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Stephen Hewer*

Legal Identity and 13th-Century English Ireland

* FWO Onderzoeker, Universiteit Gent, stephen.hewer@ugent.be

Abstract

The study of legal status in 13th-century English Ireland has suffered from a lack of law-in-action methodology, so many 19th-century assumptions have endured without critique. This article sorts out defensive pleas and petitions from court judgments, and applies decolonial and intersectional-feminist methodologies to the terminology regarding the medieval courts and peoples. It defines legal freedom under medieval English law in Ireland and delineates the methods used by the courts to determine legal freedom. A critical, forensic study of the surviving court rolls has revealed that there were several legal identities (*generes*) allowed to use the English royal courts in Ireland (legally »free«) and intersections with and within these categories. The court rolls also demonstrate that legal identity had different consequences in criminal proceedings than in civil, and that categories such as »the English« or »the Gaels« in medieval Ireland are too broad; the interaction of factors such as identity, freedom or unfreedom, gender, and social status have to be taken into account.

Keywords: status, identity, colonialism, Ireland

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Legal Identity and 13th-Century English Ireland

I. Introduction

In 1166, the old story goes, Diarmait Mac Murchadha, rí (*rex*) of Laighen, was exiled – by both his rivals and allies – so he fled to Bristol, England to seek aid.[1] He returned the next year with English and Welsh mercenaries, shortly followed by larger English forces, all invited by Rí Diarmait to assist his return to power. Diarmait granted lands throughout Laighen to the English, but these were deemed insufficient in quantity. The mercenaries quickly spread out into other *cúigidh* (provinces of Ireland), taking lands by force and establishing several colonies.[2] The effect of this series of invasions was that English lords (men and women) had a large patchwork of various territories taken from (or, on a few occasions, given by) the Gaelic and *Austmenn* (whom I call »Ost-people«) peoples of Ireland.[3] These various colonies accounted to the English exchequer in Dublin, but it was during the reign of John of England (1199–1216) that English law was officially instituted in parts of Ireland.[4] The effects of the invasions and the establishment of English colonies in medieval Ireland have been hotly debated for centuries. The concern of this article is the question of »citizenship«, legal identity,[5] the law of persons, and legal practice.

Based on one or two medieval petitions and a hyperbolic treatise from the early 17th century, most 20th-century scholars argued that since some Gaels did not have access to the English royal courts in Ireland, none did.[6] The most cited petition asked for every Gael to be granted access to the English courts, and this was taken as proof of the inverse (that *no* Gaelic person had access to the courts).[7] Many scholars spilled a great deal of ink agreeing that no Gaelic person could use the English royal courts in Ireland and therefore *all* Gaelic people were regarded as unfree by birth (*nativitas*) by the English in Ireland. On the other hand, a few scholars took the time to search the surviving royal court rolls to determine whether non-English people could use the English royal courts in Ireland.[8] The former group of scholars made a seemingly convincing argument: that only *English* people could use the *English* courts in Ireland. While this sounds axiomatic, it is not based on case law. In order to sort the rhetoric from legal facts, we must consult the court rolls. The oldest still extant today are from 1252.[9] These royal court records establish the case law necessary to reconstruct the 13th-century law of persons in English Ireland.

A »citizen« in English Ireland in 1200 or 1300 was specifically a recognised member of a city, which was the seat of a bishopric and not simply a large urban centre, and the records of English Ireland use this terminology. However, contemporaries did conceive of a system in which certain people were allowed to use the English royal courts in Ireland, hold lands in fee, be a juror, serve as a

1 For the full story, see Duffy (1997) 57–80.

2 Goddard Orpen, and Robin Frame following the former's example, argued that there was not *one* English lordship in medieval Ireland, but instead a patchwork of lordships or colonies: Orpen (2005); Frame (1977) 3.

3 The Scandinavian-Gaelic peoples of Ireland have been called many names by modern historians, but the only medieval names for them are *Austmenn* (usually called »Ostmen« by Irish historians), Dubliners (and similar names for the four other urban centres), or *Gaill*. They probably called themselves Dubliners or *Austmenn*, but more likely they just referred to themselves by their personal name, which was the usual practice for both the English in Ireland and for the Gaels. *Gaill* is the Gaelic term for »other« (non-Gaelic) people from Ireland. It is usually translated as »foreigner« but that misses the point of the term, as it was generally not used for people from outside of Ireland, e. g. those from England (*Saxanaibh*) or Scotland (*Albanaigh*).

4 Brand (1992), 445–463, especially n. 14.

5 »Identity« is a translation of *genus* – the term occasionally used in court records – and is used here instead of »ethnicity« or »nationality« because neither of those terms would work for all of the groups being discussed, and »category« is too vague.

6 See, for example, Otway-Ruthven (1950); Frame (2013). The 17th-century treatise was John Davies's *A discoverie of the true causes why Ireland was never entirely subdued*. For a detailed recounting of the »state of the question«, see Hewer (2018a) 3–9.

7 Otway-Ruthven (1949); Gwynn (1960); Phillips (1996).

8 Nicholls (1982); Parker (1992) 134–141, 173–187; Duffy (1993) esp. 32–47, 59–65; Duffy (1999); Smith (1999) 75; Purcell (2003–2004).

9 For a list of surviving court rolls, see Hewer (2018a) 288–301.

bailiff, and have their life, limbs, and goods protected by the criminal arm of the courts; and others did not have some or any of these rights. An early 13th-century legist (the author of *de legibus et consuetudinibus Angliae*) described two legal types of people under English law: free (*libera/liber*) and bond (*serva/servus*).[10] One point of law to note is that the terms *serva* and *servus* were not used by the English royal courts in Ireland; instead, they employed *nativa* and *nativus* to designate legally unfree people. I translate *nativa/-us* as »unfree« to differentiate it from »bond« (*serva/-us*). Nevertheless, the legist's point about legally free and unfree people did apply. The central focus here is: how can we determine who the royal courts acknowledged as a »free« person?

II. Medieval tests of legal freedom

The tests of legal freedom under 13th-century English law have been analysed by numerous scholars, and most of these tests also applied to the English law in medieval Ireland.[11] One problem to note is that not every English person passed all of the tests of legal freedom. No English woman in any of the surviving records was allowed to be a juror in a royal court or serve as a royal bailiff. This is not to say that English women in medieval Ireland had no power or agency. On the contrary, some English women held immense power, such as the right to hang criminals at their own private gallows.[12] So, when previous historians wrote of »the English«, they really meant only the English men who held at least five shillings' worth of free lands (which was the usual minimum requirement to be a juror). Many English women held hundreds – some even thousands – of acres of land. Being denied one of the tests did not mean that someone was unfree (unless they were denied because of naifty/*nativitas*), but crucially, passing one of the tests did then and does now manifest someone's freedom. One may notice that »royal« is repeated frequently in this analysis. That is because in 13th-century English law, tests of legal freedom had to come from royal courts (in Ireland: itinerant, Dublin bench, and the justiciar's court, which were roughly equivalent to the itinerant, Westminster bench, and *coram rege* in England). Some scholars have speculated that unfree people in England could be sued (but could not bring any action) in county courts.[13] For this reason, county courts are not included as royal courts in the historiography and in this study. Manorial studies have revealed that unfree people in England could be manorial jurors, suitors, and provosts (sometimes called »reeves«).[14] Manor courts were the only available medium for the unfree to sue on their own. Some injured *native/-i* could convince their lord to sue on their behalf in a royal court, but this would not work if their lord had caused the injury.

Before examining the rest of the legal tests of freedom and individual cases, it is important to note the numerically largest groups in medieval English Ireland. There were the Irish Gaels (*Gáedhel*), Ostpeople, English, Welsh,[15] and Scots. The Scottish Gaels were not distinguished from the non-Gaelic Scottish people by the English courts in Ireland.[16] There were also other people present in Ireland at the time, such as Luccans,[17] Manx, and French, but they do not appear in many court records, and most were in English Ireland under an English royal safe conduct. One group that does not appear in the English court records is Normans. The distortion of medieval English identity has been well demonstrated by John Gillingham many years ago and does not need to be repeated here.[18] These groups are referred to as »legal identities« in this article because this is a study of legal status. Many individuals did refer to themselves as »Scottish« or »Welsh« (etc.) in the royal courts in Ireland, but this was in a colonial context. The courts did not usually recognise differences within these legal umbrella groups and lumped

10 The author was historically believed to have been Henry de Bracton, but Paul Brand argued that the original author was William Ralegh: Brand (1992) 447.

11 For example, Hyams (1980).

12 Hewer (2018a) 180–181.

13 Hyams (1980) 133, n. 42. But see the case from English Ireland (see n. 20 below) when the jury stated that being answered in a county court was sufficient proof of legal freedom.

14 Evans (1996) 211–220; Poos/Bonfield (eds.) (1998).

15 The »Welsh« in English Ireland appear to have mostly been *Cymry* (and a few English settlers from Wales), but in the English records they were always called *Wallenses* (as opposed to *Brittones* or *Cymry*). In the Gaelic sources, Welsh people were usually called *Bretnach* and *Mac Bretnach*.

16 Hewer (2018c).

17 For Luccans, Florentines, and Lombards in English Ireland, see O'Sullivan (1962).

18 Gillingham (1993); Gillingham (2002); Gillingham (2007).

together peoples who belonged to different polities, in some cases even if these were currently at war with each other.[19]

1. *Ability to plead in court*

The first legal test was prior use of the English royal courts in Ireland. This right actually had several aspects to it. Some people could sue certain writs but were not allowed the use of others. What is known to experts on medieval English law, but must be mentioned here, is that certain writs and certain actions were not available even to English men who held more than five shillings' worth of free land. To use the writ of an assize of novel disseisin (a fast court case for recent, illegal dispossession of real property), the demandant (plaintiff) had to have been in seisin on the day that she or he claimed to have been disseised. Many case records show that the royal courts quashed assizes when the jury determined that the plaintiff had been in seisin continuously on the day in question (was not disseised on that day or at all) or had never been in seisin of the lands in fee (such as a farmer or lessee: *firmaria/-us*). These cases can give us valuable information on legal freedom, though. When an English person sued Gaelic, Welsh, or Ostpeople and lost due to the defendants using one of these peremptory pleas, this shows that the defendants could plead in court. This is confirmed by jury verdicts, these same defendants suing as plaintiffs in other cases, and by comparisons with the common law in England. A non-English plaintiff losing a case is not evidence of a lack of franchisement and is definitely not evidence of naifty.

In 1295, a jury stated that since William le Teynturer, the son of a Gaelic man and an Ostwoman, had been answered in the Limerick county court (which was not the same as a royal court) during his plaint of replevin, he was free in English Ireland and the defendants had to answer his assize of novel disseisin.[20] William, despite being the son of a Gael, did not identify as Gaelic but instead as an Ostperson when he was in court. The jury in this case stated that as an Ostman, William was free, but that was not the law in English Ireland. Many Ostpeople were denied access to the royal courts and some were regarded as unfree.[21] The justiciar's court in 1295 probably allowed this verdict because it was then under the control of a custos, a temporary justiciar, who was a magnate from English Ireland and not a legal expert. Some Gaels as defendants did not even have to reply to the charge, juries and courts would still protect their freeholds. In 1252, William Otewy brought an assize of mort d'ancestor against Thomas Ó Riagain for lands in Limerick that he claimed to have belonged to his father, Walter Otewy. Thomas said nothing against the assize (he made no technical pleas against William's claim) and the assize jury reported that Walter Otewy was never in seisin of the lands so that Thomas could prevent William from legally inheriting them – the claim in an assize of mort d'ancestor. Thomas was left in seisin of his free lands.[22] In 1278, Maurice fitz John Laweles brought an assize of novel disseisin against Maolmórda Ó Fearghail for one messuage. The jury reported to the court that Maurice, while underage, had demised the messuage to Maolmórda out of »custody and friendship« and to pay him for nurturing Maurice. Maolmórda was left in peaceful seisin.[23] This Gaelic man was not only allowed to have seisin of free lands and to use the courts, he also had been the legal guardian of an English child.

Law in action can also be used to study the legal status of women. Sybil Long brought an assize of novel disseisin for common pasture in co. Limerick against three people in 1252. They came to court and said nothing against the assize. The assize determined that the defendants had not disseised Sybil as she described in her writ – which could mean a technical error in her wording or that she was not disseised at all.[24] The verdict does demonstrate that Sybil held free lands and that she could sue for them on her own. Saidhbhín inghean Mhac Dhonnchadha was sued several times. In one case

19 This footnote could be an entire article. Due to exigencies of space, I provide only a few references. For the Gaels, see Hewer (2018a) 9–15. For a few examples when the English recognised differences, see Hewer (2018b) 172 (n. 24), 177–178, 182 (n. 83). For the Scots, see Barrow (2003); Brown (2004).

20 Mills (ed.) (1905) 14, 59.

21 Hewer (2018a) 145–156.

22 An Chartlann Náisiúnta: The National Archives, Dublin [ACN], RC 7/1, 197–198.

23 ACN, RC 8/1, 53–54.

24 ACN, RC 7/1, 169.

in 1301, she called Geoffrey le Blund to warranty her claim to two acres in co. Tipperary.[25] Geoffrey was present and immediately warranted Saidhbhín. Her legal status was cemented by this as she had pleaded in court and been warranted. If Geoffrey lost, she would get two acres of his lands in return. In co. Cork in 1260, Mariota widow of William le Waleys sued Raghnailt Ó Céadfadha for Mariota's dower in Kinsale.[26] Mariota lost because William had never been in seisin of the lands so that she could have a dower from them, and Raghnailt was left in peaceful possession. Both women appear to have been single, but we do not know that for certain. Both, however, were allowed to use the royal courts.

Married women in medieval English Ireland were not usually allowed to sue on their own.[27] If a married woman made a business deal with someone and that person defaulted, the former could not sue for damages or debts. The same was true if she owned free lands and someone stole those. The injured woman's husband, with the woman or her attorney beside him, had to sue on her behalf (with a few extraordinary exceptions). In fact, some husbands sold or leased their wife's free lands and the woman had to sue to recover those after the husband died. This happened so often that the English chancery created a writ called *cui in vita* (while her husband was alive, she could not oppose him). These married women could be English or other, commoner or noble, but still did not pass the test of legal freedom of being able to sue a writ in a royal court.

The ability to sue a writ in the English royal courts in medieval Ireland was not restricted to English people. On the one hand, free, non-English people could sue writs; on the other, married free women, including English women, usually could not sue a writ on their own despite being legally »free«.

2. *Attempts at denial of access to courts*

Not every Gael or Ostperson was allowed to use the royal courts, although denial of access must not be mistaken for unfree status. Some of the free Gaels and Ostpeople who were denied access to the royal courts purchased grants of access from the crown of England, either through a petition to the king himself, the king's justiciar in Ireland, or at the Dublin exchequer. The free Gaels and Ostpeople who could not use the royal courts and had not yet purchased a grant should be referred to as »unaccepted« for brevity's sake. A few dozen of these grants survive, and when a grantee encountered trouble in a court, they presented their grant. In one instance, we can see that an enfranchised man was legally free but not English. Thomas fitz Gerald was labelled a *Hibernicus* (the English colonists' othering label for some of the Gaels and Ostpeople) and the justiciar seized Thomas's burgages in Drogheda.[28] Thomas's father, Gerald fitz John, had received a grant from Edward I of England twenty years earlier.[29] Thomas's burgages were returned to him, but he was not an English man despite his father being enfranchised by charter. Clearly, Thomas, Gerald and John are not Gaelic names, so we cannot be certain that any of them were in fact Gaels – but they definitely were not considered English. We also have records of Welsh and Scottish people born in Ireland. In 1297, Henry Scot brought an assize of novel disseisin against Laurence fitz Henry Trynedyn. Laurence replied that Henry was a *Hibernicus* and would not answer his writ. Henry replied that he was an English man – an *Anglicus* – from Scotland, and that he and his father had always used English law. The jury reported that Henry was a *Scotus* – that is, a Scottish man – and not an English man, but that he did use, and had access to, English law.[30] The court accepted this verdict. In 1332, Richard fitz Robert le Crouther brought an assize of novel disseisin against four people. Two defendants claimed that the extent of the messuage and lands in question was not correct and wanted the writ quashed for false claim. One of these defendants added an additional plea: that Richard was a *Hibernicus* and also that he was not of free blood. Richard replied that his grandfather had been born in Wales, that he (Richard) was Welsh (*Wallensis*),

25 ACN, RC 7/8, 108–110.
26 ACN, RC 7/1, 257.
27 In medieval England, many married women could: McIntosh (2005).
28 ACN, RC 8/1, 338; Mills (ed.) (1914) 352.
29 Public Record Office, National Archives of the UK, Kew, Surrey [PRO], C 66/103, m. 11.
30 Mills (ed.) (1905) 158; Hewer (2018c) 212–214.

and that he was free. The jury agreed and their report implied that all Welsh people in English Ireland were considered free and had access to English law.[31] Other records (landholding) contradict this and are mentioned below. The main point is that having access to the English royal courts in Ireland did not make someone *English*, and one did not have to be English to access the courts.

Since some of the example cases include defensive pleas that claimed that a *Hibernica/-us* could not use the English royal courts in Ireland, this claim should be addressed. In 1303, Maurice Scadan sued Giolla na Naingeal Mac Clereigh, *Hibernicus* of Maurice, for a trespass. This case was heard in the Dublin bench.[32] If Mac Clereigh had been unfree, Maurice never would have sued the former in the Dublin bench. The justices would have considered that a manumission of an unfree tenant, and even if they allowed the case to proceed against an unfree defendant (in contradiction of the law), the lord lost chattels if their unfree tenant was amerced.[33] This was because medieval English courts and society considered the chattels of all unfree people to be the legal property of their lord. There were unfree Gaels who attempted to sue in the English royal courts and there were defendants who claimed that a plaintiff was an unfree Gael.[34] Most of the cases being examined here, however, do not involve pleas of naifty.[35] Another case highlights the problem. Hugh fitz William sued John Tebaud for half an acre of land and the profits of a mill in co. Cork; Tebaud replied that he did not have to answer Hugh as the latter was a *Hibernicus*. Hugh said that this did not bar him from court or suing, as his father had enfeoffed him of the tenement and put him in full seisin.[36] The question was not one of naifty, but instead of enfranchisement – or lack thereof – based entirely on identity. The court did not rule this case on that plea, so this claim is tentative. But the court did allow Hugh to bring an assize and it was not quashed with a plea of naifty (the bar against unfree plaintiffs).

Additional royal-court cases indicate that in medieval English Ireland, holding free lands in fee proved someone was free and therefore answerable in court. Several defendants attempted to quash writs against them not by claiming that the plaintiff(s) was unfree (*nativa/-us*) but instead that she/he was a *Hibernica/-us*. Many of these plaintiffs replied with their supposed legal identity and did not mention their freedom because that was not the issue for the jury to determine: the issue was access to the royal courts. Of course, this should not be taken to mean that this time period saw the end of legal unfreedom or of the existence of *native/-i* in English Ireland. It is important to note, however, that out of the roughly dozen or so surviving cases in which the *est Hibernica/-us* plea was employed, it only worked twice, and one of those was against a free (seemingly English) widow.[37]

3. *Holding free lands*

Titles to free lands were a reason for many court cases and, more importantly for this study, landholding records can fill a critical lacuna from the court rolls. There are many intersections between having access to the courts and holding lands in fee, as Hugh fitz William's case indicated. We can see that many women held lands in fee when they sold the lands to someone or donated them to a church, including Gaelic women. In 1258, Sláine widow of Giolla Phádraig the butcher granted lands in the suburbs of Dublin to Ralph the cook.[38] In 1299, two English men sued every burgess of Clonmel, claiming to be their lords. These suits are a great source for women and Gaels holding burgages and being sued in the Dublin bench. There were at least ten women holding burgages in Clonmel: Margaret Lowys (held two),

31 ACN, RC 8/17, 150–152; Hewer (2018b) 197–198.
32 ACN, RC 8/2, 168.
33 Hyams (1980) 20–21, 126–151; Briggs (2008).
34 Hewer (2018a) 23–32; Hewer (2018b) 180–190.
35 Two of the defendants in Richard le Crouther's case claimed that he was of unfree blood, and the defendants in William le Teynturer's case claimed that he was servile.
36 Mills (ed.) (1905) 336–337.
37 For the two cases, see Hewer (2018a) 128–129, 136–137. Other cases include allegations of unfreedom, but these do not.
38 McEnery / Refaussé (eds.) (2001) no. 88.

Lucy la Chartere, Agnes Randalf, Elena Thony, Roes Arthur, Isabel Thark, Agnes Thony, Eva Mustard, Agatha la Boteler, and Sybil Map.[39] These cases also reveal eight Gaelic men holding burgages. Gaels also appear on rentals and extents of manors. In 1311 at Imaal, Donnchadh Mac Maoilsheachlainn and Hugh, Morvuth, Faolán, Baltor, Meiler, and Robert Ó Tuathail were listed as free tenants, together with the extent of each of their holdings. Additionally, the extent listed that some owed suit of court at the manor court, and others were free from that obligation.[40] There are even land grants to Gaels. In 1277, Thomas de Lega granted an acre and half of land along with a messuage in Corbally, liberty of Kildare, to Neamhain Ó Fionnghalaigh to hold by socage tenure (which meant that he simply paid rent and owed no military service).[41] There are many other surviving records like these.

Land records also demonstrate that non-Gaelic people could be unfree. In 1331, a detailed survey was made of all of the unfree tenants at Lisronagh; at least three were Welsh (John Rhys, Peter Walche, and David Rhys), and one appears to have been English (Philip Peke).[42] Another type of record (a royal pardon for crimes) supports the existence of unfree English tenants in English Ireland. In 1310, the chief justice of the Dublin bench met with a Gaelic rí, Mathghamain Mac Mathghamhna, and the justice stipulated that Mathghamain had to satisfy all of the English *native/-i* (unfree tenants) of the marches of co. Louth whom he had injured recently.[43]

Relying on the jury verdicts and court judgments that stated that holding free lands guaranteed access to the royal courts as indicative of the law, manorial extents and criminal court cases demonstrate that additional Gaels held free lands and therefore had access to the courts, and simultaneously that Welsh and English people could be considered legally unfree. Being unfree did not mean that that person was Gaelic, and being Gaelic did not mean that that person was unfree.

4. Warrantors and other positions of power

In order to prove one's title to land in an English royal court in medieval Ireland, someone could either present a charter, ask the jury to view the lands in question, or call another person to come to court and give a warranty. Warranting was not the same as being a witness or an oath-helper; it usually was done by the grantor of lands. Promising to provide a warranty was typically part of a land grant. As noted earlier concerning the case of Saidhbhín inghean Mhac Dhonnchadha, to warrant a case meant that the person giving the warranty (the warrantor) took over the case from the person who called them (the warrantee). If the warrantor lost the case, the warrantee lost the lands in question, but the warrantor provided lands of equal value or size to the warrantee. Warranting in court is thus an immensely helpful phenomenon for studies of legal status because the warrantor had to hold free lands in fee in order to be able to give them away. Various cases show that women could be warrantees and warrantors. Stephen de Britann was sued for nine acres of land with an assize of mort d'ancestor. He called Margaret, abbess of Hogges, to warranty.[44] In 1290, Reginald de St James was sued for a messuage and lands in co. Limerick. He called Juliana, sister and heir of Maurice fitz Gerald senior, to warranty. Juliana was present and provided a »writing« (*scriptum*) that showed that the plaintiff's father had granted the manor to her brother. She won the case.[45] In 1306, Robert Ardaugh sued Alice the Lange and ten other people with an assize of novel disseisin for a messuage in Dundalk. Two of the fellow defendants called Alice to warranty and the rest made no claim to the messuage and denied having possession of it. Alice warranted the couple and the jury found that Robert had no claim to the messuage.[46]

Medieval society had legally recognised hierarchies beyond »free« and »unfree«. The court rolls provide significant evidence for classifying or tax-

39 ACN, RC 7/6, 77–78, 80–82; RC 7/7, 24–31, 165–167, 176–181; RC 7/8, 158.

40 Donnchadh Mac Maoilsheachlainn and Morvuth and Faolán Ó Tuathail were free from suit of court. The rest owed suit: White (ed.) (1932) 20.

41 Curtis (ed.) (1932) no. 204.

42 Curtis (1935–1937) 46–47.

43 Griffith et al. (eds.) (1956) 161.

44 ACN, RC 7/1, 468–469.

45 ACN, RC 7/2, 142.

46 ACN, KB 2/4, ff. 588–589.

onomising socio-legal status in 13th-century English Ireland. In 1299, several royal bailiffs and sergeants were amerced for summoning men to juries who did not hold at least five shillings' – or in one case 10 shillings' – worth of free lands.[47] Other records state that jurors should be knights, but if not enough from the area were available, then the bailiffs and sergeants were to summon »legally knowledgeable« men.[48] Bearing this in mind, the records of jurors manifest several aspects of legal identity. In 1216, an agreement was made that certain juries in co. Cork would contain twelve law-worthy Gaels to determine if someone who was alleged to be a *nativa/-us* was in fact unfree.[49] At that point, the English had been in Ireland almost fifty years and the existence of Gaelic men who were »legally knowledgeable« about English law indicates that these men were more than just accepted. In 1299, the escheator of Ireland formed a royal inquisition into lands held in chief of the crown of England. The inquisition had two parts, a jury from the *villa Hibernicorum* of Roscommon and a jury from the borough of Roscommon.[50] The former included Robert Ó Mughróin, Mac Muireagán Mac Giolla Bhrighdhe, Andrew Ó Domhnalláin, Donn Sléibhe Ó Martain, Eugenius Ó Cléirigh, Aodh Ó Martain, and Eochaid Mac Máille, and the latter included Philip Ó Conbhuidhe, Ainghle Mac Giolla Aindréis, and Niall Mac Searraig. These men cannot be denounced as unfree. They were investigating lands held in chief of the king of England for the escheator, and the records are clear that jurors had to be more legally knowledgeable and of higher social standing than an »ordinary« free person. Other juries contained Welsh and Scottish men, but women are noticeably absent from jury lists. Merchants, such as the Luccans, could not usually be on a jury because they did not hold free lands in English Ireland.

The ability to work for the crown of England was reserved for certain people, usually those politically connected or, for regional posts, locals with power and influence. In 1324, Aymer de Valence, an English noble, died, and his liberty of Wexford was taken into the crown's hand. The escheator took the oaths of royal bailiffs to oversee the liberty during the escheat. Gilbert Ó Maoil Áeducáin was named as sergeant of the vill of Odogh [in Kilkenny, but part of Aymer's liberty], and Maurice Ó Dubhagáin was made the »foreign sergeant«, meaning he oversaw lands surrounding the vill.[51] For the term of 1242–1243, Simon Ó Muireadaigh was the viscount of co. Dublin.[52] Viscounts (*vicecomites*) in the 13th century were royally appointed bailiffs of royal counties or were bailiffs of large areas in the liberties who reported to the seneschal. From 1279 to 1281, Hugh de Kent was collector of the new custom for the vill of Galway, and at the same time he was named as a burgess and merchant of Galway.[53] Nearly 20 years later, in 1297, the same Hugh de Kent of Galway, now called a *Hibernicus*, received a grant of access to the royal courts from Edward I of England.[54] There were many more Gaelic bailiffs, sergeants, provosts, attorneys, narrators, and collectors. They served the crown of England, English lords, and all sorts of commoners of English Ireland.

Lords also employed bailiffs and receivers (financial bailiffs). Women could be receivers, even for other women. William fitz Roger Owen claimed Alice wife of Walter de Kenley was his receiver for one of his manors.[55] William's court case against Alice failed, so there is no legally definitive proof that she served in this position. Assuming that Alice was his receiver, this act exhibits significant agency by a married woman in 13th-century English Ireland. Receivers would have been required to be literate and possess notable skills in mathematics and record-keeping.

47 Mills (ed.) (1905) 296, 298. See also (fines from 1297), ACN, RC 7/5, 128–129, 213.
48 Hewer (2018a) 55–58.
49 Nicholls / MacCotter (eds.) (1996) 76–79.
50 Mills (ed.) (1905) 268–269; Dryburgh / Smith (eds.) (2007) no. 100.
51 Dryburgh / Smith (eds.) (2007) no. 234.
52 PRO, C 66/277/2.
53 36th Report of the deputy keeper of the public records and keeper of the state papers in Ireland (1904) 54, 73; Sweetman (ed.) (1877) 419; Sweetman (ed.) (1879) no. 1; Sweetman / Hancock (eds.) (1886) no. 692.
54 Sweetman / Hancock (eds.) (1886) no. 19.
55 ACN, RC 7/5, 46–47.

They had to keep written records of all of their accounting work (*compotus*) and, at the end of their term, deliver the records to their employer. Elena wife of Pagan Inteberge was the receiver of Isabel wife of Henry Moryz for an unspecified term.[56] This case is even more remarkable because a married woman had hired another married woman to be her receiver. Both demonstrate considerable agency.[57] Alice and Elena appear in the records because they did not return their records on time and their former employers sued them (and their husbands). There were almost certainly many more women receivers who remain hidden from our eyes because they returned their account records on time and therefore were not sued.

III. Legal status under criminal law

The final point to consider when asking whether a person was a legal member of medieval English Ireland is the »protection« of life, limb, and goods. This is a highly debated and misunderstood point in the histories of medieval Ireland. The English royal courts in medieval Ireland did not »protect« anyone from death or maiming. The courts inflicted corporal punishment against some felons and awarded compensation to certain injured people or their relatives and denied it to others. A large and historiographically overlooked aspect of criminal cases in the royal courts is that the possessions of people who could not sue a civil case were protected. English people who stole goods from Gaels were hanged frequently.[58] In 13th-century English Ireland, legal status in criminal cases was different than in civil cases. English men with sufficient lands to be a juror could be outlawed and killed by a *posse comitatus* or captured and executed after a court judgment. In many situations, English men were not only not protected »of life and limb« by the courts, they were liable to lose life and limb by the order of the courts! Outlawry occurred when an individual was charged with a crime (or sometimes when accused of a »criminal« action with a civil appeal) and did not appear to answer the charge. After a certain number of non-appearances, the accused was outlawed.[59] Just as with civil cases, women's status under criminal law does not match the traditional arguments put forward by scholars. Women – English, Gaelic or other – could also be outlawed and hanged.[60] An outlaw was supposed to be captured and brought to court to face the charge, but in some circumstances, an outlaw could be killed without a judgment. In co. Tipperary in 1295, Alessia widow of Walter fitz Walter le Bret appealed thirteen men of the homicide of her husband, which was her personal action and not an indictment. The accused who did not appear were ordered to be outlawed if they did not appear by, at least, the fourth county court, the usual process for outlawry from an indictment. Some of the accused did appear and one of them, Walter le Bret, answered that he had been viscount of co. Tipperary on the day in question and with a *posse comitatus* had pursued »malefactors« (unconvicted criminals or convicted »general evildoers«). Walter then said that Alessia's husband and another man had been with the malefactors and had attacked the *posse*. The death of Alessia's husband during this attack, Walter claimed, was therefore no crime and was not against the peace.[61] No judgment was made then, and none survives, but one of the accused (John de London) paid £ 20 for a pardon a month before the appeal was heard; he clearly felt that he would be convicted and probably hanged. Alessia withdrew her appeal against this man because he had a royal pardon, but she was still gaoled for false appeal and had to pay 20 shillings to be released from gaol.[62] Not anyone or everyone could kill an outlaw. In 1297, James de Boy killed Adam fitz Ralph, an outlaw, in Meath. Adam had been outlawed in the liberty of Kildare (just south of Meath) for robbery and being a malefactor. James claimed that the officers of the liberty of Kildare had given him permission to kill Adam wherever James found him after Adam had killed James's relative. The royal court did not accept this plea and James had to pay a fine to be pardoned for slaying Adam.[63]

Another type of justifiable homicide was self-defence. In co. Cork in 1295, John fitz Nicholas de

56 ACN, RC 7/3, 108. No judgment in the surviving record.
57 Both women's husbands were involved in the court case, so they were not *come femmes soles*.
58 Hewer (2018a) 218–224.
59 There were mesne processes, but they are not particularly relevant to this study. For that discussion, see Hewer (2018a) 208–210.
60 Hewer (2018a) 208–209.
61 Mills (ed.) (1905) 60.
62 Mills (ed.) (1905) 57, 60.
63 Mills (ed.) (1905) 195.

Roche was charged with the homicide of Henry fitz Nicholas de Roche. The jury reported that Henry had tried to kill John and that John had fled but, in the pursuit, killed Henry in self-defence. John was acquitted and his chattels were returned.[64] However, a verdict of self-defence was not always an automatic acquittal of the charge of homicide. Some accused had to obtain a pardon after the jury verdict.[65] A third type of allowed homicide was accidental. In 1302, Walter the White was crushed to death by the mill at Leyiston, Kildare, by accident. The jurors declared that clearly no one was suspected, but the court ordered that the parts of the mill that killed him were forfeit as a deodand (the physical objects that killed someone were forfeit to the king for killing: the usual practice).[66] In 1311, Richard le Venour, servant of William fitz John, was leading a cart of William's oats and fell. The cart ran over Richard and killed him. William was not charged with any crime and he was allowed to keep possession of the deodand until it was assigned to a monastery.[67] Gregory Ó Toráin was driving his cart towards a moor in Kildare when he found a young boy out in the road. He shouted for the boy's mother to move her son, but she did not get there in time and as it was on a down-hill slope, Gregory could not stop the cart before it ran over the boy. Gregory immediately fled the scene so his goods were forfeited (the law for everyone), but the jury said that the death was an accident and the court granted him permission to return to his home without having to buy a pardon.[68] A relevant, but tangential, aspect of this case is that the court's treatment of Gregory Ó Toráin demonstrates that he was free. He owned chattels and the court recognised this. An unfree person's chattels would have been handed over to their lord.

On some occasions, accidental deaths were not automatically forgiven. Henry fitz William Hamond killed his own mother by misadventure (the usual legal term), but had to get a magnate to request that Henry be allowed to pay 40 shillings for a pardon.[69] There were probably more facts involved in this case, but those were not recorded in the surviving record. Pardons for homicide in English Ireland were a regular occurrence. Wealthier people could buy a pardon, but once Edward I of England began his wars with Scotland (1296), most slayers had to serve in the English army in Scotland to avoid the noose. James Hareberge killed an Englishman named Craddoc le Waleys (a rather Welsh name). Hareberge went to Scotland and fought to secure his pardon, which was granted.[70] Some slayers paid a fine for a pardon but were then ordered to serve in Scotland additionally.[71] The families of the victims in these instances were not compensated and the slayers were not corporally punished by the courts (the men who received these pardons all survived the wars in Scotland).

All of these situations are important when examining the courts' treatment of the homicide of Gaelic people. The royal courts ordered the hanging of English men and others for killing Gaels, and outlawed many more for killing Gaels and then fleeing.[72] This treatment, however, was not universal. Certain Gaels were called »*Hibernica/-us* of [a lord]«, usually an English lord, in a criminal case investigating the Gael's death. In most of these cases, the slayer was pardoned the crime of homicide and ordered to pay a *resolucio* to the lord.[73] These Gaels appear to have been regarded as *native/-i* (unfree). Lords in England sued for the death of their unfree tenants (called »villeins«).[74] Where the English law in Ireland diverged the greatest from the law in England was concerning the slaying of Gaels labelled *Hibernice/-i* who did not have a lord. These Gaels were seemingly free (in that they were not unfree tenants of a lord from English Ireland) but were not »free« to the English royal courts in Ireland in the sense of being considered members of English Ireland. One case illustrates this point. Geoffrey fitz Thomas Broun killed John Stakepol and was charged with the homicide of an Englishman. The jury returned that Stakepol had been a *Hibernicus* and was the son of Domhnall Ó Glasbháin. Broun

64 Mills (ed.) (1905) 64.
65 Griffith et al. (eds.) (1956) 320.
66 Mills (ed.) (1905) 444–445.
67 Griffith et al. (eds.) (1956) 171–172.
68 Griffith et al. (eds.) (1956) 319.
69 Griffith et al. (eds.) (1956) 251.
70 ACN, M 2542, 321; Griffith et al. (eds.) (1956) 26–27.
71 ACN, KB 2/7, ff. 2r, 4r.
72 Hewer (2018a) 180–185.
73 Hewer (2018a) 188–197.
74 Hyams (1980) 136–137.

was released from all charges without even an amercement or fine.[75] No one alleged that Stakepol was unfree.

IV. Conclusions

In 13th-century English Ireland, identity and acceptance were crucial. Parties in court vigorously argued over who was »English« and who was not. Despite this rhetoric, many juries specified that non-English people enjoyed access to the English royal courts and had certain rights and privileges. Other people did not. The most disadvantaged groups were the unfree, women (especially married women), and unaccepted Gaels and Ostpeople, but just as modern Black feminist theorists have argued, there were many intersections of power and discrimination.[76] An unfree Gaelic woman or Ostwoman would stand to be oppressed in various ways simultaneously (by her lord, by her priest, by her husband, and by her neighbours). English women could own extensive tracts of lands, have lordship over liberties, hang criminals in their own courts, and order their bailiffs to mistreat tenants. These same women might not have a choice in their first, second, or even third husbands, who could then sell or lease away their lands without their consent, and they could not sue to recover these lands until the husband had died. At least one group of rural English people were labelled *native/-i* (unfree), which disrupts the predominant current understanding of legal status in 13th-century English Ireland. Their existence contradicts the discourse at that time as well as the many court judgments that declared that being English in English Ireland made someone free and accepted ipso facto. English law, however, was already equipped with traditions, customs, and defensive pleas to prevent unfree English people from enfranchising themselves in a royal court. Presumably, if these English *native/-i* went to the Dublin bench, their lord would interrupt the case with a plea of naifty. This hypothesis is confirmed by the fact that the record which names the English *native/-i* was created at the behest of the chief justice of the Dublin bench.

Some Gaels, Ostpeople, Welsh, and Scots were allowed to use the English royal courts in Ireland but were not considered English. There also existed legally unfree people in English Ireland, but this did not mean that all Gaels and Ostpeople were unfree. Neither did being English in medieval English Ireland automatically provide all legal rights and privileges. Besides the few unfree English people, English women had to negotiate for power in a discriminating society. The law-in-action method provides numerous insights into the nuance of society and power in medieval English Ireland.

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75 Mills (ed.) (1914) 520.
76 Crenshaw (1989).

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