

EARLY IRISH LAW SERIES
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A GUIDE TO EARLY IRISH LAW

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Mac Aodhagain

From the evidence both of the annals and of the surviving leg manuscripts it is clear that the MacEgan⁵¹ (*Mac Aodhagdin*) family was the most active and influential of the post-Norman legal families. There are far more references to MacEgans than to any other legal family in the annals, and most surviving legal manuscripts have a MacEgan connection. They had schools in Ormond (now Co. Tipperary), and at Duniry, Park and other locations in Co. Galway. Some important non-legal manuscripts were also produced at MacEgan schools, notably the mainly

religious *Leabhar Breac* i.e. *Leabhar Mor Duin Daighre* 'the great book of Duniry' compiled c. 1390-1410.

As well as being academic lawyers, the MacEgans were widely involved in legal practice.⁵² Between the 14th and 16th centuries, MacEgans are known to have acted as lawyers for most of the ruling families of western and central Ireland, including Mac Carthy More of Desmond,⁵³ Butler of Ormond,⁵⁴ O'Kennedy of Ormond,⁵⁵ Burke of Clanricard,⁵⁶ O'Connor of Offaly,⁵⁷ Mageoghegan of Keneleagh,⁵⁸ O'Farrell of Annaly,⁵⁹ O'Connor Roe,⁶⁰ O'Conor Don,⁶¹ O'Rourke of Brefny,⁶² O'Connor Sligo,⁶³ O'Dowd of Tireragh,⁶⁴ and Barret of Tirawley.⁶⁵ The fact that the Butlers, Burkes and Barrets employed native lawyers shows the extent to which Irish law was used by the Anglo-Norman lords of this period. The Statute of Kilkenny of 1366 prohibited the use by the coloniser of the law of the march and of the brehon (*la ley de merche et de brethan*),⁶⁶ the former apparently being an amalgam of Irish and English law. Such prohibitions were ineffective, however, and in some colonised areas English law seems to have been totally ousted. Thus in 1476 the common law was not in use in Co. Waterford, 'but only the wicked and damnable law called Brehon law'.⁶⁷ Lord Chancellor Gerrard's *Notes of his Report on Ireland* (1577-8), quoting earlier records, speak of the adoption of Irish laws and customs by 'Englishe degenerates' who 'imbrace rather Irishe braghan lawes than sweete government by justice'.⁶⁸

⁴⁷For a detailed appraisal of the glosses and commentary on a particular law-text (*Bechbretha*), see *BB* 14-24.

⁴⁸C/H 2299.18-21 = *Eriu* 12 (1938) 38.

⁴⁹CJH 2308.20-9 = *Eriu* 20 (1966) 28 §12.

⁵⁰This passage is edited and translated under the heading 'commentary to §58' at the end of Neil McLeod's *Early Irish Contract Law*.

⁵¹For information on the MacEgan family, see Martin J. Blake, 'Two Irish Brehon scripts: with notes on the MacEgan Family' in the *Journal of the Galwa.*,

Archaeological and Historical Society 6 (1909) 1-8; T. B. Costello, 'The ancient law school of Park' *ibid.* 19 (1940) 89-100; Joseph J. Egan and Mary Joan Egan, *History of Clan Egan* (published for the Irish American Cultural Institute, Michigan 1979); Caitilin Ní Maol-Chrúin, 'Geinealaigh Clainne Aodhagáin A.O. 1400-1500' in *Measgra i gcuimhne Mhíchíl Uí Chleirigh* ed. S. O'Brien (Dublin 1944) 132-9.

⁵²Note the distinction in Campion's *History of Ireland* (1571) between these two aspects of the legal profession. Having described the law-schools (quoted above p. 250) he proceeds 'Other lawyers they have, liable to certaine families which after the custome of the country determyn and judge causes. Thes consider of wronges offered and receyved amonge their neighbours. Be it murder or felonye or trespas, all is redeemed by composition (excepte the grudge of parties seeke revenge). And the tyme they have to spare from spoyling or praying they lightly bestowe in parling abowt suche matters. The *Breighon* (so they call this kynde of lawyer) sittethe him downe on a bancke, the lordes and gentlemen at variaunce rounde about hym and then they proceede' (quoted MacNiocaill, *J* 2 (1967) 299 and Kenney, *Sources* 35-6).

⁵³*pR/A* 36 C (1921-4) 96-7.

⁵⁴In *AFM* s.a. 1601 (p. 2272) the death is recorded of Cairpre Og mac Cairpre mic Aedacáin 'who was standard-bearer to the son of the Earl of Ormond'. In a juror's report of 1537 Donoughe Makhewgan = (= Donnchadh Mac Aodhagáin) is included among the brehons acting in Kilkenny (*Gael. Jnl.* 8 (1897-8) 74).

⁵⁵*Gael. Jnl.* 8, 86-90.

⁵⁶*AC* s.a. 1438 §3.

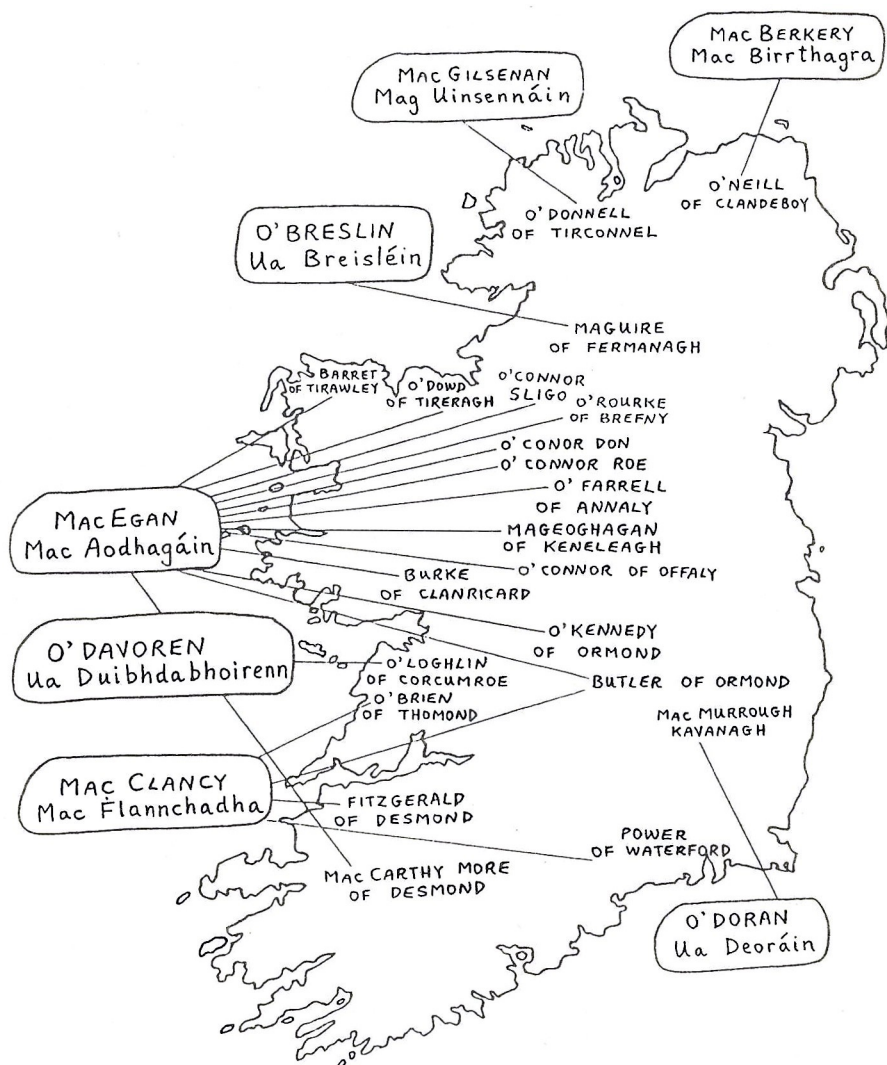
⁵⁷*AC* s.a. 1422 §9.

⁵⁸*Ibid.* cf. *BM Cat.* i 152.

⁵⁹*AFM* s.a. 1393.

⁶⁰*ibid.*

MAP 2



Map showing the principal legal families and their employers, 14th-16th centuries.