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## Child-Centred Law in Medieval Ireland

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### Introduction

The study of medieval childhood has come a long way in the last two decades and recent publications have argued convincingly how several well-known theories on historical childhood current in the 1960s and 1970s can now be put to rest.<sup>1</sup> Such theories proposed not only an evolutionary model of how childhood should be viewed across the ages, but also questioned the very recognition of childhood within medieval society.<sup>2</sup> However, as Hanawalt correctly observed, the current challenge is to achieve a greater awareness across the popular and scholarly communities of the progress made on medieval childhood, in order to recognise, debate and move on from the inheritance of Ariès *et al.*<sup>3</sup> This contribution aims to serve that purpose, in addition to highlighting a unique, early medieval source on childhood, which has been surprisingly absent from discussions to date.

Much that has been written about medieval childhood focuses on the later Middle Ages and the world of the town and court. The range of sources for this period (journals, letters, guild registers, household books, court registers, manuals and much more) permits the historian with a detective's eye to create a composite picture of childhood. At times it has been lamented by scholars that children were not the primary focus of many extant medieval sources and that such scant information survived from early medieval times on a given topic.<sup>4</sup>

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<sup>1</sup> See D. Alexandre-Bidon, and D. Lett, *Children in the Middle Ages* (Indiana, 1999); B. Hanawalt, 'Medievalists and the Study of Childhood', *Speculum* 77 (2002), 440-460; A. Classen, 'Philippe Ariès and the Consequences, History of Childhood, Family Relations, and Personal Emotions Where do we stand today?', in A. Classen (ed.) *Childhood in the Middle Ages and the Renaissance The Results of a Paradigm Shift in the History of Mentality* (New York, 2005), pp. 1-65.

<sup>2</sup> See P. Ariès, *Centuries of Childhood* (New York, 1962); L. deMause (ed.), *History of Childhood* (London, 1974).

<sup>3</sup> B. Hanawalt, 'Medievalists and the Study of Childhood', *Speculum* 77 (2002), 457.

<sup>4</sup> V. L. Garver, 'The Influence of Monastic Ideals upon Carolingian Conceptions of Childhood' in Classen (ed.), p. 72; Classen, 'Phillipe Ariès and the Consequences', p. 21.

Fortunately, the historian of early medieval Ireland does not face such predicaments in the search for the child as a detailed body of legal discourse survives. This is the largest collection of legal material written in a vernacular for pre-1200 Europe, with the published edition running to 2,343 pages.<sup>5</sup> Within this *corpus iuris*, the practice of child-rearing was regarded as one of four corner-stones of stability and social order.<sup>6</sup> We find copious references to the youngest members of society scattered throughout this material. In fact, very few of the major tracts do not mention the child in some capacity. More remarkable, however, is the existence of two tracts which deal specifically with children, one on the child-rearing process (*Cáin Íarraith*), and another on the matter of inheritance (*Maccsleхта*), both dating to the eighth century.<sup>7</sup>

It should be noted, however, that this legal material is not without its challenges. The eighth-century tract dealing specifically with child-rearing is in a fragmentary state, but fortunately is accompanied by a mass of later legal texts, mostly dating to the eleventh and twelfth centuries. The legal tradition of early medieval Ireland was preserved and guarded by a professional class. What we possess is a complex weave of oral tradition (*fénechas*), combined with what was termed the law of nature (*recht n-aicid*) and the law of the letter (*recht litre*), all of which produced Brehon Law, as it is often labelled in later sources and secondary writings.<sup>8</sup> A core body of material was committed to vellum by the mid-eighth century (as dated by linguistic analysis), and throughout the Middle Ages legal scholars commented on and glossed many of the tracts and so extended, discussed, compiled, and interpreted the texts left by earlier generations. Therefore, what we are reading are ruminations on legal principles, often extrapolated to an extreme degree. Whether or not this material reflects common practice, academic exercises and/or

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<sup>5</sup> D. A. Binchy (ed.), *Corpus Iuris Hibernici* i-vi (Dublin, 1978). Hereafter, *CIH*.

<sup>6</sup> *CIH* 350.13-14.

<sup>7</sup> *Cáin Íarraith*, *CIH* 1759.6-1770.14; *Maccsleхта*, *CIH* 1296.17-1301.16, 1546.26-1550.14.

<sup>8</sup> See F. Kelly, *A Guide to Early Irish Law* (Dublin, 1988), pp. 1-16; T. Charles-Edwards, *The Early Medieval Gaelic Lawyer*, Quiggan Pamphlets on the Sources of Mediaeval Gaelic History 4 (Cambridge, 1999); L. Breatnach, 'Canon Law and Secular Law in Early Ireland: the Significance of Bretha Nemed', *Peritia* 3 (1984), 439-59.

theoretical idealism has been discussed elsewhere.<sup>9</sup> In any case, what we have are statements and reflections on the concerns and standards of a society towards its youngest members. It is a source with tremendous potential to shed light on many fundamental issues of society and social structure, and one which is not widely known outside the field of early-medieval Celtic studies.

This chapter will investigate the issues of childhood which were of particular legal interest and in so doing will endeavour to deal with the raft of questions now expected when the subject of childhood is examined for any time period: was childhood *per se* a recognised life-stage?; what, if anything, can be said about the more nuanced areas of child development, the ‘nature’ of childhood or child behaviour?; can an emotional attachment between parent and child be detected?; what about the delicate matter of discipline and punishment? By the end of this contribution is it hoped that the content and comment on childhood within this source, will draw many of the above-noted queries into an earlier time-period than normally permitted in the study of childhood. Perhaps, therefore, the findings have a dual role to play in the larger continuity debate on childhood now prevalent in scholarship, not only within the early medieval to late medieval arena, but, more importantly for this volume, between the medieval and modern world.<sup>10</sup>

### **Procreation & Pregnancy**

A good place to begin our examination is by asking whether any particular attitude towards having children can be detected. A statement within an eighth-century tract on relationships notes how the desire for procreation should dictate the sexual behaviour between a man and woman. This raises the issue of entitlement not

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<sup>9</sup> See D. A. Binchy, ‘The Linguistic and Historical Value of the Irish Law Tracts’, *Proceedings of the British Academy* 29 (1943), 3-35; Binchy, *CIH* (1978), pp. vii-xxii; Kelly, *Guide to Early Irish Law*, pp. 225-263; N. Patterson, ‘Brehon Law in Late Medieval Ireland: ‘Antiquarian and Obsolete’ or ‘Traditional and Functional’, *Cambridge Medieval Celtic Studies* 17 (1989), 43-63; N. McLeod, ‘The Concept of Law in Ancient Irish Jurisprudence’, *The Irish Jurist* 17 (1982), 356-367; Charles-Edwards, *Early Medieval Gaelic Lawyer* (Cambridge, 1999).

<sup>10</sup> W. W. Cutler III, ‘Continuity and Discontinuity in the History of Childhood and the Family: A Reappraisal’, *History of Education Quarterly* 26 (1986), 395-406. Hanawalt, ‘Medievalists and the Study of Childhood’, 441-3; Classen, ‘Philippe Ariès and the Consequences’, p. 51.

only to sexual relations within a marriage and but also to offspring.<sup>11</sup> This is supported in a variety of scenarios mentioned elsewhere in the tracts, such as a woman who could withdraw from a marriage without penalty were her partner impotent,<sup>12</sup> or if he refused to enter the marital bed in the first instance.<sup>13</sup> Along similar lines was the man who could find himself censured for failing to wake and engage in sexual intercourse with his partner.<sup>14</sup> All such behaviour inhibited the possibility of procreation, not to mention its probable impact on marital accord. Once pregnancy occurred, the lawyer's concern shifts to the woman's domestic and working environment. We read how contention could arise in the case of a pregnant servant of the household who was unable to fulfil her workload owing to this condition.<sup>15</sup> To resolve this situation the legal commentator notes the necessity (on the part of the man who caused the pregnancy) to provide relief for the pregnant woman by means of a replacement worker— a medieval maternity leave of sorts! The prescribed time period granted was one month ante-natal leave with a further month for post-natal recuperation. Through this recommendation the continuity of labour within the household or the court was guaranteed; the physical limitations of pregnancy were fully recognised, in addition to the provision of better conditions for a woman in the final stage of her pregnancy.

The health of the expectant mother and that of the unborn child appear of particular interest to the medieval Irish lawyer. The texts remove all legal liability for the stealing of food specifically to satiate a woman in her condition.<sup>16</sup> The underlying principle at play was that a pregnant woman should not go without food if the need arose. Within a detailed discussion on this topic the lawyers ponder the following sinister scenario: what if food was withheld from a pregnant woman by her partner with the primary intention of instigating a miscarriage, or did she perhaps have a part to play in this situation and knowingly fail to request food with a similar end in mind?<sup>17</sup> The

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<sup>11</sup> *CIH* 505.19.

<sup>12</sup> *CIH* 1823.28-30.

<sup>13</sup> *CIH* 388.12; 1692.33.

<sup>14</sup> *CIH* 149.19.

<sup>15</sup> *CIH* 387.31; 388.8-9.

<sup>16</sup> *CIH* 270.25; 940.28; 1256.26.

<sup>17</sup> *CIH* 387.30. 387.34-36; 242.17; 270.24-271.9; 940.28-941.24; 1256.25-1257.37.

intent, the circumstances and character of those involved were taken into account when an assessment was made to determine what compensation was required when either the termination of the pregnancy occurred, which may or may not have involved the death of the mother in the process. It is important to emphasise that legal interest in the foetus extended beyond the couple involved. In addition to the partner receiving compensation (if proven non-complicit in the act of termination), the biological kin groups of *both* the man and the woman were to receive a sizable compensatory payment from the guilty party.<sup>18</sup> They were perceived to have suffered a loss through what was deemed an act of homicide. This legal discourse served a dual purpose; on the one hand, to protect the health of the unborn child and its mother; and on the other, to protect the interest of the kin and, by extension, the community.

A further legal concern was the actual time of labour and the danger this posed for both mother and child. There is a clear awareness throughout the legal tracts that the death of the mother in childbirth or soon after was not an unusual occurrence, and so ‘the removal of child from the dead breast of its mother’ was a necessity at times.<sup>19</sup> A seventh-century clerico-legal tract (*Cáin Adomnáin*) which aimed to increase protection for woman, children and clerics, notes how a natural death for a woman was one within marriage, the implication being that of dying in childbirth (as opposed to on the battlefield or at the hands of a criminal).<sup>20</sup> To avoid this end, a husband in the middle of a legal dispute with someone else when his wife went into labour was granted a temporary postponement in his case to seek out a midwife, if one was required.<sup>21</sup> As to the labour

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<sup>18</sup> *CIH* 270.30-31; 270.36-37; 941.3-4; 941.15-16. For a discussion on the kin within medieval Irish society see, Kelly, *Guide to Early Irish Law*, pp. 12-15; T. Charles-Edwards, *Early Irish and Welsh Kinship* (Oxford, 1993); Charles-Edwards, *Early Christian Ireland* (CUP, 2000), pp. 68-144.

<sup>19</sup> *CIH* 375.7; 400.8-9.

<sup>20</sup> G. Márkus, *Adomnán's Law of the Innocents* (Glasgow, 1997), §42, p. 20; M. Ní Dhonnchadha, ‘The Law of Adomnán: a translation’, in T. O’Loughlin (ed.), *Adomnán at Birr AD 697* (Dublin, 2001), §42, p. 64; Ní Dhonnchadha, ‘The *Lex Innocentium*: Adomnán’s law for women, clerics and youths, 697 A.D.’, in M. O’Dowd and S. Wichert (eds.), *Chattel, servant, or citizen: women’s status in Church, state and society* (Belfast, 1995), pp. 58-69. For Old-Irish text see, K. Meyer, *Cáin Adamnáin* (Oxford, 1905), §42, p. 28.

<sup>21</sup> *CIH* 420.30.

itself, one peculiar passage discusses the requirement upon a person who happened to kill the lap-dog of a woman to have it replaced or provide an appropriate substitute for its role as trusty companion and protector to the woman (and child) during the labour process.<sup>22</sup> These examples speak of the desire on the part of the legal profession to provide the woman with the support she needed and expected at what could only have been an anxious time.

What has been noted so far reveals concern over the physical environment and provision for a pregnant woman. We discover a different type of protection sought for the unborn child within a discussion on the validity of agreements. The participation of certain categories of people could result in an agreement's negation. A person in his mother's womb is included in the list.<sup>23</sup> It reflects the fundamental legal requirement for anyone who was involved in making or securing a transaction or contract to be mentally competent (*ciall*) and of age to answer for his actions. This entry seeks to protect the vulnerable, unborn child (and infant) from exploitation, perhaps by a lord or member of the community who has attempted to extract guarantees from the parents for the future service of the child.

### Legal Status

A person's legal status was all-important in the social structure of medieval Ireland. The recognised 'weight' of one's character not only determined the extent to which a person could participate in society (e.g. to stand witness in court), but also dictated the value of compensation owed in cases of injury or insult. On the whole, a person's honour-price was based on his or her parent's social standing and was measured in units of *cumals* or *séts*.<sup>24</sup> At birth a child carried

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<sup>22</sup> *CIH* 377.2; 806.33-807.10. See L. Breatnach, 'On the Glossing of Early Irish Law-texts, Fragmentary Texts, and Some Aspects of the Laws Relating to Dogs' in Anders Ahlqvist *et. al.* (eds.), *Celtica Helsingiensia. Proceedings from a Symposium on Celtic Studies*, Societas Scientiarum Fennica, Commentationes Humanarum Litterarum 107 (Helsinki), 11-20.

<sup>23</sup> *CIH* 26.7.

<sup>24</sup> A *cumal* = six *séts*. A *set* = a young heifer = half a milch-cow. For example, a farmer (*ócaire*) = 3 *séts*; a noble (*aire désa*) = 10 *séts*; a minor territorial king (*rí tíuaithe*) = 7 *cumals*; a provincial king (*rí bunaid cech cinn*) = 14 *cumals*. See D. A. Binchy, *Críth Gablach* (Dublin, 1979), pp. 81-2, 105-06; T. Charles-Edwards, 'Críth Gablach and the law of status', *Peritia* 5 (1986), 53-73. See 'A Note on Irish Units of Value' in

half the value of his or her father's honour-price.<sup>25</sup> The very act of awarding an honour-price upon a child demonstrates the expected participation of the child within the social order. At this point in his or her lifecycle, a child was deemed *báeth* (legally incompetent) - a dependent.

What is remarkable within this material is the following step taken by the law to provide increased protection for the young child. A child's status was half that of his or her father's until baptism, at which point the child's honour-price or value was raised to equal that of a cleric.<sup>26</sup> Hence a much higher value was bestowed, which in turn should have acted as a deterrent to injuring or harming the child. This step may indicate a child's particular vulnerability at this point in the lifecycle, but it also reveals a society willing to place added worth on the very young for their own protection. It is of interest to note that gender did not affect the application of a higher honour-price. Nor are we solely referring to noble or royal children, but all children of the freeman grade and higher. There is evidence to suggest that this step may have been influenced and supported by the church as part of a movement to extend protection to children, woman, clerics and non-combatants in general. In the latter half of the seventh century, the Columban church, centred on Iona, produced a document (*Cáin Adomnáin*) backed by many of the leading kings and clerics of both Ireland and Northern Britain in which it was demanded that the injury or killing of a child required an extra payment to be made to the church.<sup>27</sup>

This elevated social status continued until the child reached the age of seven years at which point the honour-price reverted back to the half portion of his or her father's value. The child had passed through the initial life stage referred to by one lawyer as *gradh maice* (the grade of a young child, i.e. early childhood).<sup>28</sup> By the age of seven a child was considered to have undergone recognisable mental and

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Charles-Edwards, *Early Irish and Welsh Kinship*, pp. 478-85; See 'Units of Value' in F. Kelly, *Early Irish Farming* (Dublin, 1997), pp. 587-99.

<sup>25</sup> CIH 779.7.

<sup>26</sup> D. A. Binchy, 'Bretha Crólige', *Celtica* 8 (1968), §52, 41-3.

<sup>27</sup> Márkus, 'Law of the Innocents', §43-4, p. 20; Ní Dhonnchadha, 'The Law of Adomnán', §43-4, p. 65; Meyer, *Cáin Adomnáin*, §43-4, p. 28. For early Frankish law which gives a high wergild to children and to women in their child-bearing years see, K. Fischer Drew, *The Laws of the Salian Franks* (Philadelphia, 1991), p. 86.

<sup>28</sup> Binchy, 'Bretha Crólige', §7, 6.

social development. A lawyer asks what is the age when one can expect to distinguish between a sensible person and a fool? The answer is at seven years of age.<sup>29</sup> A display of better reason was now expected from the child, as he began to assume greater legal responsibility for his own actions. We shall revisit this pivotal age within the discussion on discipline and punishment.

### **Responsibility for the child**

Ideally, the legal material expects both the mother's family and the father's family to contribute equally to the cost of raising a child, especially if the child was sent out into fosterage.<sup>30</sup> The impression one receives is that there was entitlement on the part of the child to a particular standard and type of childcare, and an obligation on the part of the parents to provide it. However, equal sharing of the child rearing responsibilities was not invariably the case and why this may have occurred is of interest to the medieval scribe. Two lists of adults were exempt from paying child rearing costs and participating in the child care provided. The list of women includes a working-bond woman,<sup>31</sup> a woman who has been raped,<sup>32</sup> a deaf woman,<sup>33</sup> a blind woman,<sup>34</sup> a leprous woman,<sup>35</sup> a woman with a wasting illness,<sup>36</sup> a woman with disease,<sup>37</sup> a lame- (or maim)-handed woman,<sup>38</sup> and an insane woman.<sup>39</sup> A similar entry for men includes an insane man, a senseless man, a foreigner, a slave, and a non-native of the locality.<sup>40</sup> The men and women on these lists were of extremely low status, perceived to be of dubious character, were violated, or had certain physical incapacities. Although on initial reading the presence of some may appear harsh to the modern eye, the legal commentary provides justification for their inclusion. For example, the lame-handed woman

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<sup>29</sup> *CIH* 1265.4.

<sup>30</sup> *CIH* 503.20; 503.29; 442.24.

<sup>31</sup> *CIH* 1575.14; 20.28.

<sup>32</sup> *CIH* 20.29.

<sup>33</sup> *CIH* 1575.13.

<sup>34</sup> *CIH* 1575.13.

<sup>35</sup> *CIH* 375.8.

<sup>36</sup> *CIH* 375.9.

<sup>37</sup> *CIH* 21.24.

<sup>38</sup> *CIH* 375.9.

<sup>39</sup> *CIH* 20.29.

<sup>40</sup> *CIH* 21.27-22.10; 1575.15-18.

may not be able to prevent a child from approaching the hearth or fire.<sup>41</sup> The numerous prohibitions display a deep-seated interest on the part of the lawyer in the matter of legal responsibility for the provision of care, in addition to assessing the quality and standard of care provided.

To this end, the agile legal mind stretches to include more unusual scenarios which, although we may they suggest were rare occurrences, nonetheless reveal a great deal about the consideration given on the subject of responsibility for a child. We have for example, a sensible woman who bears a son to a (recognised) fool,<sup>42</sup> a woman who has a child with a man in orders,<sup>43</sup> or with a man who was an acknowledged outlaw.<sup>44</sup> The woman in each of these scenarios was mentally competent and had full knowledge of her sexual partner's status within society at the time of conception. On this basis, the woman *and* her kin were to bear full and sole responsibility for the upbringing of the child. A woman maintained a legal connection with her own biological family throughout the course of her lifetime, even after entering into a marriage. Her kin-group, therefore, functioned as an important and continuous presence in her life and had a recognised role and interest in any child resulting from a sexual union into which the woman entered willingly.

What has been noted so far has assumed that the paternity of the child was not in question. It is important to note that illegitimacy was not a concept given recognition in the mechanics of early medieval Irish society. All male children of one father by several free-ranking women were of equal status and entitled to an equal share of inheritance provided the man officially accepted them as his offspring. If so, they became full members of his kin-group. If doubt over paternity prevailed however, the woman's kin was to assume responsibility for the welfare of the child, until the biological father was known. There was a strong desire on the part of the legal profession to ensure that due attention was given to such cases as it determined the fundamentals of a person's position within society: his status, his kin-group, and in time, inheritance rights. Therefore, in the unusual occurrence where a court case (involving witnesses and

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<sup>41</sup> *CIH* 375.13-14.

<sup>42</sup> *CIH* 1276.36; R. M. Smith, 'The Advice of Doidin', *Ériu* 11 (1932), 71.

<sup>43</sup> *CIH* 5.15-19; 5.20; 1883.18; 1883.27-28.

<sup>44</sup> *CIH* 307.27.

evidence) failed to settle the matter conclusively, a final legal path was suggested to resolve the situation. A waiting period was recommended, whereby at the end of three years the case was reassessed on the physical development of the child. Three criteria were applied in the pre-DNA medieval world: *fineguth*, *finecruth* and *finebés* (the voice of the kin, the physical shape of the kin, and the mannerisms of the kin).<sup>45</sup> If these three characteristics were deemed in evidence, paternity was proven. For those three years the child was in the care of his mother's kin and once paternity was accepted or rejected, the child's future path was then determined.

That the provision of continuous care and a stable environment for the child was sought after, is also evinced in the following example which sees a lawyer including in a discussion the responsibility of childcare within the context of a married woman bearing a child to another man. Her husband was legally recognised as the father of child 'until purchased from him [by the putative father]'.<sup>46</sup> The child was to be reared, educated and fostered as would have been expected if paternity was not in doubt. Once the biological father paid compensation to the aggrieved husband, which included all child rearing costs incurred to that point (maintenance, possible fostering fees, payments made as compensation for any criminal actions on the part of the child), only then did responsibility for the child revert to the biological father and his kin-group. In all the examples noted, there is clarity at any given time where legal responsibility lay for the child. Ideally, a child would have had both parents fully participating in his or her upbringing, in addition to both parental kin-groups involved in the process, which in all likelihood was the norm. However, if owing to physical, social or legal circumstances, one parental line was removed from the childcare equation, legal responsibility for the guardianship of the child rested squarely on the other parent and on his or her kin. The overall welfare of the child should not have been compromised at any point.

### **Fosterage: a regulated form of child rearing**

The role fosterage plays in today's society is in direct response to a crisis. Normally, it is turned to as a last resort and mostly viewed as a

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<sup>45</sup> *CIH* 232.21; 1871.9. D. A. Binchy, 'Fionna-Chruth', *Éigse* 15 (1974), 19-22.

<sup>46</sup> *CIH* 294.13.

temporary solution when grave and immediate concern prevails over the welfare of a child. Fosterage in the medieval and early modern period was the antithesis of this. It was a much desired, cherished and popular form of child rearing, which was advantageous for all parties involved and society as a whole. It was an integral feature within the dynamics of medieval Irish society, and one which pervades the legal material and is also abundantly evident in the vast majority of primary sources for medieval Ireland (annals, poetry, saga literature, saints' lives, statutes etc). The legal material provides no reason to suspect that the information we have regarding the care a child received while in fosterage was in any way different to the care provided for a biological child within a household. Therefore much of what follows can be applied to the practice of child rearing in general.

According to the legal material, parents ought to provide the fosterage fee for a child.<sup>47</sup> This method of child rearing was not only expected, but clearly perceived as creating the proper environment in which to raise a child. Through the examination of fosterage we are allowed into the child's world of education and care, as the terminology relating to fosterage indicates. The terms applied to foster-father (*oide*) and foster-mother (*muime*) were considered terms of affection in Old-Irish, the equivalent of 'daddy', 'dad' and 'mammy', 'mum' in today's speech.<sup>48</sup> The label *aide/oide* (foster-father) is embedded in the word *oideachas*, Modern Irish for education, with the term *dalta* (foster-child) also carried over into the educational sphere to mean pupil or student. The term for the act of fosterage is *altram*, the root of which carries the notion of feeding and nourishing.<sup>49</sup> Child rearing, nurturing and education are all interwoven in this institution, which we are told was entered into for the mutual prosperity of all parties involved.<sup>50</sup> Two categories of fosterage are highlighted within the legal corpus. The first type was entered into out of love or affection, and receives scant examination by the lawyers because it did not involve a fee or payment. The second type of fosterage was contractual in nature and involved a payment. Therefore, the latter is of much greater legal interest with contractual

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<sup>47</sup> *CIH* 503.19-24; for a boy, 503.28-31.

<sup>48</sup> Kelly, *Guide to Early Irish Law*, pp. 86-7.

<sup>49</sup> Bremmer, 'Avunculate and Fosterage', *Journal of Indo-European Studies* 4 (1976), 73, footnote 17.

<sup>50</sup> *CIH* 507.10-11.

rights to be protected, obligations enforced, and where possible infringements of a contract and subsequent liability became issues which required legal intervention and statement.

The age of seven has been regarded by historians as the time when fosterage commenced.<sup>51</sup> However, the legal material points to the possibility of a child entering into fosterage at any age, however young. The practice of wet-nursing as an optional first step in the overall fostering process is evident from a special, life long entitlement (to a particular payment) which was formed between foster- and biological children who shared the same cradle and mantle in the early stages of life within a household. This was a bond which was legally recognised and protected.<sup>52</sup> The fosterage fee was scaled to reflect the child's status. In order to send a son into fosterage one text lists the following prices: 3 *séts* for a son of a small farmer, 5 *séts* for a strong farmer, 6 *séts* for a particular grade of noble, and 30 *séts* for a king.<sup>53</sup> There was an increase of one *set* within each grade in order to send a daughter into fosterage and this will be returned to below. As a fee, the cattle went towards the cost of maintaining the child, in addition to having an immediate and positive impact on the overall prosperity of the household. Along with the fee, the child (or baby) was required to bring particular items, e.g. clothing and play things, which could be sued for by the foster-parents if they were not provided.<sup>54</sup>

The type of education both boys and girls were entitled to receive was determined by their status and future role within the community. Boys belonging to the freeman grade were taught practical skills such as herding of calves, kids, young pigs, the drying and raking of malt, kiln-drying, and wood-cutting.<sup>55</sup> It is of interest to note how this list

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<sup>51</sup> N. T. Patterson, *Cattle-lords and Clansmen The social structure of early Ireland* (Notre Dame, 1994), p. 190; H. Mytum, *The Origins of Early Christian Ireland* (London, 1992), p. 158; G. Mac Niocaill, *Ireland before the Vikings* (Dublin, 1972), p. 59.

<sup>52</sup> *CIH* 439.15-18. An *airer* was a fine amounting to one-seventh of a person's honour-price.

<sup>53</sup> A *set* = a young heifer = 1/2 milch-cow. *CIH* small farmer (*ócaire*) 1760.12; strong farmer (*bóaire*) 1760.26; noble (*aire túise*) 1760.32; king (*rí*), 1761.1. An alternative price list: 3 *samaisc* (2 year old heifer) for the son of a small farmer; 4 for daughter; 3 *samaisc* for a strong farmer; 4-12 *samaisc* for a noble; 18 *samaisc* for royalty, *CIH* 1760.6-11.

<sup>54</sup> *CIH* for clothing see, 899.25; for play-things see, 373.25-27; 888.40-41.

<sup>55</sup> *CIH* 1760.21-22.

tells of boys learning to tend only young animals. This appears to reflect recognition of the limitations upon a child's physical capabilities, coupled with an awareness of the dangers which could befall a child if larger animals were involved. This is a well-documented danger in the legal material.<sup>56</sup> Girls were to receive education in the use of the quern stone, in how to knead, the use of the sieve, and also the herding of lambs and kids.<sup>57</sup> For both boys and girls of the freeman grade, domestic activities within or surrounding the homestead formed the focus of their educational curriculum. In addition to the life skills already noted, the male children of the noble grades were to receive instruction in board-games (a good strategic and mental pursuit), spear-throwing, swimming, horsemanship and what was labelled 'instruction in arts' (i.e. high status skill, craft or an expertise).<sup>58</sup> The more noble tasks for girls included learning to sew, to cut out, and to embroider.<sup>59</sup> Many of these pursuits are played out in episodes throughout the medieval narrative and hagiographical traditions. Saintry boys herd animals and perform miracles whilst doing so, and pretty girls sit in the forecourt of a noble residence embroidering or undertaking chores such as collecting water or milking animals.<sup>60</sup> At the core of the legal commentary on education lies a clear expectation that a child should gain adequate training for his or her role in society.

The lawyers state in no uncertain terms that if the expected education of the child was deficient in any way a hefty fine would be incurred. Even if one expected skill had not been taught, two-thirds of the overall fee was forfeit to the parents.<sup>61</sup> This was not a protected privilege of the noble and royal children, but was a fine applied to all freeman grades. Each parent within his grade had a right to expect a child to be educated to the standard of that grade without fault.

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<sup>56</sup> *CIH* 1769.8-11. See M. Dillon, 'Stories from the Law Tracts', *Ériu* 11 (1932), no.s II & III, 52-3, for two legal anecdotes regarding children savaged by animals (*CIH* 2113.6-25).

<sup>57</sup> *CIH* 1760.22; 82.5.

<sup>58</sup> *CIH* 1760.32-34; 82.13-14.

<sup>59</sup> *CIH* 1760.34; 82.14.

<sup>60</sup> For example, C. Plummer, *Bethada Náem nÉirenn Lives of Irish Saints II* (Oxford, 1922), pp. 100, 112; D. Greene, 'Esnada Tige Buchet', in *Fingal Rónáin and other stories* Mediaeval and Modern Irish Series 16 (Dublin, 1975), p. 29; A. G. VanHamel, *Tochmarc Emire* MMIS 3 (Dublin, 1978), p. 23.

<sup>61</sup> *CIH* 1760.23-24; 1761.5-6; 82.6-7; 82.15.

Discussion prevails over situations whereby the feasibility of teaching a certain skill was called into question, for example, not teaching a child to swim, if there was no water on the land!<sup>62</sup> Or, if the biological father failed in his responsibility to supply a horse with his noble child after the age of seven, and therefore riding had not been taught, did this mean liability fell on the foster-father? The answer is no.<sup>63</sup> If however there were grounds for complaint, the severity of the fine (two-thirds of the overall fee) reflected the serious nature of failing to oversee the education of a child.

The maxim ‘the fosterage of every child according to the fosterage fee’,<sup>64</sup> extended beyond particular skills to include the standard of maintenance a child received in relation to clothing and diet. The lawyers comment how certain colours, accessories, and the number of changes of clothing could distinguish social grade and thus reflect whether or not a child was being cared for appropriately.<sup>65</sup> A noble child should wear the colours red, green and brown. Blue and purple were for royal offspring, whereas the freeman grade wore yellow, black, white and natural-coloured garments.<sup>66</sup> Silver brooches adorned the cloaks of noble children with a lesser metal used for the lower grades. There is a general statement on children possessing two changes of clothing.<sup>67</sup> But it is also clear that noble and royal children had a variety of outfits for Sundays and feast-days. The medieval lawyers recognise such a prescribed approach would be somewhat impractical for both parent and a very young child, particularly within a child’s first year of life. Accordingly, it is noted how the clothing across the various social grades was not differentiated at this early stage, with a dark cloth sensibly suggested for all babies.<sup>68</sup> We find a similar comment that food for very young infants need not be differentiated according to social grade, ‘all their foods are the same to the end of a year or three years’.<sup>69</sup> However, this was not the case for older children as food was considered a further statement on the

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<sup>62</sup> *CIH* 1761.30.

<sup>63</sup> *CIH* 1761.32-33.

<sup>64</sup> *CIH* 1759.20-21.

<sup>65</sup> See Charles-Edwards, *Early Christian Ireland*, pp. 116-7.

<sup>66</sup> *CIH* 1759.13-15.

<sup>67</sup> *CIH* 1759.11.

<sup>68</sup> *CIH* 1762.18-20.

<sup>69</sup> *CIH* 1759.38.

standard of care provided. In relation to diet, a porridge (meal-type) substance was advocated for all children, differentiated by the added ingredients. It was to be based on buttermilk or water with salt butter to flavour for the freeman grade, to be made with new milk with fresh butter and barley for the noble grade, and new milk with wheaten meal and honey for the royal children.<sup>70</sup> Rank and status pervaded all aspects of the child rearing process.

### **Shaping Behaviour**

Discipline is one of the more sensitive issues relating to children and upbringing in today's society. The issues of (possible) interference by the state in the family unit versus parental autonomy over the child rearing process often shape current debate.<sup>71</sup> The areas of discipline and appropriate correctional methods also greatly concerned the medieval lawyer. When a child intentionally committed an offence, three key factors were taken into consideration: the age of the child, the nature of the act and the number of offences previously committed (perhaps not too dissimilar to consideration given in today's courts). If an intentional offence was committed by a child in the 'first age', which referred to anytime up to the age of seven years, physical chastisement was advised. If the offence took place within the 'second age', between the years of seven and twelve, chastisement in conjunction with the temporary withdrawal of food was recommended. The third and final age fell between twelve and seventeen years of age, when the adolescent was expected to pay a portion of a fine, and/or make restitution for the actual offence, e.g. if a boy of twelve years stole a hoop or hurley (playing-stick) from another boy, he would have to restore or replace the object.<sup>72</sup> In this last age, the child has become exposed to the all-important process of how to reinstate social harmony (through restitution) after an offence had been committed. It is this restorative principle (to compensate the victim as opposed to today's retributive-based social order, i.e. punish the offender) which lies at the very heart of this legal tradition.

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<sup>70</sup> *CIH* 1759.37; 1759.39-1760.2. See R. Sexton, 'Porridges, Gruels and Breads: The Cereal Foodstuffs of Early Medieval Ireland', in M. A. Monk and J. Sheehan (eds.), *Early Medieval Munster Archaeology, History and Society* (Cork, 1998), pp. 76-86.

<sup>71</sup> For example, M. Murray, 'A hard-hitting debate', *The Irish Times* 14 June 2005; K. Ahmed, 'Should it be a crime to hit your child?', *The Observer* May 4, 2003.

<sup>72</sup> *CIH* 439.33-34; for the example noted see, 1340.10-11.

In this third phase within childhood, the twelve to seventeen year old was now inducted into the way the adult world works, and was expected to mimic the procedure applied to redress an offence committed if he had come of age. However, less severity is applied. What is apparent within this material is a legal schema based on recognised child development, evident in the overall breakdown into three age-based categories and reinforced by the specific and scaled punishments prescribed within each age-grouping.

This outline may have served as a general guideline for lawyers. Further legal commentary reveals however, that it was not set in stone and that the subject of discipline and child behaviour was a much more complex affair. One lawyer notes the possibility of a guardian choosing to discipline his charge for the first deliberate offence in each age by issuing a verbal threat to carry out the expected punishment.<sup>73</sup> The thorny issue of children who repeatedly commit the same offence within an age-grouping is also examined and what punishment should be imposed. In this case the punishment was determined on the basis of the number of times a child had committed the offence (and not primarily on the age of the child). For example, a fine known as a *díre*-fine, which would normally be associated with persons over the age of twelve, could be enforced in the first age (naught-seven years) when the child committed the offence on the 5<sup>th</sup> occasion, in the second age (seven-twelve years) on the 4<sup>th</sup> occasion and on the 3<sup>rd</sup> occasion in the last age (twelve-seventeen years).<sup>74</sup> Evidently, a more severe penalty could be introduced and imposed in any age bracket if it was deemed appropriate and necessary to discipline the child. A final factor to be considered was the type of offence committed. Theft and assault appear to have been of particular concern. Theft was regarded a more serious offence by the very nature of the act which required deception and concealment, and therefore it went against an honour-based social structure. It took fewer occasions of theft for a child to receive a heavier penalty within an age bracket, than on occasions of assault.<sup>75</sup>

What if punishments did not have the desired effect? This raises the issue of delinquency and a child who was perceived to display

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<sup>73</sup> *CIH* 1768.20-1.

<sup>74</sup> For *díre* see Binchy, 'Legal Glossary', in *Críth Gablach* (Dublin, 1979), p. 84; *CIH* 1768.23-5.

<sup>75</sup> *CIH* 1768.25.

habitual criminal tendencies. With the parent or guardian of a child responsible for paying the cost of any damages or fines which resulted from the child's behaviour, a repeat offender could have serious financial implications for the economic welfare of the kin. How should a guardian best proceed? If a child was in fosterage and continued to commit offences, he could be returned to his biological family with the contract of fosterage terminated.<sup>76</sup> Alternatively, a guardian could 'proclaim' a child. This was a step which informed the biological family and community that a certain person was a liability and that it was best to exercise caution when interacting with him or her. The foster-child could still remain in fosterage, but only if the biological father agreed to pay for any further expenses incurred by the actions of his child.<sup>77</sup> Whereas in the adult world a person could be put outside the protection of his kin and society for repeatedly committing criminal acts, a delinquent child retained a degree of protection under the law - his education and nurturing was to continue (either in fosterage or in his natal home). In this matter and in many others within the law, adults and children were dealt with differently, reflecting the fundamental differences in their status, level of dependency and perceived mental and social development.

The discussion on discipline highlights certain pivotal times within childhood. This information reaffirms the age of seven as a significant marker, already mentioned above as the time of greater reason, and when a child's honour-price reverted back to being half of his or her father's. The child now accepted greater responsibility for his actions, which also meant that he could undergo a more severe punishment. The age of twelve was the second turning point within childhood, and we may suggest a time of greater consequence for the developing social and legal persona of the child as he or she moved closer to adulthood. Before the age of twelve the child was punished with chastisement and/or the temporary withholding of food, where this punishment acted as a deterrent in its own right. At twelve, a child's punishment was linked directly to the offence committed. The child was now able to make amends for his crimes through compensation and restitution.<sup>78</sup> Until he or she came of age the financial severity of his actions remained capped throughout this final

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<sup>76</sup> *CIH* 1764.14; 83.10.

<sup>77</sup> *CIH* 1765.12-13; 1769.17-25; 84.8-9.

<sup>78</sup> *CIH* 439.33-34.

age (twelve-seventeen years). If we scroll forward almost a millennium to the current 'Children Act' (Ireland, 2001) it is of interest to read that 'it shall be conclusively presumed that no child under the age of twelve years is capable of committing an offence.'<sup>79</sup> The age of twelve was and is regarded as a turning point in a child's own understanding of his actions, capabilities and position in society and how he answers for those actions.

### **Corporal Punishment**

The discussion above on discipline and punishment concentrated on when it was appropriate for certain penalties to be imposed. Are the rights of the child examined or child protection in general discussed? But are such considerations evident in the medieval mind-set? In today's world the subject of physically chastising a child is very contentious. According to current law in Ireland, 'the right of the parent to inflict moderate and reasonable physical chastisement on the child' is permitted in common law.<sup>80</sup> This comes under the label 'reasonable chastisement' within the United Kingdom's legal apparatus. However, the line between discipline and violence or abuse is perceived by some as a very thin one, as shown in a recent debate in the House of Lords. To quote Baroness Walmsley (on expressing her disfavour with the current approval permitting mild smacking without leaving a mark), "with that in mind, will the Minister enlighten me and the House about the precise force and velocity required to hit a child without causing a bruise...."<sup>81</sup> Almost a millennium ago, it appears that the medieval Irish lawyer assumed parents and guardians would know the answer. Where corporal punishment was imposed, no physical mark was to be evident on the skin, nor blood shed, or a bandage-wound tolerated, or a blemish of

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<sup>79</sup> *Children Act*, 2001, Part 5 Criminal Responsibility, §52.

<http://acts.oireachtas.ie/en/act2001.0024.1.html>. Date visited, 17 August 2006.

<sup>80</sup> *United Nations Convention on the Rights of the Child, Ireland's Second Report to the UN Committee on the Rights of the Child* (July 2005), National Children's Office *Oifig Náisiúnta Leanaí*, p. 86.

[http://www.nco.ie/upload\\_documents/final\\_pdf\\_UNCRC\\_Oct\\_2005.pdf](http://www.nco.ie/upload_documents/final_pdf_UNCRC_Oct_2005.pdf).

Date visited, 17-08-06.

<sup>81</sup> House of Lords debates on Reasonable Chastisement, 13 February 2006; [www.theyworkforyou.com/lords/?id=2006-02-13a.991.4](http://www.theyworkforyou.com/lords/?id=2006-02-13a.991.4). Date visited, 13 August 2006.

any kind to remain.<sup>82</sup> If a blemish or physical mark remained, compensation was required from the person who inflicted the mark. There are certain inconsistencies within the various passages of legal commentary with one scribe noting ‘another version’, which remarks that royal children were never to experience physical chastisement.<sup>83</sup> If a mark or blemish occurred while in fosterage (although chastisement was justifiable for whatever incident had occurred), the foster-father still forfeited two-thirds of the overall fosterage fee.<sup>84</sup> In conjunction with the general statement that fosterage (and so childrearing by extension), should be without blemish,<sup>85</sup> this serious financial reprimand illustrates that physical chastisement to an excessive degree was neither advocated, nor sanctioned. A child should be blemish free and a pupil should expect ‘correction without harshness’.<sup>86</sup>

In the violent world of medieval times, child abuse must not have been uncommon, though difficult to gauge, according to Shahar.<sup>87</sup> However, upon reading the thought and detail provided by the medieval Irish jurist, if it was common it was certainly not acceptable. As far as the law can protect a child at any time and in any era, we see such protection evident in the medieval Irish corpus. The general approach to discipline and correction was that punishment should be appropriate to both the age and offence, and should be applied to correct the child. Within these parameters parents and guardians had a duty not to take discipline to excess, for which they could be heavily penalised.

### **Duty of Care**

The medieval legal writings clearly illustrate a duty of care on the part of the adult towards the welfare of the child. At a very basic level, there had to be adequate provision of food and clothing for the child. If not, a child could be legitimately recalled from fosterage.<sup>88</sup> Similarly, if the child fell prey to disease without medical attention being

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<sup>82</sup> *CIH* 1761.18.

<sup>83</sup> *CIH* 1761.14-16.

<sup>84</sup> *CIH* 1767.5-6.

<sup>85</sup> *CIH* 1760.3.

<sup>86</sup> *CIH* 1613.31.

<sup>87</sup> S. Shahar, *Childhood in the Middle Ages* (London, 1990), pp. 109-11.

<sup>88</sup> *CIH* 1763.1.

provided, the foster-family was deemed negligent in the primary care of the child.<sup>89</sup> Offences of neglect were also those committed in the foster-father's presence 'without prevention or in ignorance'.<sup>90</sup> Neglect, therefore was perceived either as a lapse in supervision on the part of the care-giver (i.e. his or her absence), or it could also involve the direct failure to prevent or intervene in times of danger or misbehaviour in the care-giver's presence. One legal commentator expresses an understanding of the difficult task before any (foster-)parent to be constantly vigilant where a child is concerned. He notes that it is an easier task for a person to mind a child for a short period of time, than to have complete and continuous charge of the child.<sup>91</sup> On this basis, greater liability and penalty rested on the shoulders of a temporary child-minder were the child injured in his/her care, or indeed if the child was allowed to injure someone else or cause damage to property.

The tracts mention two types of dangers which could befall a child. The first category appears to concern non-intentional occurrences, such as injuries caused by animals belonging to the family or a neighbour.<sup>92</sup> The physical environment is often the focus of the medieval lawyer when incidents occur to either children or adults. We read discussions on whether or not precautions were taken to prevent injury (for example, were animals fenced off correctly? Were people informed of possible hazards?).<sup>93</sup> The second category of danger concerns intentional injuries and includes a child falling from a height, or into a body of water, injuries caused by spikes and spears, stocks and stones.<sup>94</sup> Also included in the discussion is the figure of a *deorad*.<sup>95</sup> This is a recognised outsider in the community who perhaps hails from a neighbouring territory or further afield. He represents a person who is lacking in established character within the community, and therefore should be treated with caution. On this basis, there was

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<sup>89</sup> *CIH* 1763.29.

<sup>90</sup> *CIH* 1766.29.

<sup>91</sup> *CIH* 1171.29-33.

<sup>92</sup> *CIH* 1767.8-9; 1767.17.

<sup>93</sup> See Kelly, 'Offences by domestic animals' in *Early Irish Farming* (Dublin, 1997), pp. 134-157. Márkus, *Law of the Innocents*, § 41-2, pp. 19-20. *CIH* 275.12ff (Cow); 276.3ff (Bull); 278.4ff (Pig); 284.1ff (Oxen); 274.17ff (Tree-felling); 289.22ff (Fences).

<sup>94</sup> *CIH* 1171.4-5; 1767.17-18.

<sup>95</sup> *CIH* 1767.9.

a responsibility on the part of a guardian to protect children from any possible threat a *deorad* might pose.

This leads us to ponder why it cost a *sét* more to foster and raise a daughter over a son. One lawyer's answer is that a foster-daughter's attendants were more numerous than a foster son's.<sup>96</sup> We may speculate how accompaniment for a girl was required to prevent kidnap, rape, or an attempt to lure into an illicit sexual union. Frequent references to such incidents can be found in a wide variety of medieval Irish sources: the saints' lives,<sup>97</sup> annals,<sup>98</sup> justiciary rolls,<sup>99</sup> the *dindsenchas* (place-name lore)<sup>100</sup> and the penitentials,<sup>101</sup> as well as elsewhere in the law tracts.<sup>102</sup> The potential for dangerous situations which could befall a female child or fosterling, which in turn would expose the carer to a charge of neglect, perhaps resulted in a higher fee imposed for assuming the responsibility of a female child. We may also speculate that in general a greater risk was involved in trying to guarantee that a female child would remain completely blemish-free, where physical beauty may have impacted on marriageability and future prospects.

There needed to be satisfaction in the matter of neglect on the part of child-minder, before determining who was entitled to compensation if injury or death befell a child. If neglect or endangerment was suspected and proven, the person in charge of the care of the child would carry the weight of the penalty and any necessary fines. Two specific fines are mentioned, the body-price fine for inadvertent harm (*coirpdire anfoit*) and a body-price fine for

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<sup>96</sup> *CIH* 1760.11.

<sup>97</sup> Plummer, *Bethada Náem nÉirenn* II (Oxford, 1922), pp. 100, 112.

<sup>98</sup> *Annals of the Four Masters* J. O'Donovan (ed. and tr.) (Dublin, 1851), the years 1222, 1223, 1226, 1236; *Annals of Ulster* W. M. Hennessy and B. MacCarthy (ed. and tr.) (Dublin, 1887-1901), the years 1231, 1315, 1355, 1517; *Annals of Loch Cé* W. M. Hennessy (ed.) (Dublin, 1939), the years 1132, 1171, 1315.

<sup>99</sup> H. Wood, A. E. Longman, and M. C. Griffith, *Calendar of Justiciary Rolls 1308-14* (Dublin, 1956), pp. 236, 284, 207, 276, 302.

<sup>100</sup> Stokes, 'Dinshenchas' in *Revue Celtique*, 16 (1895), for 'Tuag Inbir', p. 152; and 'Loch Gile', p. 146.

<sup>101</sup> L. Bieler, *The Irish Penitentials* *Scriptores Latini Hiberniae* 5 (Dublin, 1963), pp. 87, 89, 117.

<sup>102</sup> *CIH* 1178.34; 337.14; Márkus, 'Law of the Innocents', §50, pp. 21-2; Ní Dhonnchadha, 'The Law of Adomnán', §50, p. 67; Meyer, *Cáin Adammáin*, §50, p. 32.

intentional harm (*coirpdire comruite*).<sup>103</sup> Alternatively, two-thirds of the fosterage fee could be imposed, which depended on the extent of the injury in question.<sup>104</sup> The child's biological kin-groups (both paternal and maternal) would receive compensation, as too would the foster-family, if the child was in fosterage at the time of injury (and the foster-family had no part to play in the incident).

### Play & Games

Although the practical skills taught were of utmost concern in preparing a child for his role and function in later life, the Irish legal texts allow us to witness another facet of child development through play and interaction with young peers. Play items are specifically mentioned in relation to a legal procedure known as distraint. This refers to a legal process which settled disputes over the ownership of particular items.<sup>105</sup> Prior to the commencement of legal proceedings, there was an established period of time when notice of the action pending was given to the parties concerned. This created an opportunity for cases to be settled before going to court. On the list of items which required one-day notification were hurleys, hoops, balls, cats and dogs.<sup>106</sup> These were 'noble items which remove the *serg* [illness, boredom/ malaise?] from little boys'<sup>107</sup> and provide a glimpse into the material culture of the child in medieval Ireland. The presence of pet animals (dogs, cats, hens, herons, birds, pigs, even deer, wolves, and foxes) around the household finds support in various legal tracts, and no doubt served the dual function of amusement and companionship, and also in exposing and training children in animal husbandry, responsibility and even possibly in the taming of wild animals.<sup>108</sup> A fascinating reference in a different text concerns the recuperation of an invalid within a household and advises the following;

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<sup>103</sup> *CIH* 1767.17-18.

<sup>104</sup> *CIH* 1767.18-19.

<sup>105</sup> For distraint see Kelly, *Guide to Early Irish Law*, pp. 177-189; D. A. Binchy, 'Distraint in Irish Law', *Celtica* 10 (1973), 22-71.

<sup>106</sup> *CIH* 373.26.

<sup>107</sup> *CIH* 373.26.

<sup>108</sup> *CIH* 372.37; 888.40-41; 383.32, 384.1; 73.19-20. See Kelly, *Early Irish Farming*, pp. 124-131.

‘there are not admitted to him [the invalid] in the house fools or lunatics or ‘senseless’ people or half-wits or enemies. No games are played in the house. No tidings announced. No children are chastised... No conversation is held across him. No shout is raised. No pigs grunt... No cry of victory is raised nor shout in playing games...’<sup>109</sup>

The last clause in this quotation is glossed by a later commentator with the ‘prattle and playing, the battle of rods’.<sup>110</sup> Play was clearly considered part of the normal bustle of family life within the homestead.

Perhaps even more surprising is the existence of a fragment of an eighth-century legal text on *Sport-Judgements (Mellbretha)*, which deals specifically with injuries caused during sports and children’s games.<sup>111</sup> This was a chance find in 1968 when it was discovered acting as part of a vellum cover for a manuscript.<sup>112</sup> The text lists a variety of sports, games and play activities, divided into two groups on the basis of whether or not the participants could be held liable for any injury sustained through the course of play. The first group of *ruidles*-games lists, “‘hurley, ball, ‘boundary pillar’, ‘excavating small dwellings’ (building sand castles?), jumping, swimming, wrestling (?), b., f. and b. (three board-games), hide-and-seek, carrying..., juggling in the air with balls”.<sup>113</sup> All these games were immune from prosecution and penalties and appear to be associated with younger children’s play. The second category of games includes “‘(*fian*) games whose arrangements (rules?) are different:...- swinging, horse-riding, putting the weight, climbing, leaping, and pelting...”<sup>114</sup> These activities involve greater danger and reflect an older child’s activities. In the later commentaries of the eleventh and twelfth centuries, the age of the participants becomes all important when assessing a child’s behaviour. One passage notes how ‘small boys’ were free from all

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<sup>109</sup> Binchy, ‘Bretha Crólige’, §61, 9.

<sup>110</sup> *Ibid.*, 9.

<sup>111</sup> D. A. Binchy, ‘Mellbretha’, *Celtica* 8 (1968), 144-154.

<sup>112</sup> A. Gleason, ‘Entertainment in early Ireland’, unpublished PhD thesis, Trinity College Dublin (2002), p. 286; L. Breatnach, *A Companion to the Corpus Iuris Hibernici* (Dublin, 2005), pp. 263-4.

<sup>113</sup> Binchy, ‘Mellbretha’, 149. For a further discussion of these games see Gleason, ‘Entertainment’, pp. 286-92.

<sup>114</sup> Binchy, ‘Mellbretha’, 149. Gleason, ‘Entertainment’, pp. 292-6.

liability within both categories of games until they reached the age when they could make restitution for their actions, i.e. twelve years of age.<sup>115</sup> We see remarkable consistency between the texts on the age divisions and general punishments already discussed above and punishments for offences caused through play.<sup>116</sup> Once again twelve years of age was a major turning point within childhood itself. Between twelve and seventeen years, a boy would pay a portion of an adult fine for injuries caused in both categories of games mentioned. Simply put, the child was now expected to act more responsibly while at play. The fact that he had still not come of age was reinforced by the existence of a third category of games and liabilities, *col*-games, which involved adult-only participation and were deemed unsuitable for children.<sup>117</sup>

The range of games noted in this tract reveal how beneficial play could be in aiding the physical and social development of the child: team games would have required co-operation and even negotiation amongst children; imaginative games and board games required mental agility and strategic thought; certain activities specifically required hand-eye co-ordination, and the more physical activities, some of which were important life skills, promoted strength and fitness. The educational dimension of all these activities should not be overlooked, and the important physical and mental (even character building) challenges they may have offered the male children in particular. One could venture that in this material play reflects the socialisation of children, who had to learn how to play with each other within society's rules. Play was an integral part of childhood, coupled with a strong desire to protect and mould young participants in the process. Through the means of play, either fair or foul, a child found affirmation of (un)acceptable behaviour and learned that greater responsibility and control came with age.

### **Death**

The high infant mortality rate, possibly as high as 30-50%,<sup>118</sup> suggested for medieval times has raised the possibility of medieval desensitisation towards the death of a child, which in turn may have had a

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<sup>115</sup> *CIH* 1339.30-32.

<sup>116</sup> *CIH* 1340.5; 1340.15; Gleason, 'Entertainment', p. 300.

<sup>117</sup> Binchy, 'Mellbretha', 150; *CIH* 1341.3-5.

<sup>118</sup> Hanawalt, 'The Study of Childhood', 450.

negative impact on the parent-child relationship and the quality of care provided.<sup>119</sup> This argument has been refuted in recent scholarship and the medieval Irish legal material would lend support to its rejection.<sup>120</sup> The depth of consideration given to the care and protection of a child across this vast legal corpus is a testament in its own right to society's attitude towards children, and is far removed from the 'ambivalent' medieval phase within deMause's evolutionary model of childhood.<sup>121</sup> The death of a (foster-)child through negligence or intent carried far-reaching consequences if the biological family and foster-family were not compensated adequately and swiftly for their loss. One of the very few occasions where physical force, killing or the commencement of a blood-feud was permitted in law was for the 'vengeance for the foster-child of the family'.<sup>122</sup> The death of a child could have a profound impact on the stability of the community and was a very serious matter.

The lawyers clearly indicate that the death of a child was a possible, if not frequent occurrence with death noted as one of the three occasions when the contract of fosterage was legally terminated.<sup>123</sup> In this context, there was neither culpability nor suspicion over the circumstances surrounding the death. In fact, the medieval jurist suggests that the family of the deceased child put the remainder of the fosterage fee towards sending a sibling into fosterage within the same foster-family.<sup>124</sup> One is minded of the lament, which a thirteenth-century poet places in the voice of a grieving foster-mother towards her young, noble foster-child, Gormlaith, a little girl not yet five years of age who died from disease whilst in fosterage. In beautiful verse, we read how the foster-mother is so distraught at her loss she ceases to notice the everyday occurrences going on around

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<sup>119</sup> Ibid., 443; Classen, 'Philippe Ariès and the Consequences', p. 19.

<sup>120</sup> Hanawalt, 'The Study of Childhood', 453-56; Classen, 'Philippe Ariès and the Consequences', pp. 19, 45, 61; Alexandre-Bidon and Lett, *Children in the Middle Ages*, p. 31.

<sup>121</sup> L. deMause, 'The Evolution of Childhood', in deMause (ed.) *The History of Childhood* (New York, 1974), pp. 1-73.

<sup>122</sup> *CIH* 2014.18.

<sup>123</sup> *CIH* 1764.14. The other two occasions were when the child reached the age of choice (i.e. the age of marriage, or entering the church), or when a child was habitually criminal and returned to his biological parents by mutual consent.

<sup>124</sup> *CIH* 1765.10-11; 1765.18-21.

her, such as music and the chatter of children.<sup>125</sup> There are no poetic recriminations as to where fault lay, but the grief of the foster-mother is central and palpable in this poem.

Such grief reflected a special bond or relationship recognised within the legal material under the label *lánamnas*. This was expected in certain relationships, for example, between a husband and wife, a monk and his clerical pupil, a master and his pupil, and a guardian and child (both biological or through fosterage).<sup>126</sup> With children in mind it was a term which encapsulated *all* the legal responsibility towards child rearing discussed in this chapter.<sup>127</sup> By the very nature of this source, it is probably the closest we should expect to come to an explicit statement on the degree of attachment between adult and child. The legal material is perhaps not best suited to reveal the emotional tenor of early Irish life, and for that we can draw upon other sources. Dr NicEoin's discussion within this volume on poetic laments to children is a fine illustration of the emotional and sentimental attachment between child and adult. The multiple episodes in Insular hagiographical material of grief-stricken parents seeking aid from the local saint to revive or cure a child,<sup>128</sup> or examples within the medieval Irish annalistic tradition which record retribution and retaliation over the death of a child or former foster-child, all point to the bond between guardian and child and the emotions experienced if tragedy occurred.<sup>129</sup>

### **When did childhood end?**

There appears to have been several watersheds (seven, twelve, fourteen, seventeen, twenty) within the lifecycle which marked a growth in maturity and legal responsibility. In one tract fourteen was the age specified when a girl's fosterage could be completed and is

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<sup>125</sup> N. Williams, *The Poems of Giolla Brighde Mac Con Midhe* Irish Texts Society 51 (Dublin, 1980), p. 26.

<sup>126</sup> *CIH* 502.29ff.

<sup>127</sup> *CIH* 502.29-519.35.

<sup>128</sup> For example, Plummer, *Bethada Náem nÉrenn*, 101, 315; for a Continental perspective see, R. C. Finucane, *The Rescue of the Innocents Endangered Children in Medieval Miracles* (New York, 2000).

<sup>129</sup> See *AU*, the year 1103; *Annals of Inisfallen* R. I. Best and E. Mac Neill (eds.), the year 1128; *Annals of Connacht* A. M. Freeman (ed.) (Dublin, 1944), the year 1244; *AFM*, the year 1396.

referred to as a time of choice (*togu*).<sup>130</sup> This choice could set the adolescent girl on two very different life-paths; one was to marriage, the other to celibacy and the religious life. Another tract raises the female age of completion to seventeen, and therefore appears to indicate some ambiguity on the matter, or perhaps it simply reflects variant practices.<sup>131</sup> For boys, fourteen was also a possible marker when he could, in theory, assume a greater degree of responsibility and although not completely independent, could establish a homestead on his father's land.<sup>132</sup> However, the overall impression from the legal material is that the age of seventeen was favoured as the appropriate time for a male to complete fosterage.<sup>133</sup> As previously discussed, the legal commentary on behaviour and games indicated that the upper age-marker on childhood discipline and punishment was seventeen. Full autonomous adulthood did not automatically commence at this age, nor did it depend on age alone. A male at this point was regarded as a 'son of a living father' (*mac béoathar*), which indicated that he was still waiting to enter into his inheritance and so assume his father's full legal status.<sup>134</sup> He remained at this social standing until he did inherit, and on many issues the adult son was to show legal deference to his father's decisions while alive. A further turning point may have occurred *ca.* twenty years of age, or when he had achieved 'beard encirclement', which symbolised his growing participation in society.<sup>135</sup>

In a real sense the end of fosterage meant the end of childhood. This was formally marked by a parting gift, the *sét gerta* ('a valuable of affection'), from the foster-parent to the foster-child,<sup>136</sup> with a similar gift presented between biological parents and children referred to as the *macslabrae*.<sup>137</sup> This gift was of specific value, and reflected the standard of care and education that the child had received. It served a symbolic and social function in that a counter-gift was required from the child in later life. This took the form of a contribution towards

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<sup>130</sup> *CIH* 1764.14; 83.10.

<sup>131</sup> *CIH* 2288.6-8; Binchy, 'Bretha Crólige', §7, 9.

<sup>132</sup> *CIH* 777.25-7.

<sup>133</sup> *CIH* 902.4.

<sup>134</sup> *CIH* 593.26-27. See Kelly, *Guide to Early Irish Law*, pp. 80-1.

<sup>135</sup> Binchy (ed.), *Críth Gablach*, l. 69. See *fer midboth*, pp. 89-90.

<sup>136</sup> *CIH* 1769.26; 902.14.

<sup>137</sup> *CIH* 591.31-4.

the maintenance of (foster-)parents in poverty or old-age.<sup>138</sup> This was a mandatory requirement, and if neglected could lead to the very serious consequence of the (foster-)child being brought to court or his or her status being diminished in the eyes of the community.<sup>139</sup> This obligation to support biological parents and foster-parents was an expression of *goire* (pious, proper, filial behaviour towards (foster-parents and masters)).

The end of the period of fosterage, and hence of childhood, reflected the end the immediate duty and responsibility for the primary care and education of the child. Yet it also opened up another phase in the social ties and obligations created through the fostering process. Throughout a foster-child's life, as through the time in fosterage, foster-parents had the important privilege of 'proof, judgement and witness' over children who had once been in their care.<sup>140</sup> These were key legal privileges normally associated with a person's biological kin which allowed foster-parents to support their former charge. Life-long bonds forged during fosterage were not solely between foster-parent and child, but also between foster-brothers and –sisters who had shared the same cradle, cup and cloak, as mentioned earlier.<sup>141</sup> This was manifested in a specific payment, the *airer*, which was due in the event of the unlawful killing of a foster-sibling.<sup>142</sup> Once again the *airer*-payment was primarily associated with biological kin-members, and therefore its extension to include foster-relations reflects the standing of the foster-kin *vis-à-vis* the biological kin. The closeness of the bond between foster-siblings is dramatically exemplified in the great medieval Irish saga, *Táin Bó Cnailnge* (The Cattle Raid of Cooley), which reaches its climax in a scene between the champions of two opposing sides, the foster-brothers Cú Chulainn and Ferdia. The tragedy is heightened by the fact that both are compelled by loyalty to their group to violate their special bond in a scene of drawn-out and bloody single-combat. They continuously lament their actions, "It is wrong I should fall at your hand... Your

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<sup>138</sup> *CIH* 503.31; 1613.33-34. See D. A. Binchy, 'Some Celtic Legal Terms', *Celtica* 3 (1956), 228-31.

<sup>139</sup> *CIH* 1769.30-31; or loss in entitlements, Binchy, *Críth Gablach*, ls. 126-7; *CIH* 534.26; 779.8.

<sup>140</sup> *CIH* 503.24, 503.30-31; 1613.36.

<sup>141</sup> *CIH* 439.16.

<sup>142</sup> *CIH* 439.15-18.

guilt clings to me as my blood sticks to you...”.<sup>143</sup> It is the bond of fosterage which each desperately wounded youth recalls with much tenderness and passion.

Who benefited from fosterage? For both sets of parents involved, fosterage could illustrate, strengthen, or re-establish relations between families. One tract conveys this role in the phrase, *ar id carnt a ngenelaighe* (‘for their family lines (i.e. pedigree) are in friendship’).<sup>144</sup> Gormlaith, the five year old lamented in the thirteenth-century poem was ‘the key of the lock’ (*eochair ghlais*), which reflected her role as peace-maker between two families.<sup>145</sup> The immediate needs of a child, i.e. provisions, care and education, were also catered for in the process. To send a child into fosterage or receive a child into your household was to gift them the possibility of added support and succour throughout the course of their life. This may have taken the form of witnessing a contract, support in court, or much needed military aid in defence or on campaign. It is often the foster-father or foster-brother who stands at the shoulder of a leading figure in both the historical and literary worlds, or who seeks to avenge his death or injury.<sup>146</sup>

There were clearly many immediate and long-term benefits to fosterage. On the surface of it and perhaps to modern eye, the notion of sending a child into another household may appear somewhat non-maternal, even heartless. However, what we see in these texts is the depth of consideration given to this institution, coupled with the desire to participate in this process. Even the ‘son of a living father’

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<sup>143</sup> T. Kinsella, *The Táin* (Oxford, 1969), p. 197. R. I. Best and M. A. O’Brien, *The Book of Leinster* ii (Dublin, 1956), ls 40-45, p. 354.

<sup>144</sup> *CIH* 1762.24.

<sup>145</sup> Williams, *Giolla Brighde*, p. 22.

<sup>146</sup> For example, *AFM* 1063; *AI* 1103, 1128; *ALC* 1309, 1310, 1315; *AConn* 1244, 1316. For examples of literary references to the role of foster-relatives see, O. Bergin and R. I. Best, ‘Tochmarc Étaín’, *Ériu* 12 (1938), 177; M. Dillon (ed.), *Serglige Con Culainn* Mediaeval and Modern Irish Series 14 (Dublin, 1953), p. 12 (ls 343-46); J. Carmichael Watson, *Mesca Ulaid* MMIS 13 (Dublin, 1967), pp. 8 (ls 166-73), 46 (ls 1030-43); E. Knott, *Togail Bruidne Da Derga* MMIS 8 (Dublin, 1975), pp. 3 (ls 98-99), 4 (ls 1-3); D. Greene, ‘Esnada Tige Buchet’, *Fingal Rónáin and other stories* MMIS 16 (Dublin, 1975), p. 28; A. G. Van Hamel, ‘Immram Brain maic Febail’, in *Immrama* MMIS 10 (Dublin, 1941), p. 13 (ls 135-36); D. Greene, *Fingal Ronáin* MMIS 8 (Dublin, 1975), p. 5 (ls 75-6); Williams, *Giolla Brighde*, p. 110; L. McKenna (ed. and tr.), ‘Broan re ndubhadh diomdha Dé’, *Aithdiogluim Dána* Irish Texts Society 37 (Dublin, 1939), p. 317.

could not be denied the right to arrange fosterage contracts for his own children.<sup>147</sup> By the time old age had come upon a foster-child, he or she would have raised foster-children of his or her own to tend to any particular needs, as with each generation this child-centred process commenced afresh. It is the recognition of this life-long involvement that we begin to appreciate why the legal tradition considered children and child-rearing, and in particular fosterage, to be one the four pillars of stability and prosperity in medieval Irish society.

### **Conclusion**

In many medieval sources children are invisible as ‘adults tend not to discuss children’.<sup>148</sup> The survival of the *corpus iuris* in which children are neither marginalised nor hidden is therefore of great importance in the exploration of childhood in medieval times. That both genders are included in the discussion only further increases its significance and distinctiveness as a source. We are not however reading grandiose, legal theories on childhood, but aspects of daily life and concerns which faced the medieval parent such as the quality of childcare provided, the type of education received and the manner in which to correct unacceptable behaviour. Across these issues we see childhood approached in a sensitive, even compassionate manner with the age and understanding of the child taken into account at every step. Throughout this source the treatment and safety of the child remained central and was underscored by the legal profession’s desire to protect: the right of the unborn child and the health of the expectant mother; to protect the standard of education and maintenance; to protect the child from neglect or attack; to protect the (foster-)parent from a charge of neglect or financial ruin; and even to protect children from one another during play. Responsibility for the child and the overall duty of care rested with the parent or guardian and a strong desire to educate and prepare a child for his or her adult role in society is of particular concern.

The dominant presence of fosterage within the social structure was perhaps unique to medieval Ireland in the Middle Ages. It was an institution whose strength was derived from a kin-based society, one

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<sup>147</sup> *CIH* 45.37.

<sup>148</sup> Classen, ‘Philippe Ariès and the Consequences’, pp. 21, 53.

in which the absence of illegitimacy and certain inheritance practices contributed to its popularity and longevity. This particular method of child rearing offered a mechanism through which stability, loyalty and prosperity were promoted within the community, but never lost focus on the upbringing of the child. Therefore, the very child-driven nature of fosterage secured an important position for children within the social structure which their presence in the legal writings indicate. In the last two decades there has been greater acknowledgment of medieval society's own recognition of this distinct first stage within the life-cycle. However, recent debate has questioned whether medieval society placed a high level of importance on childhood. To quote one medievalist, '(they) [medieval society] may have valued childhood somewhat less than we do', even if they did recognise it.<sup>149</sup> The detail provided in this chapter shall stand testament to medieval Irish society's stance on the matter. To the medieval lawyer the position and upbringing of the child was in part a reflection of the overall health of society. Therefore, it is not surprising that the legal profession turned its attention to protecting children and ensuring they reached their full potential. Such protection finds expression through this body of child-centred law.

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<sup>149</sup> J. A. Schultz, Review article 'Nicholas Orme. *Medieval Children?*, *Medievalia et Humanistica* 30 (2004), 159.

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