



Introductory narratives in early Irish law: a change in style in the late Old Irish period?

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[1] Nine narrative prologues are found in the extant corpus of early Irish law:²

1) CIH 250.1–32, 925.1–926.4 (Bretha Étgid); 2) CIH 250.32–35, 926.5–18 (Bretha Étgid); 3) CIH 2186.37–38 (Córus Iubaile); 4) CIH 339.1–342.21, 874.35–876.27, 1378.17–21, 1650.1–1653.15, 1655.27–1657.9 (Pseudo-historical Prologue to Senchas Már); 5) CIH 687.37–688.20 (Cáin Fúithirbe); 6) CIH 2143.41 (Fothae Becc); 7) CIH 979.23–26 (Anfuigell); 8) CIH 1027.21–1028.12, 1280.1–21 (Cóic Conara Fuigill); 9) CIH 1338.5–1341.7 (Mellbretha).

[2] Prologue to *Leges Baiuvariorum* (MGH LL nat. Germ. 5,2, pp. 201-2)

Theoderic, king of the Franks, when he was at Châlons, chose wise men who were learned in the ancient laws of his kingdom. At his command, he ordered the law of the Franks and of the Alamanni and the Bavarians to be written down for each nation under his authority, according to their customs. He added what needed to be added and removed what was unforeseen and disordered; and he changed what was according to the customs of the pagans to be in accordance with the law of the Christians.

[3] Prologue to Alfred's laws (Attenborough 1925: 63)

[49.9] Now I, King Alfred, have collected these laws, and have given orders for copies to be made of many of those which our predecessors observed and which I myself approved of. But many of those I did not approve of I have annulled, by the advice of my councillors, while [in other cases] I have ordered changes to be introduced'

[4] Prologue to the *Cyfneth* recension of the Law of Hywel Dda (Russell 2004: 4)

Hywel Dda ... took six men from each commote in Wales and brought them to him at the White House and one hundred and forty men entitled to hold a staff of office from among the bishops and archbishops and abbots and good teachers. And from that number the twelve wisest laymen and the wisest scholar were chosen to make the laws. Good laws were made, and the bad ones which there had been before him were rejected and good ones made in their place...

[5] Pseudo-historical Prologue to *Senchas Már* (Carey 1994: 18–19)

§§7-8: Dubthach revealed them [i.e. the laws] all to Patrick. Whatever did not go against God's word in the law of scripture and in the New Testament, or against the consciences of the faithful, was fixed in the system of judgement by Patrick and the churches and the princes of Ireland

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² I will leave out the prologue to *Gúbretha Caratniad* (CIH 2192.1-7) here because it has many unique features not shared by the other prologues, but I do not have time to talk about it in this paper.



severally... Nine men were chosen to arrange (the laws): Patrick and Benignus and Cairnech, three bishops; Lóegaire mac Neill king of Ireland and Dáire king of Ulster and Corc mac Lugdech king of Munster, three kings; (and) Dubthach maccu Lugair, and Fergus the poet, and Ros mac Trechim the expert in legal language.

[6] The short Prologue to Lex Salica (Drew 1991: 59)

Therefore from among many men four were chosen who were named as follows: Wisogast, Arogast, Salegast, and Widogast from places beyond the Rhine named Botheim, Saleheim, and Widoheim. These men, meeting together in three different courts and discussing the causes of all disputes, gave judgment in each case in the following fashion.

[7] Rothair's Edict (Drew 1996: 39)

In the name of the Lord, I, the most noble Rothair, seventeenth king of the Lombards, [issue this lawbook] with the aid of God in the eighth year of my reign ... we have perceived it necessary to improve and to reaffirm the present law, amending all earlier laws by adding that which is lacking and eliminating that which is superfluous.

[8] The *accessus ad auctores* scheme:

locus, tempus, persona, causa scribendi / locc, aimser, persa and tucait scribindi or fáth airicc

[9] The preface to *Féilire Óengusso* (Stokes 1905: 2) : the Pseudo-historical Prologue to SM and *Cáin Fuithirbe* (CIH 342.40-344.23, 688.20-29);

Auraicept na nÉces (Calder 1917: 6-7) : *Bretha Étgid* (CIH 250.33-251.3, 926.5-18)

[10] *Córus Bésgnai* (Breatnach 2017: 33-5)

§30 ...It is the law of nature which held sway among the men of Ireland until the coming of the faith in the time of Lóegaire son of Níall. It was in his time that Patrick came. It was after the men of Ireland accepted the faith from Patrick that the two laws, the law of nature and the law of the letter were combined.

§31 Dubthach maccu Lugair the learned poet set forth the law of nature. It is Dubthach who first showed reverence to Patrick. It is he who first rose up before him in Tara...

§37 Dubthach, then, expounded them to Patrick. What did not conflict with the word of God in the law of the letter and with the conscience of the faithful was combined in the order of judges by the church and learned poets...

[11] *Bretha Nemed Dédenach* (CIH 1111.12-18)

This *Cáin Enech* then that we have mentioned, it was made by the kings and the poets of Ireland since the beginning of the world; it was sanctified and it was renewed by Patrick son of Calpurnius and by Dubthach maccu Lugair the poet in the time of Lóegaire son of Níall, and it was agreed upon by the people of Ireland that it should be without discharging [and] without extinction until Doomsday, even between mutually hostile territories, where it would be legitimate for anyone to wound the body of another, it would not be legitimate to satirise his face, as it says in the white judgments of On mac Aim.



[12] Bechbretha (Charles-Edwards & Kelly 1983: 68–71)

§§30-34: If it be an eye which it [i.e. the bee - FQ] has blinded, it is then that it (the injury) requires the casting of lots on all the hives; whichever of the hives it falls upon is forfeited for its (the bee's) offence. For this is the **first** judgment which was passed with regard to the offences of bees on Congal the One-eyed, whom bees blinded in one eye. And he was king of Tara until [this] put him from his kingship. He charged the man who owned the bees with its offence and this is the judgment which was passed by the Ulaid and the Féni about it. For it is in this case in Irish law that a multitude is liable for the offence of one...

[13] Heptads (CIH 63.7-64.5)

Whence was the custom of ráth-surety in Irish law established? Since the *ráith* (enclosure) of Amairgen was forfeited. For it is he who first provided 'back surety' of entitlement in Ireland: Amairgen 'of ráth-surety/ of enclosures', who had seven enclosures. He gave one as ráth-surety on behalf of Conall Echlúath. And it was forfeited to Eógan mac Durthacht, so that it is Conall who has **first** paid a compensation of surety in this island. And such is the compensation that he has paid to him: two enclosures on top of an enclosure together with the restoration of his enclosure.

[14] The 'Díguin-tract' (CIH 1431.32-36)

There was an assembly of the men of Ireland at Slíab Fúait or Slíab Cuilt in the plain of Brega, i.e. their bishops and their ollams and their lords and their sages and their elders, and they have determined in that meeting, the 'precinct of séts' for each grade of both the grades of clergy and laity, and this was written by the men of Ireland into 'the great affair of the ancients' [i.e. *Senchas Már*], and this is it: a law-abiding bóaire of the laity, [such is] the measurement of his protection, i.e. the precinct [under a householder's] protection has been determined for each grade.

[15] (CIH 602.34-603.15, Binchy 1983)

Here is how the Imperial Law had its beginning: there were two cities in Greece named Athens and Sparta. And the manner in which the people of that city [called] Sparta had their law was through memory and learning by heart. The people of the other city, Athens, were accustomed to have their law in writing. And equally [for both] the law consisted of their customs and ordinances according to their own natural reasoning. And it was from these two cities that the Romans took their model and instruction when Romulus was their chief. He ordered the Romans to have ten wise men who would preserve in memory the customs and usages they had taken from the above-mentioned Greek cities. And full powers for a year were given to them to do that. The result was that they had their law [engraved] on ten tables within that year. And whatever difficulties arose [afterwards] were put into two other tables in addition, with the result that it was named the law of the Twelve Tables. And [subsequently] when many doubts about that law of the Twelve Tables arose, the name *ius civile*, was given to it, i.e. civil law. And after that there arose law-suits and matters for decision (?), and a certain number of these were established so that there should not be a superfluity of them, and they were given the name of *legis actiones*. And it is Gaius Flaius (recte Gnaeus Flavius) who devised the *legis*



actiones. And the names of the Decemvirate are [given] elsewhere: Ploc, Plut, Plocar (?), Rucon, etc.

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