

Cáin Adomnáin and the Laws of War

Colin Smith

Barrister at Law; Adjunct Assistant Professor, Trinity College Dublin, Ireland

James Gallen

Lecturer, School of Law and Government, Dublin City University, Ireland

This article examines a piece of early medieval Irish law, the Cáin Adomnáin, considering it in the context of the endemic violence in the Irish society of the 7th and 8th centuries. We argue that the Cáin was an attempt by secular and religious leaders of the period to offer distinctive protection for women, children and clerics which advanced contemporary legal and political standards of protection. We conclude that the Cáin illustrates the potential for the application of humanitarian principles in distinctive cultural, legal and religious settings and traditions and that it deserves to be remembered as part of the heritage of international humanitarian law.

1 Introduction

International humanitarian law is commonly understood to have its modern origins in the 19th century. The development of the law of war has however been influenced by more ancient historical antecedents. The role of Roman law, just war theory and, recently, broader comparative perspectives in the formation of contemporary rules is acknowledged. However, to date, one ancient historical analogy has remained outside the noted influences on modern humanitarian law. The Cáin Adomnáin (the Law of St. Adomnán)¹ is a piece of ancient Irish law from 697 CE that reflects a number of components of modern international humanitarian law.² In particular, the Cáin introduced specific protections for women, children and clergy that responded to concerns about the endemic nature of tribal violence in early medieval Ireland and innovated

1 Adomnán is the genitive form of the proper name Adomnán, denoting ownership or possession.

2 Dáibhí Ó Cróinín, *Early Medieval Ireland, AD 400–AD 1200*, (Essex: Longman 1995) 115–6.

by comparison to the existing system of customary Irish Brehon law. Though not without significant weaknesses by modern standards, Celtic Studies scholar Gilbert Markus describes the *Cáin Adomnáin* as ‘an early attempt to limit the effects of war’.³ This article will identify the nature of ancient Irish society and its legal system and argue that the *Cáin Adomnáin* sought to offer distinctive protection to non-combatants that was innovative in its social and legal context. We conclude that the *Cáin* illustrates the potential for the application of humanitarian principles in distinctive cultural, legal and religious settings and traditions and that it deserves to be remembered as part of the heritage of modern international humanitarian law.

2 Politics, Society and Violence in Early Medieval Ireland

Ancient Ireland followed a historical path distinctive to mainland Europe and Great Britain that explains the emergence of humanitarian principles in a period contemporary to the Dark Ages in the rest of Europe. With the exception of a few comments in the writings of St. Patrick, there are no accounts of Ireland from a foreign perspective before the *Topography of Ireland* written by Gerald of Wales shortly after the Anglo-Norman invasion of Ireland in 1169. However, native documentary and archaeological evidence suggests that ancient Irish society had a social structure characterised by tribal loyalties and hierarchical relationships. There was no central political authority, the basic political unit in Ireland being the tribe (*tuath*). Scholars suggest that at any given period between 400 and 1100 CE there may have been 100–150 tribes in Ireland.⁴ Most tribes were comprised of family or kin-groups (*fine*) numbering about 3,000 men, women and children. At the head of each tribe was a King (*rí*) and, though most kings exercised control over their own tribe alone, some attained dominance over lesser tribes to become Over-Kings (*ruire*) or Provincial Kings (*rí ruireach*). Sharp distinctions were made in rank between the nobility (*nemed*) and the common people, between free (*soer*) and unfree (*doer*). This unfree category included serfs who were tied to the land of their lord as well as slaves, who were simply the possessions of their masters. Early Medieval Irish society also included a professional class comprised of poets, judges, lawyers, blacksmiths, wrights and physicians. These professional men occupied positions somewhere between the nobility and the commoners by

³ Gilbert Markus, *Adomnán's 'Law of the Innocents' Cáin Adomnáin; a Seventh Century Law for the Protection of Non-Combatants* (Blackfriars Books 1997), 6.

⁴ Dáibhí Ó Cróinín, *Early Medieval Ireland, AD 400–AD 1200*, (12) 41–60.

virtue of their particular skills, which were passed down from generation to generation.

Ireland was never part of the Roman Empire, and as such, concentrated urban settlements were few; most were built around important monastic sites. The conversion of the Irish to Christianity which was initiated by Romano-British missionaries such as St. Patrick in the 5th century had been completed by 689. St. Columba (known in Irish as St. Colm Cille) founded a monastery on the Hebridean island of Iona around 563 and by the time of his death, Iona had become the centre of a federation of monasteries both in Ireland, in the Gaelic kingdom of Dal Riada on the west coast of Scotland and the Anglo-Saxon kingdom of Northumbria on the eastern coast of England. It was from the Columban community on the island of Lindisfarne in Northumbria that the re-conversion to Christianity of northern England began.

The highly fragmented nature of tribal society in ancient Ireland led to a significant and persistent level of violence. Endemic warfare in ancient Ireland renders challenging the identification and classification of such conflict into war and peace.⁵ As a rule, free men stayed within the territory of their own tribe unless they went raiding or on pilgrimage, and people who ventured outside their tribe's territory could expect no protection. Only members of the professional class could travel freely. Conditions outside the safety of tribes were violent and hazardous. This situation arose as the obligation to fight in combat was a component of the status of free men in the early Middle Ages.⁶ The use of force in the settlement of private disputes between families was a recognised means of legal redress.⁷ There is little indication that vengeance, killings and blood feuds were thought to be any different from large scale conflicts in moral terms.⁸ In contrast, the increasing Christian influence on violence argued that it was only morally acceptable in response to an infringement or injustice and with the sanction of a legitimate authority.⁹ This Christian influence led to the attempt to regulate violence in the Cáin Adomnáin.

5 TM Charles-Edwards, "Irish warfare before 1100" in Thomas Bartlett and Keith Jeffery (eds.) *A Military History of Ireland*, (Cambridge: CUP 1996), pp. 26–51.

6 *Ibid.*, 26.

7 James E. Fraser, "Adomnán and the morality of war", in Jonathan Wooding (ed.) *Adomnán of Iona: Theologian, Lawmaker, Peacemaker*, (Dublin: Four Courts Press 2010), 101.

8 *Ibid.*, p. 96.

9 Máirín Ní Dhonnchadha, "Birr and the Law of the Innocents", in Thomas O'Loughlin, (ed.), *Adomnán at Birr, AD 697: Essays in Commemoration of the Law of the Innocents*, (Dublin: Four Courts Press, 2001), 13–32, 17–18.

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1X 3 St. Adomnán of Iona

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3 It is thought that Adomnán of Iona was born at Drumhome in what is now Co.
 4 Donegal between 624 and 627 CE.¹⁰ He was a member of the same tribe, the
 5 Northern Uí Néill, as St Columba, Iona's first abbot.¹¹ As a young man, he
 6 became a monk of the Columban community and received an extensive edu-
 7 cation in ecclesiastical scholarship.¹² He was appointed Abbot of Iona in 679 at
 8 the probable age of 52. He was closely related to Loingseach Mac Uisneach,
 9 who became Over-King of the Northern Uí Néill and one of Ireland's most
 10 powerful rulers in 696. Adomnán undertook several diplomatic missions on
 11 King Loingseach's behalf to the King of Northumbria to secure the release of
 12 Irish captives.¹³ He was also involved in negotiations about the adoption by
 13 Ireland and Iona of the calculation of the date of Easter used by the rest of
 14 Christendom. Adomnán's era saw the start of the Irish Golden Age, when
 15 schools of art, learning and missionary endeavour sprang up throughout
 16 Ireland. Iona was a place of 'study, questioning, teaching and books.'¹⁴
 17 Adomnán himself was the author of two books: *De Locis Sanctis*, a geographi-
 18 cal study of the sacred places in the Holy Land, and the *Vitae Columbae*, a hagi-
 19 ography of St. Columba, his kinsman and predecessor.¹⁵ In the latter work,
 20 Adomnán demonstrated an interest in the conduct of public life and the ideals
 21 and responsibilities of royal power.¹⁶ *The Annals of the Four Masters*, a chroni-
 22 cle purporting to record every significant event in Irish history from Noah's
 23 flood until 1616, records that Adomnán was 'tearful, penitent, fond of prayer,
 24 diligent and ascetic, and learned in the clear understanding of the Holy
 25 Scriptures of God.'¹⁷ He died in 704, shortly after the *Vita Columbae* was
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10 Sometimes Anglicised as St. Eunan.

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11 Maire Herbert, "The World of Adomnán", *Birr and the Law of the Innocents*, in Thomas O'Loughlin, (ed.), *Adomnán at Birr, AD 697: Essays in Commemoration of the Law of the Innocents*, (Four Courts Press, 2001) 33–39; 36

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12 *Ibid.*

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13 *Ibid.*; Thomas O'Loughlin, "Adomnán: a man of many parts", in Thomas O'Loughlin (ed.), *Adomnán at Birr, AD 697. Essays in Commemoration of the Law of the Innocents*, (Dublin: Four Courts Press, 2001) 41—51 43

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14 O'Loughlin, *ibid.*, 50.

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15 *Ibid.*, 47–48.

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16 Maire Herbert, "The World of Adomnán" (n11) 38. Indeed, Adomnán ascribes to St. Colum Cille the view that the Northern Uí Neill were predestined by God for the Kingship of All-Ireland.

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17 St. Adamnan, *The Catholic Encyclopedia* (New York: Robert Appleton Company). Retrieved 8 November 2012 from New Advent: <http://www.newadvent.org/cathen/01135c.htm>.

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completed.¹⁸ His scholarship and reputation led to his canonisation by Pope Gregory II in 727, and his works continued to be studied until the sixteenth century. Today, he is remembered principally for his Cáin, promulgated on a visit to Ireland as Abbot of Iona in 697 and a major innovation on existing Irish law.

4 Irish Law in the Time of Adomnán

Knowledge of ancient Irish Brehon law is limited and remains the subject of academic debate and development. The term Brehon law derives from the fact that this form of law emerged from the practice of (*brithemain*) judges and jurists, who administered the law independently of a particular king.¹⁹ It is agreed that Brehon law governed issues of status in Irish society including kingship, personal injuries, land and contract law, the status of marriage and women and obligations to family and kin.²⁰ The absence of a single sovereign ruler in Ireland resulted in the existence of several forms or structures of Brehon law. The Traditional Law (*fénechas*) formed the basis of a legal superstructure which bound the whole nation of petty kingdoms in the consolidated institutions of Irish law,²¹ but radically underdetermined the legal system. Cáin law governing specific subjects purported to be of universal application across the kingdoms of Ireland, in contrast to the *Urradas*, a law of more limited geographical application.²² In addition, the acts of individual judges in settling disputes were to be influenced by (*fásach*) legal maxims, (*cosmailius*) legal analogies, and (*aicned*) natural law and (*teistimin*) scriptural testimony.²³

The system of Brehon law that existed at the time of the Cáin Adomnán is difficult to reconcile with modern conceptions of a legal system, but it nevertheless contains several features which affirm the revolutionary character of Adomnán's law. Brehon law caused difficulties for positivist legal scholars in the nineteenth century.²⁴ In particular, Austinian scholarship struggled with

18 Maire Herbert "The World of Adomnán" (n11) 39.

19 Dáibhí Ó Cróinín, *Early Medieval Ireland, AD 400–AD 1200*, (n4) 113.

20 *Ibid.*, 115–116.

21 Neil McLeod, "The Concept of Law in Ancient Irish Jurisprudence" (1982) 17(2) *Jur* 356.

22 Laurence Ginnell, *Brehon Law: A Handbook*, (London: Fisher Unwin 1894) 3.

23 Robin Chapman Stacey, *Dark Speech: the Performance of Law in Early Ireland* (Pennsylvania: U Penn Press, 2007) 190.

24 Jane Hook, "Nineteenth Century Positivist Legal Theory: A Barrier to Interpreting the Early Irish Law-texts" *eLawjournal* 15/2 (Dec. 2008), 123–133.

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1X the identification of a legal sovereign in ancient Ireland. Leading Celtic Studies
2 scholar D.A. Binchy described the nature of Brehon legal authority as follows:

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There was no machinery of legislation in an Irish tribe . . . the king was not a lawgiver in the sense that he could create new law or change existing law, though he had the power of issuing temporary ordinances in time of emergency. Neither was he the supreme judge.²⁵

It is noteworthy that ancient Irish law was not created by fiat of powerful rulers like Hammurabi or Justinian, but through a long oral tradition originating in pre-Christian druidic schools. Neil McLeod noted that in the absence of sovereign legislative authority or uniformity associated with each of these kingships or *tuath*, “the law was the province of an independent legal profession, a branch of the *filid*, or ‘seers’ . . . It was they who practised the law both in advocacy and justiciarship, and it was they who declared its contents.”²⁶ It was these Brehons who were responsible for maintaining the continuity of this legal tradition: “Like all members of the Irish learned class these jurists were, to use Frank O’Connor’s vivid phrase, ‘backward-looking’: charged with the task of handing on the ‘sacred’ law, which embodied the collective wisdom of the ‘ancients,’ they strove to preserve this intact and entire just as they had received it from their own teachers.”²⁷ Binchy suggests that the motives of these jurists in preserving the older approach were in part to resist the gradual encroachment of Christian ideas and organisation.²⁸ Despite this posture, many of the texts evidence the influence of canon law and reflect the eventual dominance of Christianity.²⁹

Most of the extant texts seem to have been composed between 650 and 750 CE. In this time, the process of committing Brehon law to text emerged from a Christian monastic practice of writing in the Latin alphabet. The vast majority of Irish law texts survive only in manuscript copies dating from the fourteenth to the seventeenth centuries.³⁰ Much Brehon law was cast in verse

25 D.A. Binchy, “Ancient Irish Law”, (1966) 1(1) *Jur* 84.

26 Neil McLeod, “The Concept of Law in Ancient Irish Jurisprudence” (n21).

27 D.A. Binchy, *Ancient Irish Law*, (1966) 1(1) *Jur* 84 (n24).

28 D.A. Binchy, *Corpus iuris hibernici* (Dublin: Dublin Institute of Advanced Studies, 1979) pp. ix–x.

29 Donnchad O’Corrain, Liam Breatnach, and Aidan Breen, “The Laws of the Irish” (1984) 3 *Peritia* 382–438.

30 Liam Breatnach, ‘Lawyers in Early Ireland’, in Daire Hogan and W.N. Osborough (eds.), *Brehons, Serjeants and Attorneys: Studies in the History of the Irish Legal Profession* (Dublin: Irish Academic Press 1990) 1–13, 2.

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at this time, leading D.A. Binchy to infer that the text was not ‘canonised’ for about a hundred years after it was first committed to writing.³¹ Several early translations of the Old Irish used in Brehon law texts have since been heavily criticised. Twentieth century scholars have been at great pains to distinguish between the original texts of Brehon laws and various interpretations, commentary and comment from later years that, while persuasive, would not possess formal legal authority in this legal system.³² Robin Chapman Stacey describes current knowledge of ancient Irish law as follows: “What survives today is a bewildering conglomeration of old and new, text and commentary, plain prose and obfuscatory verse.”³³ The major gap in our knowledge of Brehon law is the broad absence of case law. As a result there is no reliable guide as to how these legal provisions and the system as a whole worked in practice. What is more, the system was peculiar in that the rules assumed a static character once recorded in writing. The Brehons were at pains to maintain continuity and immutability of their legal tradition. The system also displayed a lack of authoritative determinations as to the creation of new rules or the interpretation and punishment of existing rules through a specialised agency; rather this function was performed by individual Brehons. Their law shows no trace of ever having been systematically collected, revised and publicly issued in the manner of Roman law.³⁴ Despite these difficulties, provisions of the Brehon law continued to be used in parts of Gaelic Ireland until the final demise of the Gaelic order at the beginning of the 17th century and final submergence of Brehon law to the authority of the English legal system.³⁵ It is in this context that the Cáin was promulgated at the Synod of Birr.

5 The Synod of Birr

The Irish annals record that in 697 CE, Adomnán ‘proceeded to Ireland and gave the Law of the Innocents to the people.’³⁶ In that year, at a synod of Irish

31 Donnchad O’Corrain, Liam Breatnach, and Aidan Breen, ‘The Laws of the Irish’ (n28).

32 D.A. Binchy, *Ancient Irish Law*, (n27).

33 Robin Chapman Stacey, *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (n22), 24.

34 Dáibhí Ó Cróinín, *Early Medieval Ireland, AD 400–AD 1200*, (n4), 113.

35 Fergus Kelly, “Brehon Laws”, (2000) 6(3) *World of Hibernia* 60; The Courts Service, “Brehon Law” available at <http://www.courts.ie/Courts.ie/library3.nsf/0/3CBAE4FE856E917B80256DF800494ED9?opendocument> (visited 10 November 2012).

36 Maire Herbert, “The World of Adomnán”, (n11) 47.

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 1X and British ecclesiastical and secular leaders at Birr in Co. Offaly, the Cain
 2 Adomnán was enjoined ‘on the men of Ireland and Britain.’ The abbey at Birr
 3 may have been chosen because of its location in the centre of the island. The
 4 Cáin records that it was guaranteed by 91 religious and political leaders. It is
 5 not known whether these men were actually present at the Synod, though his-
 6 torical sources exist for 64% of them, and the text records that the Cáin was
 7 proclaimed ‘by order of their nobles.’³⁷ The guarantors came from both sides of
 8 the Irish Sea, and assuring the assent of these powerful figures must have
 9 required significant diplomacy and consultation by Adomnán and can only
 10 have been the result of extensive legal drafting to agree a text. The Cáin con-
 11 cludes with a requirement of additional guarantors from every chief church
 12 and every family in Ireland and two guarantors from the high-chieftains.³⁸

13 The Cáin’s list of guarantors included church leaders such as Fland Febla,
 14 Bishop of Armagh – a member of the ruling political dynasty Uí Méith of
 15 Airgialla – and Áed, Bishop of Sletty, also a member of a leading political fam-
 16 ily. The regional reach of the Cáin in attempting to regulate conflict is illus-
 17 trated by the presence on the guarantor list of leaders from Britain, including
 18 Northumbrian Bishop Egbert and Bruide, King of the Picts. Political leaders
 19 also lent the Cáin their authority. Adomnán’s kinsman, King Loingseach Mac
 20 Oenghusa, recorded in the Cáin as Rí Eirenn – King of Ireland – but more accu-
 21 rately the Over-King of the Northern Uí Néill, is the most illustrious of these.
 22 The collaboration of these most powerful men of the time – the Bishop of
 23 Armagh, Adomnán himself as Abbott of Iona, and the Over-King of one of the
 24 most powerful Irish tribes – would have greatly enhanced the chances of
 25 the law’s success. In the absence of sources regarding the implementation
 26 of the Cáin, the pre-eminence of its guarantors at least illustrates the intention
 27 to give meaningful effect to its provisions.
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30 6 Cáin Adomnán: The Preface

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 32 Our knowledge of the specific law of the Cáin Adomnán is derived from two
 33 surviving copies. One, written in the fifteenth or sixteenth century, is in the
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 36 37 Máirin Ní Dhonnchada, *The Guarantor List of Cáin Adomnán 697 (1982)* 1 *Peritia* 178–215,
 215. For the remainder of guarantors, circumstantial evidence exists for some and there
 37 remains an absence of information for others. Most of the guarantors’ titles were not
 38 present on the original list but were added by successive annotators over a long period
 39 of time.

40X 38 Markus Translation, para. 53.

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Bodleian Library at the University of Oxford. The other is in the Bibliothèque Royale in Brussels.³⁹ The identity of the copyist of the Oxford manuscript is obscure, though the Brussels manuscript records that it was copied by Michael O'Clery, an Irish Franciscan monk working at the convent at Bundrowse, near Raphoe, in Co. Donegal, on 31 March 1627.⁴⁰ Both the Oxford and Brussels manuscripts ultimately derived from the tenth-century Old Book of Raphoe, a lost dossier of materials relating to the life of St Adomnán.⁴¹

The text of the law, written in Old Irish, is a composite of material from different periods.⁴² The language was spoken throughout the island as well as on the Isle of Man and on the western coast of Scotland. To the earliest text, dating from Adomnán's time, a preface was added in the 10th century. The preface focuses on the protection the Cáin gave to women, and begins with a relation of the situation of women before the promulgation of the Cáin:

This was the work that the best of women would do: going into battle and battlefield, into encounter and encampment, expedition and hosting, wounding and slaughter. Her bag of provisions hung on one side of her, her infant on the other side; her wooden pole was on her back, thirty feet in length, with an iron hook at one end which she would plunge into the hair of another woman out of the opposing ranks. Her man would be behind her, a fence-post in his hand, flogging her into battle. It was a woman's head or her two breasts that were carried off as a trophy at that time.⁴³

The author of the preface then imagines a scene which seems to prefigure Henry Dunant's description of his own formative experience on the battlefield of Solferino.⁴⁴ Adomnán and his mother, Ronnat, are depicted coming upon the bodies of dead and dying women on a battlefield near Drogheda in Co. Louth:

39 Rawlinson codex B 512 of the Bodleian Library, Oxford; no. 2324–40 of the Bibliothèque royale, Brussels.

40 Máirín Ní Dhonnchadha, "Birr and the Law of the Innocents" (ng) 15–16.

41 K. Meyer (ed.), *Cáin Adomnáin: An Old Irish Treatise on the Law of Adamnan* (Oxford: Clarendon Oxford 1905).

42 Máirín Ní Dhonnchadha, "Birr and the Law of the Innocents" (ng) 16.

43 G. Markus Adomnán's 'Law of the Innocents', *Cáin Adomnáin* (Kilmartin House Trust) (Markus Translation) para 3.

44 Henry Dunant, *Un souvenir de Solferino* (Geneva 1862).

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1X [T]hey came upon a field of slaughter. This was how thick the carnage
 2 was on which they had come: the two feet of one woman reached to the
 3 headless neck of the next one. Of all they saw on the battlefield, they saw
 4 nothing which they found more touching or more wretched than the
 5 head of a woman lying in one place and her body in another, and her
 6 infant on the breast of her corpse. There was a stream of milk on one of
 7 its cheeks and a stream of blood on the other cheek.⁴⁵

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9 Resolved to end the slaughter of innocents, the Saint is portrayed undertaking
 10 a miraculous four-year fast, at the end of which he is visited by an angel who
 11 promises him that the women of Ireland are to be freed. A fanciful angelic
 12 directive is even included in the form of a 10th century Latin insertion into the
 13 body of the Adomnán's original text:

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15 Go out into Ireland and make a law in her, that women may not be killed
 16 by a man in any way, neither by slaughter nor by any other death, nor by
 17 poison, nor in water, nor in fire, nor by any beast, nor in a pit, nor by dogs,
 18 but [shall die] in their own lawful bed. You must pass a law in Ireland and
 19 Britain for the mother of every one, because a mother has borne every-
 20 one, and for the sake of Mary the mother of Jesus Christ through whom
 21 everything is. . . . From this day, whoever puts a woman to death and does
 22 not do penance according to the Law, not only will perish and be cursed
 23 before God and Adomnán, but all who hear of it and do not curse him
 24 and do not punish him according to the judgement of this Law will them-
 25 selves be cursed. That is the decree of the angel to Adomnán.⁴⁶

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27 This passage underlines the humanitarian intention of the Cáin to augment
 28 the protection afforded to women and to justify the additional protection by
 29 reference to women's role as mothers, with Mary, the mother of Jesus Christ, as
 30 a paradigm. This additional protection and its justification contrasts strongly
 31 with the role of women "going into battle and battlefield" described previously
 32 and seeks to transform women's role from combatants to innocents. The pref-
 33 ace then records that Adomnán imposed his law upon the country through the
 34 force of his faith and the threat of divine retribution:

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36 If you do not do good to my community on behalf of the women of this
 37 world, the children you beget will fail, or they will perish in their sins.

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 45 Markus Translation, para. 7.

40X 46 Markus Translation para 33.

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Scarcity shall fill your larder and the kingdom of heaven will not be yours.
You will flee from Adomnán of Iona by your meanness or falsehood.⁴⁷

The ancient sources leave us no evidence of the Cáin's enforcement in practice but the fact of its repetition and transcription across the centuries suggests that it was of more than purely religious or academic relevance. The first paragraphs of the ancient text give clues as to how the Cáin may have been implemented.

7 Cáin Adomnáin: Implementation

Adomnán's original text begins with a solemn declaration of both laity and clergy "to the whole of the Cáin Adomnáin until Judgment".⁴⁸ In the context of this spiritual and solemn swearing of the law, the text prays that God bless those who fulfil this law and curse those who fail to do so with suffering and dishonour.⁴⁹ The law goes on to provide a short narrative which purports to relate the exact words of the angel who directed Adomnán to go from Iona to Ireland to enact a law so that "women be not killed in any manner by man...". It appears that Adomnán's focus on women, children and the religious is a consequence in part of biblical conceptions of justice.⁵⁰ Moreover, the preface added to the text locates the need to protect women from violence in a broader historical and religious context.

The system of compliance with the Cáin demonstrates the interaction of this text with the general body of Brehon law but also evidences the specific moral and religious admonitions arising from the need to curb the nature of violence against women, children and clerics in ancient Ireland. Implementation of the Cáin operates through a complex system of fines, sureties and religious condemnation.

The primary system of compliance with the Cáin was the payment of fines by perpetrators to victims for violation of its provisions. In general, Brehon law placed significant emphasis on social rank, which is reflected in their "honour-price". To each rank of society was accorded an honour-price (*log n-enech*).

47 *Ibid.*, para. 27.

48 *Ibid.*, para 29.

49 *Ibid.*, para 30–31.

50 Thomas O'Loughlin, Thomas, "Adomnán: a man of many parts" (n13) 41–51; (n12) 42–43.

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1X Fines (*eraic*) for offences against a person were reckoned as a multiple or frac-
 2 tion of his or her honour-price. A person's honour-price was estimated on the
 3 basis of property, office or skill. Women had legal capacity only in limited cases.
 4 In general, a woman's honour-price was half of that of her father, husband or
 5 guardian. According to one source, a king's honour price was 14 female slaves
 6 or 42 dairy cows, while the honour-price of a youth without his own land was
 7 a year-old heifer. As noted above, bishops, abbots and other leading clerics
 8 were often of noble birth and, accordingly, they had honour-prices comparable
 9 to those of lay nobles. The honour price is the sum that has to be paid to a man
 10 or to his relatives, in the event of any offence, ranging from insult to murder,
 11 against his honour. It can rise as well as fall in accordance with his conduct.
 12 The honour-price of a man's chief wife, son or daughter is normally fixed at
 13 half his own.⁵¹ This emphasis on hierarchy does suggest a broadly unequal and
 14 inegalitarian approach, though evidence does exist of some protection of the
 15 weaker members of society, albeit excluding slaves.⁵²

16 Fines were due under the *Cáin* in addition to any other penalty a person
 17 might have to pay under the existing Brehon laws.⁵³ The payment of fines oper-
 18 ated in accordance with a scale of the injuries caused ranging from death to
 19 various forms of blows and wounds.⁵⁴ The *Cáin* used the female slave (*cumal*)
 20 as a unit of value in the calculation of fines, though in practice it seems that
 21 fines were actually paid in dairy cows or in precious metals.⁵⁵ The *Cáin* required
 22 that a third of the pledge for the payment of fines should be in bronze or silver.
 23 The innovative component of the *Cáin*'s fine system was that it valued women
 24 over and above the value presented in contemporary Brehon law.⁵⁶ The *Cáin*'s
 25 fine scale may have been intended to discourage the more egregious forms of
 26 violence against the protected groups. The implementation of the *Cáin* was to
 27 be overseen by Adomnán's order of clerics: "These are the judges of the *Cáin*
 28 Adomnán in every church and in every tribe: the clergy whom the community
 29 of Adomnán shall choose, and to whom the commit the enactment of the
 30 *Cáin*".⁵⁷

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34 ⁵¹ *Ibid.*

35 ⁵² DA Binchy, *Corpus iuris hibernici*, (n27) para. 1000.30–1.

36 ⁵³ Markus translation, para. 29.

37 ⁵⁴ *Ibid.*, para 44

38 ⁵⁵ Thomas O'Loughlin, Thomas, "Adomnán: a man of many parts", (n13), 21

39 ⁵⁶ *Ibid.*, 27–28.

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The oversight by religious figures in each tribal area must have enabled a highly localised and personal authority to support the implementation of the principles of the Cáin. This approach reflects the fragmented and localised nature of the Brehon legal system generally at this time. Where the Cáin was violated and fines were not paid on foot of a dispute, the debt was deemed payable by the family and tribe of the violator. The role of religious leaders extended to the supervision of the collection of fines by churches who conducted the burial rites of the deceased.⁵⁸ In addition, the Cáin required the payment of a levy above and beyond the relevant fine to the churches of Adomnán's order for any offence committed under the Cáin. It has been suggested that this was an opportunist move on the part of Adomnán – that the Cáin was, in effect, a medieval 'protection racket'.⁵⁹

In addition to the system of fines and in order further to ensure compliance with the Cáin, a system of sureties was established. Generally in Brehon Law, sureties operated to ensure the enforcement of the law without recourse to violence. The most common form was the paying surety who guaranteed with his own property that the person for whom he was standing as surety would carry out his part of the agreement.⁶⁰ If the principal reneged, the surety would pay the injured party and seek to recover the loss from the principal. A person might also act as an 'enforcing surety', and be permitted to use force to compel the principal to honour his debts.⁶¹ Finally hostage sureties guaranteed an obligation with their own person. In cases of default they surrendered themselves to the injured party and were kept in custody either until the defaulter agreed to honour his debt or guaranteed payment of a ransom fee from his own property. The Cáin provided that a hostage surety was to be appointed for every lawsuit. For persons in such surety positions, the Cáin provides immunity against their person for the duration of the surety and in the absence of default.⁶² The importance of hostage surety in the Cáin's implementation illustrates the danger of drawing too close a comparison between the ancient rules and those of modern international humanitarian law. The modern laws of war clearly prohibit the taking of hostages in both international and non-international

58 *Ibid.*, para 40.

59 James E. Fraser, "Adomnán and the morality of war", (n7) 111.

60 Dáibhí Ó Cróinín, *Early Medieval Ireland, AD 400–AD 1200*, (n2), 134.

61 Robin Chapman Stacey, *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (n22) 29–53.

62 Markus translation, para. 49.

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1X armed conflict.⁶³ This modern prohibition against the taking of hostages
 2 should not be confused with the provision in the *Cáin* for the giving of hos-
 3 tages as sureties, on which the modern laws of war are largely silent.

4 Other distinctive forms of compliance rely upon contemporary religious
 5 and moral influences. The *Cáin* demonstrates an early influence of Christianity
 6 and just war theory in altering the nature of warfare in Ireland and in providing
 7 compliance with the regulation of warfare. Clearly, the threat of religious sanc-
 8 tion was important as the text provides:

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10 All the holy churches of Ireland, around Adomnán, begged the divine
 11 Unity, Father and Son and Holy Spirit, and the community of heaven and
 12 the saints of earth, that everyone who fulfils this law in claiming and levy-
 13 ing and fulfilment and payment should have long life and wealth, and
 14 that he may be honoured by God and man, and that he may be exalted in
 15 heaven and on earth.

16 The holy churches of Ireland around Adomnán then begged God and
 17 the orders of heaven and the saints of the earth that anyone who shall
 18 violate the *Cáin* Adomnáin, either clergy or laity, whoever shall not
 19 enforce it and shall not fulfil it according to his strength and his ability,
 20 and shall not enforce it on everyone, both prince and church, that his life
 21 shall be short with suffering and dishonour, without attainment of heaven
 22 or earth for any of them.⁶⁴

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24 The *Cáin* prescribes a malediction by which, over a course of twenty days and
 25 through recitation of psalms and litanies of the saints, violators of the *Cáin*
 26 would be cursed and excommunicated.⁶⁵ It even describes an Order of
 27 Malediction, a ritual of chanting of maledictive psalms. This ritual was used as
 28 a sanction by early churches as means of coercing malefactors into submission
 29 and restoring peace to a disturbed community. It is noteworthy that sin and
 30 the individual's existential fate are offered as significant features of the regime
 31 for compliance under the *Cáin* Adomnáin.

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63 Geneva Conventions, common art 3, Geneva Convention IV, art. 34, Additional Protocol I,
 37 Article 75(2)(c), Additional Protocol II, Article 4(2)(c), and Rule 96 of the ICRC Customary
 38 Law Study.

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64 Markus Translation, paras. 30–31.

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65 *Ibid.*, para 32.

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7 **Cáin Adomnáin: Offences and Liability**

The most interesting passages in the text of Cáin Adomnáin from the point of view of the modern scholar of international humanitarian law are those dealing with offences and the penalties associated with them. These passages, which appear to prohibit violence against women, children and clerics, are recognisably humanitarian in character, though they can be distinguished from modern international humanitarian law in that their application appears to have been general rather than specific to periods of armed conflict. The absence of distinct periods of “peace” in ancient Ireland has the consequence of excluding a narrow application of specific laws of war as a *lex specialis* in this period. The generalised scope of the Cáin reflects, of course, the endemic nature of inter-tribal warfare in late 8th century Ireland discussed above.

The Brehon legal system did provide for a number of offences against the person that find modern analogues in the conduct prohibited if not in the remedy provided. In the case of murder or assault, fines are payable in accordance with the injury suffered and the rank of the victim.⁶⁶ For women in particular, the Cáin seems to have provided a level of legal protection above and beyond that bestowed by the Brehon law. This protection was afforded in the first place to their lives, but also to their persons and honour:

Whatever be the violent death which a woman shall die, unless it is an act of God, or of proper lawful marriage, it is paid for in full fines to Adomnán for both slaying and drowning, burning and poison, crushing and perishing in a quagmire, wounding by domesticated animals and by pigs and cattle.⁶⁷

...

If it is rape of a girl, seven half-cumals is the fine for it. If a hand is laid on her, or on her girdle, ten ounces is the fine for it. If a hand is put under her clothing to her shame, three ounces and one cumal is the fine for it. If there is [as the result of an assault] a blemish of her head or her eyes, or in her face, or in her ears or nose, in her tooth or tongue, in her foot or in her hand, the fine for it is seven cumals. If there is a blemish in some other part of her body, seven half-cumals is the fine for it. If there is tearing of her clothing, seven ounces and one cumal for it.⁶⁸

66 Fergus Kelly, *Guide to Early Irish Law*, (Dublin: DIAS 1988) 127–129.

67 Markus Translation, para 42. Markus posits that the death as a result of ‘proper lawful marriage’ referred to in the Cáin should be interpreted as referring to death in childbirth.

68 Markus Translation para. 42, 50.

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 1X These paragraphs of the Cáin might be described as analogues of our contem-
 2 porary rules prohibiting wilful killing of civilians, rape and other forms of sexual
 3 violence, and outrages upon personal dignity.⁶⁹ While the absence, in the
 4 context, of any war/peace dichotomy eschews a strong comparison, the Cáin
 5 does appear to have been an attempt to attach protections to innocents in a
 6 similar fashion to modern international legal protections. The Cáin further
 7 prohibits the direct participation of women in hostilities, imposing fines on
 8 men who allowed women to join them in battle: 'If there is deployment of
 9 women in a slaughter or in hosting or on a raid, seven cumals is the fine for
 10 each hand [involved] up to seven men, and from there on it is as the crime of
 11 one man'.⁷⁰

12 Women who participated in hostilities were also subject to punishment in
 13 their own right. For fights involving women, the Cáin held that '[m]en and
 14 women are equally liable from now on to all small and large punishments', and
 15 the text states that although a woman guilty of murder, arson or theft from
 16 churches deserved death, her punishment was to be set adrift at sea in a boat
 17 with one oar and a pot of gruel, on the grounds that '[j]udgment on her belongs
 18 to God'.⁷¹

19 Clerics and children too derived some measure of protection from the Cáin.
 20 Like women, they were considered to be non-combatants in a society in which
 21 every man was expected to bear arms.⁷² The Cáin provided that whoever kills
 22 'a young cleric or an innocent child' was liable to a fine valued at the equivalent
 23 eight slaves, and was required to do penance for eight years.⁷³ Non-fatal wound-
 24 ing of non-combatants incurred a fine whose severity reflected the level of
 25 injury inflicted: seven sets for a wound requiring a staunch, five sets for a
 26 wound drawing blood and three sets for a lesser wound.⁷⁴ The offender was
 27 even obliged to pay for the attendance of a physician on his victim.⁷⁵ Male
 28 children were considered innocent, in the eyes of the Cáin, until 'they are capa-
 29 ble of killing a man, till they have a place in the tribe and till their first armed
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 32 69 Geneva Conventions, common art 3, Third Geneva Convention, art 14, Fourth Geneva
 33 Convention, art 27, second paragraph Additional Protocol I, Article 75–77, Additional
 34 Protocol II, Article 4(2) and Rule 93 of the ICRC Customary Law Study.

35 70 Markus Translation, para. 52. This may mean that in smaller raids, all the men involved
 36 were equally liable, whereas in larger raids, only the chief was responsible and liable to be
 37 fined for conscripting women to serve as warriors.

38 71 *Ibid.*, para 45.

39 72 *Ibid.*, p 20, fn 35.

40X 73 *Ibid.*, para. 35.

41 74 *Ibid.*, para. 44.

42 75 *Ibid.*

conflict is known.⁷⁶ Subsequent paragraphs make no distinction based on youth or old age in the protection of the clergy and it is therefore unclear whether ‘young clerics’ were entitled to some special protection above and beyond their more senior fellows.⁷⁷

Thus, in its provisions prohibiting attacks against women, children and clerics, Adomnán’s 8th century law can be compared with the principle of distinction between those who take direct part in hostilities and those who do not, which is in our time a central tenet of international humanitarian law.⁷⁸ The immunity from attack granted to clerics by the Cáoín can be understood as a foreshadowing the Peace of God proclaimed across Western Europe in the 10th century and, in this sense, the Cáoín’s rules protecting clerics are ancestors of the modern rules of international humanitarian law to the effect that religious personnel accompanying who are exclusively assigned to religious duties must be respected and protected in all circumstances.⁷⁹ Likewise, the Cáoín’s prohibition on attacks against children prefigure our contemporary rules entitling children affected by armed conflict to special respect and protection.⁸⁰

As well as prohibiting attacks on clerics, the Cáoín sought to protect churches and religious property from the hazards of war and violence. This is perhaps unsurprising given the Christian impetus behind the Cáoín’s promulgation and the substantial financial benefit accruing to the church through Adomnán’s system of fines. The Cáoín imposed full honour-price fines for attacks on churches and clergy, with half-fines imposed for attacks not involving wounding or robbery. The importance of relics in early medieval religious practice is reflected by prescription of a full honour price fine payable to the church whose relics were affected. The protection which these rules sought to provide to religious property find their modern analogue in the contemporary rules of international humanitarian law governing the protection of cultural property in time of armed conflict, and in particular in the customary rules prohibiting seizure, destruction or damage to institutions dedicated to religion, charity and education, as well as acts of theft, pillage or vandalism directed against them.⁸¹

76 *Ibid.*, para. 34.

77 *Ibid.*, paras. 36 and 40.

78 Addition Protocol I, art 48.

79 See for example the First Geneva Convention, art 24, the Second Geneva Convention, art 36, Additional Protocol I art 15, Additional Protocol II, art 19 and Rule 29 of the ICRC Customary Law Study.

80 See Fourth Geneva Convention, arts 23–24, 38, 50, 76 and 89, Additional Protocol I, arts 70 and 77, Additional Protocol II, art 4(3) and Rule 135 of the ICRC Customary Law Study.

81 See for example the Lieber Code, art 35, the Brussels Declaration, art 17, the Oxford Manual, art 34, Hague Regulations, arts 27 and 56, Hague Convention for the Protection of

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1X The Cáin attributed liability based principally on the grounds of individual
2 responsibility, so that 'each one pays for the offences of his own hand.'⁸² Such
3 principles of liability encourage perception of the Cáin as a system of tort, but
4 they need to be contrasted with its strong normative and religious character.
5 The system of responsibility and penalties does not present itself as one
6 designed around self-interest or efficiency. Perpetrators and accomplices were
7 deemed equally guilty, in that the Cáin provided that 'whatever the fine is for a
8 crime, it is the same for being an accomplice in it.'⁸³ Where there was failure to
9 pay a fine by an offender, their liability was transferred to the members of their
10 tribe, who seem effectively to have been treated as accomplices, and to have
11 been liable to execution in circumstances where they sought to cover up the
12 crime.⁸⁴ The Cáin seems also to have envisaged a species of joint-liability for
13 offences against protected persons, so that, where the offence was committed
14 by a small group, each member of the group was deemed equally liable.⁸⁵ For
15 larger groups of over 300 people, the fine payable by each person was reduced
16 to reflect, perhaps, their diluted liability.⁸⁶ It is also notable that, where a man
17 witnessed the killing of a cleric or child and failed to intervene, he was consid-
18 ered to be just as guilty as the perpetrator, having committed an 'eye crime': 'It
19 is the same payment for someone who does the injury and for one who only
20 looks on and does not protect the victim with all his might'.

21 This passage suggests that the Cáin imposed a legal duty on all men – that is,
22 all warriors – to intervene to protect non-combatants and that failure to step in
23 was judged harshly. Such an obligation is unknown in modern international
24 law, which prescribes vicarious liability only on civil and military superiors.
25 The Cáin is also sufficiently sophisticated to recognise that deaths can be
26 caused inadvertently, whether by negligence or by mistake, and that such inad-
27 vertence should be reflected in the severity of the penalty. Thus, the text
28 records that where the death of the cleric or child was occasioned 'through
29 negligence or ignorance' the Cáin prescribes that the offender should pay half
30 of the standard honour-price fine to Adomnán's community.⁸⁷

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Cultural Property, art 4, Additional Protocol I, art 53 and Additional Protocol II, art 16 and Rules 38–40 of the ICRC Customary Law Study.

82 Markus Translation, para 43.

83 *Ibid.*, para. 47.

84 *Ibid.*

85 *Ibid.*, para. 35.

86 *Ibid.*

87 Markus Translation, para. 35.

8 Conclusion

Promulgated in the absence of any meaningful distinction between war and peace in ancient Irish society, the *Cáin* reflects the expectation that all adult men would engage in combat and have legitimate recourse to violence. The absence of a provision identifying the application of the *Cáin* to specific conditions *ratione materiae* leaves us to conclude that it sought to provide women, children and clerics with protection from violence not only in battle but at all times.⁸⁸ In this respect of course, the *Cáin* may be contrasted with modern international humanitarian law, which applies as *lex specialis* in time of armed conflict and occupation. As such, it would be overstating matters to imply that the *Cáin* contains rules which prefigure those of modern international humanitarian law. The *Cáin*'s societal context makes any distinction between Brehon laws of peace and war impossible, and as such, any description of the *Cáin* as a prefiguration of modern international humanitarian law is necessarily inapt. As such, the temptation to identify the *Cáin* too closely as a progenitor of the modern law of armed conflict should be resisted.

Having said that, we do not suggest that the *Cáin* was merely a monetary system of liability for conflict during this period akin to a system of torts or delicts. The offences examined, especially rape and violence against women, are condemned by the *Cáin* in terms that ill-suit a description as a tort-based system. However anachronistic the use of the term 'humanitarian' may be in the context, the purpose of the *Cáin Adomnáin* was identifiably one rooted in religious belief and centred on human welfare. In this respect, we believe that it is historically significant.⁸⁹

The focus of the *Cáin Adomnáin* on women, children and clerics situates the law within the broader tradition of the religiously-influenced limitation on violence in conflict in Christian and Islamic thought. The contrast of the *Cáin* with other contemporary components of ancient Irish law and society affirm the potential of humanitarian law to contribute to the transition of a society even in periods of conflict. Moreover, in seeking to prevent violence against non-combatants in early Medieval Ireland in a broader context of sustained violence, the *Cáin* faced challenges similar to those facing modern international humanitarian law in situations of sustained, low level armed conflict in fragile States.

⁸⁸ Máirín Ní Dhonnchadha, "Birr and the Law of the Innocents", (n11), 20.

⁸⁹ In this regard, the *Cáin* can be compared with approximately coeval developments in Islamic doctrine dealing with treatment of women and children in battle.