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Lex Innocentium (697 AD): Adomnán of Iona – father of Western *jus in bello*

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Abstract
This article is concerned with an Irish law dating from 697 AD, called Lex Innocentium *or the Law of the Innocents. It is also known as* Cáin Adomnáin, *being named after Adomnán (d. 704), ninth Abbot of Iona, who was responsible for its drafting and promulgation. The law was designed to offer legislative protection to women, children, clerics and other non-arms-bearing people, primarily, though not exclusively, in times of conflict. Today, the laws of war fall into two categories: those attempting to regulate when it is lawful or just to go to war, now called* jus ad bellum, *and those attempting to limit the awful effects of war by stipulating how it should be properly conducted (for instance, in providing for non-combatant immunity), now called* jus in bello. *By proscribing the killing and injuring of non-arms-bearing people,* Lex Innocentium *is an* in bello *law, and by virtue of its being the first known such law, Adomnán, its author, is the father of Western* jus in bello.

Keywords: Adomnán, *Lex Innocentium*, Law of the Innocents, *Cáin Adomnáin*, laws of war, early medieval Ireland.

Introduction

Those involved in international humanitarian law (IHL), whether in its enactment, implementation or enforcement, must wonder from time to time how the issues with which they are concerned were treated in former eras. After all, problems of non-combatants (used here in the colloquial sense) in times of war, and how to treat prisoners of war and the wounded and sick, are not new – they are as old as warfare itself. The Geneva Conventions of 1949 and their subsequent protocols represent the modern interpretation of the *jus in bello* concept and give it legislative expression. Surely the idea that non-combatants, for instance, should have some form of protection or immunity in the course of conflict must have existed from the earliest times? Dr Ahmed Al-Dawoody has pointed to references in the Qur'an and other early Islamic legal texts which address issues very similar to those covered by the Geneva Conventions, and studies have examined efforts made in other societies such as the Pacific nations and Somalia.[1] But what of the Christian West?

Historians of the laws of war have pointed to the Peace of God (*Pax Dei*) movement in the tenth and eleventh centuries as the earliest example of *in bello* considerations being given a measure of legislative attention in the West.[2] A series of church councils in various parts of present-day France proscribed acts of violence against churches, unarmed clergy and poorer lay persons, and unprotected women.[3] The ordinances of these councils, of course, do not meet modern understandings of what constitutes a *jus in bello*. They vary considerably from council to council; they often include extraneous material such as strictures on errant clergy; and, like *Lex Innocentium*, they do not apply exclusively to violence during the course of war. It is fair to say, however, that "[t]he goal of the Peace movement was to protect the 'civilian' victims of warrior violence".[4] In recognizing the non-combatant and in affording him or her a measure of protection in times of strife, the *Pax Dei* movement justly takes its place in the history of *jus in bello*. It is an expression of the concept that war and violence

1 Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles", *International Review of the Red Cross*, Vol. 99, No. 906, 2017. For the Pacific, see: www.icrc.org/en/doc/resources/documents/publication/pwars-of-dignity-pacific.htm; and for Somalia, see: https://blogs.icrc.org/somalia/2015/09/21/spared-from-the-spear/ (all internet references were accessed in February 2020).

2 Richard S. Hartigan, *The Forgotten Victim: A History of the Civilian*, Precedent, Chicago, IL, 1982, p. 65 (republished without amendment as *Civilian Victims in War: A Political History*, Routledge, Piscataway, NJ, 2010); Alexander Gillespie, *A History of the Laws of War*, Vol. 2: *The Customs and Laws of War with regards to Civilians in Times of Conflict*, Hart, Oxford, 2011, p.123; Christopher Allmand, "War and the Non-Combatant in the Middle Ages", in Maurice Keen (ed.), *Medieval Warfare: A History*, Oxford University Press, Oxford, 1999, p. 255; Frederick H. Russell, *The Just War in the Middle Ages*, Cambridge University Press, Cambridge, 1975, p. 34.

3 Thomas Head and Richard Landes (eds), *The Peace of God: Social Violence and Response in France around the Year 1000*, Cornell University Press, Ithaca, NY, 1992.

4 Christian Lauranson-Rosaz, "Peace from the Mountains: The Auvergnat Origins of the Peace of God", in T. Head and R. Landes, above note 3, p. 106.

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should be confined to those who bear arms and that those who do not should not be molested and should have protection under the law.

As we shall see, this is the concept underpinning *Lex Innocentium*, as it is the concept, given expression in Part IV of Additional Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949, underpinning that part of *jus in bello*/IHL in the modern world which dictates that wars should be fought by the armed forces on either side and that civilians should not be involved. It is this shared concept that links *Lex Innocentium*, *Pax Dei* and modern IHL, although they differ hugely in the societies in which they operate. All three, however, applied the concept to the circumstances of violence and warfare pertaining in their societies at the time, and with which they had to contend. Some may be surprised that historians have found *Pax Dei* to be the first legislative expression of this concept in the Christian West, but this writer can confirm their finding (excepting, of course, *Lex Innocentium*) after an extensive study of such sources as classical authors including Aristotle and Cicero, the Christian Gospels, late Antique legislation, early church councils, the Church Fathers, the so-called Barbarian Laws, and *acta* of the Merovingian church councils and Carolingian capitularies.[5] The absence of *in bello* is largely explained by the dominance of *ad bellum* thinking in early western thought;[6] this was reinforced by the influence of St Augustine, whose just-war attitudes were primarily concerned with the question of when it was just to go to war, with significantly less emphasis on right behaviour during the course of war.[7] The right to go to war (*ad bellum)* dominated at the expense of considerations of moral conduct during the course of war (*in bello*). In fact, the distinction between the two was not made. The way was not clear for the full expression and development of *in bello* thinking until the period of *raison d'état* in the late eighteenth and early nineteenth centuries, as described by Carl von Clausewitz in his *On War*.[8] With an acceptance of the sovereign's inherent right to wage war, *ad bellum* thinking became, for a while, redundant, thus leaving a space for thinking on what was acceptable behaviour during the course of the wars that sovereigns chose to wage, or *jus in bello*.[9]

The purpose of this article is to bring to the attention of the IHL community, and the wider public, an Irish law dating from 697 AD which, in many ways, anticipated that thinking and, indeed, the thinking behind the

5 See James W. Houlihan, *Adomnán's Lex Innocentium and the Laws of War*, Four Courts Press, Dublin, forthcoming, Chaps 1 and 2, including citation of the sources, for a detailed analysis.

6 Robert Kolb, "Origin of the Twin Terms *Jus ad Bellum/Jus in Bello*", *International Review of the Red Cross*, Vol. 37, No. 320, 1997, p. 1.

7 Richard S. Hartigan, "Saint Augustine on War and Killing: The Problem of the Innocent", *Journal of the History of Ideas*, Vol. 27, No. 2, 1966; P. R. L. Brown, *Religion and Society in the Age of Saint Augustine*, Faber & Faber, New York and London, 1972; F. H. Russell, above note 2, pp. 16–39; Robert A. Markus, "Saint Augustine's Views on the 'Just War'", *Studies in Church* History, Vol. 20, 1983; John Langan, "The Elements of St. Augustine's Just War Theory", *Journal of Religious Ethics*, Vol. 12, No. 1, 1984; John M. Mattox, *Saint Augustine and the Theory of Just War*, Continuum, London, 2006.

8 Carl von Clausewitz, *On War*, trans. J. J. Graham, N. Trübner & Co., London, 1908. For a full treatment tracing the evolution of these ideas, see R. Kolb, above note 6, pp. 1–3; J. W. Houlihan, above note 5, Chap. 1.

9 R. Kolb, above note 6, p. 2.

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Geneva Conventions themselves. Historians of the laws of war are largely unaware of *Lex Innocentium*,[10] but some other historians who have referred to it have compared it to the Geneva Conventions, with one making the observation that "[i]t is thus far from hyperbolic exaggeration to liken *Lex Innocentium*, concerned as it was with the effects rather than with the fact of war, to the Geneva Conventions".[11] Before studying in a little detail this "early Geneva convention" it is necessary, in order to understand its terms and the background in which it operated, to take a brief look at certain aspects of the Irish world of the late seventh century that produced it, and at its author, Adomnán. Its provenance will then be established, including the fact and place of its enactment and the surviving manuscripts containing its terms. The law's core provisions will be considered, from which its *in bello* credentials will be manifest. Some suggestions will then be made, by way of explanation, as to why an *in bello* law emerged, so uniquely, from late seventh-century Ireland. Finally, the position will be summarized and some conclusions will be drawn.

Setting the scene

Ireland was never formally part of the Roman Empire, and this fact alone made it different in many respects from the rest of Western Europe, although it had not been totally isolated.[12] It was a rural society; there were no cities, at least initially. Power structures, both ecclesiastical and secular, also differed from those in continental Europe. By the seventh century, a characteristic of church organization in Ireland was the model based on monastic (broadly defined) institutions.[13] Iona (on the west coast of present-day Scotland), of which Adomnán was abbot from 679 to 704, was founded by St Columba in about 563. By the time of his death, Columba had been responsible for the establishment of a number of monastic foundations both in Ireland and in northern Britain. As a

10 One notable exception is Matthew Strickland, "Rules of War or War without Rules? Some Reflections on Conduct and the Treatment of Non-Combatants in Medieval Transcultural Wars", in Hans-Henning Kortüm (ed.), *Transcultural Wars from the Middle Ages to the 21st Century*, Akademie Verlag, Berlin, 2006, pp. 114–117. Unfortunately Strickland was not aware that the text of *Lex Innocentium* was available.

11 James E. Fraser, "Adomnán and the Morality of War", in Jonathan M. Wooding *et al.* (eds), *Adomnán of Iona: Theologian, Lawmaker, Peacemaker*, Four Courts Press, Dublin, 2010, p. 96. See also Thomas M. Charles-Edwards, *Early Christian Ireland*, Cambridge University Press, Cambridge, 2000, p. 568; Gilbert Márkus (trans.), *Adomnán's 'Law of the Innocents': Cáin Adomnáin*, Kilmartin House Trust, Kilmartin, 2008, p. 8.

12 Elva Johnston, "Literacy and Conversion on Ireland's Roman Frontier: From Emulation to Assimilation?", in Nancy Edwards, Máire Ní Mhaonaigh and Roy Flechner (eds), *Transforming Landscapes of Belief in the Early Medieval Insular World and Beyond: Converting the Isles II*, Brepols, Turnhout, 2017, pp. 35–51.

13 The nature of church organization in early medieval Ireland has been the subject of debate. See Colmán Etchingham, *Church Organisation in Ireland, A.D. 650 to 1000*, Laigin Publications, Naas, 1999; T. M. Charles-Edwards, above note 11, pp. 241–281; Elva Johnston, *Literacy and Identity in Early Medieval Ireland*, Boydell, Woodbridge, 2013, p. 61; Tomás Ó Carragáin, *Churches in Early Medieval Ireland: Architecture, Ritual and Memory*, Yale University Press, New Haven, CT, and London, 2010, pp. 8–10, 215–221.

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consequence, there existed a network of authority and communication linking these monasteries on both sides of the Irish Sea. In his capacity as Abbot of Iona, Adomnán was therefore a powerful and influential figure in late seventh-century Ireland. Indeed, Iona is described as holding "an island-wide, quasi-metropolitan or quasi-archiepiscopal jurisdictional prerogative".[14] Gradually, many of the larger monasteries acquired the characterization of urban settlements. They were economic and population centres, sometimes being the sites of temporary or seasonal markets.[15] When Adomnán came to Birr (not part of the Columban confederation), in the middle of the island of Ireland, to promulgate his law in 697, he came to one such centre.[16]

The fundamental political division and the basis of secular power in seventh-century Ireland was the *tuath*. This term covers both the basic geographical entity – i.e., the block of land – and the people, or kindred, or sept involved.[17] The *tuath* was central to the maintenance of social and genealogical relationships.[18] The laws defined rights and obligations by reference to an individual's or category of individuals' place in the *tuath*. Within the *tuath*, the king ruled and the various lesser members had clearly defined positions in reference to him. There were well over 100 such petty kingdoms.[19] These small, lesser kingdoms were themselves part of a hierarchy of kingdoms comprised of larger *tuatha*, regional and sub-regional kingdoms and provincial kingdoms. There were five provinces, whose boundaries changed from time to time, but which were, in our period in the late seventh century, Ulster (north, but then confined to the northeast), Munster (south), Leinster (east), Connacht (west) and Mide (midlands).[20]

Another unusual feature of seventh-century Ireland was its complex relationship with the Latin language. While there was, presumably, some knowledge of Latin in pre-Christian Ireland, particularly for trade purposes, the introduction of Christianity in the fifth century brought with it not just the language, Latin, but also its literature and intellectual tradition.[21] In fact, writing in Irish, which flourished by the end of the seventh century, was a product of the introduction of the Latin alphabet, although there was a pre-existing limited vernacular literacy, as evidenced by the ogham inscriptions.[22] But writing in Latin

14 C. Etchingham, above note 13, p. 222.
15 T. M. Charles-Edwards, above note 11, pp. 119–121; E. Johnston, above note 13, p. 61.
16 Charles Doherty, "The Monastic Town in Early Medieval Ireland", in Howard Clarke and Anngret Simms (eds), *The Comparative History of Urban Origins in Non-Roman Europe*, BAR, Oxford, 1985.
17 Dáibhí Ó Cróinín, *Early Medieval Ireland, 400–1200*, Longman, Harlow, 1995, pp. 110–111; T. M. Charles-Edwards, above note 11, pp. 102–106; E. Johnston, above note 13, p. 72; Edel Bhreathnach, *Ireland in the Medieval World, AD 400–1000: Landscape, Kingship and Religion*, Four Courts Press, Dublin, 2014, p. 40. See also Chris Wickham, *The Inheritance of Rome: A History of Europe from 400 to 1000*, Allen Lane, London, 2009, p. 164.
18 E. Johnston, above note 13, p. 72.
19 Paul MacCotter, *Medieval Ireland: Territorial, Political and Economic Divisions*, Four Courts Press, Dublin, 2008, pp. 22, 41–44.
20 E. Bhreathnach, above note 17, p. 40.
21 E. Johnston, above note 13, p. 14. See also Dáibhí Ó Cróinín, "Hiberno-Latin Literature to 1169", in D. Ó Cróinín (ed.), *A New History of Ireland*, Vol. 1, Oxford University Press, Oxford, 2005.

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also flourished during the course of the seventh century, as did the intellectual training it necessitated.[23] The result was a high level of scholarship in such subjects as exegesis, grammar and computus.[24] What was different about the Irish was that they learned Latin as a foreign, albeit specifically Christian, language rather than as a spoken form of Latin, gradually evolving into one or another of the Romance languages.[25] This relationship with Latin, it is submitted, was fundamental to, and a major defining factor in, producing the Ireland of the late seventh century, of which the Venerable Bede could write, in a reference to foreign students coming to Ireland for learning,

> *Quos omnes Scotti libentisseme suscipientes, victum et cotidianum sine pretio, libros quoque ad legendum et magisterium gratuitum praebere curabant.* [The Irish welcomed them all gladly, gave them their daily food, and also provided them with books to read and with instruction, without asking for any payment.][26]

It is fair to say, therefore, that the Ireland of the late seventh century was, with regard to learning, relatively advanced in Western European terms.

Irish society in the seventh century was regulated by a long-established, detailed and comprehensive set of laws.[27] These laws covered all the normal concerns of society, except, of course, prior to Adomnán's intervention, laws regulating the conduct of warfare. They constitute what has been described as early medieval Europe's largest corpus of vernacular laws.[28] Usually, fines were stipulated, with the unit of value being a *cumal* (a female slave or three milch cows). Society was hierarchical and inegalitarian.[29] Central to the operation of the legal system was the concept of honour price, a system that placed a value on each category of person within the hierarchy. The king, lord, cleric and poet were of a higher rank and had higher honour prices as a result. Lesser ranks included the freeman and the unfree. Offences against a high-ranking person attracted a

22 E. Johnston, above note 13, pp. 11–12; E. Johnston, (above note 12, pp. 23–46. See also T. M. Charles-Edwards, above note 11, pp. 163–176.
23 E. Johnston, above note 13, pp. 14–15.
24 D. Ó Cróinín, above note 17, p. 211.
25 E. Johnston, above note 13, p. 15; Roger Wright, *Late Latin and Early Romance in Spain and Carolingian France*, Cairns, Liverpool, 1982, pp. 105–118.
26 Bede, *Histiria Ecclesiastica*, Book 3, Chap. 27; D. Ó Cróinín, above note 17, pp. 196–232; T. M. Charles-Edwards, above note 11, pp. 8–9.
27 These tracts are collected in Daniel A. Binchy (ed.), *Corpus Iuris Hibernici*, 6 vols., Dublin Institute of Advanced Studies, Dublin, 1978, and while many are later than the seventh century, it has been argued by Liam Breatnach that the core of the collection of tracts, known as the Senchas Már, had reached written form by the second half of the seventh century: see Liam Breatnach, *The Early Irish Law Text Senchas Már and the Question of its Date*, E. G. Quiggin Memorial Lectures, No. 13, Department of Anglo-Saxon, Norse and Celtic, University of Cambridge, 2011. For a list of texts, see Donnchadh Ó Corráin (ed.), *Clavis Litterarum Hibernensium: Medieval Irish Books and Texts (c. 400–c. 1600)*, Vol. 2, Brepols, Turnhout, 2017, pp. 863–924.
28 Roy Flechner (ed.), *A Study, Edition and Translation of the Hibernensis, with Commentary*, Dublin, forthcoming, Chap. 1.
29 See Fergus Kelly, *A Guide to Early Irish Law*, Dublin Institute of Advanced Studies, Dublin, 1988, pp. 7–11, for a concise summary of rank and honour price in *cumals* in early Irish society, including citation of the original sources.

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higher penalty for the same offence than against a person of lower rank. Dependants, including a man's wife, son or daughter, normally had an honour price of half the man's honour price; they did not have an honour price in their own right. The exception to this was the position of children under seven – *Bretha Crólige*, an Old Irish legal text, reads: "The son of a king and the son of a commoner have the same honour-price up to seven years."[30] An unusual level of protection was therefore accorded to very young children. The oath of a person of high rank automatically outweighed that of a person of lower rank, and evidence from a female was not acceptable, except in exceptional circumstances.[31] Adomnán, as we shall see, took on this deeply entrenched system in his *Lex Innocentium* and provided protection to a new category of person, the innocent or non-combatant, regardless of rank. It is therefore important to always remember that, in the early Irish society confronted by Adomnán, some people were more valuable than others. As well as gaps and deficiencies in the protection provided to some women and children, there was no specific provision for them as non-combatants *per se*.

Apart from the law contained in the law texts, there was a second type of law known as *cáin* law. This was enacted law as distinct from customary law.[32] The *cáin* originated from the laws enacted at the *óenach* (fair) by the king for his *tuath*. These laws sometimes applied to an entire province and occasionally to all of Ireland and those parts of Britain under Irish influence. *Lex Innocentium* was expressly enjoined upon "the men of Ireland and Britain",[33] and, as we shall see, recognized non-combatant status and filled the lacunae in vernacular law.

Any outline of the nature of Irish society in the late seventh century must include a recognition that it was a violent society. What might be considered low-level violence, in medieval terms, was endemic.[34] It is very difficult to say whether Irish society was more or less violent than contemporary neighbouring societies. The lack of a central authority in Ireland to compel observance with the law is sometimes seen as a source of violence because petty kings were required to take it upon themselves to ensure that the terms of judgments were implemented and act as enforcing sureties on behalf of clients (usually their freemen or lesser kings), thus leading to raiding, feuding and low-level warfare. An analysis of the chronicles for the 100-year period up to and including 697 reveals a recording of 187 acts of violence including killings, battles, sieges, burnings, laying waste, storming, slaughters, engagements and skirmishes.[35] On the other hand, the system of local legal enforcement was not unique to Ireland, and not entirely a source of disorder and violence. In Francia, as in every early medieval kingdom,

30 D. A. Binchy, above note 27, 923.3–4.
31 F. Kelly, above note 29, p. 207.
32 D. Ó Cróinín, above note 17, pp. 78–84; T. M. Charles-Edwards, above note 11, pp. 559–569; Thomas M. Charles-Edwards, "Early Irish Law", in Dáibhí Ó Cróinín (ed.), *A New History of Ireland*, Vol. 1, Oxford University Press, Oxford, 2005, pp. 334–337.
33 *Lex Innocentium*, para. 28.
34 E. Bhreathnach, above note 17, p. 122.
35 This figure is extracted from Thomas M. Charles-Edwards (ed. and trans.), *The Chronicle of Ireland*, Vol. 1, Liverpool University Press, Liverpool, 2006.

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the ruler exercised authority over a limited range of issues.[36] Most were settled locally by violent action or the threat of it. In fact violence, as a self-regulating system, could have positive rather than negative effects on social order.[37] This has been referred to as "the law of self help."[38] It is important to understand that there were no standing armies, and that all adult laymen (*laici*) in seventh-century Ireland were entitled and obliged to take up arms and "may be viewed as potential soldiers",[39] or as one historian put it, "it would have been as difficult a prospect for Adomnán as for us to identify a civilian or non-combatant element among them".[40] Their involvement would include participation in all levels of violence, from that connected with the collection of a debt right up to that involved in an expansionary expedition or the repelling of an invader. The point at which lower-level violence became "warfare" was never defined. There was no need for such a definition, and, as will become clear, because of the nature of violence and warfare in his society, Adomnán intended his law to apply in all circumstances. This state of affairs would have been known to all members of seventh-century Irish society and would not have required specific mention in the law. Clearly the frequency of this type of violence was a concern, and it was imperative to regulate it, on an agreed basis among participants, and to lay down accepted parameters such as the non-involvement of non-combatants.

This, then, is the context in which Adomnán introduced his law – but what of Adomnán himself? As we have seen, he was Abbot of Iona, ninth in succession to Iona's founder Columba. He was head of a powerful and influential confederation of monasteries. Furthermore, he belonged to the same Uí Néill sept as Loingsech mac Óengusso – who became King of Tara and, as such, the leading claimant to the kingship of Ireland, in 695 – and clearly had close links with him.[41]

The work for which Adomnán is best known today is *Vita Columbae*, his "Life of Columba", not only for what it tells us about Columba, but also as one of the most valuable sources for the study of early medieval Ireland generally. It has been and continues to be an inexhaustible quarry from which historians draw nuggets of valuable information, not least about Adomnán himself and his mindset. It is of particular interest to note that Adomnán devotes four of his chapters to stories about Columba's involvement with miscreants who have offended against "innocents" and in which he adopts an unusually harsh and

36 Paul Fouracre, "Attitudes towards Violence in Seventh- and Eighth-Century Francia", in Guy Halsall (ed.), *Violence and Society in the Early Medieval West*, Boydell, Woodbridge, 1998, p. 71; T. M. Charles-Edwards, "Early Irish Law", above note 32, p. 368.

37 P. Fouracre, above note 36, p. 71; Warren C. Brown, *Violence in Medieval Europe*, Pearson, Harlow, 2011, pp. 16–17, 57–58.

38 T. M. Charles-Edwards, "Early Irish Law", above note 32, p. 341. See also Thomas M. Charles-Edwards, *Early Irish and Welsh Kinship*, Clarendon, Oxford, 1993, pp. 259–261, 265, 272–273.

39 Máirín Ní Dhonnchadha, "The *Lex Innocentium:* Adomnán's Law for Women, Clerics and Youths, 697 AD", in Mary O'Dowd and Sabine Wichert (eds), *Chattel, Servant or Citizen: Women's Status in Church, State and Society*, Institute of Irish Studies, Belfast, 1995, p. 59.

40 J. E. Fraser, above note 11, p. 95. See also Thomas M. Charles-Edwards, "Irish Warfare before 1100", in Thomas Bartlett and Keith Jeffery (eds), *A Military History of Ireland*, Cambridge University Press, Cambridge, 1996, p. 26.

41 See J. M. Wooding *et al.* (eds), above note 11, for a modern assessment.

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vehement tone.[42] What did Adomnán mean by the term "innocents"? It is clear from a reading of the relevant chapters that he meant people in society who do not bear arms. Chapter II.25 is headed "Again Concerning Another Persecutor of Innocents". This chapter concerns the slaying of a young girl by "a cruel man, a pitiless persecutor of innocent folk".[43] The immediately preceding chapters relate to violence against men who have undergone sacramental penance and, as such, would have been under the protection of the church and would not bear arms.[44] As will be clear from paragraph 34 of *Lex Innocentium*, Adomnán included these men in his definition of innocents. The word *innocentia* derives from *innoc(u)us* or *innoce(n)s*, in English "innocuous", not capable of causing harm.[45] When juxtaposed against the remainder of society, men of full age who were expected to bear arms, the terms "innocents" and "non-combatants" were, in Adomnán's time, synonymous.

Unfortunately, sources tell us nothing of the violence towards innocents that occurred in the years leading up to 697. The chronicles are silent as to the killing of innocents in the many violent incidents that are mentioned. Given human propensities, it is unlikely that there were none. It is more likely that the chronicles did not record such incidents because they were outside their scope and/or contrary to their desired style.[46] Furthermore, it is extremely unlikely that Adomnán would have initiated a law for the protection of innocents if there was no need. As with so much of early medieval history, there are large and frustrating gaps in our information.[47]

It is likely that Adomnán did not complete the writing of *Vita Columbae* until after his return to Iona from Birr in the summer of 697. At that time the Irish annals were being compiled in Iona and scholars consider that Adomnán, as Abbot of Iona, would have had an input into their content and, indeed, into the description of his law in the annals, as *Lex Innocentium*.[48] Compared to the absence of references to non-combatants in the other sources referred to above, Adomnán's explicitly articulated awareness is remarkable.

Provenance

Historians know of the enactment of the Law of Innocents from an entry in the *Annals of Ulster* for the year 697:

42 *Vita Columbae*, Chaps II.22–25. See Richard Sharpe, *Adomnán of Iona: Life of St Columba*, Penguin, London, 1995.
43 *Vita Columbae*, Chap. II.25.
44 J. E. Fraser, above note 11, p. 98.
45 Máirín Ní Donnchadha, "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, Dublin, 2001, p. 17.
46 See Roy Flechner, "The Chronicle of Ireland: Then and Now", *Early Medieval Europe*, Vol. 21, No. 4, 2003, p. 432.
47 J. W. Houlihan, above note 5, Chap. 3.
48 Kathleen Hughes, *Early Christian Ireland: Introduction to the Sources*, The Sources of History: Studies in the Uses of Historical Evidence, Sources of History Ltd, London, 1972, p. 118.

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> *Adomnanus ad Hiberniam pergit et dedit Legem Innocentium populis.* [Adomnán proceeded to Ireland and gave the *Lex Innocentium* to the peoples.][49]

The law came to be known as *Cáin Adomnáin*, but it was first referred to as *Lex Innocentium*, the Law of the Innocents, a term that is found in the earliest contemporary annal reference, the *Annals of Ulster*. The text of the law is known from two surviving manuscripts: a fifteenth/sixteenth-century manuscript in the Bodleian Library, Oxford (Rawlinson MS. B 512, pp. 48–51), and a copy made by Míchéal Ó Cléirigh in 1627, now held in the Bibliotheque Royale, Brussels (O'Clery MS. 2324-40, pp. 76–85).[50] Both copies can be traced to the same exemplar, a now lost dossier known as the "Old Book of Raphoe", which itself cannot date from before the late tenth or early eleventh centuries, at a considerable remove from Adomnán's own time. The text of the law, as we now have it, is a compilation consisting of a number of layers that were added from time to time over a period of 300 years, from the seventh to the late tenth or early eleventh century.[51] Kuno Meyer, when he first edited and translated the text, divided it into paragraphs, numbered 1 to 53. All subsequent editions by modern scholars adopt the same paragraphing. All scholars are agreed that the first twenty-seven paragraphs date from about 1000 AD. While the bulk of the remaining paragraphs are written in Old Irish, 1–27 are written in Middle Irish. Paragraphs 28–32, 33 and 50–53 are considered to be discrete strata, with some scholarly debate as to their respective dating. This leaves paragraphs 34–49 as representing the core of the law, as drafted by Adomnán in 697, that is the subject of this article.[52]

Before examining these sections in detail, the exceptional list contained in paragraph 28 of the law merits our consideration. It is a list of ninety-one names of those who are stated to have guaranteed the law, forty clerical leaders and fifty-one lay. Included are all the primary ecclesiastical leaders, headed by the sage-bishop of Armagh, and lay leaders, headed by Loingsech mac Óengusso, described as King of Ireland, followed by the kings of the provinces and all the main sub-kings. Amongst the lay guarantors giving support to the claims of extra-territorial jurisdiction are Euchu úa Domnaill, identified as King of Scottish Dál Riada,[53] and Bruide mac Derilei, King of the Picts (Cruithentúath).[54] It is in paragraph 28 also that we learn that the place of enactment was Birr. It can be concluded that this

49 Seán Mac Airt and Gearóid Mac Niocaill (eds and trans.), *The Annals of Ulster*, Dublin Institute of Advanced Studies, Dublin, 1983 (s.a. 697).

50 For copies of the texts, see Kuno Meyer (ed. and trans.), *Cáin Adamnáin: An Old Irish Treatise on the Law of Adamnán*, Clarendon, Oxford, 1905; Máirín Ní Dhonnchadha (trans.), "The Law of Adomnán: A Translation", in Thomas O'Loughlin (ed.), *Adomnán at Birr AD 697: Essays in Commemoration of the Law of the Innocents*, Four Courts Press, Dublin, 2001, pp. 53–68; Pádraig P. Ó Néill and David N. Dumville (eds and trans.), *Cáin Adomnáin and Canones Adomnani II*, Department of Anglo-Saxon, Norse and Celtic, University of Cambridge, 2003; G. Márkus (trans.), above note 11, pp. 10–25.

51 M. Ní Donnchadha, above note 45, p. 16; G. Márkus (trans.), above note 11, p. 2.

52 J. W. Houlihan, above note 5, Chap. 5.

53 Máirín Ní Dhonnchadha, "The Guarantor-List of *Cáin Adomnáin*, 697", *Peritia*, Vol. 1, 1982, p. 212.

54 *Ibid.*, p. 214.

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paragraph dates from sometime between 722 and the end of the century, but is based on a list of names contemporary with the meeting in Birr in 697.[55]

The core text

In paragraphs 34–49 of the law, what Thomas Charles-Edwards calls "the sober legal text of the original edict"[56] is immediately evident. The language used and the tightly drawn legal phraseology mark these paragraphs out from the others. The law is stated in sixteen precise sections (in the modern legal sense of the term as applied to a section of an act). For instance, the term *forus cána*, or a derivation of it, meaning "the enactment of the law", is used in five of the paragraphs to tell the reader the content of the law.[57] This direct terminology is not used in any of the other strata of the text. In its language, the approach taken is what would be referred to today as a no-nonsense approach. We do not know the procedure followed in Birr in 697. It is likely that these paragraphs were read out to the assembly from a platform, erected in a suitable location outside the curtilage of the monastery.[58] This would be the only means by which the contents could be made known to those attending. It has been suggested that even by 697, there was in existence, as standard, an approved form and technical vocabulary.[59] It is reasonable, therefore, to conclude that a written document containing the provisions of the law was produced in Birr, and that a list was made of the names of those who were its guarantors.[60]

> 34.
> This is the enactment of the Law of Adomnán in Ireland and in Britain: the immunity of the church of God with her *familia* and her insignia and her sanctuaries and all the property, animate and inanimate, and her law-abiding laymen, with their legitimate spouses who abide by the will of Adomnán and a proper wise and holy confessor. The enactment of this Law of Adomnán enjoins a perpetual law for clerics, and females, and innocent youths until they are capable of killing a person, and of taking their place in the *túath*, and until their drove be known.[61]

55 See *ibid.*, pp. 178–221.
56 T. M. Charles-Edwards, "Early Irish Law", above note 32, p. 337.
57 Paragraphs 34, 36, 39, 41 and 48. See T. M. Charles-Edwards, above note 11, p. 562, n. 134.
58 It is thought that the ruined church in Church Lane, Birr, is the location of the early monastery. See Caimin O'Brien, *Stories from a Sacred Landscape: Croghan Hill to Clonmacnoise*, Offaly County Council, Offaly, 2006, p. 73.
59 T. M. Charles-Edwards, "Early Irish Law", above note 32, p. 336, n. 28.
60 A beautifully scripted and decorated manuscript, bound in leather and written on vellum, containing the terms of the law, is housed in Birr public library and is available for public viewing. It was made by a local artist, Margaret Maher, under the tutelage of calligrapher, Timothy O'Neill, on the occasion of the 1,300th anniversary of the promulgation of *Cáin Adomnáin* in 1997 and was intended to replicate, as far as possible, how a written manuscript of the law would have looked in 697.
61 M. Ní Dhonnchadha (trans.), above note 50, p. 62.

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Before specifying crimes and penalties, paragraph 34 sets out the objective of the law. It is to provide immunity from violence for stated classes of persons, namely clerics, females, and innocent youths until they reach manhood,[62] along with lay people, presumably penitents,[63] who are subject to a confessor, and church property. All of these categories would have been recognizable as non-combatants or innocents because they do not bear arms. Clearly, church property also requires protection, the unarmed clerics not being in a position to defend it.[64] This paragraph explains and, indeed, defines the meaning of the term *Lex Innocentium* used in the annals. For anybody asking, either today or thirteen centuries ago, what was the Law of the Innocents, this is the answer, provided in this opening paragraph of its legal text. This is its view of itself. It purported to be, and saw itself as, a law for the protection of non-combatants, and it contains, it would appear, the first legislative definition of what today is referred to as a "non-combatant" and was then called an "innocent". This, in essence, is its link to modern IHL, which also seeks to protect the non-combatant in times of conflict. A modern statute, incidentally, is drafted in much the same way, usually by providing a preliminary paragraph or preamble indicating the intention of the legislation. This paragraph also stipulates the territorial jurisdiction of the law, Ireland and Britain. Presumably, by "Britain", the text refers only to those parts of the island of Britain over which Iona had influence.[65]

It is worth examining a little further the final part of this paragraph relating to innocent youths. Clearly it is stipulating the point at which young men cease to be innocents. It is when they are capable of killing a person and taking their place in the *tuath*. On leaving the category of "innocents", they automatically become combatants; there is no other status available to them, unless they become clerics or penitents. The above translation of the final words "and until their drove be known" differs from that used by Meyer, which reads "and their (first) expedition is known";[66] by Márkus', "and till their first armed conflict is known";[67] and by Ó Néill/Dumville, "and until their (first) expedition is made public".[68] This, then, is the distinction between innocent and combatant.

> 35.
> Whoever wounds and kills a clerical student or an innocent youth in transgression of the Law of Adomnán, eight *cumals* and eight years of penance for it for every hand involved, up to three hundred, one *cumal* and one year of penance for it for each one from three hundred to a thousand,

62 "For-tá forus inna Cána-sae Adomnáin bithcáin for clérchu ocus banscála ocus maccu encu co-mbat ingníma fri guin duine ocus co-mbat inbuithi fri tuaith ocus con-festar a n-immérgi." See P. P. Ó Néill and D. N. Dumville (eds and trans.), above note 50, p. 37.
63 For Adomnán's inclusion of penitents among his innocents, see J. E. Fraser, above note 11, p. 98.
64 Máirín Ní Dhonnchadha (ed. and trans.), "An Edition of *Cáin Adomnáin*", unpublished PhD thesis, University College, Cork, 1992, p. 24.
65 See Michael Richter, *Ireland and Her Neighbours in the Seventh Century*, Four Courts Press, Dublin, 1999, pp. 48–108; M. Ní Dhonnchadha, above note 39, p. 58.
66 K. Meyer (ed. and trans.), above note 50, p. 25.
67 G. Márkus (trans.), above note 11, p. 20.
68 P. P. Ó Néill and D. N. Dumville (eds and trans.), above note 50, p. 36.

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> and it is the same fine for the one who commits it and the one who sees it and does not prevent it to the best of his ability. If there be inadvertence or ignorance, half-fine for it, and there shall be an oath-equivalent that it is inadvertence and ignorance.[69]

Paragraph 35 goes on to stipulate penalties for offences committed against two of the categories indicated in 34, clerical students and youths.[70] These penalties are designed to fill the lacunae in the protection offered by existing law. For instance, the vulnerable position of children between the age of 7 and manhood is dramatically improved by prescribing an eight-*cumal* penalty for their killing. It is of particular interest that the law covers violence carried out not only by individuals but also by large numbers of people, making specific provision for armies of up to 300 men and of between 300 and 1,000. It is suggested that the involvement of such numbers of people, having regard to the population and nature of battle in our period, clearly constitutes warfare.[71] We are left in no doubt that *Lex Innocentium* was an *in bello* law. It was not, of course, an exclusively *in bello* law; nor, indeed, was the body of laws that emerged from the Peace of God councils. Both sought to provide protection to innocents arising from violence, in all circumstances, including in the course of what today would be called military operations. Paragraph 35 goes on to anticipate and provide for onlooker's liability by stipulating an increased penalty for a defaulting onlooker, over and above the sanction imposed under vernacular law. It is interesting to note that vernacular law exempted certain categories of person from the obligation to intervene – i.e., "clerics and women and boys and those who are not able to wound or protect or forbid and senseless persons and senile persons".[72] These people were unarmed and therefore unable to intervene; they were innocents. All others were presumed to be armed and capable of intervening; they were combatants.[73]

Paragraph 36 fulfils the objective in paragraph 34 to provide protection for the church and churches. The next three paragraphs might be loosely called enabling clauses – essentially, they are procedural and facilitate the operation of the law, dealing with such matters as judges, pledges and sureties.[74] Paragraph 40 clarifies who is to be entitled to the fines in the cases of clerics and youths.

69 M. Ní Dhonnchadha (trans.), above note 50, pp. 62–63.
70 It should be noted that Ní Dhonnchadha's translation reads "wounds and kills", whereas Meyer, Márkus and Ó Néill/Dumville all read "wounds or slays (kills)". Ní Dhonnchadha explains her wording by pointing out that the penalties refer to death, not to injury (above note 64, p. 214). The text in Old Irish reads "Nech gonus ocus marbus…". It is easier to make sense of the provision following Ní Dhonnchadha.
71 See Guy Halsall, *Warfare and Society in the Barbarian West, 450–900*, Routledge, Abingdon, 2003, pp. 119–133, for a discussion on the size of armies in this period.
72 F. Kelly, above note 29, p. 353.
73 For a detailed discussion of the relevant vernacular Irish text, see J. W. Houlihan, above note 5, Chap. 3.
74 See *ibid.*, Chap. 5, for further details.

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41.
The enactment of the Law enjoins that payment in full fines is to be made for every woman that has been killed, whether a human had a part in it, or animals or dogs or fire or a ditch or a building. For in *cáin*-law every construction is to be paid for, including ditch and pit and bridge and hearth and step and pool and kiln and every hardship besides, if a woman should die on account of it. But one-third is remitted for fore-maintenance if it be a senseless person that die on account of it. Of the other two-thirds, one-third belongs to whomsoever is entitled to it.

42.
Whatever violent death a woman die, excepting that which results from an act of God or proper lawful union, it is to be paid for in full fines to Adomnán, including slaying and drowning and burning and poison and crushing and submerging and wounding by domesticated animals, and pigs and cattle. If it be the first crime on the part of the cattle, or the pigs, or the dogs, they are to be killed at once and half-due of the human hand for it. If it be not the first crime, payment is made in full fines.[75]

Paragraphs 41 and 42 deal with violent deaths of women and address the commitment given in paragraph 34 to legislate for their protection. Paragraph 41 appears to be concerned with the killing of women inadvertently.[76] In both paragraphs the payment of "full fines" is stipulated for the killing of a woman – that is, the full seven *cumals* fine. There appears to be some doubt as to whether the *éraic*, the fixed penalty under vernacular law of seven *cumals* for the killing of a freeman, regardless of rank,[77] was payable for the killing of a woman.[78] One way or the other, the introduction of a seven-*cumal* fine by Adomnán was a major step in the provision of protection for women.[79] It is also of the utmost significance that under the terms of paragraph 42, this fine in its entirety was to be payable to Adomnán, thus bringing women's welfare, in a special way, under his protection. By virtue of this revolutionary provision, women are given protection in their own right rather than as a wife or daughter linked to a male's honour price. They are now to have at least equal status with men in terms of the value of their lives under the law.

The struggle to change attitudes, as we know from similar struggles in the modern world, must have been immense, and is reflected in the Middle Irish preface

75 M. Ní Dhonnchadha (trans.), above note 50, pp. 64–65, for both paragraphs 41 and 42.
76 There may be some question about this. While eDIL (the electronic Dictionary of the Irish Language) would suggest that the word used in the text, *ro-marbthar*, would translate as "has been slain", and this is followed by both Meyer and Ó Néill/Dumville, Ní Dhonnchadha prefers "has been killed" (above note 64, p. 230), as does Márkus, thus enabling a distinction to be made between paragraphs 41 and 42.
77 F. Kelly, above note 29, p. 126.
78 M. Ní Dhonnchadha, above note 45, p. 22. Payment of the *éraic* for the killing of women is mentioned in the law tracts: see, for instance, F. Kelly, above note 29, pp. 78, n. 79, 134, n. 71.
79 If it was already payable, this new fine would be in addition.

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to the text.[80] In paragraph 42, "Adomnán envisioned a panoply of horrors arising from war",[81] which are listed out in detail. These provisions were, of course, designed to provide protection for women from violence in all circumstances including in warfare, but not confined to it. The detailed listing of types of violence is required, it is suggested, to pre-empt possible excuses or defences. It is noteworthy that no provision is made in paragraph 42 for deaths caused by large numbers of people, as was done for clerics and youths in paragraph 35. In view of Adomnán's obvious concern for women, it is unlikely that this was omitted by design. Did the provisions of 35 carry over into 42? We have no idea today as to whether each paragraph would have to stand on its own merits. These questions can be asked; it is unlikely that they can be answered. While it is a little confusing that Adomnán deals with deaths caused by dangerous domestic animals in 42 rather than 41, it is interesting to note that he makes the same distinction between animals which attack for the first time and those that have exhibited a prior "vicious propensity" as was made in modern Irish law of dogs up to recent times.[82] Though paragraph 41 appears to be concerned with the inadvertent killing of women only and is therefore somewhat marginal for us, it does illustrate Adomnán's attitudes. It is remarkable that he is concerned with "the workplaces of women, and of servile women in particular".[83] It is most noteworthy that Adomnán stipulates that the full fine will not be paid to him in the case of the death of a senseless woman and directs that one third of it should go to those who have cared for her in life and one third to whoever would be entitled under the law (as distinct from Adomnán's law). Apart from compassion, this illustrates Adomnán's concern not to undermine the position of the mentally ill in society and of those who care for them.

Paragraph 43 refers to two concepts found in vernacular early Irish law. The first is what would today be called counterclaiming, and the second could be called, in modern parlance, agency fees.

> 44.
> One eighth of everything small and large to the *familia* of Adomnán for the wounding of clerics and innocent youths. If it be a non-mortal wound that anyone inflict on a woman or a cleric or an innocent youth, half seven *cumals* from him, fifteen *séts* from [related] *fine* (kindred) and unrelated *fine* for their accompliceship. Three *séts* for every white blow, five *séts* for every spilling of blood, seven *séts* for every wound requiring a staunch, a *cumal* for every injury requiring attendance and the leech's fee besides. It amounts to half of the fines for murdering someone if it be more serious than that. If it

80 Paragraphs 16–27. For an English translation of these paragraphs, see G. Markús (trans.), above note 11, pp. 12–16.
81 J. E. Fraser, above note 11, p. 95.
82 Up to the enactment of the Control of Dogs Act in 1986, common law provided no compensation for a person injured by a dog unless the animal had demonstrated a propensity for viciousness on some prior occasion. See Robert Francis Vere Heuston, *Salmond on the Law of Torts*, 13th ed., Sweet and Maxwell, London, 1961, pp. 607–608.
83 M. Ní Dhonnchadha (ed. and trans.), above note 64, p. 230.

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> be a blow with the palm or the fist, an ounce of silver for it. If it be a livid or red mark or a swelling, six *scripuli* and one ounce [of silver] for it. Women's hair-fights, five wethers for it. If it be woman-combat with degradation, three wethers for it.[84]

Paragraph 44 is notable in that it again, like paragraph 34, pulls together the three main categories of innocents, women, clerics and youths, and sets out the penalties that are to be imposed on anyone who uses violence towards them resulting in a variety of injuries short of death. It appears that the general principle for these offences is that one eighth of the stipulated fine is added on to cover Adomnán's collection fee, thus ensuring that the injured party enjoys the maximum compensation.[85] The fines are carefully graded according to the gravity of the injury, from the minor offence of a white blow, which leaves no mark, to a serious injury requiring the attendance of a physician, and on to more serious injuries which attract fines amounting to half the fines for murder.[86] While many of these offences appear to be domestic in nature, they were envisaged as equally arising in the course of inter-sept conflict, all of which septs had subscribed to the law and had agreed to be answerable to Adomnán and his community for breaches.

> 45.
> Men and women are equally liable, then, for all fines small and large from this up to woman-combat, except [where it results in] outright death. For this is the death that a woman deserves for her killing of a man or a woman, or for ministering poison from which one dies, or for arson, or for digging beneath a church, to wit, to be put in a boat of one paddle at a sea-marking out at sea, to [see if she will] go ashore with the winds. Judgement on her in that regard [belongs] with God.[87]

Paragraph 45 continues the theme of crimes committed by women and makes a significant concession to them in respect of penalty for some serious crimes which would, if committed by a man, warrant the death penalty. These crimes include the killing of a man or a woman by a woman, murder by poisoning, arson and undermining the structure of a church. For lesser crimes, men and women are to be liable for the same penalties. It has been suggested that the

84 M. Ní Dhonnchadha (trans.), above note 50, p. 65.

85 M. Ní Dhonnchadha, above note 45, p. 27. It should be noted that Ní Dhonnchadha's translation reads "for the wounding" and she is followed by Ó Néill/Dumville (above note 50, p. 44), whereas Meyer translates as "slaying" (above note 50, p. 29), as does Márkus (above note 11, p. 22). The sentence in the text reads "Ochtmath caich bicc ocus caich móir do muntir Adomnán di guin clérech ocus mac n-ennac" (P. P. Ó Néill and D. N. Dumville (eds and trans.), above note 50, p. 45). From the point of view of making sense of the paragraph, "slaying" seems correct on the basis that "wounding" is covered for women, clerics and children in the second sentence and it is already clear that the entire fine and not one eighth is payable to Adomnán (paragraphs 41 and 42) for the killing of women, hence their exclusion from the first sentence. See F. Kelly, above note 29, pp. 131–133, for wounding generally.

86 On the penalty of three *séts*, see Neil McLeod, *"Di Ércib Fola"*, *Ériu*, Vol. 52, 2002, p. 127.

87 M. Ní Dhonnchadha (trans.), above note 50, p. 66.

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equivalent of a death penalty for digging under a church must imply a seriously criminal objective,[88] or perhaps it reflected the sacrilege involved. Rather than the death penalty, the offending woman should be put in a boat with only one paddle and be towed out to sea for a mile or so,[89] and be set adrift, at the mercy of the winds. (The text says that she is to be provided with a pot of gruel.[90]) God's judgement will determine her ultimate fate, not man.[91] This is a remarkable concession by Adomnán, surely reflecting some view on his part regarding an inherent difference in women's relationship with violence relative to men's.[92]

Paragraphs 46 and 47 deal with secret killing, which in early medieval times was viewed as being more serious than open killing. The next two paragraphs, 48 and 49, are, like 37, 38 and 39, procedural in nature. They do not contain substantive laws but rather detail a practical aspect of the process of levying and collecting the fines. Once again Adomnán is at pains to clarify the finer details of the workings of his law and so to avoid any misunderstandings that might undermine its effectiveness.

Why Ireland – why 697?

One might wonder why a law such as this emerged, quite uniquely, from Ireland in the late seventh century. There were many factors present in Irish society of that time, some unique to Ireland, which, taken together, facilitated and encouraged the making of an *in bello* law.[93] Clearly, there was an obvious need for such a law – otherwise Adomnán would not have drafted it and would not have gone to such pains to win acceptance for it. Furthermore, at that specific time, there was a fortuitous confluence of ecclesiastical and lay power in the persons of Adomnán and his kinsman Loingsech, King of Ireland. The enabling infrastructure was there in the form of a monastic confederation with an existing nationwide organization, and an established and widely accepted legal system. The latter accepted the inevitability of violence and adopted it into its enforcement system through the "law of self help". Two other factors merit further consideration.

Ireland was, broadly speaking, free from the threat of invasion from outside. This was not the case elsewhere. From Greek and Roman times there was always an "enemy at the gate", and this was deeply ingrained in the psyche of many societies, whether those enemies were barbarians, non-Christians or

88 M. Ní Dhonnchadha (ed. and trans.), above note 64, pp. 239–240.
89 *Ibid*., pp. 240–241; G. Márkus (trans.), above note 11, p. 23, n. 45.
90 This is inadvertently omitted from Ní Dhonnchadha's translation. It is included in G. Márkus (trans.), above note 11, p. 23; and P. P. Ó Néill and D. N. Dumville (eds and trans.), above note 50, p. 44.
91 M. Ní Dhonnchadha (ed. and trans.), above note 64, p. 243; and see F. Kelly, above note 29, pp. 219–221, on setting adrift generally.
92 See M. Ní Dhonnchadha, above note 45, pp. 28–31, for a discussion of Adomnán's attitude to women. For women-specific provisions in IHL, see Françoise Krill, "The Protection of Women in International Humanitarian Law", *International Review of the Red Cross*, Vol. 25, No. 249, 1985, available at: https://international-review.icrc.org/articles/protection-women-international-humanitarian-law.
93 See J. W. Houlihan, above note 5, Chap. 7, for a detailed analysis.

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heretics.[94] In Adomnán's own time, Visigothic Spain was under threat from the forces of Islam and due to collapse in 711.[95] No one questioned the justness of the cause in wars against these "other" peoples. *Jus ad bellum* considerations applied to the exclusion of *jus in bello*. It is of considerable interest to note that the Peace of God movement in Francia emerged at a time when, briefly, the warrior class was freed from a preoccupation with any perceived threat from outside.[96] Such violence as existed was among themselves, and non-combatants were suffering. This demanded *in bello* legislation and, because of the absence of external threat, society had the space to address it. It is clear, therefore, that external threat did not produce conditions conducive to *in bello* law-making, whereas conditions in late seventh-century Ireland, as in late tenth-century Francia, where there was no "enemy at the gates", did.

In a society where "honourable warfare" was acceptable,[97] and each king was entitled, as of right, to initiate it, it is not surprising that markers would be laid down as to how it should be conducted. One is reminded of the conditions that emerged in eighteenth- and nineteenth-century Europe, the period of *raison d'état*, where it came to be considered legitimate for the sovereign to wage war, almost as an extension of diplomacy, by virtue of his or her sovereignty.[98] This rendered redundant the concept of *jus ad bellum*, and allowed *jus in bello* to be developed. Seventh-century Ireland was similar, to the extent that the right of a king to attack his neighbour could not be challenged, thus allowing and encouraging the adoption of a *jus in bello*. Again, this is the prism through which *Lex Innocentium* must be viewed: a coming together of the leaders of a society to make distinctions between what was justified and not justified, and to lay down ground rules for the conducting of violent interactions between themselves – interactions which all of them, without exception, knew would continue. In contrast to some societies, there was little expectation or reliance on a king's peace being imposed from above.[99] In fact, that expectation would inhibit a society from coming together to enact a law such as *Lex Innocentium* because the hoped-for king's peace would render it unnecessary.[100]

These and many other factors combined to make seventh-century Irish society fertile ground for a *jus in bello*. As always however, these factors are not, in themselves, a sufficient explanation, without the active intervention of an individual. "Cometh the hour, cometh the man" is as apt a truism in our search for an explanation of *Lex Innocentium* as in any other historical study that might come to mind. It is probable that there were factors in the 1860s that would have

94 W. C. Brown, above note 37, p. 20; C. Wickham, above note 17, p. 43.
95 C. Wickham, above note 17, pp. 139–149.
96 T. Head and R. Landes, above note 3, p. 10.
97 Richard Sharpe, "Hiberno-Latin *Laicus*, Irish *Láech* and the Devil's Men", *Ériu*, Vol. 30, 1979, p. 86.
98 R. Kolb, above note 6, p. 2.
99 See, for instance, Warren C. Brown, "Charlemagne, God, and the License to Kill", in W. C. Brown, above note 37, pp. 69–96.
100 *Ibid*., p. 71. Brown argues that Charlemagne "made new claims about the power of central authority to regulate the use of violence" which countered the "far older norms that were still well entrenched among the Franks, namely the norms surrounding the personal right to violence and violent vengeance".

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helped in the formation of what became the International Committee of the Red Cross, but a historian of those events would be aware that the decisive factor was the initiative taken by Henry Dunant following his experience of the aftermath of the battle of Solferino in 1859. Similarly, a scholar of *Lex Innocentium*, and the jurisprudence of warfare in general, seeking an explanation for the emergence of a *jus in bello* from late seventh-century Ireland will see as the primary answer Adomnán and his intervention in Irish affairs in 697. Whether he acted, like Dunant, in response to a traumatic personal experience cannot be known for certain, although this is suggested in a number of Middle Irish sources.[101] The prologue to *Lex Innocentium* and, in particular, paragraphs 6–15 explain the circumstances which impelled Adomnán to introduce his law.[102] Adomnán and his mother Rónnat are described as arriving at the aftermath of a battle in Brega, in present-day County Meath, where scenes of the most awful violence are encountered.

> Of all they saw on the battlefield, they saw nothing which they found more touching or more wretched than the head of a woman lying in one place and her body in another, and her infant on the breast of her corpse. There was a stream of milk on one of its cheeks and a stream of blood on the other cheek.[103]

Historians have speculated that these oft-repeated tropes reflect a tradition, which had gained currency by the tenth century, that Adomnán had had a personal experience which inspired him to introduce his law[104] – that he had had a "Solferino moment".[105] It is reasonable to conjecture that only a significant shock resulting from a first-hand personal encounter, similar to that experienced by Dunant, would be sufficient, firstly, to instil in Adomnán his singular awareness of innocents and, secondly, to motivate him to undertake the exceedingly onerous task of their protection. For Adomnán to be so aware of innocents, he must have experienced for himself the horror of their involvement in the carnage of war, rather than having been informed of it by others. This is particularly remarkable against a background of the complete absence of any similar awareness being apparent in other sources, Irish or continental. Here and there, provisions for the protection of widows and orphans are found,[106] but none for the non-combatant

101 Óengus of Tallaght, *Félire Óengusso*, ed. and trans. Whitley Stokes, in *Félire Óengusso Céli Dé: The Martyrology of Oengus the Culdee*, London, 1905; Whitley Stokes and John Strachan (eds), *Thesaurus Paleohibernicus: A Collection of Old-Glosses, Scholia, Prose and Verse*, Vol. 2, Cambridge, 1901–03, p. 306.
102 For an English translation of these paragraphs, see G. Markús (trans.), above note 11, pp. 11–13.
103 *Ibid.*, p. 11.
104 M. Ní Dhonnchadha (ed. and trans.), above note 64, p. 33.
105 See Colin Smith and James Gallen, "Cáin Adomnáin and the Laws of War", *Journal of the History of International Law*, Vol. 1, No. 16, 2014, pp. 71–72.
106 See H. R. Loyn and John Percival (eds and trans.), *The Reign of Charlemagne: Documents on Carolingian Government and Administration*, Edward Arnold, London, 1975, where Charlemagne did take widows, orphans and "humble folk" or "less powerful people" under his protection. See, for example, the following capitularies: Mantua 1, 781, p. 50; Concerning the Saxons 1, 797, p. 54; General Capitulary for the *Missi* 5, 30 and 40, Spring 802, pp. 54, 76–77, 79; Special Capitularies for the *Missi* 15, 802, p. 81; Aix 2, 802–03, p. 82.

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per se until the Peace of God movement. That awareness, that concept, in its explicit expression, belonged to Adomnán.

Summary and conclusions

This article draws a parallel between *Lex Innocentium* and modern *jus in bello*. The analysis of any legal document is difficult – the interpretation of a modern statute requires the skills of a legal expert, well versed in the broader legal context in which the statute is intended to operate, and it is common for such experts to differ in their interpretations. When the statute in question is thirteen centuries old and survives in incomplete copies, often containing errors, made seven and eight centuries after the law's promulgation,[107] and the surviving sources for information on the legal system itself in which the statute was intended to operate are incomplete and inadequate,[108] interpretation is perilous in the extreme. Add to that the thought processes, attitudes and prejudices accumulated over those thirteen intervening centuries in the modern mindset, and the capacity to understand becomes even more limited. It is not surprising, therefore, that at times, contradictions and apparent incoherences in the detail of the law are perceived. In broad terms, however, there are constants, and violence and killing is one of them. The concept of the non-combatant is another, and the notion that such an innocent should have a degree of immunity from violence exists today as it did, without doubt, in the mind of Adomnán in 697. As stated above, he was Abbot of Iona when the annals were being written there at the end of the seventh century, and it has been suggested that he would have taken an active interest in the content of the chronicle. He would, therefore, have chosen to call his law *Lex Innocentium*. His singular concern for the innocent, for those who do not bear arms, is further manifested in his recounting of episodes in *Vita Columbae* concerning innocents, written almost contemporaneously with his visit to Birr in 697.

While we must speculate about many aspects of Adomnán's law and may not always be correct in that speculation, the fact that it was a law for the protection of those who do not bear arms cannot be doubted. This is clear not only from the name given to it in the annals, *Lex Innocentium*, but also from the declaration of intent in paragraph 34, which was followed through in the subsequent paragraphs with specific provisions for each class of innocent and careful detail on how the law would operate in practice. It is also clear that the law envisaged this protection applying not only in circumstances of violence generally, but also in war and in warlike situations, and each of its provisions must be read as applying in all such contexts. Mention is made in paragraph 35 of up to 1,000 men, which would constitute a substantial army in early medieval Ireland, where the warfare of the day was carried out by smaller bands of warriors. Adomnán recognized the

107 A quick glance through P. P. Ó Néill and D. N. Dumville (eds and trans.), above note 50, where attention is drawn to the differences in the two surviving texts, the omissions and mistakes, makes this clear.
108 F. Kelly, above note 29, pp. 1–2.

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difference between these warriors, being the bulk of males of full age in circumstances where a standing army did not exist, and those in society who did not bear arms. He articulated this difference, defined it by setting out who were innocents, and enshrined it in legislation which was designed to protect them. In his determination to protect innocents, Adomnán broke the mould in which pre-existing vernacular law had been cast; this was the magnitude of his task. In defiance of the legal system existing in his own time, he created a new category of person under the law: the innocent, the non-combatant. Rank was the underlying principle that underpinned the rest of the entire edifice of early Irish law. Adomnán disregarded it, by stipulating fines for death and injury which were to apply equally to all victims. All women and young men between seven and manhood were put on an equal footing with freemen under the law. While all categories were brought under Adomnán's protection, women were treated in a special way, by the stipulation in paragraph 42 that all fines for their violent deaths were to be paid to Adomnán.

It is arguable that Augustine of Hippo, with his ideas on just war, can be seen as the father of *jus ad bellum* in the Western tradition. It is far from "hyperbolic exaggeration" to see Adomnán of Iona as the father of *jus in bello*, Birr as an early Geneva and *Lex Innocentium* as an early Geneva Convention.

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