

## THE ANCESTRY OF JOHN DOE: A SQUIB

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Work preparatory to redrafting the *Oxford English Dictionary's* entry for the name *John* has turned up three hitherto unpublished references to *John Doe*.<sup>1</sup> The earliest of these dates from 1599, 170 years before Blackstone's celebrated comment on this legal fiction, long viewed as the first written attestation. It then seems opportune to explore the possible origins of the name from the fresh vantage point of the late sixteenth century.

In his *Commentaries on the Laws of England* dealing with 'Private Wrongs' the celebrated eighteenth-century legal historian William Blackstone discusses writs which 'are either optional or peremptory; or, in the language of our law, a *praecipe*, or a *si te fecerit securum*.' The second is used when nothing other than simple satisfaction is demanded via a court judgment. Blackstone illustrates with 'writs of trespass ... wherein no debt or other specific thing is sued for in certain, but only damages to be assessed by a jury.' The defendant is called to appear in court, provided the plaintiff has given security (here persons supportive of both the plaintiff and his cause) that he fully intends to prosecute his claim. But of such security Blackstone writes:

The whole of it is at present become a mere matter of form; and John Doe and Richard Roe are always returned as the standing pledges for this purpose. The ancient use of them was to answer for the plaintiff; who in case he brought an action without cause, or failed in the prosecution of it when brought, was liable to an amercement from the crown for raising a false accusation; and so the form of the judgment still is.<sup>2</sup>

Later historians have identified *John Doe* as the name given to the fictitious lessee of the plaintiff in the now obsolete mixed action of ejectment, while *Richard Roe* was the fictitious defendant.<sup>3</sup> Here, in a procedure and with names that were mere matters of form by the mid-eighteenth century, the Roman legal practice of naming fictional persons is seen in what would appear a thoroughly English guise. But is it English?

When a third name was called for, the convention was to use *Peter Poe*. This both rhymes with the two foregoing names and replicates the alliterative pattern of the second. This assonance is less fully realized in the first name, *John Doe*, giving it the appearance of a slightly less arbitrary origin than the two following, and perhaps of some original discrete status. *Doe* has never been a common English surname.<sup>4</sup> *Roe*, on the other hand, is a fairly frequent name in the English-speaking world. Its origins, however, are not exclusively English but also Irish, in which context the name derives from the adjective *ruadh* ‘red, red-headed’, used as epithet and sobriquet. The third surname, *Poe*, clearly an expedient and with a more tenuous connection to *Doe* and *Roe*, is traced to Old Norse *pá* ‘peacock’ and is among a number of European names with the meaning of ‘showiness’ and ‘vanity’. Although never common, it is attested in both England and Ireland.<sup>5</sup>

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Like *Roe* and *Poe*, *Doe* has an Irish parallel, if not antecedent, but it is not drawn from the everyday register where *ruadh* or Hiberno-Norse ‘peacocks’ are at home. *Doe* (vars. *doé*, *dae*) is found in Middle Irish as an infrequent term from the elevated register of poetry and law, and is a synonym for ‘human being, person’. In the lexical compilation now called *Cormac’s Glossary* and ascribed to the late ninth-century bishop-king of Cashel, Cormac mac Cuilennáin, we find *doe .i. duine* ‘doe, i.e., person’.<sup>6</sup> In other texts dealing with law, *doé* is listed among the twenty-six *togarmand miadslechta* or ‘rank sections of dignity’.<sup>7</sup> Evidence is too slim to determine whether it represents a given socio-economic rank, for which early Irish offers a rich terminology, but it does occur in the list just after the lowest of the extensive noble ranks and before the farming classes.<sup>8</sup>

The chief objection to entertaining the loan of *doe* ‘person’ or a variant from the Irish to the English legal tradition is phonological. The Irish word contained a diphthong, by the Middle Irish period, already moving toward resolution as a pure vowel [i]. The English spelling *Doe*, on the other hand, probably represents a long, equally pure [o] sound in Middle and early Modern English. Yet, if *doe* were so little a part of everyday speech that it required a gloss, and is otherwise found only in legalistic texts, it may never have had much in the way of an oral life. It then appears justified to hypothesize a text-to-text transfer of the term, resulting in a simple replication of orthography, without a phonic echo as interference. This does, however, add one more area of speculation to this inquiry.

The discovery of *doe* in the early Irish legal vocabulary invites closer scrutiny of the surname *Roe* and a questioning of its simple derivation from *ruadh* in the present legal context. *Roe* is found as a legal term for ‘duel, single combat, field of combat’, which accords well enough with the notions of plaintiff and defendant, but seems unlikely to have supplied the name of just one side of the dispute, and the defendant’s at that. More intriguing is early Irish *roach*, which referred to the witness to a contract.<sup>9</sup> Thus one could see in the pair *Doe* and *Roe* a principal and a witness.

Early Irish legal tradition also offers precedents for, or at least procedures comparable to, English law in the areas of illegal and legal occupation of land. Although it was an offence to squat on another’s land, right of ownership could be established if such presence went uncontested for a stipulated period of time, called *rudrad*. Such usucaption could be opposed by ejecting cattle, tearing down fences, and by verbal complaints before witnesses (Kelly 1988: 109). Legal entry, *tellach*, was effected in the presence of witnesses and with the backing of sureties. A first such action might be followed by a withdrawal and the submission of the dispute to arbitration. This process could be reiterated with escalating symbolic acts of taking possession; legal ownership might follow successful arbitration or the failure of the defendant to submit to arbitration (Kelly 1988: 186f.). Irish law offers much evidence for sureties or guaranties which had a human identity, and which might roughly be compared to present-day character witnesses, with the same lack of evidentiary weight.

To return to John Doe, we have no evidence for fictitious persons in the early Irish legal tradition, from whom *John Doe* and *Richard Roe* might be thought to descend. Given that *John Doe* and *Richard Roe* now appear to have been in regular use in England from about 1600 onwards and had become commonplace by Blackstone’s time in writs concerning trespass and ejectment, it would be easy enough, in the light of the history of English land tenure in Ireland, to improvise a larger fiction and see John Doe as the tenant of an English landholder in Ireland, at pains to prosecute his claim against a rival, whether an unnamed Englishman with a tenant or lessee of his own, Richard Roe, or a native Irish defendant so named. But this is more speculative than based on hard evidence.

If we were to pursue the link between Old Irish *doe* and Blackstone’s *John Doe* as tantamount to ‘just anybody’, which is admittedly a slight over-reading of the evidence, we should need to establish how the praxis of Irish courts under British rule, in particular as they dealt with titles to land, could possibly have influenced English common law even in such an insubstantial matter as fictitious guarantors. Irish law students, albeit largely from Old English backgrounds, studied in England in the thirteenth and fourteenth centuries, and Irish lawyers pleaded cases there,

providing additional opportunities for the transfer of legal concepts.<sup>10</sup> According to Richard Stanihurst, Irish law was being used in Ireland in many areas along with English common law as late as the third quarter of the sixteenth century, and the latter did not predominate until the following century.<sup>11</sup> The new evidence now in the hands of the editors of the *OED*, however welcome, still leaves a tantalizing temporal gap between the introduction, from whatever source, of *John Doe* into English legal procedure, and these first attestations.

The later history of the name *John Doe* is yet another story. Blackstone's remark appears to have continued to be well-known into the nineteenth century, as when Charles Dickens writes of the prenatally aged law clerk Smallweed in *Bleak House*:

In short, in his bringing up, he had been so nursed by Law and Equity that he has become a kind of fossil Imp, to account for whose terrestrial existence it is reported at the public offices that his father was John Doe, and his mother the only female member of the Roe family.<sup>12</sup>

The name *John Doe* crossed the Atlantic to America in the legal context, maintaining its use as a dummy name in legal scenarios but also becoming a proxy for the name to be filled in on a form and, in police jargon, the provisional name for an unidentified corpse. Apart from the latter extension, *John Doe* seems never to have been at home in British or American slang.<sup>13</sup> Police use of the name may well mean that John Doe's days are numbered.<sup>14</sup>

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## Notes

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<sup>1</sup>. The *OED* slips offer the following three summaries: 1599 J. Adames *Order of Keeping Court Leete* sig. D1, "After the Stile of the Court entered, you shall cause the Bayliffe to crie once Oyes, and then call the Jurors. *Examp.* John Doe, Richard Roe, John Den, Richard Fen, [etc.]" ; 1648 R. Robins *Whip for Marshalls Court* sig. D1v, "Their writts run to Arrest John Doe, and Richard Roe in an action of Trespas"; 1671 F. Philipps *Regale Necessarium* 159 Returning upon the Writ the feigned names of *John Doe* and *Richard Roe* for the Sureties put in by the Complainants to make good their Complaints or Actions. I am grateful to John Simpson, Chief Editor of the *OED*, and to his staff for this information, in advance of its appearance in

the New Edition. Later examples of *John Doe* in *Oxford English Dictionary*, 2nd ed., Oxford, 1989, online version December, 2011.

<sup>2</sup>. Blackstone (1979: 275).

<sup>3</sup>. *OED* (1989), s.v. *John* 4.

<sup>4</sup>. The rare English name *Doe* reflects the French (Anglo-Norman) name *D'Eu*, based on the toponym from the department of Seine-Inférieure; see Reaney (1967:73 and 1997:137).

<sup>5</sup>. Discussion in Hanks and Hodges (1988), s.n. *Peacock*. Here, *Doe* has an entry comparable with that in Reaney (1967) but the Irish antecedents of *Roe* are not mentioned

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and a simple equivalence with English *Ray* is listed, traced to the Old English term for the female roe deer.

<sup>6</sup>. Cormac mac Cuilennáin (1912), entry Y494. See, now, the *Early Irish Glossaries Database*, <http://www.asnc.cam.ac.uk/irishglossaries>, s.v. *doe* (Y494).

<sup>7</sup>. O'Donovan et al. (1865-1901: IV, 344f.), Binchy (1978: II, 582, l. 33); additional examples in Quin et al. (1912-76), s.v. 2 *doé*.

<sup>8</sup>. On Irish social nomenclature, see Kelly (1988).

<sup>9</sup>. Kelly (1988: 320), s.v., with refs.

<sup>10</sup>. Brand (2000). For two case studies of Irish and English law interacting, see Hand (1967).

<sup>11</sup>. Stanihurst (1584: 33-38), cited in Sharpe (1986: 188f.). On the early phase of this long transitional period, see Brand (1981).

<sup>12</sup>. Dickens (1983: ch. 20).

<sup>13</sup>. See, for example, Partridge (1984).

<sup>14</sup>. The argument presented here is speculative, hence the cautionary note sounded in its title, "A Squib". It is entirely possible that the resemblance of *John Doe* and early Irish *doe* 'person' is merely an entertaining coincidence. I am grateful to the editors of *Miscelánea* for their generous provision of space for what may be a less than fully convincing scholarly exercise.

## Works cited

BINCHY, D. A. (ed.) 1978. *Corpus Iuris Hibernici*. 5 vols. Dublin: Dublin Institute for Advanced Studies.

BLACKSTONE, William. 1979. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*. Vol. III. 'Of private wrongs', with an introduction by John H. Langbein, Chicago: University of Chicago Press.

BRAND, Paul. 1981. "Ireland and the Literature of the Early Common Law". *The Irish Jurist*, 16: 95-113.

—. 2000. "Irish Law Students and Lawyers in Late Medieval England". *Irish Historical Studies*, 22: 161-73.

CORMAC MAC CUILENNÁIN. 1912. *Sanas Cormaic: An Old Irish Glossary*. Kuno Meyer (ed.) Halle: Niemeyer, and Dublin: Hodges, Figgis.

DICKENS, Charles. 1983. *Bleak House*. New York: Bantam.

DINNEEN, Patrick S. (comp.) 1927. *Foclóir Gaedhilge agus Béarla: An Irish-English Dictionary*. Dublin: Irish Texts Society.

HANKS, Patrick and Flavia HODGES (comp.) 1988. *A Dictionary of Surnames*. Oxford and New York: Oxford University Press.

HAND, Geoffrey. 1967. "The Common Law in Ireland in the Thirteenth and Fourteenth Centuries: Two Cases Involving Christ Church, Dublin". *Journal of the Royal Society of Antiquaries of Ireland*, 97: 97-111.

KELLY, Fergus. 1988. *A Guide to Early Irish Law*. Early Irish Law Series, 3. Dublin: Dublin Institute for Advanced Studies.

O'DONOVAN, John, et al. (eds.) 1865-1901. *Ancient Laws of Ireland*. 6 vols. Dublin: HMSO.

OED. 1989. *The Oxford English Dictionary*. 2nd ed. J. A. Simpson and E. S. C. Weiner (prep.) Oxford and New York: Oxford University Press.

PARTRIDGE, Eric. 1984. *A Dictionary of Slang and Unconventional English*. London: Routledge and Kegan Paul.

QUIN, E. G., et al. (eds.) 1912-76. *A Dictionary of the Irish Language*. Dublin: Royal Irish Academy.

## Notes

- REANEY, P. H. 1967. *The Origin of English Surnames*. New York: Oxford University Press.
- . 1997. *A Dictionary of English Surnames*. 3rd ed. R. M. Wilson (rev.) Oxford: Oxford University Press.
- SHARPE, Richard. 1986. "Dispute Settlement in Medieval Ireland: A Preliminary Inquiry". In Davies, Wendy and Paul Fouracre (eds.) *The Settlement of Disputes in Early Medieval Europe*. Cambridge: Cambridge University Press: 169-89.
- STANIHURST, Richard. 1584. *De Rebus in Hibernia Gestis*. Antwerp: [s.n.] 1584.

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