

Discussion Transcript
“Anarchy in Medieval Ireland”
McClelland Irish Library
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(McClelland Library at the Phoenix Irish Cultural Center)

[Tom] Okay, everybody. Welcome. Thank you all for being here. I'm Tom Jenney. I'm the executive director of the McClelland Library. I'm the new executive director. Chas Moore will actually be probably wandering up here in a little while. I hope you're enjoying the atmosphere. We are in a medieval-ish sort of style of castle [laughter]. Some of the stones outside the building were actually brought from Ireland and there are lots of stories about that if you talk to our architect. [Audience comment.] Sorry, yeah: or a docent. We have very smart people who can walk you around this campus and tell you a lot of things. Quick housekeeping. Bathrooms are downstairs on the first floor. We have the second floor blocked off. The fire exit is in that corner. And, if the English invade, in that closet we have a bunch of longbows [laughter] and so we'll need you to go out here on the balustrade. All of the good and noble and brave people will defend the castle. If you don't feel noble, or brave, or good, then you'll be held in low esteem [laughter]. I'm not going to force you to fight for the castle. Let's see what else I have on this list.

[Comment from Roy Miller, in the audience.] What about those of us who want to fight for the English?

[Tom] There's an exit, Roy. You can leave now. It's not a good group for that.

[Laughter.] Let's hold audience questions until we get to the audience part of the deal and I will start by introducing my interlocutor. We'll mostly be sitting for this, right? I was thinking we could lounge like Bill Buckley on *Firing Line*, with a cigarette. Jim Boyle is a trustee of the Irish Cultural Center and most importantly for our purposes, he has a Ph.D. in medieval Irish archaeology from New York University. I was hoping he'd come in here in a fedora and sweat-stained khaki clothes... [Dr. Bob, please take a seat--oh, there's alcohol over there.] ... and carrying a whip and a revolver. And, I was going to make some joke about how "your life has been spent in pursuing archaeological relics." But actually, Jim has a day job. He's a dairyman here in Arizona. His family company operates out of Casa Grande. His family's been here a while. The internet said he has 5,000 cows but he says it's somewhat lower.

[Jim] 3,500 milking cows.

[Tom] Now according to the internets you could have actually gone double that.

[Jim] It's all about accuracy.

[Tom] He is a historian, so he's trying to get some accuracy here. His family has been in Arizona for five generations going back to 1880. If you think about the OK Corral incident, that happened in 1881, so this is a long way back. He is going to talk to us later, shortly, actually. Let me tell you about how this event came about. For about 30 years I've been something of a fan of the late economist Murray Rothbard. Murray Newton Rothbard.

[Jim] His birthday's today.

[Tom] It turns out I knew that at different points in my life. I may have known about that in the fall. But, when you suggested March 2, it didn't register. Yeah, it's actually Murray Rothbard's birthday. He would have been 97 today. Maybe later we could sing him happy birthday. Some of us are going to go over to the bar next door afterwards. That could be something that can happen. So, let's see. 50 years ago, in 1973, Murray Rothbard wrote a book called *For a New Liberty*, which was subtitled the *Libertarian Manifesto*. Now, this event is not actually about libertarianism. It's not about persuading people about anything. The goal is to find out more about medieval society in Ireland. What things were like. And, as Dr. Boyle is going to explain, and I'll help a little, there were a lot of really fascinating things happening in the society, culture, legal system, and political system in medieval Ireland.

Back to libertarians. Rothbard's book in 1973 was, for a lot of people, a kind of Bible of sorts, and especially if you were a libertarian anarchist, into what Rothbard called anarcho-capitalism. Now, one of Rothbard's great virtues was that he is, or was, a very

clear writer. So, you may disagree with Murray Rothbard, and I'm guessing that 99 percent of the population does. But it's usually not because you don't understand what he's telling you. You understand exactly what he's telling you and you don't buy it. You disagree. There's a topic that we will not get into, fractional reserve banking [laughter]. I think Rothbard is ultimately wrong about FRB, but it's not because I don't understand him. He's very clear in his books on monetary policy, especially *What Has Government Done to Our Money*. I disagree about that, but his writings are crystal clear, and some of the best stuff you can read to understand how he thinks the monetary system works.

So, anyways, I got this job at the McClelland Irish Library back in September. And, I'm not a librarian. You saw a librarian briefly. She was in here and downstairs. We've got librarians -- real, live librarians. My job is in financing, fundraising, and that whole side of the equation. Anyway, I look up from the spreadsheets one day and I think, "Wait a minute. Didn't Rothbard say something about Ireland?" So, I looked it up.

In *For a New Liberty*, in the second half of the book, Rothbard is arguing about how a society could function, how he thinks the society could function -- and function well, he believes -- without any governments. Without what he calls the State, with a capital S. Much of his argument is based upon the idea that in a stateless society, a society without governments, the mechanisms of free markets will help to solve a lot of the problems that people find difficult and often go to governments to solve in most societies. Things like securing property rights, handling disputes between property owners, preventing and adjudicating acts of crime, defending the populace from foreign invasion: the sort of stuff that usually most societies have gone to governments to solve.

So, that's the economic theory. Then there's the whole question of, "Okay, has this ever worked anywhere?" "Can you give me an example?" And in this case, Rothbard's Exhibit A in the book is medieval Ireland. I will quote at length what he says. Parts of this were in the document that we had in the invitation. But let me read this. This is Rothbard:

"The most remarkable historical example of a society of libertarian law and courts, however, has been neglected by historians until very recently. And this was also a society where not only the courts and the law were largely libertarian, but where they operated within a purely *state-less* and libertarian society. This was ancient Ireland — an Ireland which persisted in this libertarian path for roughly a thousand years until its brutal conquest by England in the seventeenth century."

You're supposed to -- except for Roy -- you're supposed to all boo [laughter].

He says, "And, in contrast to many similarly functioning primitive tribes (such as the Ibos in West Africa, and many European tribes), prequest Ireland was not in any sense a 'primitive' society: it was a highly complex society that was, for centuries, the most advanced, most scholarly, and most civilized in all of Western Europe. For a thousand years, then, ancient Celtic Ireland had no State or anything like it. As the leading

authority on ancient Irish law has written,” (he's referring to a guy named Peden) “There was no legislature, no bailiffs, no police, no public enforcement of justice... There was no trace of State-administered justice.”

And, that's the end of the quote. So again, Rothbard is an exceptionally clear writer, I think. Especially for an economist. So, when he says that Ireland was a purely stateless and libertarian society, I think we have to take him at his word. Some of you have read Rothbard, some of you may have actually met him. [Some in audience say they have.]

He was a feisty personality. If there was something he knew was unlibertarian about Irish society, I think he would have said it, because he was that kind of guy we call an “edge lord.” One of these people who wants to be out on the outer edge of radicalness. He wanted to make sure that you were either with him, or you were a squish. And I think if he had found something at that point, when he was writing, if he had found something about medieval Ireland that he didn't think was up to his standard, he probably would have said something about it. I don't believe he would have made such a blanket endorsement of the system.

So, for the next hour we're going to explore some of the features of medieval Ireland. We're going to talk about some quirky and fascinating features of the legal system and the political structure to help illustrate what a strange and interesting place it was. And, if any of you have time machines, one of the things you may want to think about is whether you would actually want to go back in time. Let's say a mad scientist straps you into a time machine and is going to send you back 1,500 years. Which society do you want to go to? And so one thing to think about would be, “Is this a place I'd really want to go?” Those of you who are of the libertarian persuasion may think, “Okay, maybe this was an anarchy, but was it the kind of place I'd like? Was it libertarian enough?” Maybe we'll talk about that. And those of you who are non-libertarians will think, “Is this the kind of place I could stand being?” “Would I rather go to a monarchy somewhere in central Europe?” Jim and I are going to start off by kicking around the question of whether Rothbard was right about Ireland. Then we'll open it up to audience questions. Hopefully, short questions. And I can try to translate for you if some of them are strange questions -- from the kind of people who are my friends.

[Tom turns to Jim.] So, I had one question we decided to table for a bit about the actual the exact functioning of the legal system. I think the first question I'll ask is about “kings.” You read anything about Irish history, and you start reading about a lot of “kings.” So, there were “kings.” How do “kings” fit into anarchy? Usually, most people think of kings and think of government, taxation, the state.

[Jim]. A king is the head of a state. In our modern conception, a king is the head of a state. So, I think that before we get to any discussion of Rothbard's view of Ireland, I'll just give a little bit of the current status of our feeling about what medieval Ireland looked like. So first off, there's really three main sources for where our conception of Ireland comes from. The law tracts are one of them. The law tracts are a really

incredible collection of mostly 12th- and 13th- and 14th-century glosses – which means copies -- of 7th and 8th and 9th century law that has then been commented on by later scribes. So, we don't actually have any surviving intact 7th-century Irish law, but we do have copies of 7th-century Irish law within a bunch of 12th-century references to it. So, when we talk about the Irish law, that's what we're talking about. Physical law tracts that are mostly in Ireland that have been translated over the centuries. We also have the annals, which are basically the historical documentation of yearly events that were usually transcribed in monasteries and that describe, for example, "In the year 752 there was a great famine. Half of our cows died. And in 757 there was a comet across the sky and the wheat harvest was wonderful." Lots of that type of thing. You have saints' lives: a very popular kind of story. Again, most of them assumed to have been written originally in the 7th, 8th and 9th centuries, but mostly surviving in much later transcriptions. But they give us a little insight into the day-to-day life of early medieval Ireland.

And then you have the archeology. I'm an archaeologist first. Despite a very large surviving corpus of written material from medieval Ireland, there are still huge amounts that are left out. Things we don't have surviving documentation about. We have big gaps. We of course always have to deal with the issue of the sources not being accurate. Biased sources. Everybody's got a political agenda. So the archaeology exists to describe truly what was going on, on the ground, and in particular, the daily lives of the Irish people themselves. And when we're talking about early medieval Ireland, we start with the 5th-century Christianization, with the missions of Palladius and Patrick, and then continue in one stage up until the Vikings arrive, basically at the end of the 8th century. And then there's a shift into the Viking age of Ireland, which continues until around 1000, and then you have the break at 1160 with the Anglo-Norman invasion. And then with 1160 going forward, you have in this later medieval period agglomeration of both English and Irish society existing more or less side by side, learning from each other. Waxing, waning. And then, the Irish essentially collapsing in the early 17th century. So, that whole period can be described as medieval Ireland.

When we're talking about the law tracts -- in particular, what most of the libertarian writers have been interested in -- that is from that early medieval period. Those laws that were written down in the seventh and eighth centuries and continued to be used by Gaelic society all the way up until the end of the 16th century. So, you have this very longstanding law history that is recorded. Now, it changes throughout time. And we can get into some of the changes that we recognize during this whole period. Those form the idea of what early medieval Ireland looks like and what that Irish-Gaelic-speaking part of Ireland looks like up until the end of the 16th century.

But, I think the best description of the society is from one of the great Irish translators of manuscripts, D.A. Binchy, who interestingly enough was Maeve Binchy's uncle. She was a popular author. He translated the classic translations of a large number of these of these law tracts, and in the process, wrote a huge amount of academic work about the society that they represented. And, he has a very succinct description of what early

Ireland was like: it was tribal, it was rural, it was hierarchical, and it was familiar. And, familiar in the sense that the family was the basis of the society.

So, it was tribal in that we know that at any one time there were probably 35 to 50 different kingdoms. So when we get back to this issue of the king, there was never a high king of Ireland that ever had anything more than a title that was usually quite temporary, and that really didn't even come into play until say about the 11th century. Prior to the 11th century the idea of a high King was an idea that people could imagine, but there was no political structure that could have actually supported that. Or, historical documents that point to a high king up until Brian Boru in the 11th century. So, society was basically based around these large clans which formed the tribes. You have this tribal group where a king would serve as the head of the tribe. What we're really talking about is not so much a state society but more of a complex chiefdom, if anybody's into the concepts of societal types.

Rural. Ireland was entirely rural prior to the Vikings. It was composed almost entirely of farmsteads separated by fairly good distances apart. The only real large settlements were monasteries. Monasteries existed separated from these tribal groups. There wasn't the idea of a parish church sitting right next to you in the middle of a town. Instead, the early Irish church was very monastic, very removed from society in its outlook. It really started as hermitages. The earliest Irish churches we have in the west coast are essentially like beehive huts. They were made by monks who were forcing themselves into the wilderness to get away from society to focus their life on God and not be distracted by anything else. Those eventually evolved into monasteries which do have large numbers of monks at them. They have large hinterlands which they farm, but they're relatively self-sufficient settlements that are really unrelated to the secular society at the time. And, there's no concept of a city in the sense that we think of, until the Norse – the Vikings – arrive and start building trading outposts in the cities that we think of today as the major cities of Ireland: Dublin, Waterford, Cork, Limerick. Those were all Viking cities founded by Norse traders, totally separated from the rest of Irish society except for trade networks.

We have tribal rule. It's hierarchical. It's very clear from everything in these surviving documents that there is an incredibly complex hierarchy within these tribal groups / kingdoms. They go from the king of the tribe all the way down to the lowest of the low of status, which is essentially slaves. Slaves are typically captured foreigners. Saint Patrick was captured by Irish slavers, probably from Wales, brought to become a shepherd in Ireland, escapes, and then returns to Christianize the people that he escaped from. So, he's a classic example of a very early Irish slave. There was a period, it seems, in the 4th and 5th Century, where slaving was incredibly popular among the Irish. That waned, and there seems to be fewer and fewer slaves as you get later in time. But that hierarchy retains itself: you'd have slaves and you'd have what we would think of as indentured servants, which would still be unfree people, but would have the ability to eventually earn their freedom at least from their owners. And then, you have all these gradations of farmers – a dizzying gradation of farmers. It's incredible. Then you have a large number of craftsmen. You have a separate hierarchy

for churchmen. And, then you have lords. You have six or seven different types of lords of different ranking. So this hierarchy is very defined. Almost all the early law tracts we have revolve around how this hierarchy works, what it means, and in a society that is this hierarchical, how does everyone mediate their social interactions.

Finally, familiar. In the sense that they're all family based. The individual is not held up particularly strongly in Irish law. The family is not the nuclear family. It changes in law as it goes. The biggest group, the *fine*, is the general term for your family. But, that could be very, very large. We're talking six, seven, eight generations of a defined family name.

[Tom] The *derbfine*? Is that smaller? From a single great-grandfather?

[Jim] That changes over time. There's a little bit of debate on that. Generally, the *derbfine* is considered the relatives that you are most responsible for, and vice versa. And, that's typically either all the descendants of a common great-grandfather, although earlier it seems like it's descendants of a common great-great grandfather. And as time goes on that gets a little unwieldy, as you could imagine, and they start defining *derbfine* a little differently in the 9th and 10th centuries, versus how it was in the 6th and 7th centuries. And then there is a smaller group, which is three generations: the *gelfina*. But, all of these groups are responsible in one way or the other for each other. And everything that you do wrong, that group is responsible for you.

[Tom] Just jumping in. This is a big departure. You said that this was not an individualistic society. Or, you didn't say it exactly like that?

[Jim] No. I mean, there are individuals that show up. That's one of the things that is interesting. When you read the annals, the history of the time, you do see individuals. You do see the king. One of the great conflicts of pre-Norse Ireland is the growth of the O'Neill Dynasty in Northern Ireland. The O'Neill dynasty was incredibly powerful. It constantly expanded territory. And *the* O'Neill is mentioned multiple times. It does seem like that individual – whoever is filling that that role at the time as the king of the O'Neills – is a very powerful person. He runs into conflicts with very powerful abbots who lead the monasteries, and they have their issues. You do have individuals in the annals. And if you just had the annals, you would think that it seems like everywhere else in Europe. It's the battle of great kings against each other for territory, and their negotiations with the church, and things like that.

But, that's why you need the archeology and the law scholars to fill in the rest of it, and see that it doesn't look like the rest of Europe. Whatever that king is – and even the O'Neill, who was powerful – it was definitely a different concept of king than we're used to. And some of that goes way back. I don't want to go out on too much of a tangent into Iron Age concepts of kingdom. But the bog bodies often are sacrificed kings. That is the general idea of Iron Age kings. You're a king for a temporary amount of time. You have a really good life for 10 years, and then you're getting your throat slit and you're shoved in a bog hole.

[Tom] We discussed this a little bit beforehand. You said that kings were very easily deposed in the medieval period.

[Jim] They could be. Kings were more or less elected. I'll sometimes use the word *tuatha*. A *tuath* is the Irish term for these little kingdoms, these complex chiefdoms, these 25 to 50 territorial units -- though it's not territorial, necessarily. And the king of the *tuath* was essentially elected. There is not a hereditary kingship. It does develop later in time, but in the initial pre-ninth-century Irish society, the king would have been selected amongst the royal families. Now, these royal families are likely all interrelated. But there was a process of arguing your position, probably paying off your family members and your rivals, and then an election for who would be the next king of the *tuath*. And once you were deposed or killed, the election happened again. A king's son could claim that he should be the next king, but there was no guarantee. And in fact, it was not all that often that you have dynastic inherited kingdoms in Ireland prior to the 12th century.

[Tom] I was reading through some of the documents and books that we put out there for the attendees. One of them is Fergus Kelly, where there are a lot of things happening in contracts. So, people are entering into contracts with each other. But this notion of hierarchy -- if I understand things right -- this notion of hierarchy comes in a lot. If you are more of a commoner, if you're in one of those categories of commoners -- and digressing, the people who study medieval writings find that medieval scholars are often insisting that there are seven categories. They'll create seven classes. So there's some question as to how many there really were. But apparently, it was a very stratified society... If you were some kind of commoner it was ill-advised for you to even enter into a contract with someone who was considered a *nemed* or a noble.

[Jim] Above your rank.

[Tom] Because the way the law apparently was, when you started to get into legal disputes, you were not necessarily on an even playing field. Like the *honor price*, right?

[Jim] Right. That's where I was going to go with that. The hierarchies are defined by name and then they're also defined by their value. And there's all sorts of discussion as to, "How real is this?" But, Ireland was an entirely nonmonetary economy prior to the Vikings. The Vikings were the first ones to introduce any sort of coinage. Even then, it was very slow to be adopted, and even in the 15th century the Gaelic Irish had a tendency to not like coins as a source of wealth. Your wealth was your cows. Cattle were the basic foundation. And not just cattle: it was a cow with a calf. It was a dairy economy. A cow and a calf is your basic productive unit, and that's where your worth and value was set. So, a low-grade lord could be worth 20 cows and a high-grade lord could be worth 50 cows. And, then you work your way down. The basic free man -- the free farmer, who isn't necessarily directly tied to a lord in a way that's subservient -- is worth three cows. After that, you have this group of unfree people. They're not slaves, and it gets to be a very complex system. But basically, it's people who owe more to

their lords than they themselves are worth. So, they are the unfree. And, they could be worth three pigs. They could be worth a goat. [Laughter.] It's a very agrarian society, where there is this idea that your honor price -- that's basically what you are worth if you are wronged -- is all tied up in the agricultural system.

And, that honor price also sets the type of contract that you're allowed to do by yourself without the help of anyone else. Say you're a free farmer worth three cows. Now, you probably owned more than three cows, but that's your ranking. The law says you can enter a contract with someone else worth that much, for that much value. Anything beyond that is more difficult. Say you wanted a contract to acquire this piece of land that's worth eight cows. The only way that guy would be able to do that is if he found relatives who together had that much value. He could then make the trade. With the idea that, if for some reason he doesn't hold up the bargain and doesn't deliver those cows for that land, then the owner can come and seize the value of that property from the group of farmers that went together to pledge their property for the deal.

[Tom] A lot of the contracts that people entered into, from what I've read, seemed to be very connected to the *derbfine* or to some kind of clan structure. For instance, blacksmiths. They could go out there and make some money, but they still owed two-thirds of whatever they made to their clan. They weren't allowed to just go out and make a bunch of money and keep it. The clan had that claim on it. And, women who would marry into other families. Whatever they made as part of the marital exchange, they still owed some to the family they came from. Their family took a piece.

[Jim] That's because in general, property was held in common -- to a certain extent. *Tuath*, if you go back linguistically in Ireland, was "land around the commons," or "land around the pasture." Every kingdom had a big common, not owned by anyone besides the kingdom, where animals would be grazed, typically during the summer. These are often highland areas, or marshy areas that are only good for grazing during the summer. They're not really owned by anyone. Then other farmers have their own private pieces of land in the *tuath* as well. But those private pieces of land were still somewhat owned by the family. You had *tuath*-owned land. You had *derbfine*-owned land. You had *fine*-owned land. Everybody had a little bit of connection to all this different property. Sometimes just your immediate family -- your brothers, sisters, uncles and cousins -- might've had these pieces. But you're sharing with everybody.

[Tom] There's not a lot of individual guys sitting on land saying, "Yup, this is mine. I own it free and clear. I don't owe it to anybody."

[Jim] Yeah. One of the things that makes it complex -- and why even the kings had such an issue with land ownership and didn't own that much land -- is the value. I keep referring to that honor price, and it being based on cows. The economy wasn't necessarily based on land. The economy was based on cattle. And a king, being as rich as he was -- because he came from a powerful family -- he then creates contracts with other people beneath him that are advantageous to him. He starts acquiring a lot of cows. Annals are always kind of hard to believe, but there's fairly good evidence that

a king could -- in short order -- need to pay another kingdom 400, 500, 600 cows. That means he had to have access to that which was his. To own that much land in this system was almost impossible -- to acquire enough land to graze 600 cattle. Along with all the other associated things. You've also got sheep and you've got pigs. Cattle, sheep and pigs are the big animals. There are some goats in Ireland, but not as much. You need a lot of grazing land. The kings don't have that much.

So, what they do is they take those cows and loan them to other farmers. This creates a web of interconnection between these contracts. You you're starting to see why honor prices are set in cows. Now, your king is out there saying, "Well, I've got 400 cows. I only have land for 50. So, for my other 350 cows I have to find clients I'm going to loan to who will take care of those cows. I'm providing them with a big gift, and they'll repay me in either the cows themselves or the products of those cows throughout the year." That's why cattle end up being the basis of the wealth system and land doesn't end up being so much. Because there are always the common lands, which are usually the upland summer grazing areas that everyone that has access to. And otherwise, the rest of the land is fairly constrained by everybody else's family owning it. So, the only way to really distribute these animals on the landscape is to find clients to go and take them from you.

[Tom] It's interesting, because we're in a modern society, what they would call a liberal society, based mostly on the individual. And our modern conceptions of property rights are based around the dealings between individuals. So, an author like Peden would say there was definitely a very intense and strong system of property rights in medieval Ireland. But it appears that they're not what we think of as property rights. There's this clan attachment, this *tuath* attachment, that goes along with those things.

[Jim] It's all nested in levels. There are families that have property rights. There are large clans that have property. There are clans within the *tuath*. Then there's the *tuath* itself that has these property rights. One thing that does sometimes show up on the individual level as being owned by a single person are important decorative objects. You'll see in some of these contracts where people say, "We're doing this contract where it's worth 12 cows to each of us together, but I'm not going to take these 12 cows because you need them and I don't have room for them. You need to have them, so in exchange, to make sure you do what I want you to do, you will have to donate your personal object of value. Whether it's a bronze cauldron, a silver brooch, or some personal item that I get to hold as a surety until the contract is complete." And these things get very common as you get higher up in society. You start running into the fosterage issue, where you're actually trading your children to the lord for him to raise. You want your kids back at some point and so you had better do what he wants you to do and uphold your end of the bargain. Otherwise, he'll do whatever he wants with your child. That is a very common surety system at the highest levels.

[Tom] Did you want to talk about women?

[Jim] Sure. [Laughter.]

[Tom] From the point of view of a more modern liberal society, or for modern libertarians, if we're talking about individuals, and placing a big premium or a focus on the individual, one way to measure that is to ask, "How well did women do?" They're individuals. In some societies, they were almost like property, so that goes against an individualistic ethos.

[Jim] There are a lot of things written about this. You can interpret the sources a lot of different ways. In general, the popular idea is that women actually had a lot more individual rights in early medieval Ireland than they did in many other medieval societies. That comes from the way you would typically marry outside your larger clan group. Fairs is where you would have matchmaking happen. The woman would relocate to her husband's family lands. But, she would always maintain some of her wealth from her family that was separate and not combined with her husband's. In and of itself, that is a very powerful position to have in comparison to other medieval societies, where a dowry was given, the man's family got it, and she never got it back. Her family wealth was something she always had access to, as long as her family maintained wealth enough to provide it.

There are a lot of different definitions of marriage in early medieval Ireland and it's very hard sometimes to figure out what exactly what they are. Because at the same time, you've got the Church -- the very Christianized Church -- that frowns on things like plural marriages and multiple marriages and divorce, just as they do today. You have an Irish society that is adapting to that, but still retains a lot of elements of the pre-Christian marriage patterns. There are tracts on women being able to separate from their husbands. There are ideas of temporary marriage that last a summer -- like a "tryout" marriage. [Laughter.] There are little hints of this. But a lot of times, the monks are the ones transcribing this, and they don't really want to talk about this. So, you don't have as much of that surviving.

[Tom] Or they say, "This was going on, and we really did not approve."

[Jim] Yeah. You have that sense. It's very hard to tell. After a man died, the wife did inherit some of the property. But again, it's really his *derbfine* that's going to get it, because it's all there. She's treated as part of that family, but it's not like she inherits it all at the death of her husband. Instead, she inherits a 16th of it because the other 15 are going to the rest of the family. Again, she still has her ties to her family, those interconnections. Actually, in Irish history we know, particularly after the 12th century, there are some very powerful Irish widows that had worked the system very well. Some of them remarried multiple times and were multiple widows. Which is always an interesting thing. [Laughter.] A lot of questions asked about those women, after their fourth husband dies. Sometimes we get lost in this misty notion that Ireland was this great place for women. You still have issues of limited opportunities. I mean there's no way you're going to be a female Goldsmith or even a female craftswoman really. There's very little evidence of that, except for women's crafts, which are the classic ones: the weaving, the sewing, the cooking, and the brewing. But there certainly

is more personal property that women can accumulate in Irish law than I think you see in a lot of other European law.

[Tom] I've read Harold Berman's book, *Law and Revolution*, which is mostly about the continental legal systems and to some extent England in the medieval period. He's one of the documenters of what people call -- and Elinor Ostrom is big in this area -- polycentric law. The idea that, especially in the medieval period, you have people at the margins of society, marginal players, who can access different legal systems. And from what I've read, I see some of that going on in Ireland. So, if you're not completely happy with what's happening in the *tuath*, it's possible there's a monastery nearby where you might be able to get a different deal -- or possibly, at the border of the *tuath* there may be some options. Then you have the Vikings. You can go to a Viking city and perhaps you can find a different set of legal rules there. Some of the people who are into anarchism -- I think Ostrom was not an anarchist -- some of the people who are looking at these systems will say, "It's not all one thing." And in fact, even in America -- and we do have a judge who can tell you -- there are a lot of times when you've got overlapping systems of law. You've got federal law and state law. You've got a commercial code on the side. You've got some international merchant law and things like that. How powerful is the king? I read about Saint Columcille. Supposedly he raised a private army. I believe they were fighting over relics. He went and wiped out some local king. (This is a monk, by the way.) That's why he gets exiled to Iona. So, that's an interesting society.

[Jim] I think you were getting right to why he could do that, when you discussed this polycentric law. So yes, this is the law for Ireland that exists for the majority of the population. However, the monasteries operate under their entirely different law system and that is a fledgling church law that was being formulated, much more on continental ideas. These monasteries were large. They did not just hold monks. Because they were separated from the *tuatha*, they had to be basically self-sufficient. Otherwise they'd owe too much to one king versus another king, and they didn't want to be in that situation. The monks could work the fields themselves, of course. But it does seem clear that there were families that left *tuatha* and went to monasteries to live and dedicate themselves to the church, but don't become part of a religious order or take vows or anything like that. The monks talk about, "our people" doing things differently than "their people." We don't have a lot of surviving evidence -- it's probably just survival bias or chance. But, it seems clear that in those communities there was different law. There was prohibition of multiple marriages and prohibition of divorce. There was a different sort of inheritance: probably because of families that were separated from their *fine* on purpose. When Columcille or any other abbot wanted to raise an army, those would be the people that would form the army. I'm sure there were fighting monks, as well. But most of these were from families attached to the monastery. The young men formed the backbone of these monastic armies which then went and fought against *tuatha*. Or, more often than not, against other monasteries. [Laughter.] They had monasteries in open combat with each other. Those were people who had opted out of the Irish law system into an ecclesiastical law system -- and that was a group of people who could go back and forth.

Certainly, once the Viking towns are established, you've got a very different system, where people could come and go. First, the urban folks work under the Norse rules, and then eventually, as the Norse towns become Hibernicized, the hybrid of Norse rules which start to resemble the Irish rules, the Irish law. But I think there were always quirks there. For example, there's always much more currency in the urban areas. And value is much more of a commercial thing like we know. That's happening in all of the cities in Ireland, versus what's happening in rural Ireland.

[Tom] And then the English come and ruin everything. [Laughter.] In the Peden paper, he quotes Edward the First -- who was Longshanks, if you remember *Braveheart*. I guess he didn't like the Irish very much. You have the English coming in and trying to impose varieties of royal law and a relatively centralized common law system. And Edward supposedly had this to say about medieval Irish law: "The laws which the Irish use are detestable to God and so contrary to all laws that they ought not to be called laws." Did you want to say anything about the English?

[Jim] You hear that all the time from the English commentators, because it's such a different law system from their perspective. They just can't get their heads around it. Especially the punishment side of Irish law. English common law is fairly clear-cut in the sense that if you did something wrong you're going to jail, or you're going to get punished physically, or you're going to get executed. And that's how it's going to work. Irish law, from the English perspective, operated totally differently. The family of the criminal gave the aggrieved party six cows and the guy got off free. So, there's this constant complaint that Irish outlaws were constantly being let go. Instead of being properly punished, the English saw them as getting a slap on the wrist by their compatriots -- and then they're off to go commit more crime.

[Tom] I had an elaborate example I was going to start off with. You and I see each other in the parking lot afterwards, and I take out a knife and try to take your car. You shoot me, but we both survive. Under the Irish system, potentially, you could come to me and say, "You really did me wrong." And I could say, "Okay. I'll pay your medical bills and give you \$25,000, and we'll let bygones be bygones."

[Jim] Yeah. Pretty much.

[Tom] Imagine if you had that situation now. There are witnesses. We go to a judge and say, "We already worked this out. We're cool. Yeah, I did cut him a bit with a knife, and I did try to take his car. But we worked it out."

[Jim] "We're good."

[Tom] Imagine trying to say that to a judge today. It's a very different kind of legal system.

[Jim] That was able to exist. Though the Anglo-Normans establish some power bases in Ireland, and the English presence in the country grows, in the medieval period it never takes over the entire country. In fact, it ebbs and flows. There are periods when English law would've covered 60 to 70 percent of the country and there were periods when it was probably operating in only 20 percent of the country. So, this Irish law always stayed there in certain areas, such as the Wicklow Mountains, most of the west, parts of the southwest, and the north in particular. Those were the strongholds of Gaelic Ireland and that's where Irish law continued to be practiced, alongside English law, all the way up until the 17th century. And, those were the groups that maintained these law documents, copied them down, and glossed them, commenting on the laws and explaining what things meant. After all, you're asking 13th-century scholars to comment on something that is 600 or 700 years old.

Also, behind all this is the idea that Irish law was never meant to be written down. It always existed as an oral tradition. It only got written down in the 7th century because some monks decided they were going to do it. And really, it always continued to be an oral law tradition, all the way until the 16th century. You would've been taught the law as a spoken thing. You would not have consulted law books. It would've all been memory and a bardic style of law. That's a feature that was unique – and that would've made the English really scratch their heads.

[Tom] Let's open it up to questions.

[Audience member] I'm interested as to how the law came about. You would think you would have a king give the laws. But this sounds more organic.

[Jim] That's a great point. That's a huge feature of this. The king does not make the law. No king makes law in this system. The law is made, we think, by a group of judges, by a group of *brehon* lawmakers, who exist to orally pass down the law from generation to generation. How that changes is one of those great mysteries that I certainly don't have a great grasp of. How did people say, "This law isn't working, so we need to change it and introduce a new law"? How that was done, we don't know. But it wasn't the kings.

[Tom] And the *brehon* lawyers are not employees of the king, except maybe in rare circumstances.

[Jim] Right. The king always had a judge. That's written down from the very beginning. That's one of the things that makes a king a king. He travels with a judge. But that's not the only type of law-decider. There are independent lawyers that can be used to mitigate concerns. Where did this originate? Clearly, it originated in Ireland. It has elements of Germanic law, but it is different than Germanic law. It probably originated in the Iron Age, but Iron Age Ireland is such an enigma, a mystery. It wasn't a very populated place, and I think most of this stuff came out of a period where there's a lot of political upheaval, social upheaval. In the fourth and fifth centuries, Rome is collapsing on the continent and piracy is becoming a big thing. Ireland at the time, for one reason

or another, seems to be becoming a much more populous place, where there's a lot of forest clearing, there's a lot more construction going on, and it seems like there's a big population surge in the fourth century that is maybe driving this more complex view of society.

[Tom] A lot of us would call it bottom-up law, or an emergent order. It's not legislated from on high. I think it's very clear from the record that it's not kings handing down laws.

[David, in audience] I heard Tom give a talk about the Vikings years ago, about medieval Iceland, which was basically anarchistic. It was an interesting talk and a great book that he had with it. But, the Vikings came into Ireland about when?

[Jim] The first Viking raid is in 795.

[David] When they came in, I assume they had a different law. And how did it mix with the Irish law?

[Jim] When the Vikings came in, they were entirely pagan. They were entirely an illiterate society. They didn't write anything down besides the basic rune stones that we have surviving. Rune stones generally just describe the events in people's lives. There's no legal tradition that's written down in runic script. So, we don't know what that earliest Viking law is like. By the time you get to the late ninth century, when you start seeing these cities form -- Dublin and Waterford and Wexford -- they're still barely literate. They're still not writing a lot of things down. There is some evidence, but not a lot, and it's partly because they don't have that monastic storage house that the Irish law has to rely on to keep these things safe. Medieval Dublin was a collection of thatched wooden huts that that burnt down regularly. So it's really tough for documents to survive.

Icelandic law is a slightly later thing but probably very influenced by it. Iceland's a fascinating place. Iceland has a lot of influences from Ireland in terms of its people and some of its agricultural effects and things like that, because the Norse that settled Iceland had very close connections with Dublin, in particular. But I'm not an expert.

[Tom] I'm not an expert, either, and I don't want to get too deep into Iceland. But, they started being settled in about 960. So that's two centuries after they start appearing in Ireland. That is a very interesting system. It's a system of settlers who come in who have no roots there because nobody's ever been there. And from my reading, that legal system seems much more individualistic. It would be fun to compare and contrast, if we had an expert on Iceland. It feels to me that in Iceland, you're not so deeply connected to a clan as you are in Ireland. It feels much more individualistic. I suspect that in Ireland, there was usually a judge who was tied to a *tuath*, or a set of judges, and you go to those people because you're in this clan and that's your go-to guy. In Iceland, you see a lot more picking and choosing. You don't have to go to one. Just because this

local guy is the armed lawyer that most of your family uses, you seem to have no obligations to go to that person.

[Jim] Right. One of the things that I do know about Iceland shows up in some of the early written sources. In Ireland, one of the worst things you can be is an outlaw. Because when you're an outlaw, you've got no home. You've got no place to go. You can't just leave. And, I think that's one of Rothbard's biggest mistakes. He somehow interpreted *tuath* as a place you can just come and go as you want. He even says that you could just go to the other *tuath* if you wanted. That's not really true. The only people who were allowed to cross those borders were essentially traveling craftsmen and churchmen. Being banished from your *tuath* means I've got nobody to support me. I'm an outlaw. I'm in deep trouble. I have nowhere to go. I'm on my own, and being on your own is not a good thing.

[Tom] And anybody classified as a foreigner, as I understand it, was in a dangerous category.

[Jim] You're going to end up as a slave, probably. Whereas in Iceland, the most famous early Icelandic character, Snorri Sturluson, is essentially an outlaw. There were places you could go in Iceland if you were an outlaw. You could become a rich outlaw. It was a very open, freer place to be. Mainly because you were in a frontier society.

[Tom] Or, you get rich and you assemble a group of people that will go back and press your case for you.

[Jim] You're still a Viking.

[Tom] We have one guy in the room who could talk forever about *brehon* law. That's Padraig, who I only met about two or three weeks ago. You were my backup if something happened to Jim on the way here. Did you want to say something?

[Padraig] I'm not an expert, but there's a very strong notion that *brehon* law has deep relations with Indo-European law. Because there's certain aspects of the *brehon* law, for example, sick maintenance. And this answers your question, Tom. If you go out to the car park and you stick a knife into somebody and you pay them off. That's fine: you've got away with it. Because in the *brehon* law, and in the Indo-European law, is something called sick maintenance, which James would know about. That went out of fashion more early than the other aspects of the law. But not alone would you have to pay him off, because the fine could be considerable, and you could turn out to be a poor man and your honor price, the price that establishes you in society, would go down to zero. And you could then be chased and pushed out of the *tuath* very easily. It would be very severe. But that's not the worst of it. We go to punitive damages. Punitive damages would mean that you had to take care of Joe Seamus who went back to his family and is bleeding from here, and has got his leg and can't walk anymore. He can't look after the wife and the kids, and he can't look after the farm. You would be responsible for putting them into a safe house. Getting people to go and help the wife

on the farm. Making sure that the lady comes in and helps the wife at home, making sure he gets all his medicine. And the doctor coming in is going to have his fees, and all the rest. You would be on the hook for a lot of stuff, and you could be ruined. They didn't cut your head off and didn't put you in jail, as the English would have done, as you say.

The only other thing is that, as my friend says here, this was organic, from the ground up. It was society. And as James mentioned, there were degrees of family. My family here. My grandfather here. My grandfather going back generations of grandfathers. You've got different degrees of family. You've got the *fine* and the other people outside of that, who are called [inaudible]. There's not that emphasis on the individual, except that if the individual who stuck the knife in the guy in the car park doesn't come up with all of this, to help you get out, the family would all have to go around with a pot to give you the money. If they didn't come up with that, all the rest of the family will say, "You're a nuisance, you've always been in trouble. We're not supporting you. You are gone." It's all about this big family, this big cohesive group. Which is what the Irish law was about. And this is what is hugely important. In this period, there wasn't a lot of tumult and fighting. Because we had one island. We had one nation. We had one language. We had one religion. We had one law that was everywhere. You did not go out of the *tuath* because outside, your password didn't work. The status you had here didn't work in Arizona. It didn't work in New Mexico. That's why the individual, the stranger coming in, was worthless. He could marry a lady in the *tuath*, but she'd have all the power in the marriage, because that was the women's rights. They were very strong. The woman in Ireland was her own person and part of her family, even though she's in the marriage. The woman in Rome at the same time was part of the husband's family and was a slave of the husband's family. So, they had very powerful notions about this.

And, I'll finish on this point. In the early Irish law, the situation -- as James mentioned -- was many degrees of farming and people and occupations going down. And women couldn't be goldsmiths. When you got to the bottom, the man had enough grass for seven cows and that was one level near the very bottom. If you went further down on that and he didn't have enough grass for two cows, like *Peig* in Irish literature, he would have a relationship with the local lord. The local lord would give cattle to poor farmers and the farmers would pay them back with a cow or a calf for the end of the year. And they could advance up to a higher level because they got property. And that property in cattle I would say goes back to Indo-European history, as well. And when we look at the sick maintenance -- how you have to look after the guy you hurt -- and there's a piece missing, you can go back to the Indo-Europeans, back to India, and find that piece in the Indian scripts and bring it back and put it into the sick maintenance that we had in Ireland. So that proves the notion.

[Tom] Thank you. We should have had you on the panel! I was going to pivot on that, because you brought up you brought up the class mobility question, and I think that's an interesting aspect. A lot of people look at this and then compare it to more feudal societies in Europe. If you are a serf then your children will be serfs. You will be serf

forever, unless you somehow escape from there and get to a free city. In Ireland, it seems more mobile.

[Jim] There are three generations to move up, and three generations to move down. And it happens fairly often. If you're doing fairly well, but you have a son that has a tendency to go off and commit crimes and bankrupt the entire family, the entire family loses value, and you can eventually end up in that unfree class. On the flip side, except for that bottom slave level, everyone else has the ability to move up, through good fortune and the right clientship.

I want to go back to one of your points. You had one island, one language, one culture, even though you had all these kingdoms -- and one legal system. This is important because although the system sounds somewhat crazy -- it sounds incredibly complex -- and we don't know for sure how well it works. But, we do know when you look at the excavated graves of cemeteries, and the skeletons excavated from them, from this period prior to the Norse, you have incredibly low levels of violent trauma. Once the 8th century hits, the whole thing changes. But prior to the 8th century, the skeletal remains that we typically find in Irish cemeteries don't show a lot of interpersonal violence. There is very little. We do have weaponry. We do have spearheads and swords and shield bosses from the period. Clearly, warfare was going on, but the level of violence in the society does seem to be surprisingly small for an island with 25 to 50 different polities all jockeying for position.

[Tom] And, Rothbard makes that claim in his extended point about Ireland. Compared to a lot of places in Europe, it seems to have been a relatively peaceful society.

[Jim] A lot of cattle raids. That is the thing to do. [Laughter.] When all your wealth is in cows, and they move with you, it's a quick way to get rich. So there is that. Did that translate to huge amounts of violence? It doesn't seem to be the case.

[Tom] Padraig brought up a point about Indo-European law. You get into a question of, Is this a tradition? Or, is this a case of separate evolution? You have legal systems in mostly pastoral societies and they tend to evolve the same rules, even if they're very isolated from each other. They tend to evolve the same rules because those rules seem to work for the people that live in those kinds of societies.

[Jim] There's an ecological background to cattle farming that just isn't going to change. The cow doesn't change, whether you're in India or Ireland or East Africa -- the other great pastoral society in the world. In fact, some of the best studies for understanding the Irish cattle economy came from anthropologists who worked in East Africa with pastoral groups, where the entire economy revolved around cattle.

[Tom] Do we have a few more quick questions?

[John, in audience] Comment and a question. The comment has to do with Rothbard. People should know that his entire discussion of the medieval Irish legal structure in *For a New Liberty* is only about seven or eight pages long, and relies on a single source, which was Peden.

[Jim] I gathered that.

[John] It seems infused with wish fulfillment. [Laughter.] He would love for medieval Ireland to have been some kind of anarcho-capitalist utopia. Which, I think we can agree, it was not. Having said that, he goes into a little bit of what the process and procedures were like. It sounds as if these what we're calling judges here were what we would now call private arbitrators. They were sort of independent agents. They didn't have the apparatus of the state. So my question is, How were their judgments enforced, and what avenues for appeal were there from a mistaken judgment? Or, do we know?

[Jim] The appeal question -- I don't know that one off the top of my head. I do know that there were people in the *tuatha* that were assigned a role as a kind of public defender. I can't remember their name. And there were also those that were assigned to go and do the law's duty. You would have a situation where you would have two legally skilled people arguing on both sides during a dispute.

[Tom] The usual explanation, at least from the people who are into polycentric legal studies, is that these systems tend to be compositional models. So it's based upon negotiation. The two groups are sitting there together. You've assembled your people, and you have assembled yours. You're essentially going to enter into a kind of negotiation.

[John] It's more like a mediation than an arbitration.

[Jim] But there are specific third parties that serve to protect the accused. There is that role. I can't remember the old Irish word for it, but is it is an actual name for an individual in the area that would do this as their duty.

[Tom] And, it was someone independent. It was not just your cronies backing you up.

[Jim] Yeah. When things got out of hand, the first thing you want to do with the guy who killed your brother is to go kill him. He would be on the run from the aggrieved family. This individual [the one whose duty was to protect the accused] would have to have weapons and armor, to be able to calm the guy down and put up enough force to say, "Hey, no, we're going to do this the legal way. You're not going to go and just take vengeance."

[Peter, in audience] So this goes to the question of enforcement. When push comes to shove, it's who's got the bigger sword and who's stronger. What really happened with enforcement?

[Tom] So, generally, it's compositional. You work out an agreement between the--

[Peter] But sometimes that's not possible.

[Tom] If it's not, and if there are enough people, then it's effectively outlawry, as we talked about it.

[Jim] If you went out of bounds, unless you are the top of society, somebody over you is going to make sure that you and your family follow the judgment -- that the punishment is meted out. Because the other option is, you're out of the kin group and out of the kingdom, and that's a really bad position to be in.

[Peter] Was it over though? I assume that people still clubbed each other over the head.

[Jim] Well, they did... [Laughter]

[Peter] You get desperate. Your entire life savings is on the line. And people do some really desperate things.

[Jim] I'm sure that happened.

[Tom] You'll see these compositional models working in some very unlikely places. Prisons. Pirate ships. There have been a lot of studies about how, in order to reduce the levels of violence, the clan leaders come together and say, "We gotta stop this. This is what has to happen to your guy, because we can't have this get out of hand."

[Audience member] This is an easier question. I know from 1850 on, if a man and wife came together and decided they were going to get married, one of the things that would happen is the future husband would say, "You will bury me with my family, and you -- the future wife -- will go with your family." Does that go back to before 1850? And, how do they split up the inheritance? Would his family get part? Or did she get it all, if he died first?"

[Jim] Inheritance is easier, because that's very well documented going back. She certainly did not get all of it. There was a strict distribution of goods according to the family lines. She retains some, but for the most part, it gets distributed to the entire family. In terms of the burials, we don't know. Once you're back in the medieval period, it's very hard to figure that out. Nobody has headstones with their names on them, so all we know is the basic skeletal information we can gather -- male, female, age, and that's about it.

[Tom] I was going to ask one last question to suggest just how different things were. That's the question of satire. Throughout the law, you see satire is a big deal.

[Jim] It was a huge deal. In fact, one of the biggest punishments the king can have forced upon him is to have a satirist come to his home and make fun of him. [Laughter.]

[Tom] And there are big penalties for people who engage in satire without really getting their ducks in line.

[Jim] It's the power of words. It's the power of saving face. It's the importance of honor. It's the inability to counter that satirist. Because that's very difficult – as anybody knows who's been made fun of by a stand-up comedian. It's tough to defend yourself.

[Tom] You gotta be like Will Smith. Get up there and smack em.

[Jim] That's what you want to do. And that's exactly what you're not supposed to do. The power of words and their ability to wound people is constantly mentioned in the law tracts.

[Tom] Thank you, Dr. Jim Boyle. Thank you, everyone. We started 15 minutes late and we're ending 15 minutes late. For more discussion, I'll see you at the bar next door.

[Transcript edited to improve people's grammar and remove a lot of verbal stumbles.]

