology. It is clear to us that the words for great-grandson and great-great-grandson, *íarmue* and *indue* are closely connected with the words for 'after-kin' and 'end-kin', *iarfhine* and *indfhine*. It is also reasonable to assume that the words that were in general currency, *íarmue* and *indue*, were what inspired the legal terms for the kin-units.

I have mentioned several points where MacNeill's model has been criticised by Binchy, and later by Charles-Edwards, one of the most fundamental points being the change in counting of generations in the kin-groups in MacNeill's model. A further point that builds on this one is the fact that the model does not explain the connections between the words *íarmue/indue* and *iarfhine/indfhine*. Though *íarmue* means 'great-grandson', the *iarfhine* in MacNeill's model extends to the common ancestor's great-great-grandson, and though *indue* means 'great-great-grandson', the *indfhine* extends to the great-great-great-grandson of the common ancestor. Basing itself on the solution to the different depths of the kin-groups in MacNeill's model, Charles-Edwards proposes that the words had another meaning originally, one that rectifies the fact that the words-pairs do not fit together in this model. He believes that 'it is likely that, at the period when the terms *iarfhine* and *indfhine* were created, *íarmue* meant great-great-grandson (...) and *indue* meant great-great-great-grandson (...)' (Charles-Edwards, 1993, 50).

The reason why it is important to unite these word-pairs with the kin-groups that are derived from them, is the references we have to their more common uses. One way of referring to a *fine* in a non-legal context, was as the *indui X*, the 'end-grandsons of X' (Charles-Edwards, 1993, 52). The *indui* (plural of *indue*) would mark the limit of the kin, as it marked the final element of the agnatic line of the common ancestor, X. Following the same pattern, the *íarmui X* (plural of *íarmue*), the 'after-grandsons of X', would mean the *iarfhine*. This use of the terms are clearly ancestor-focused; for a member of a *fine*, a member of the kin would not talk about his collaterals in terms of a long gone ancestor or a theoretical future great-grandchild. It is therefore logical that the terms for collateral kinship match those of

## The Organisation of Kin in early Irish Law

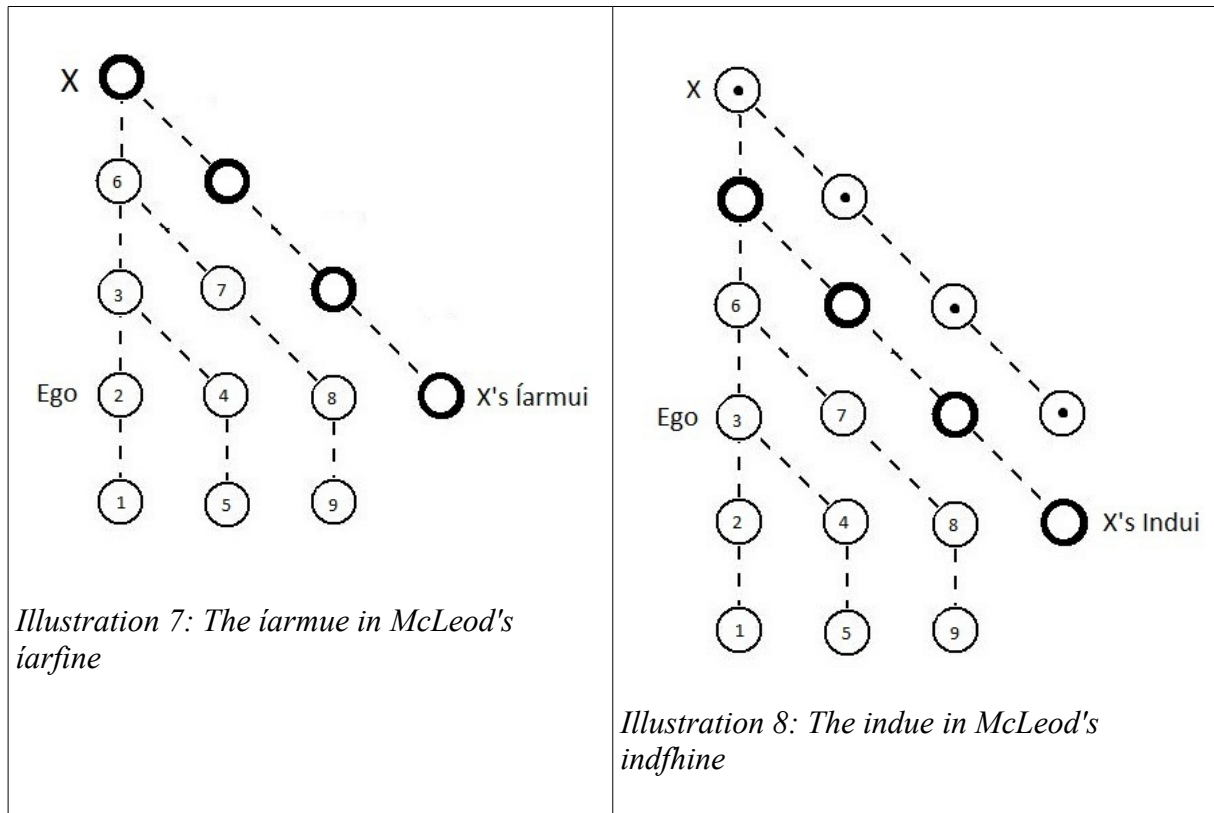
lineal descent. To clarify, in Charles-Edwards' interpretation, the *íarmue* of the common ancestor, his great-great-grandson, can be used to talk about the whole *íarfine* from an external point of view. From an internal point of view, in this interpretation, if ego is the youngest member of his *fine*, the same person would be his 4<sup>th</sup> cousin, and the youngest member of his *íarfine*.

The same theory can not be applied to the *derbfhine* as there is no familiar term that has the same linguistic relationship with *derbfhine* as *íarmue/íarfine* and *indue/indfhine*. When following the same pattern, the *auí* fills the same space as the *íarmue* and *indue*; the descendants of ego's great-grandfather are the *auí X* in Charles-Edwards' model, which makes the *derbfhine* the 'primary grandchildren' in his model, followed by the 'after-grandsons' and 'end-grandsons'.

When a fourth kin-unit was introduced in the early 8<sup>th</sup> century, according to the theories that support this view, a change in terminology also took place. The new kin-unit, the *gelfhine*, was a shallow lineage consisting of three generations, where the older units all consisted of four. Where *ae* had previously meant both grandson and great-grandson, it was now restricted to grandson, and as a result *íarmue* took over the meaning great-grandson, and the great-great-grandson was the *indue*. This means that the *íarmue* would no longer correspond to the *íarfine*, but to the *derbfhine*, and the *indue* would correspond to the *íarfine*. This change is supposed to have reflected real social change, as the terms *ae*, *íarmue* and *indue* were in everyday and non-technical use. The change in meaning of these words, mirror, according to Charles-Edwards, the replacement of the *derbfhine* by the *gelfhine* as primary kin-unit (Charles-Edwards, 1993, 56).

There is no conclusive evidence for such changes neither in the meaning of *ae* and its compounds, nor for *íarmue* nor *indue*. First, it is difficult to ascertain whether *ae* had an earlier meaning, both because of the general use of the word to mean 'ancestor' in the sources, and because of the early date such a change must have taken place. The second solution would be to find *íarmue* being used for a great-great-grandson, or *indue* being used for a great-great-great-grandson in some of the older sources, but no evidence from such an early stage, where the meaning of the words cannot be disputed, seems to exist (Charles-Edwards, 1993, 503).

## The Organisation of Kin in early Irish Law



As MacNeill's model does not satisfactorily explain the connection between *íarmue/indue* and *íarfine/indfhine*, and the solution presented by Binchy and Charles-Edwards is difficult to prove with any certainty, I will look at how the words connect in the last of the models I presented in the previous chapter.

McLeod comments on the theory that *íarmue* and *indue* have each been docked a generation, that 'nothing so adventurous is required under my model' (McLeod, 2000, 18). In illustration 7, we see that ego's *íarfine* consists of his *derbfhine* and an additional four men, all being the descendants of ego's great-grandfather, X. At the bottom is X's great-grandson, his *íarmue*, marking the limit of the *íarfine*. To ego's *derbfhine* eight men are added to make up his *indfhine*; these are all the descendants of his other great-grandfather, and extends as far as his great-great-grandsons, his *indue*. The *indui* are the members below ego in the illustration, and they mark the outer limit of the *indfhine* (see illustration 8).

A man with sons was considered to belong to a generation of *íarmui*, and a man with grandsons was considered to belong to a generation of *indui*. This statement is based on an excerpt from the 8<sup>th</sup> century Old Irish Penitential on kin-slaying (Bieler, 1975, 271). The text

## The Organisation of Kin in early Irish Law

deals with penance for killing a child, parent, sibling or uncle/aunt, and lists victims 'to the seventh man (...) - to the grandson and great-grandson and great-great-grandson, and the sons of the great-great-grandson, as far as the finger-nail.' (McLeod, 2000, 19). This list of victims of kin-slaying matches the *derbfhine* in the kinship system presented by McLeod.

It seems to me that several of the statements made in reference to the earlier meanings of the familiar terms are based on a circular reasoning; the existence of an earlier system is required for the words' change in meaning to have occurred, and the earlier meaning of the words is used as evidence for the existence of an earlier system.

### 4.1.2 The *gelfhine* as a new invention

As I mentioned at the end of the introduction to this section, Charles-Edwards presented two ways to prove Binchy's hypothesis that the *derbfhine* was once the primary unit of kinship in Ireland, the first being to prove that there was a semantic shift in familiar terms during the 8<sup>th</sup> century; the other way is to procure some sort of evidence of an earlier stage where the *derbfhine* was indeed the primary kin-unit.

One of the major differences in the modern models that I outlined in the previous chapter is the approach to the *gelfhine* and its place in the kinship system. The belief that the *gelfhine* is an invention of the 8<sup>th</sup> century, and that the original primary unit of kinship was the larger kin-group, the *derbfhine*, has been championed in the models of Binchy and Charles-Edwards, and has been quoted by several authors in different fields of Celtic studies. In this section I will look at the evidence that has been put forth to support the theory of the 'newer' *gelfhine*, and the evidence against such a theory.

There are several cases of manuscripts on the *fine* where the writers have glossed the word *derbfhine* with 'i.e. *gelfhine*' (Charles-Edwards, 1993, 503), and it is certain that the *gelfhine* acquired a certain amount of the responsibilities previously held by the *derbfhine* in the course of the 8<sup>th</sup> century. This habit of glossing the word '*derbfhine*' is part of why Binchy proposes that the *gelfhine* is an invention of the 8<sup>th</sup> century, and that the *derbfhine* originally was the primary unit of kinship. In *Early Irish and Welsh Kinship*, Charles-Edwards to prove that there was a common heritage of prehistoric Celtic institutions of kinship, through a comparison of Irish and Welsh sources, and that this was the the agnatic four generation



## The Organisation of Kin in early Irish Law

lineage corresponding to the Irish *derbfhine* (Charles-Edwards, 1993, pp. 3, 212-2, 303, 471, 487-9).

The root of the Irish word *derbfhine*, *derb* is cognate with the Welsh root *derw*. This root also has the meaning 'true' or 'certain' and is used in *cefniderw*, 'first cousin' and *cyferderw*, 'second cousin'. Charles-Edwards believes it likely that *derbfhine* is a term of greater antiquity than *gelfhine*, *iarfhine* and *indfhine*, and a term of less exclusive legal currency than these (Charles-Edwards, 1993, 51). In this section I will look at some of the evidence that has been put forth to support this theory.

### Various textual evidence

To be able to prove that the *derbfhine* had a primary role in Irish society before the 8<sup>th</sup> century, we need an early text that deals differently with the kin-units than the later ones. As I outlined in the chapter on the models of interpretation, this is exactly what Charles-Edwards does when he compares the legal text *Fodlai fine* with the text he calls the *Kinship Poem*. I will recapitulate briefly what I wrote about these two texts in the previous chapter:

Both texts discuss the processes dealing with inheriting kin-lands, specifically in cases where entire kin-groups were extinct. In a situation like this there had to be rules deciding who should inherit the different portions of the kin-lands. The *Fodlai fine* grants three quarters of an extinct *gelfhine*'s lands to its *derbfhine*. The remaining quarter of land the text tells us belongs to the *iarfhine*, but is shared with the *indfhine*. This portion was divided after the same ratio, the *iarfhine* getting three quarters and the *indfhine* one quarter. We can see this sharing of the last part of the kin-land in two ways.

Either the *iarfhine* takes the remaining quarter and redistributes a share of it to the *indfhine*. This is the way the commentaries explain it. Or we can say that the entire quarter is shared between the members of the *indfhine*, which is what the *Kinship Poem* seems to suggest (Baumgarten, in *Peritia* 4, 1985, 313). In this text, an 'outside branch' inherits the kin-lands, except for a quarter belonging to the *indfhine*, 'So that it is not the inheritance of lesser kin' (Charles-Edwards, 1991, 517). A further subdivision of the land is not mentioned in the *Kinship Poem*, and this is the main reason why Charles-Edwards supports Binchy in the belief that the *gelfhine* is a new invention. Since the *indfhine* did not need to subdivide the kin-land, Charles-Edwards believes that there were only these two 'outside branches' in addition to the

## The Organisation of Kin in early Irish Law

primary kin, which would then be the *derbfhine*. I will look closer at the aspect of inheritance in the next section.

An other pair of texts that can seem to refer to the *derbfhine* as the primary kin-unit are the legal tract on bee-keeping, the *Bechbretha*, and the text on water-mills, the *Coibnes Uisci Tharaidne*. The two texts are most likely composed by the same author and are both dated no later than c.700 AD, and no earlier than c.635 AD (Charles-Edwards, 1993, 504).<sup>29</sup> The texts use the workings of the *fine* as metaphors on their themes; in *Bechbretha* §18, a kinsman is said to have been sustained by his *derbfhine*, and the *derbfhine* would get his inheritance, *dibad*, if he died without issue. This is compared with the closest household that sustained a swarm of bees, where the law texts stated that this household would receive the benefits from the swarm (Charles-Edwards, 1993, 504). In *Coibnes Uisci Thairidne*, there is a similar comparison; the holding where the mill-race has been diverted from the main stream is called here the *bunad*, the 'origin' of the mill-race (§1), and must therefore, according to Charles-Edwards, be the *derbfhine*.

In *Bechbretha*, all the four *fini* are mentioned in a section of the text, but Charles-Edwards believes the mention of the *gelfhine* to be an interpolation. He feels that the glosses to the text in *Bechbretha* shows that the writer had trouble reconciling the system he was describing in the text with the one he knew from reality, and that this is the reason he glossed *derbfhine* with 'i.e. *gelfhine*' (Charles-Edwards, 1993, 505).

In the text *Córus Fine*, the 'Legal Ordering of the Kindred', the rules for the distribution of the *éraig* or *cró*, the wergeld, appear to have been written down. As I mentioned in the first chapter of this thesis, this particular text has only survived in fragments and is difficult to interpret. Through the quotes and glosses, it is clear that the text refers to the *derbfhine* as the unit that prosecuted feuds and received, or paid, the *éraig* or *cró* (Charles-Edwards, 1993, 505).

In the legal text called *Cáin Adomnáin* (AD 697), the theme is the protection of non-combatants (for example women, children and monks) from violence. Here, there are passages where the text equates the words *fine* and *derbfhine*, 'kin' and 'true-kinsman', with no apparent change in meaning; *for fini no anfini*, 'upon kin and non-kin' and later, *for derbfhini*

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<sup>29</sup> On their common authorship, see D. A. Binchy's edition of *Coibnes Uisci Thairidne*, *Ériu* 17, RIA, 1955, p. 54.

## The Organisation of Kin in early Irish Law

*no anfini* (Charles-Edwards, 1993, 506). The legal texts called *cáin* were edicts by kings or ecclesiastics; they are called 'promulgated law' by Kelly (Kelly, 1998, 305). These types of legal documents depended on a surety for it to be effective, an *aitire*. *Cáin Adomnáin* states that an *aitire* should be appointed by each *derbfhine* in order to ensure their obedience to the law. The law thus assumes that it is the *derbfhine* that will prosecute a feud, and keep control over its members.

### The *Comaithches* (the neighbouring groups of joint-farmers)

It is natural that the kindred would come together to do important chores connected with farming and herding, as can be seen in the tale *Bethu Brigte*, where a man working in a cow-pasture was asked by the saint why he was working all alone, and the man replied that all his family was ill.<sup>30</sup> We move from the natural work-distribution within the kindred, however, and over to legal regulations, when the kindred cooperates with neighbours on farming. In the earliest sources, the farming responsibilities belonged to the *derbfhine*, and the cooperative unit of neighbours that came together to work the land. In the law tract on neighbourhood laws, it is stated 'A question: whence grows joint-husbandry? From plurality of heirs' (Charles-Edwards, 1993, 47).<sup>31</sup> This shows the close link between the neighbouring farms and the kin-groups that inhabited them, and it is also the reason why the *comaithches*, the neighbourhood farming cooperation, is seen as evidence of a time when the *derbfhine* was the clear primary unit of Irish society.

*Comaithches* indicates both the state of being a neighbour, in the legal sense this is the duties and responsibilities expected by two households with lands bordering on each other, and the group of neighbours with a farming cooperation, which has authority within the group to deal with disputes internally. The *comaithches* group would be a set of close neighbours that combined their herds in joint-pasture, combined men and cost of equipment in joint-ploughing, and in general joint-farming. Another aspect of the duties of the *comaithches* is found in the tract on water-mills, *Coibnes Uisci Thairidne*.<sup>32</sup> A group of neighbours would come together to set up a mill, and the use of the mill would then be based on the input of

30 *Bethu Brigte*, from the University College Corc, Corpus of electronic texts, (visited 30.11.2012): <http://www.ucc.ie/celt/published/T201002/index.html> p. 39.

31 *Bretha Comaithchesa*, CIH 64.18-20, translation from Tomas Charles-Edwards, *Early Irish and Welsh Kinship*, Clarendon Press, Oxford, 1993, p. 47.

32 See Baumgarten, Rolf, 'The kindred metaphors in *Bechbretha* and *Coibnes Uisci tharaidne*' in *Peritia* 4, 1985.

## The Organisation of Kin in early Irish Law

each group, the ones who put in most labour and costs would get more use of the mill. The text also specifies that this group of neighbours would consist of a number of related lineages; it would be unusual to grant another kindred access to the mill, but there is specified an exception in *Coibnes Uisci Thairidne*, granting access to a non-participating neighbour in cases where a part of the mill-complex was situated on this neighbour's land. The neighbour might also accept a fee for the intrusion on his land.

Legal texts on neighbourhood are found in the manuscripts Egerton 3. 5 and TCD H 3. 18, most notably in three tracts from the *Senchus Már*. *Bretha Comaihchesa* is the longest of them, dated to the early 8<sup>th</sup> century, with some parts of it of a different date, and is dedicated to giving a full account of the law of neighbourhood. The other two tracts, *Bechbretha*<sup>33</sup> and *Coibnes Uisci Thairidne* are both concerned with neighbourhood laws in connection with their main topics. These two tracts can be dated to the 7<sup>th</sup> century (Charles-Edwards, 1993, 416). In the introduction to this text the relationship between the neighbours and kin is examined, and it is from this part of the tract we have the notion that *comaihches* comes 'from plurality of heirs' (Charles-Edwards, 1993, 47). Inheritance laws also states that neighbours were often kin, as rules regarding the sharing of land between brothers or cousins would divide the kin-land.

This connection between kinsmen and close neighbours is interesting in its own right, but the reason for including it in this thesis is the belief that this connection, the idea that neighbours were often kinsmen, stemmed from an earlier period when the *derbfhine* was the primary kin-unit in society. A passage in *Bretha Comaihchesa* is mentioned specifically; it is translated by Charles-Edwards, 'law (of the *fine*) up to the sixth man' (Charles-Edwards, 1993, 418). He interprets it as an oblique reference to the 'five fingers' mentioned in *Córus Fine* and the *Kinship Poem*. As he interprets these five as the men in the generation currently in possession of holdings, he sees it as evidence of the *derbfhine* having once been the primary kin-unit. In this earlier period, the *derbfhine* would have full economic control over its members, being both the unit for working land and inheriting land (Charles-Edwards, 1993, 423). As the *gelfhine* at a later date became the kin-unit in charge of the inheritance of lands, Charles-Edwards believes that there was a general shift of power in Ireland. He believes that the transfer of power from the *derbfhine* to the *gelfhine* reflects a slackening of the hold of the

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33 *Bechbretha*, CIH 444.12- 457.10, edited and translated by Thomas Charles-Edwards and Fergus Kelly in *Bechbretha*, DIAS, the Early Irish Law Series vol. 1, 1983.

## The Organisation of Kin in early Irish Law

close kin-unit on economy, and a rise in the importance of neighbours, or partnerships of neighbouring farms. However, the *derbfhine* kept all responsibilities for farming co-operation after the *gelfhine* had taken over other important tasks, granting the newer unit less power over its members than the previous.

There is no doubt that there was a close connection between kin and neighbours in early Ireland. The textual material show us a working-unit of neighbours with great influence over its members and with many responsibilities. The cooperation units were controlled by the *derbfhine* of the members, as this was the kin-group responsible for farming. Binchy and Charles-Edwards believes that this constitutes evidence of a time when the *derbfhine* was the primary kin-unit in Irish law, and that a transfer of power from the close family to neighbouring farm-units took place.

It must be noted that the reason for posting arguments in favour of the change in the kinship-system is to keep the theoretical organisation of the *fine* within the kinship-model of MacNeill. As this model is the basis for both Binchy and Charles-Edwards, this is understandable. However, without the need for explaining the basic organisation of MacNeill's model, there is no need to look so far for reasonable explanations. I believe that the interpretation of the 'five fingers' in *Córus Fine* as a reference to the five men in possession of the holdings of the *derbfhine* is unnecessarily complicated, as the 'five fingers' could just as easily be the five members of the *gelfhine*, if this was the primary kinship unit.

### 4.1.3 On the social changes in early Ireland

Initially in this chapter I mentioned that Binchy and Charles-Edwards believes that the reason for the change in primary unit from the greater *derbfhine* to the more shallow lineage of the *gelfhine* was some sort of demographic crisis. The effect of this crisis was supposed to have been far reaching enough to change how the primary units of kin in society cooperated. In this section I will look closer at the explanations used for such a social change.

The proposed demographic crises are centred around diseases that would cause fluctuations in the size of the population. At the end of the 540s AD Ireland suffered under the bubonic plague, and probably the pneumonic plague as well, which had spread across Europe during the decade (Charles-Edwards, 1993, 473).<sup>34</sup> In 664 AD a new outbreak occurred,

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34 Charles-Edwards, *Early Irish and Welsh Kinship*, Clarendon Press, Oxford, 1993, p. 473 n.27.

## The Organisation of Kin in early Irish Law

followed by two more before the end of the century (Charles-Edwards, 1993, 473). We know that these plagues occurred, and that they were disastrous for the Irish, but there is no good evidence as to how the population actually reacted to these disasters, as Charles-Edwards also points out. What we do have evidence to prove, is how the population later grew, and that there was a rapid recovery after 549 AD; this seems to have put a considerable pressure on the supply of land in 664 AD (Charles-Edwards, 1993, 473). Though Charles-Edwards feels that later evidence is worth very little, he does mention several sources to this (Charles-Edwards, 1993, 473, n. 28). That the population made such a rapid recovery, means that the economy in Ireland during this century suffered from a constantly rising population. The plagues were calamities that struck suddenly and whose effects were immediate, while the recovery took time after each event. The population would then be perceived as growing during the entire century, even if the size was much the same at the beginning as it was at the end.

The basis of free status in early Ireland was the inheritance of a certain amount of land. This system must have been heavily affected by major changes in population. The high-ranking *bóaire* would be a man who had an entire plough-team, while the lower-ranking *ócaire* would be a man who had an ox, but not enough resources for a full team. The *fer midboth* and *óenchiniud* were minors, too young to have received an inheritance, or if they had received it, they were too young to farm independently. These two categories were both landless and free, and a natural phenomenon in early Ireland. The *óenchiniud* who remained landless, and free, throughout his life however, is a strange phenomenon.

In the case of the landless and free, there are indications that changes in the social order took place. The legal text *Crith Gablach*<sup>35</sup> allows a man to remain a *fer midboth* or an *óenchiniud* throughout his life, though he has not received an inheritance in land (Charles-Edwards, 1993, 474). This is as opposed to what we have understood is the 'normal procedure', that the *fuidir* is a person whose kindred does not have sufficient lands to provide him with an inheritance. This is what is stated in the *Kinship Poem* and in the tract on the *fuidir* (Charles-Edwards, 1993, 474). This type of landlessness is one of the clearest marks of the unfree or semi-free in early Ireland. Charles-Edwards believes it is possible for a man to remain both without lands and with a status as a free man because the population growth put pressure on the link between inherited lands and free status.

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35 D. A. Binchy (ed), *Crith Gablach*, Dublin, 1941, lines 69-70, translated E. MacNeill, 'Ancient Irish Law: The Law of Status or Franchise', *Proceedings of the Royal Irish Academy*, 1923, § C, 36, pp. 265- 316.

#### 4.1.4 Evolution of the kin-groups

Charles-Edwards also talks about the difficulties of cohesion between the different kin-units as a cause for the social change in the 8<sup>th</sup> century. New segments would constantly add to the kin and as the older members died, evolution of the kin was inevitable. The new branches of the kin were incipient lineages, for the segmentation that came with the passing of the generations would indeed transform the branch into an independent lineage (Charles-Edwards, 1993, 472).

One of the important issues was the ability of a head of a kin to maintain the cohesion of the lineage in the face of the power of the heads over its respective branches. This power-struggle is based on the theory that each of the *gelfhini* had a head of its own, while the *derbfhine* had one head ruling the whole kin-group. This is not the system of kin that McLeod presents, and this entire discussion is thus contained within the model of Charles-Edwards.

Through the legal text *Cáin Aicillne*<sup>36</sup> we see that a good portion of the qualities required by a head of a kindred was concerned with land. He must be a good farmer and he must have an unblemished record in maintaining his inheritance, so as to be entitled to annul the imprudent contracts of his fellow-kinsmen. A central question in many disputes is likely to have been about the ability of the kindred to maintain the free status of its members by providing them with inheritances of the required extent. This would be called into question in times of increased population, a situation that would also put pressure on the head of the *derbfhine*, ultimately sowing doubt about his authority, and thus encouraging the segmentation of the kin into new lineages.

This segmentation of the kin does not require that the level of population rose to such an extent that malnutrition or starvation became a problem, merely that it rose enough to put a strain on the property requirements for status. To make matters worse, the geographical distribution of the population would not have been able to deal with a rapid rise in inhabitants. The areas in a kingdom of well-cleared land, *maige* (sg. *mag*), were often what kingdoms were named after, such as Mag nInis, Mag Rath and Mag Line. For the kindred whose lands lay at the centre of such a *mag* there would be little expansion possible, as they would be surrounded by the kin-lands of other *fine*. Should they choose to migrate and leave their lands in favour of a kingdom where more land was available for clearing they would be degraded to

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<sup>36</sup> *Cáin Aicillne*, CIH 479.23-502.6; 902.26-903.18; 1778.34-1804.11; 2233.1-2237.32, Thurneysen, R, (ed) *ZCP 14*, 1923.

## The Organisation of Kin in early Irish Law

aliens and lose any status they might have had. If one branch of the *fine* chose to migrate to another part of the same kingdom, segmentation would undoubtedly occur, as they could no longer look to their kinsmen for farming cooperation. Charles-Edwards believes that this pressure on the *derbfhine* was the reason the shallower *gelfhine*-lineage gained much power after the 6<sup>th</sup> and 7<sup>th</sup> centuries (Charles-Edwards, 1993, 477).

We know that there were several demographic crises in Ireland in the 6<sup>th</sup> and 7<sup>th</sup> centuries. We have writings of diseases that would cause fluctuations in the size of the population, but we can not say how the population reacted to these disasters. The recovery periods after these crises put pressure on the supply of land in Ireland, and as the basis of free status was inheritance of land, it must have been heavily affected by these changes in population. The evolution of the kin-groups was inevitable and closely connected with the ability of a head of a kin to maintain the cohesion of the lineage and their ability to maintain the free status of its members.

Charles-Edwards believes that the pressure that the population rise put on the *derbfhine* was the reason the shallower *gelfhine*-lineage gained power after the 6<sup>th</sup> and 7<sup>th</sup> centuries, and I think this is a reasonable explanation. The shift in power from the *derbfhine* to the *gelfhine* could likely be caused by a strained kinship system that over two centuries experienced a shortage of land and resources. I must point out finally that the earlier existence of the *gelfhine* is not being disputed in this section. There is only ever evidence for a shift of responsibilities within the kin-groups in my opinion, not for the invention of a new kin-group.

## 4.2 Other issues related to the models of interpretation

### 4.2.1 Inheritance

I have mentioned that the main task of the *fine* was to redistribute land and deal with inheritance on kin-lands upon the death of a kin-unit. This would have been an important responsibility in a society where war, hunger, disease and other unforeseen disasters easily could claim the lives of an entire household. It was important that the rules of inheritance were precisely defined, both in standard cases of lineal inheritance, and in cases where the non-existence of descendants caused a collateral inheritance.



## The Organisation of Kin in early Irish Law

The primary sources give us several models for distributing inheritance of *fintiu*, kin-land, and *dibad*, the inheritable assets of a deceased person. The tracts called *Córus Fine*,<sup>37</sup> 'The Lawful Ordering of the Kindred' and *Macshleхта*,<sup>38</sup> 'Categories of Sons', are only preserved in fragments and through excerpts in other texts, and are thus difficult to interpret with any certainty.

I have explained the differences of distribution in the legal texts *Fodlai fine* and the *Kinship Poem*, in *Fodlai fine*, when the primary kin is gone, the *derbfhine* gets  $\frac{3}{4}$  of the *fintiu*, the *iarfine* gets  $\frac{1}{4}$ , and shares  $\frac{1}{4}$  of this again with the *indfhine*. As long as the primary kin lives, it shares *dibad* of the deceased. In the *Kinship Poem*, when the primary kin is gone, the branch outside it gets the *fintiu*, with the exception of  $\frac{1}{4}$  to the *indfhine*. These rules are clear enough, as long as we all agree on who the dead kinsman's *gelfhine*, *derbfhine*, *iarfine* and *indfhine* are. Thus we have to agree on a model of interpretation that can give us an easy way of identifying the members entitled to the *dibad* and *fintiu*.

If the *gelfhine* in MacNeill's model (numbers 1 to 5 in illustration 9) all die in battle, it will be nearly impossible to come to agreement on the sharing of the inheritance. If the relevant legal perspective is on the living members, they will all have different views on who belongs to the different kin-groups of the deceased. Some of the living members will see the deceased as their *gelfhine*, which gives them exclusive rights to the kin-lands. At the same time, from the perspective of the *iarfine* and *indfhine*, the entire *gelfhine* will be considered extinct, and the kin-lands should then be shared among the extended kin. This can not be the case as the legal procedures would cause only chaos (McLeod, 2000, 11).

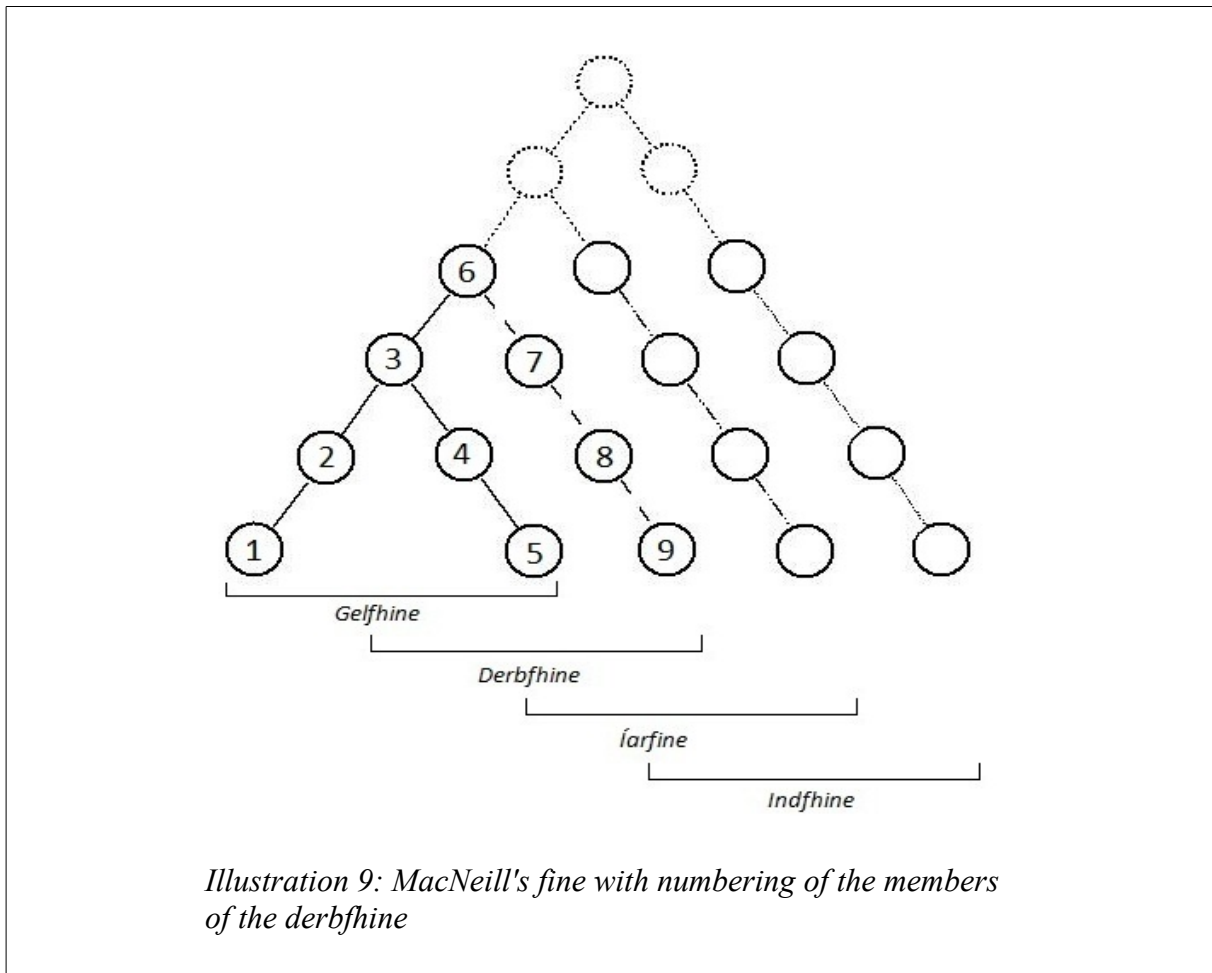
From the legal perspective of the deceased, the extinction of a *gelfhine* can not be handled any more easily. Some of the living members (numbers 6 to 8 in illustration 9), are still considered the *gelfhine* of the man at number 3. The only way to solve these problems are by a set of intricate rules, but no such rules exist in the written sources. Neither is there any trace of such a problem arising in the Irish legal tracts.

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37 *Córus Fine*, fragments in CIH 728.17-746.16.

38 *Macshleхта*, fragments in CIH 107.9-110.13, 1296.17-1301.16 and 1546.26-1550.14.

## The Organisation of Kin in early Irish Law



The solution proposed by Patterson to the same problems are to define the kinship terms as ambiguous terms with room for interpretation, so that cases such as these can be handled by a judge or lawyer at the time the problem rises. The system outlined in the legal texts are nonetheless clearly defined and leaves no room for ambiguity, and I feel that this solution is too simple.

In McLeod's model, an extinct *gelfhine* left no confusion in the remaining members of the *fine* as to who should inherit the kin-lands and goods of the deceased. All the members of a *gelfhine* had the same *derbfhine*; the youngest members of the *gelfhine* had no *iarfhine* yet; the middle and top members of the *gelfhine* all had the same people as their *iarfhine*. Only the head of the *gelfhine* had an *indfhine* that was entitled to a share, these were the heads of the other *gelfhine* in the kin, all descended from the same great-grandfather. In this system, there is an exact correspondence between the members of the *fine* expected to be alive and the ratio in which the inheritance is shared. Three quarters are to go to the *derbfhine*,

## The Organisation of Kin in early Irish Law

and the *derbfhine* (including the *ingen ar méraib*) constitutes exactly three quarters of the living members of the *fine* (illustration 10).

The last share of the inheritance follows the same pattern, three quarters to the *iarfine*, while the last share belongs to the *indfhine*. In this model, the *iarfine* and the *indfhine* are those men who belonged to the same *derbfhine* as the head of the extinct *gelfhine* (McLeod, 2000, 14). The division of the inheritance is again in correspondence with the members that share it. The division of inheritance in the *Kinship Poem* is similar to the *Fodlai fine*, though it seemingly only divides the inheritance in two levels after the primary kindred. Even so, the scale is  $\frac{3}{4}$  to the kin-group outside the primary unit, and  $\frac{1}{4}$  to the *indfhine*.

As I outlined in the chapters above, this is one of the main reasons why Charles-Edwards believes that the *gelfhine* was an invention of the 8<sup>th</sup> century, but the *indfhine* might share the inheritance internally, in which case, the ratio will still be  $\frac{3}{4}$  to the *iarfine* and  $\frac{1}{4}$  to the *indfhine*, as there are four members likely to be alive in these categories put together (see illustration 11). McLeod points out that even though the *Kinship Poem* does not mention how the inheritance is shared between the *iarfine* and the *indfhine*, this can hardly constitute proof that there was no *gelfhine*. Again, absence of evidence is not evidence of absence. It is no more strange than that it does not specify the way the inheritance was shared between the individual members of the *derbfhine* (McLeod, 2000, 15).

There is a gloss to the *Kinship Poem* in the manuscript TCD H. 3. 18, dated to the ninth century, that states:

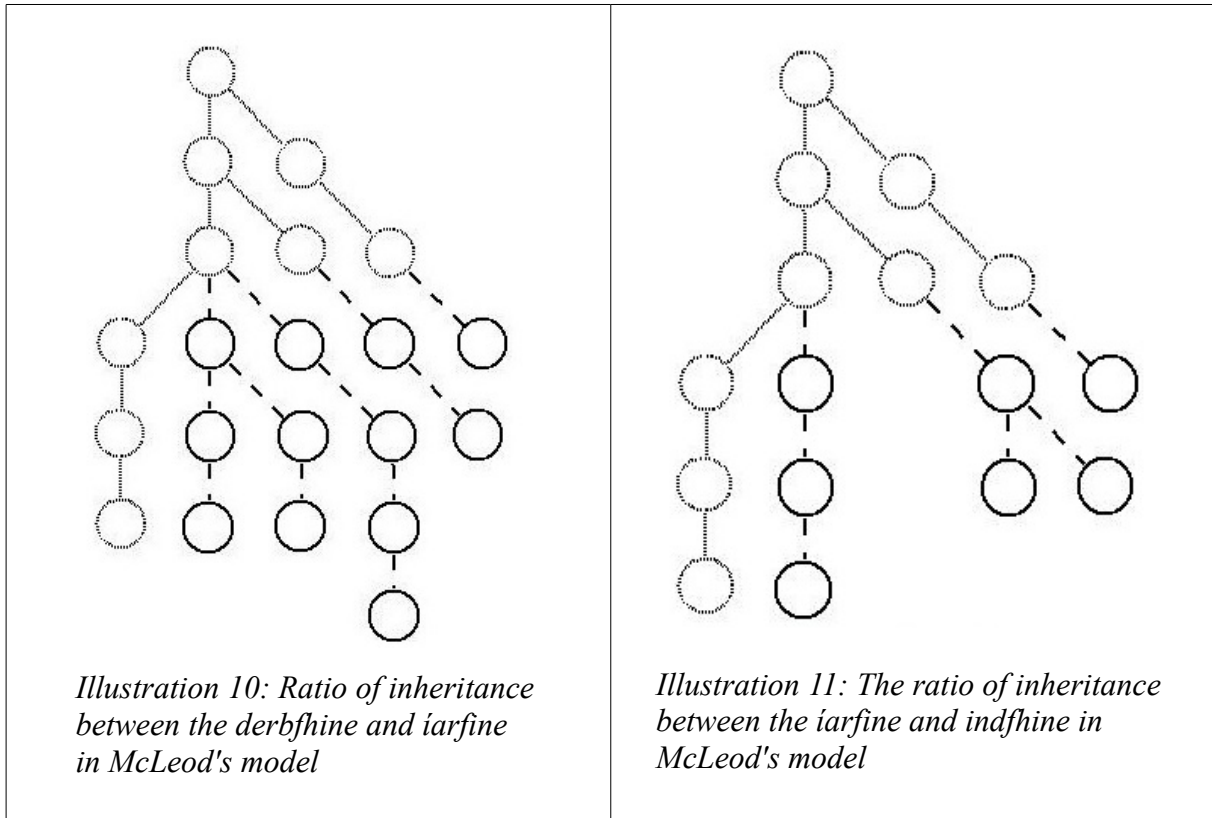
'i. is ann ni beir nach ae dibad, ar is gelfine co .u.er, derbfine co da fer .x., innfine co .uii. firu .x.'<sup>39</sup>

'i.e. it is thus that none of them takes the extinguished estate; for the *gelfhine* extends to five men, the *derbfhine* to twelve men, the *indfhine* to seventeen men.' (McLeod, 2000, 16).

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39 *Kinship Poem*, CIH 912.20-1, normalised edition by McLeod, 'Kinship', *Ériu LI*, RIA, 2000, p. 16.

## The Organisation of Kin in early Irish Law



The gloss is described by Charles-Edwards as 'a novel scheme of *fini* in which the *iarfhine* has disappeared' (Charles-Edwards, 1993, 59). The gloss is dismissed by Charles-Edwards as the scribe's attempt at reconciling the kinship system in the earlier sources with the system the scribe was familiar with. It is unclear why a scribe of the ninth century would need to invent a new system of kinship, but as it mentions the *gelfhine*, and this specific set of numbers, it is incompatible with the model Charles-Edwards presents.

On the other hand, if we base our interpretation of the text on the kinship model introduced by McLeod, the gloss makes much more sense. In this model the seventeen 'men' of the *indfhine*, minus the five 'men' of the *gelfhine*, leaves twelve 'men'. These are the twelve categories of persons that have been members of ego's first, second and third *derbfhine* (McLeod, 2000, 16).

### 4.2.2 Age in the kin-groups

In MacNeill's model of kinship the four generation lines of the *derbfhine*, *iarfhine* and *indfhine* are all expected to be alive at the same time. The two generations of ancestors above these four generations are not counted, on the grounds that they would be dead. Following this

## The Organisation of Kin in early Irish Law

logic, the four generations that are counted in this model must all be expected to be alive as the bottom layer reaches maturity. He points out, first, that the genealogies gives reason to calculate three generations in a century as average, and second, that four generations alive together would not be abnormal, but the normal limit of experience (MacNeill, 1921, 159). This implies that the normal head of the *derbfhine* in MacNeill's model would be 114 years old. This is not only unlikely, but it clashes with the principle that at the age of 88 a man would lose his legal status and revert into the care of his *fine* (McLeod, 1992, 88 n. 18).

The age of the members of the *fine* is commented by Charles-Edwards as well, he employs the 'tree-metaphor' to explain why he believes that the three categories at the top of the family tree should not be counted. The oldest member he calls A, his son through whom the ego is descended he calls B, and the son through whom the outer branches of the *fine* are descended he calls C. He explains that 'although A and B constitute the trunk of this tree of kinship, only the branches are counted', and further that 'the trunk consisted of the common ancestors, whereas the branches were the collateral lines of descent' (Charles-Edwards, 1993, 52, 28). Neil McLeod points out that this metaphor does not work. First, it does not explain why C is not counted, as C would be the first part of the *indfhine* branch, not the trunk, and second, the reason for excluding B on grounds of him being one of ego's lineal ancestors does not hold, as the ego's grandfather could be excluded on the same grounds.

Another aspect of the age of the kin-groups can be found in several commentaries on the legal tracts. Here it is stated that the *indfhine* is older than the *gelfhine*. This example is a late commentary from the manuscript TCD H. 3. 17:

'Indfhine is sí sine dibh; i ndua innfhine athair íarfine, i ndua íarfine athair derbfhine, i nnua derbfhine athair gelfhine.'<sup>40</sup>

'It is the *indfhine* that is the oldest of them. In the grave-mound of the *indfhine* [is] the father of the *íarfine*. In the grave-mound of the *íarfine* [is] the father of the *derbfhine*. In the grave-mound of the *derbfhine* [is] the father of the *gelfhine*.' (McLeod, 2000, 16)

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40 CIH 2016.15-16, normalised edition by McLeod, 'Kinship', *Ériu LI*, RIA, 2000, p. 16.

## The Organisation of Kin in early Irish Law

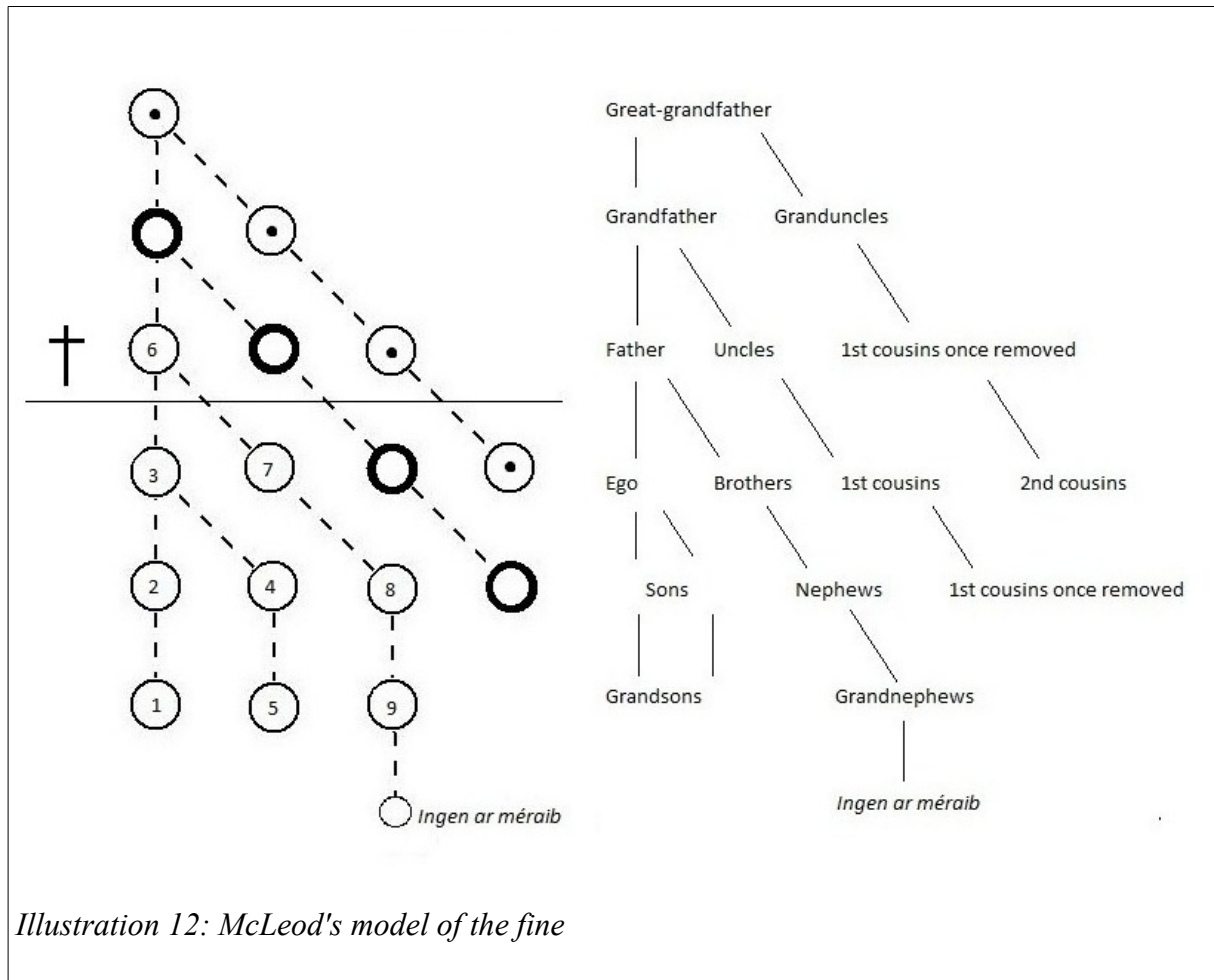


Illustration 12: McLeod's model of the fine

The commentary is mentioned by Charles-Edwards in connection with his presentation of Ó Buachalla's model, and is dismissed by him on the grounds that it was written at a time when the original kinship system was forgotten (Charles-Edwards, 1993, 493). MacNeill dismisses another commentary with much the same content in *Celtic Ireland* as an absurd attempt to interpret the seventeen men literally:

'Geilfine isi iss o, agus indfine isi i[s] sine. Ma tainic nech anis a geilfine, is fer do dul eisti suas i nderbfine, agus fer do dul as cach fine ina ceile nó ria indfine, agus fer do dul eisti-seic i nduthaig [ndufhine].'<sup>41</sup>

41 CIH 299.17-19, normalised edition by McLeod, 'Kinship', *Ériu LI*, RIA, 2000, p. 17.

## The Organisation of Kin in early Irish Law

'The *gelfhine* is the youngest, the *indfhine* the oldest. If anyone [e.g. ego's grandson] has moved up into the *gelfhine*, a man [ego's father] must go out of it up into [ego's] *derbfhine*, and a man must go out of each kin-group into the next as far as the *indfhine*, and a man is to pass from that [i.e. from the *indfhine* acquired by ego's father] into (those whose property is) the inheritance of persons other than the kin.' (McLeod, 2000, 17).<sup>42</sup>

MacNeill's interprets this commentary as meaning that any child coming of age would squeeze out a grown member of the kin, causing this member to lose his status and acquired rights. Ultimately, he believes that this commentary implies that on the reached maturity of seventeen young men, the entire group of senior members of the kin would be left with nothing (MacNeill, 1921, 176). He falls in the same trap as he accuses the writer of when he interprets the commentary so literally.

If we look at these commentaries through McLeod's model, we are able to interpret them more logically. The case seems to be that the commentaries, such as those cited above, that have been dismissed on various grounds by the authors of the models based on MacNeill, can be easily understood when basing them on McLeod's model of kinship. When looking at illustration 6 (below) of McLeod's full *fine*, we see which generations the different kin-groups belong to in relation to ego: ego's great-grandfather (dead) is a member of ego's *indfhine*, and is the ancestor of the branch that constitute ego's *iarfine*. Ego's grandfather (dead) is a member of ego's *iarfine*, and is the ancestor of the branch that constitute ego's *derbfhine*. Ego's father (most likely dead) is a member of ego's *derbfhine*, and is the father of the head of a *gelfhine* (ego).

The kin-groups are redefined each time a new segment of it reaches maturity, and a segment of kin is cut off from their kin-group, and accommodated in the group one step further out. The oldest ancestors and their descendants in the outer branch of the kin will be removed from the reckoning of the kin (McLeod, 2000, 17). This fits neatly with the system that the two commentaries describe.

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42 All formatting by McLeod, 'Kinship', *Ériu LI*, RIA, 2000, p. 17.

### 4.2.3 Redistribution of land

The inheritance of land was naturally a very important part of society, and thus the legal material. Charles-Edwards points to an uncertainty as to whether grandsons as well as sons inherited the kin-lands and quotes a legal maxim that tells us that 'as long as there is kin in front it (the kin-land) does not turn back' (Charles-Edwards, 1993, 64).<sup>43</sup>

The general rule was that land followed the lineal descendants in a *fine*, following the branches on the metaphorical family-tree. An equal division between sons of a legal union was standard. However, in some cases, this principle was rendered useless as the family line might be broken. In the case where a father died before receiving his inheritance, his sons would inherit the land together with their uncles, their father's brothers (Charles-Edwards, 1993, 62). After the uncles were all gone, it would be necessary to redistribute the lands among the grandsons. The legal maxim mentioned above is interpreted by Charles-Edwards to mean that resharing could be done within a *gelfhine*, and thus among grandsons (Charles-Edwards, 1993, 64). When the case was that an entire *gelfhine* was gone, the lands would have to be inherited by collateral relatives, thus defying the legal maxim about kin-lands not going backwards. The *derbfhine* then, only comes into play when the *gelfhine* is extinct.

Following this, Charles-Edwards wonders how MacNeill can count the five members of the *gelfhine* into the nine members of the *derbfhine*, as there would only be a limited number of members left after the *gelfhine* was gone, which was the criterion for redistributing the kin-land to the *derbfhine* (Charles-Edwards, 1993, 499). The point is moot, however, since a *derbfhine* would contain as many *gelfhini* as there were sons of their common ancestor; they are referred to as the 'front' and 'back-*gelfhini*' in various commentaries (McLeod, 2000, 13).

### 4.2.4 The *Ingen ar méraib* (the 'nail-upon-fingers')

There is one member of the kin that I have yet to talk about. He was the son of a man at the bottom segment of the *fine* that through differences in age between brothers a generation or two back would reach maturity earlier than the other children of the same segment. For example, the brother of the head of the *gelfhine* (the head of the *gelfhine* is ego), the man in position 7 in illustration 6, might be older than ego and have predeceased him, the great-grandchild of this man might reach maturity before ego's death, and ego will have to decide what position this young man is to have in the kin. This posed a legal problem, as this son

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<sup>43</sup> CIH 2018.3-4, the parentheses in the quote are added by me.



## The Organisation of Kin in early Irish Law

could not constitute a new segment to the *fine* by himself, but neither could he be counted as a child until the other children reached maturity. This would not be a rare problem, the benefits of catering to children of different generations in a kin-group were many, one would always be in need of working hands that were not busy raising children and that were not themselves children.

Therefore, the *ingen ar méraib*, the 'nail-upon-fingers', was given some legal benefits. He qualified for admission to the *derbfhine*, as it is defined as the common descendants of the great-grandfather of the bottom layer of the *gelfhine*. However, the *ingen ar méraib* would only share in the rights and the duties of the *derbfhine* if the other members agreed to include him (McLeod, 2000, 6 n. 13). This can be seen from a note in *Fodlai fine*, §12,<sup>44</sup> that states:

'Ingen ar méraib: isuide dodindnoig cluais do cluais docom ceniuil. Dedlaid fri fine. Conranna-side finnteda on med addaimther i fini.'

'Nail upon fingers: report from ear to ear brings him towards the kindred (*cenél*). He is separating from the kindred (*fine*). He shares kin-lands to the extent that he is acknowledged as a kinsman. (Charles-Edwards, 1993, 516).

In *Celtic Ireland*, MacNeill sees the *ingen ar méraib* as the 'ultimate limit of the *derbfhine*' (MacNeill, 1921, 119, n.2). He bases this belief upon the literal interpretation of the name *ingen ar méraib*, as one of the common metaphors used for the close kin was a hand, and the 'nail in front of the fingers' would mark the point where descent ended. The hand metaphor is one of many body-part metaphors used, the 'five men' of the *gelfhine* are likened to the 'five fingers of the hand' (Charles-Edwards, 1993, 511), or the *derbfhine* is likened to the chest, the *íarfine* to the forearms and the *indfhine* to the hands, thus the *ingen ar méraib* must be the 'nail-upon-fingers' (McLeod, 2000, 8, n. 15). This resemblance can be seen in illustration 6, I have reprinted it below; when holding your right hand up with the palm facing you, the illustration turned upside down, gives a likeness to the joints of the hand. The vertical line of ego's descendants form the thumb, and the four kin groups form the fingers. The *ingen ar méraib* would be the nail of the middle finger.

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44 CIH 431.35- 432.1

## The Organisation of Kin in early Irish Law

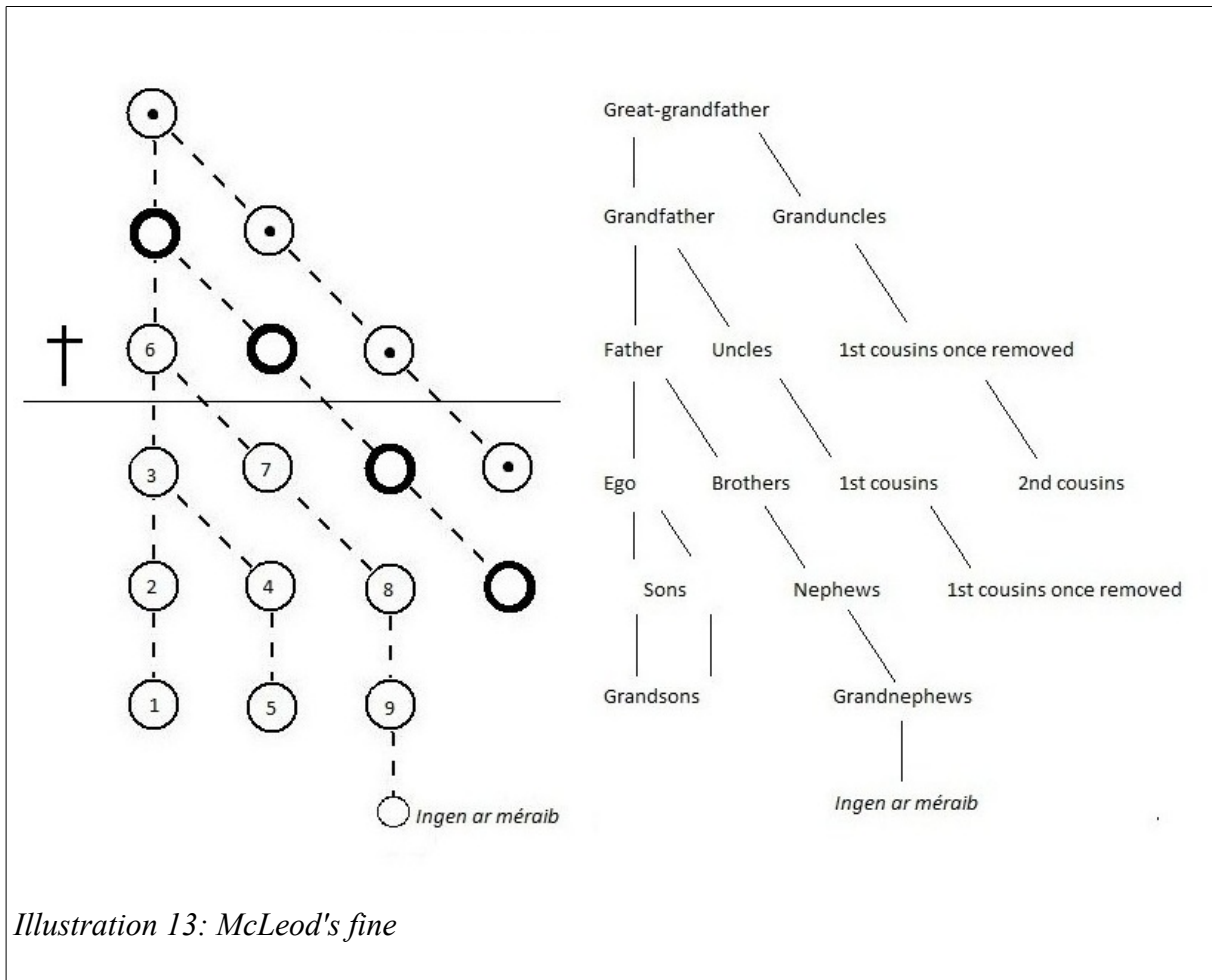


Illustration 13: McLeod's fine

Patterson sees the *ingen ar méraib* as forming a fifth grouping beyond the *indfhine*. She writes that this is 'its usual association in certain 'other sources'. She does not specify the identity of these sources (Patteson, 1990, 169-41). There seems to be little need to assign the *ingen ar méraib* a kin-group of its own; it would not be uncommon that kin-groups were of different ages, and as we have seen from McLeod's model, there are no problems incorporating the *ingen ar méraib* in the kinship system.

### 4.3 A *fine* of twelve

The idea for the discussion in this section came as a result of a personal correspondence with Dr. Neil McLeod. Reminding me of the fact that in his interpretation of the Irish system of kinship, the average number of categories of persons alive in an extended kin-group would most likely be twelve, including the *ingen ar méraib*, Dr. McLeod further pointed out how the number twelve in relation to kinship, and matters where the kin is concerned, appear in several legal, and also some non-legal, contexts in the source material. If McLeod is right, and his model is the one that most closely resemble the actual kinship system of early Ireland, then the living members of an extended kindred would be twelve categories of persons. If this was indeed the case, there ought to exist references to this number in connection with the kin, in sources dealing with legal matters and in other sources where the kin plays an important role. The living members of a kin would naturally be more important to the everyday life of the average Irishman, even though the more intricate system of kinship, with living and dead members, was what the legal texts were concerned with. It is a fair guess then, that the living categories might be more prominent in sources not dealing strictly with legal matter. I believe that a further study of Irish sagas and tales might uncover some useful references to the *fine* as a unit of twelve men. In this section, therefore, I will present a limited number of textual sources that can support this theory.

#### 4.3.1 Textual evidence

##### Legal material

There seems to be some cases of reference to kin-units of twelve in the legal material. I have written about the payment of the *éraic* fine for unlawful killing above. It is naturally the kin-groups that handle both the paying of the fine and the receiving of the payment in cases where the deceased is a kinsman. As a result of this, the organisation of the kin plays an important part in the legal proceedings surrounding unlawful killings. It is in this context, the payment of the *éraic*, that the law tract *Gúbretha Caratniad*, in § 38,<sup>45</sup> speaks of a 'mother of seven kings', while at the same time glossing the excerpt with '*mathair da fer dec*' (a mother of 12 men). This glossing of the seven kings might in itself be uninteresting, but because the

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45 Rudolf Thurneysen, 'Aus dem irischen Recht V', in *ZCP* 18, 1930, pp. 353-408.

## The Organisation of Kin in early Irish Law

contexts is the payment of the *éraic*-fine, the extended kin-group would have been heavily involved in the procedure. It makes sense that the twelve men in the glosses are the entire kin-group of the ancestral mother.

The same gloss appears other places in connection with payment of fines; it is found in § 12 in the legal tract on the *Díre*.<sup>46</sup> This tract deals with compensation for unlawful killings and with the compensation due to each man, woman or child, for a crime committed against each of them. The topic is then of the same type of interest as in *Gúbretha Caratniad* with the main topic heavily relying on the organisation of the kinship system for the execution of fine-paying to be possible. The gloss could easily be a way of referring to the extended kin-group.

This 'correcting' of numbers in the glosses appear in the genealogies as well. The correction is admittedly embedded in the text itself, but it is apparent that a correction has taken place where seven sons are changed to twelve with little or no obvious reason. The example I am referring to is found in the Laud Genealogies (Meyer, 1912, 330, line 14).<sup>47</sup> Here, seven sons are given to *Bécc Bairche* by his queen *Conchenn*, but then another 5 is added without any clear explanation of who their mother might have been. This leaves twelve sons to *Bécc Bairche*, and it would seem that this is another way of referring to the kin-group that descended from him.

### Mythological tales

In the mythological tale called 'The Wooing of Emer',<sup>48</sup> there are several mentions of groups of twelve men. The twelve chariot-chiefs that goes eastward with Cú Chulainn might just be a kin-group of warriors, or *óenchiniud*, that was in his service for one reason or another. In the previous chapter I discussed the landless and free *fuidir* that would pledge allegiance to a lord as a warrior, as an alternative to the more common agricultural binding between a lord and his client.

### Hagiographical material

I mentioned that a further study of non-legal material might uncover more references to the kin group of twelve 'persons'. The text *Bethu Brigte*, 'the life of Brigit', can be seen both as a religious text where Brigit shows her holy powers to the people of Ireland, and a text on legal

46 CIH 922,12 -923,17; 436,33-444,11

47 Meyer, Kuno (ed.), 'The Laud Genealogies and Tribal Histories', *ZCP* 8, 1912, pp. 291-338.

48 *The Wooing of Emer*, eDIL, (visited 1.11.2012): <http://www.ucc.ie/ceit/published/T301021/index.html> p. 69.

## The Organisation of Kin in early Irish Law

procedures with many interesting aspects of legal performance in early Ireland. Robyn Stacey Chapman very accurately describes the text as a power struggle of contradictions, where the young Brigit and the older St. Patrick weaves a pattern of speech and silence, Latin and Irish, as well as pointing to other contradictions between the two in their speeches, young and old, rich and poor, etc. There are many very interesting aspects of this story for the student of early Irish law, but its interest to us in this context is the scene following §39 where Brigit heals an entire household on the edge of the sea. After this healing, she meets a solitary man on cow-pasture and asks him why he is working alone; 'He said: 'All my family is ill.' Hearing this, she blessed some water and immediately healed twelve sick members of the man's family'.<sup>49</sup> As can be seen, there is a reference both to the entire family of the man being sick, and to the number of the healed being twelve.

I should point out that the twelve members of the man's family turns into thirteen when he is himself included in the count, and I have no other explanation for this than that it was a slip from the author. However, this is the kind of explanation that I have already discredited much more accomplished authors for in earlier parts of this thesis. It might be that Brigit only healed twelve of the men in the man's family because there was only need for an *iarfine* of thirteen men to help with pasture, but as the *iarfine* is never seen as the primary unit of farming this seems unlikely. The use of the number twelve could also be a Christian reference, but there seems little reason to include such a reference in this particular context of the tale. The logical conclusion, then, is that the man's whole living kin, his extended kin-group, consisted of twelve 'members'.

### A possible Christian reference

The Christian influence on these texts is undoubtedly great, and it might be that groups of twelve men are are imitation of Christ's disciples. In many cases this is beyond doubt, as in the text 'On the life st St. Patrick',<sup>50</sup> where it is said that:

'He it was who had sent a man of his family to Ireland to sow belief and faith among the men of Ireland- Palladius was his name, with twelve men, to preach to the Gael, for unto Peter's successor belong the bettering of the whole of Europe, and the headship thereof'<sup>51</sup>

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49 *Bethu Brigitte*, from the University College Corc (UCC), Corpus of electronic texts (CELT), (visited 30.11.2012): <http://www.ucc.ie/celt/published/T201002/index.html>

50 *On the Life of St. Patrick*, from the UCC, CELT, (visited 30.11.2012): <http://www.ucc.ie/celt/published/T201009/index.html>

51 *On the Life of St. Patrick*, from the UCC, CELT, (visited 30.11.2012): <http://www.ucc.ie/celt/published/T201009/index.html> p. 15.

## The Organisation of Kin in early Irish Law

This excerpt is placed very firmly in its religious context, but in texts that do not have the same clear cut message it might be a mistake to dismiss the number as a religious reference. In texts that deal with legal issues that are related specifically to the kin-group, the biblical parallel would seem inappropriate. I mentioned the texts on fine-payment above, and how they are clearly linked to the organisation of the kin; there are a number of other themes in the non-legal textual material that clearly involves the organisation of the kin in the same manner, like vengeance and inheritance, or the fictitious linking of the kings of various kingdoms through genealogy, all recurring themes in the Irish saga material. In these contexts it is logical to think that the mentioning of the number twelve, in the form of twelve brothers, twelve kinsmen or twelve men in general, in connection with one or more of these themes are a direct reference to a full kin-group, a *fine* with all its living (male) members.

An example of a tale where vengeance is the theme and the kin-group is most likely involved is the story of *The Voyage of Máel Duinn*.<sup>52</sup> In this story, Máel Duinn is advised by a druid to take with him seventeen men when seeking vengeance for the killing of his biological father, a number that could very well be a reference his extended kin, all categories including the living and dead. The boat with Máel Duinn and his kin is blown off course because he allows his foster-brothers to accompany him on the journey. This is both because the number of people in the boat exceed the number in the druid's advice and because his foster-brothers does not have a place in Máel Duinn's quest for vengeance, only the *fine* belongs in this setting.

In conclusion I believe it will be worthwhile to look through the early Irish saga literature for mentions of groups of twelve in connection with kinship, or with topics that would be connected legally with the organisation of the kin. This could take the form of twelve sons, brothers, kinsmen etc. However, more research is needed to be able to ascertain a plausible link between the examples above and the living categories of members in an extended kin-group.

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52 Oskamp, *The Voyage of Mael Dunn*, Wolters-Noordhoff Publishing Company, Groningen, 1970, pp. 99–179.

## 5 Conclusion

After having reviewed the different models of interpretation of the Irish kinship system, the main comparison must be between the model of Thomas Charles-Edwards and the model of Neil McLeod. This is because the model Charles-Edwards proposes embodies all the innovations of the modern models, with the exception of the thoughts presented by Patterson, and the model presented by McLeod. As Patterson does not propose an interpretation of her own, but merely revises the ones by MacNeill, Binchy and Charles-Edwards, the only model left to compare Charles-Edwards' with is that of McLeod.

### 5.1 The primary kin-unit

The main points of Charles-Edwards' theories is the late introduction of the *gelfhine* into the Irish kinship-system. He states that a *terminus post quem* for the introduction of the *gelfhine* into the early Irish kinship system can be set at 697 AD, the dating of the text *Cáin Adomnáin*. The legal texts assume that the *derbfhine*, first and foremost, is the kin-group that takes responsibility for an individual who cannot be made to pay for his offences, that prosecutes feuds and pays or receives *éraic*, and that appoints an *aitire* to ensure the obedience of the kin. In many cases the glosses do not share the view of the texts, rather they change mentions of the *derbfhine* being liable for the offences of a kinsman with the usual '*i. Geilfine*', 'i.e. the *gelfhine*' (Charles-Edwards, 1993, 507). All the above can thus be proof of a shift in legal responsibility during the 8<sup>th</sup> century, causing the closer kin-unit of the *gelfhine* to assume responsibilities usually handled by the wider *derbfhine*. The background for this change is believed to be a disastrous series of plagues or an other demographic crisis that kept the population rising through the centuries prior to the 7<sup>th</sup>. This does not mean, however, that the *gelfhine* did not exist as a kin-group with legal responsibilities and rights before this.

Colmán Etchingham points out in his review of Charles-Edwards' *Early Irish and Welsh kinship*,<sup>53</sup> that the adherence to dubious dating criteria affects the reliability of the book (Etchingham, 1994, 655). He points out that the textual evidence Charles-Edwards presents is mostly based on three tracts that does not mention the *gelfhine*, and that these belong to the 7<sup>th</sup> century based on his own interpretation of a strata of texts between oral and literate composition: a sub-category of '[written] texts composed in styles deriving from the older oral

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53 Etchingham, Colmán, 'Review of *Early Irish and Welsh Kinship*', *English Historical Review*, 1994, pp. 654-6.

## The Organisation of Kin in early Irish Law

material' (Charles-Edwards, 1993, 16). Etchingham's problem with this definition is that no method of distinguishing these excerpts from the purely literate genre is defined by Charles-Edwards. Etchingham also remarks upon the missing evidence for assuming that the actual mentioning of the *gelfhine* in *Bechbretha* is supposed to be an interpolation (Charles-Edwards, 1993, 505).

My conclusion on the theory that the shallower line of the *gelfhine* was an invention of the later strata of the Irish legal texts, is that the evidence is lacking. The evidence I have presented throughout Chapter four supports the theory that the *derbfhine* could once have constituted the 'sustaining kin-unit' in Ireland, just like Charles-Edwards implies. However, I do not find that the evidence is sufficient to prove that the entire concept of the *gelfhine* was a later invention that either came about as a result of social change or simply as a change in the practice of legal writing. None of the texts that have been mentioned in Chapter four indicate that the *gelfhine* did not exist as a primary kin-unit before the 8<sup>th</sup> century, nor that the *derbfhine* was considered a more ancient form of kinship; there is only sufficient evidence to prove that the two kin-groups had different responsibilities at an earlier stage, than in the later texts.

It would appear that the entire reason for proposing such a radical change in the kinship-system, is to keep the theoretical organisation of the *fine* within the kinship-model of MacNeill. As all the modern models have kept the basic organisation of the *gelfhine* and the *derbfhine* that was presented in this model, it is not hard to understand the logic behind presenting theories that unite MacNeill's model with as much of the source material as possible. Neither is there any doubt that the works of both MacNeill, Binchy and Charles-Edwards are invaluable to the student of Irish kinship, perhaps especially the last one.

But it is also important to note that the model presented by McLeod removes all reasons for correcting the discrepancies found in MacNeill's model. Even without the removal of the *gelfhine* from the 'original' calculation, and the 'semantic skipping of a generation' in familiar terms, McLeod's model is compatible with the legal material, both law text, glosses and commentaries.

In McLeod's model, there is no need for explaining why there are three generations in the *gelfhine* while there is four in the other kin-groups. Because McLeod does not expect any more than three generations to be alive at the same time, it does not matter that there might be



## The Organisation of Kin in early Irish Law

members of the kin alive to see their great-grandchildren reach maturity. In the event that this should happen, such a person would most likely revert to a dependant status within the kin, and no longer be a separate member, similar to the way that the children of the kin-group that had not yet reached maturity are dependants of the *fine*.

In this model, the matching of the *íarmue*, the great-great-grandson, to the *íarfine*, and the *indue*, the great-great-great-grandson, to the *indfhine*, does not depend on the word having had a different 'original' meaning. Here, ego's *íarfine* consists of his *derbfhine* and an additional four men, all being the descendants of ego's great-grandfather, X. At the bottom is X's great-grandson, his *íarmue*, marking the limit of the *íarfine* (see Illustration 7). To ego's *derbfhine* eight men are added to make up his *indfhine*; these are all the descendants of his other great-grandfather, and extends as far as his great-great-grandsons, his *indue*. The *indui* are the members below ego in the illustration, and they mark the outer limit of the *indfhine* (see illustration 8).

## 5.2 Final conclusions

I have presented the different interpretations of the Irish kinship-system through this thesis, and debated some of the main aspects of them with a hope of being able to conclude on an interpretation that can explain the evidence of the source material, while at the same time constituting a dynamic system of kin applicable to any kin-group in early Ireland. I have found that the writings of Eoin MacNeill on the kinship system constitute the first and most solid basic interpretation of the organisation of the kin-groups. His thoughts are continued in all the modern interpretations, with the exception of Ó Buachalla's model.

Of the modern interpretations, I have found that there are two that are worth discussing against each other, the model by Charles-Edwards and the model by McLeod. I have shown that the main point in Charles-Edwards' model, the theory that the *gelfhine* was a newer invention and that the 'original' primary unit of the kinship-system was the *derbfhine*, is difficult to prove with any certainty. The legal material shows us that the kin-groups had different responsibilities at an earlier date, and that the *derbfhine* might have had more power at an earlier time than the smaller *gelfhine* group. But it does not indicate that the *gelfhine* was an invention of the 8<sup>th</sup> century after some demographic crisis causing the society to turn away from the older practices where the kin-group was the extent of an individual's legal capacity.

## The Organisation of Kin in early Irish Law

Such a dynamic system is found only in the model by Neil McLeod. In this model, there is never any doubt who belongs to which kin-group in relation to each other, making the system a solid base for the concerned aspects of the Irish legal system. There will not be any doubt who will inherit the kin-lands of a deceased *gelfhine* in this system; the *derbfhine*, *iarfhine*, and *indfhine* will all receive a portion of lands consistent with the ratio of living members of the groups.

I believe that the kinship-system outlined by Neil McLeod in the article 'Kinship'<sup>54</sup> is the one that does the best job in following up on the evidence of the Irish legal texts. I further believe that this is the model that gives the best template of the kin-groups to explain the workings of the early Irish kin and its relationship with legal procedures such as inheritance, the paying and receiving of fines, joint-farming and contracting. Should it be that the theory I outlined at the end of chapter four, in which ml's model sugd that the living members of an extended kin-group count twelve, and this number is used to refer to a kin-group, is correct, it would further support my belief that McLeod's model of interpretation is the closest to the kinship-system that existed in Ireland. As I pointed out, this particular theory is in need of further study.

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54 Neil McLeod, 'Kinship', *Ériu LI*, RIA, 2000, pp. 1- 22.

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## The Organisation of Kin in early Irish Law