

Constitutional Change, Law and Grattan's Parliament

MAIKE SCHWIDDESEN

The years 1782 and 1783 remain striking moments in the constitutional memory of Ireland. If, as Henry Grattan declared in the Irish House of Commons, 'the Sixth of George the First took away your Constitution',¹ the amendment of Poynings' Law, and the repeal of the Declaratory Act in 1782, returned fundamental constitutional rights to the Irish Parliament. Both Acts had been symbols of English supremacy over Ireland, and the legislative changes were celebrated as a step towards greater Irish independence. But the changes are viewed in two ways. While they were celebrated at that time and super-elevated later by Irish nationalists, less significance is nowadays attributed to the so-called Constitution of 1782, which is often seen as a mere 'change on paper'. Long before 1782, the Irish Parliament could influence legislation to be introduced to Ireland by proposing 'Heads of Bills', and the amendment of Poynings' Law largely affirmed an established legislative procedure. The degree of legislative independence achieved in 1782 fell short of full independence, for the British executive still had significant control over the Irish Parliament and determined Irish politics. The constitutional changes of 1782–83 were symbolically significant, but (apart from the return to the Irish House of Lords of its appellate jurisdiction, a solid constitutional gain) their practical impact was limited. Neither the Irish Parliament as a legislature nor the laws it subsequently enacted were much affected. For these reasons, it remains doubtful whether the 'Constitution of 1782', although an important symbol in the constitutional history of Ireland, was in fact a *constitution* that brought about

¹ As Henry Grattan referred to the Declaratory Act, 6 Geo. I, c. 5 [GB] (1719); 'Henry Grattan's Speech to the Irish House of Commons', 19 April 1780, in H. T. Dickinson (ed.), *Ireland in the Age of Revolution, 1760–1805*, Part I, Vol. 2 (1779–1782) (Abingdon, 2016), 59.

significant constitutional change – terms, defined by the House of Lords' Select Committee on the Constitution, that are examined below.

This chapter seeks to offer a new look at the constitutional implications of the changes of 1782–83, first, by studying the concept of constitutional change and, secondly, by analysing the legislation passed by the Irish Parliament before and after the point at which it achieved its legislative independence. The focus is on the economic legislation enacted. Analysis of the changes of 1782–83, and of the legislation of the Irish Parliament, allows for a better understanding of the extent of the constitutional change and of its impact on lawmaking. Constitutional change and the law are always interacting with each other. Acts of Parliament have been the usual devices that brought about constitutional change in the United Kingdom and Ireland: and constitutional change in turn has influenced future legislation. The question in the present case is whether constitutional change influenced the subsequent legislation of Grattan's Parliament.

Comparison of the legislation of the Irish Parliament before and after 1782–83 shows, for example, that there was a marked continuity in the field of economic policy. Long before 1782, the Irish Parliament, by using the 'Heads of Bills' procedure, could shape its economic and social legislation, and continued to do so after 1782–83. In looking at the economic legislation, the focus in this chapter is on the linen industry, on the big infrastructure projects represented by roads and canals, and on the Dublin Paving Board, which was one of several municipal institutions in Dublin that was improving living conditions in the city. A large part of the legislation passed by the Irish Parliament in the eighteenth century was on economic and social issues, and a case study of these three areas shows the impact the legislation made.

The 'Constitution of 1782'

Three Acts, passed in the summer of 1782 and the spring of 1783, two by the United Kingdom Parliament and one by the Irish Parliament, are credited as securing the legislative independence of the Irish Parliament. Poynings' Law of 1495 and the Declaratory Act of 1719 had undermined the sovereignty of the Irish legislature, the one for centuries, and the other for the previous six decades. Legislative independence meant greater independence for the Irish legislature from the authority of the United Kingdom Parliament and executive than it had enjoyed before.

Poyning's Law declared the dependence of the Irish Parliament first on the English and eventually the United Kingdom executive.² The Irish Parliament was to be summoned by the British monarch and his Councils. It provided that the right to initiate laws in the Irish Parliament lay with the United Kingdom and Irish Privy Councils. The Irish Parliament had no right to initiate its own legislation. It could only approve or reject Bills introduced by the United Kingdom executive.

The Declaratory Act was passed by the United Kingdom Parliament in 1719 following the case of *Annesley v. Sherlock*.³ The 1719 Act deprived the Irish House of Lords of its judicial functions. The United Kingdom House of Lords, and not the Irish House, would henceforth be the final Court of Appeal for cases originating in the Irish courts. Further, the Act stated that the United Kingdom Parliament could legislate for Ireland. The subordination of Ireland to the British Crown was thus prescribed in law.

At the end of the seventeenth century, the Irish Parliament started to circumvent the prohibition on initiating legislation by introducing what were called 'Heads of Bills'.⁴ Heads of Bills were sent from the Irish House of Commons or Irish House of Lords to the Irish and the United Kingdom Privy Councils which then had to approve them. Either Privy Council could reject or amend the Heads of Bills. After their approval – be it with or without amendment – the legislative proposals were sent back to the Irish Parliament, now in the form of accustomed Bills. The Houses of Parliament in Ireland then had the option of approving or rejecting the Bill. If the Bill was approved by both Irish Houses, it received royal assent. The procedure of the Heads of Bills was recognised by the United Kingdom executive and firmly established well before 1782.⁵ Through this 'detour' of the Heads of Bills, the Irish Parliament could take part in initiating its own legislation. In fact, the majority of the Irish statutes enacted in the eighteenth century passed through this

² 10 Hen. VII, c. 4 [IR] (1495).

³ 6 Geo. I, c. 5 [GB] (1719). For the details of the case see A. Lyall, *The Irish House of Lords, A Court of Law in the Eighteenth Century* (Dublin, 2013), 45–7.

⁴ The only difference between Bills emanating from the Privy Councils and Heads of Bills from the Irish Parliament lay in the initial wording: J. Kelly, *Poyning's Law* (Dublin, 2007), 46.

⁵ For detail on the Heads of Bills see, for example, Kelly, *Poyning's Law*; C. I. McGrath, 'Government, Parliament and the Constitution: The Reinterpretation of Poyning's Law, 1692–1714' (2006) 35 *Irish Historical Studies* 160.

procedure,⁶ but the restrictions on the legislative powers of the Irish Parliament were the subject of a constant constitutional debate.

After the achievement of 'Free Trade' in 1780,⁷ the call for 'legislative independence' became louder. It had been discussed politically for some time when, early in 1782, the Volunteers took the lead. At their Dungannon Convention, held in the County Tyrone town, on 15 February 1782, the Volunteers demanded constitutional reforms. Among the Resolutions of the assembled Volunteers was one that declared that the powers of the Privy Councils under Poynings' Law were unconstitutional and that only the King, Lords and Commons of Ireland had the power to make laws for Ireland.⁸ Two months later, on 16 April 1782, Henry Grattan made his famous speech in the College Green Parliament, when he insisted 'that the kingdom of Ireland is a distinct kingdom, with a parliament of her own, the sole legislature thereof'.⁹ The demand for legislative independence was conceded shortly afterwards. On 21 June 1782, the United Kingdom Parliament repealed the Declaratory Act of 1719.¹⁰ This meant that the United Kingdom Parliament could no longer legislate for Ireland, and that the Irish House of Lords regained its appellate jurisdiction, becoming again the ultimate Court of Appeal for Ireland. Four weeks later, on 27 July, Poynings' Law was amended by the Irish Parliament through what became known as 'Yelverton's Act', an Act that consisted of four sections.¹¹ The first and the second of these declared the new legislative procedure: the Irish Privy Council and the United Kingdom Privy Council were merely to certify, 'without addition, diminution, or alteration' of the same, Bills that were

⁶ Kelly, *Poynings' Law*, 115, 162, 204, 244, 312.

⁷ The 'Free Trade' agitation (1778–80) was a political campaign of the Volunteers and Irish Patriots demanding the removal of British trade restrictions imposed on Irish commerce. The British ministry removed most trade restrictions from Ireland in 1779–80. N. Garnham, *The Militia in Eighteenth-Century Ireland, In Defence of the Protestant Interest* (Woodbridge, 2012), 102.

⁸ C. H. Wilson, 'A Complete Collection of the Resolutions of the Volunteers, Grand Juries, &c. of Ireland, which Followed the Celebrated Resolves of the First Dungannon Diet', in H. T. Dickinson (ed.), *Ireland in the Age of Revolution, 1760–1805*, Part I, Vol. 2 (1779–1782) (Abingdon, 2016), 143.

⁹ 'The Parliamentary Register: or History of the Proceedings and Debates of the House of Commons of Ireland of 1781–2', Tuesday, 16 April 1782, in H. T. Dickinson (ed.), *Ireland in the Age of Revolution, 1760–1805*, Part I, Vol. 2 (1779–1782) (Abingdon, 2016), 167, 188.

¹⁰ 22 Geo. III, c. 53 [GB] (1782).

¹¹ 21 & 22 Geo. III, c. 47 [IR] (1782).

initiated by either the House of Commons or House of Lords of Ireland.¹² The Privy Councils of both countries could neither change Bills of the Irish Parliament nor introduce Bills of their own, but the United Kingdom Privy Council still retained a right of veto. The third section provided that no Bill could be certified before a meeting of the Irish Parliament had taken place. The final section affirmed that the Irish Parliament was summoned by the British monarch.

The third statute that became part of the scheme of legislative independence was the United Kingdom Renunciation Act of 1783. Henry Flood was the leader of those who had argued that the repeal of the Declaratory Act was not enough, in that the United Kingdom had not 'renounced' the right to legislate for Ireland. On 17 April 1783, following this constitutional debate, the Renunciation Act¹³ was passed by the Westminster Parliament. This Act was also succinct. By its two sections any right to legislate for Ireland was renounced, and it was also declared that no writ of error, appeal, or any proceeding from any court in Ireland could be heard by any court in Great Britain.¹⁴

One consequence of the 'Constitution of 1782' was that in the eighteen years between 1782 and the Union, the years which became known as those of 'Grattan's Parliament', the Parliament in Dublin enjoyed greater freedom than it had ever had before. 'Yelverton's Act' had abolished the need for the Irish Parliament to use the Heads of Bills procedure to initiate its own legislation, and the sole right to initiate legislation henceforth lay with the Irish Parliament. Still, that did not imply that the Irish Parliament had gained full sovereignty, for the United Kingdom executive could still veto Irish legislation. Irish nationalists, from the time of O'Connell to the beginning of the twentieth century, had a rosy view of the successes of 'Grattan's Parliament', and were accustomed to point to the arrangements of 1782–83 as a model for a restored Irish Parliament.¹⁵ But was their veneration of these constitutional changes exaggerated; and did the changes even rank as constitutional changes?

¹² 21 & 22 Geo. III, c. 47, s. 1, 2 [IR] (1782).

¹³ 23 Geo. III, c. 28 [GB] (1783).

¹⁴ Regarding the wording of the Act see A. Lyall, 'The Irish House of Lords as a Judicial Body, 1783–1800' (1993–95) 28–30 *Irish Jurist* 314, 324–5.

¹⁵ O. Coquelin, 'Grattan's Parliament (1782–1800), Myth and Reality', in O. Coquelin, P. Galliou and T. Robin (eds.), *Political Ideology in Ireland, from the Enlightenment to the Present* (Newcastle upon Tyne, 2009), 42, 45–6; G. O'Brien, 'The Grattan Mystique' (1986) 1 *Eighteenth-Century Ireland* 177.

What Constitutes ‘Significant Constitutional Change’?

To establish whether a constitutional change took place in 1782, it is necessary to determine the meaning of the term. Finding definitions of ‘constitution’ and ‘constitutional change’ is not the least challenging task in constitutional law. For most of us nowadays a ‘constitution’ is a single codified document that prescribes the organisation of a state, although the notion of a single document is a relatively new concept. Historically, a constitution meant the fundamental laws of a country, written and unwritten. A few countries, such as the United Kingdom and San Marino, still have uncoded constitutions. The understanding of what a ‘constitution’ is differs from place to place, depending on whether or not it is codified, and also varies over time, for a constitution is always an evolving process. In the same way the meaning of ‘constitutional change’ is not static, but a developing concept.¹⁶

Definitions in the Reports of the House of Lords Constitution Committee

Much benefit has been derived from the definitions of these terms found in the Reports of 2001 (and later years) of the House of Lords Select Committee on the Constitution.¹⁷ They provide very valuable guidance, for their basis is the concept of an uncoded constitution, such as still exists in the United Kingdom, and was the ‘Constitution of 1782’.

In their First Report of 2001, the Constitution Committee defined ‘Constitution’ as ‘the set of laws, rules and practices that create the basic institutions of the state, and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual’.¹⁸ With respect to ‘constitutional change’, the Constitution Committee

¹⁶ On ‘constitutional change’ see for example X. Contiades and A. Fotiadou, ‘Introduction, Comparative Constitutional Change: A New Academic Field’, in X. Contiades and A. Fotiadou (eds.), *Routledge Handbook of Comparative Constitutional Change* (Abingdon, 2021), 1–2, 7–8; on the development of the term ‘constitution’ see D. Gosewinkel, ‘The Constitutional State’, in H. Pihlajamäki, M. D. Dubber and M. Godfrey (eds.), *The Oxford Handbook of European Legal History* (Oxford, 2018), 946.

¹⁷ The ‘Constitution Committee’ advises the House of Lords on the constitutional implications of public bills and enquires into wider constitutional issues.

¹⁸ Select Committee on the Constitution, *First Report (2001–2), Reviewing the Constitution, Terms of Reference and Method of Working* (HL Paper 11, London, 2001), para. 20.

acknowledged that any definition was challenging to find.¹⁹ Examples can be given, but there cannot be an exhaustive list or a final definition. In its Fifteenth Report of 2011 the Committee offered this non-exhaustive list of what a 'constitutional change' could embrace²⁰:

- any alteration to the structure and composition of Parliament;
- any alteration to the powers of Parliament, or any transfer of power, as by devolution or international treaty, which would in practice be difficult to reverse;
- any alteration to the succession to the Crown or the functions of the monarch;
- any substantial alteration to the balance of power between Parliament and government, including the conferment of unduly broad or ill-defined powers to legislate by order;
- any substantial alteration to the balance of power between central government and local authorities;
- any substantial alteration to the establishment and jurisdiction of the courts of law, including any measure that would place the exercise of power beyond the purview of the courts, or which would affect the independence of the judiciary.

Following this enumeration of possible examples of constitutional change, the Constitution Committee recognised that some constitutional changes are of higher significance than others. For this reason, any constitutional change needs to be examined in two steps: first, as to whether it is to be deemed 'constitutional', and second, 'whether it is so significant that it really ought to merit further delay and discussion'.²¹ In their First Report in 2001, the Constitution Committee had already emphasised the importance of 'significance', stating that the Committee aimed to focus on 'significant constitutional issues'.²² The consequence is that the importance of a constitutional change is less the change itself than its significance. This inevitably means that an element of subjectivity affects the definition²³: if it did not, the term 'constitutional change', extended to a wide range of issues which only slightly touch the 'heart' of a constitution, would be apt to become boundless.

Restricting the interpretation to 'significant constitutional changes' allows us to focus on the major changes that bring about a notable

¹⁹ Select Committee on the Constitution, *Fifteenth Report* (2010–12), *The Process of Constitutional Change* (HL Paper 177, London, 2011), para. 11 ff.

²⁰ *Ibid.*, para. 11.

²¹ *Ibid.*, para. 13.

²² Constitution Committee, *First Report* (2001–2), para. 22, emphasis in the original.

²³ Constitution Committee, *Fifteenth Report* (2010–12), para. 14.

alteration in a constitutional structure. In its First Report of 2001, the Constitution Committee suggested a neat test for significance that involves a pair of homonyms beginning with 'p'. The 'two p's' are the frequently misspelled words 'principal' and 'principle'. The test is this: 'In order to be significant, a constitutional issue needs to be one that is a *principal* part of a constitutional framework and one that raises an important question of *principle*.'²⁴

It is a definition that still includes an element of subjectivity, especially with regard to the latter word, but it does permit a better understanding and narrowing down of what 'significant' constitutional changes are. By way of example, changes in the electoral system would be 'constitutional', but significant only in the case of major changes. Such major changes could be modifications to the voting system or to the political franchise whereas minor changes like alterations to regulations prescribing how officials count the votes would not likely be deemed a 'significant' constitutional change.²⁵

In applying these definitions to the events of 1782–83, what must be factually determined is whether there were 'significant constitutional changes' – that is, changes to a *principal* part of the constitutional framework of Ireland, and if an important question of *principle* was raised.

Applying the Test of the 'Two P's'

Changes Touching the Irish House of Lords

The return to the Irish House of Lords of its judicial functions is clearly a 'significant constitutional change' within the Constitution Committee's definition. As seen above, a constitutional change can consist of a 'transfer of powers'. The repeal of the Declaratory Act transferred powers from the United Kingdom House of Lords to the Irish House of Lords. It further effected another aspect of the above definition: a 'substantial alteration to the establishment and jurisdiction of the courts of law'.²⁶ Recognition of the determinations of its highest court has to be a pillar of the constitution of any country, so a *principal* part of the Irish constitutional framework was concerned. A question of *principle* was also

²⁴ Constitution Committee, *First Report* (2001–2), para. 22, emphasis added.

²⁵ Constitution Committee, *Fifteenth Report* (2010–12), para. 14.

²⁶ *Ibid.*, para. 11.

raised: the issue of the relationship between the Irish and the United Kingdom judiciary. The Irish House of Lords, having recovered powers that it did not possess between 1719 and 1782, was again a judicial body.²⁷

Changes Affecting the Parliament as a Legislative Body

Changes in the legislature are clearly 'constitutional changes' within the contemplation of the Constitution Committee, for gaining the sole right to initiate laws was a 'transfer of powers' from Great Britain to Ireland. The previous right of the two Privy Councils to initiate Bills and to amend Heads of Bills interfered with the right of the Irish Parliament to legislate. This power was now greatly diminished, and the influence of the United Kingdom executive and legislature over Irish legislation was curbed. The Renunciation Act went further in confirming the powers of the two Houses of Parliament. The changes modified the constitutional relationship between Ireland and Great Britain, especially the relationship between the Irish legislature and the United Kingdom executive. A *principal* part of the constitutional framework of Ireland was thereby affected. The first 'p', 'principal', is thus easily satisfied.

The second 'p', 'an important question of principle', is much more difficult to establish. The question might be answered differently at different times, and any answer is subjective; but one can argue that a question of principle is always raised if visible and tangible changes come about which are likely to have a significant influence upon the course of future politics. With regard to the legislation of 1782–83, visible and tangible changes could be brought about *internally* within Ireland because the country now had the sole right to initiate legislation. There could be similar changes *externally* that would affect the relationship between Ireland and the United Kingdom because the Irish Parliament had gained more powers. But even if no changes were to be clearly visible to us, the question of *principle* would still be apt to arise when considering the perspective of contemporaries. Whether a constitution should be interpreted with strict adherence to the text or in accordance with the original perception is a continuing debate;²⁸ but what contemporaries

²⁷ In the three volumes of 'Ridgway's Parliamentary Cases', sixty-eight appeals are noted between 1784 and 1796: see Lyall, 'The Irish House of Lords as a Judicial Body', 329.

²⁸ On the interpretation of 'constitution', see for example L. B. Solum 'What Is Originalism? The Evolution of Contemporary Originalist Theory' in G. Huscroft and B. W. Miller (eds.),

understood, in particular the public opinion of the time, has to be taken into account in determining the meaning of a constitutional change at any given time, for this has a bearing on assessing the impact and importance of a constitutional change – that is, on its ‘significance’.

Analysis of the Laws Passed Subsequent to the Constitutional Changes

The Irish Parliament made use of its newly acquired right to initiate legislation and passed more Acts in the seventeen years prior to the Union than ever before. Between 1783 and 1800 the total number of public and private Acts passed was 1,057 (an average of 62.2 per year). By comparison, in the preceding seventy-nine years, between 1703 and 1782, the total number of public and private Acts passed was 1,131, only 74 Acts more (an average of 14.3 per year).²⁹

Yet, on closer scrutiny, the legislation passed between 1783 and 1800 was characterised more by quantity than quality. Grattan’s Parliament was often praised for bringing about an economic upswing; but the reality is that only a few Acts changed Irish society and the economy with tangible effect. The economic upswing under Grattan’s Parliament was mainly due to advantageous economic conditions after the end of the American War of Independence and to private investment.³⁰ It was not attributable to the legislation of the Irish Parliament, and an analysis of the social and the economic initiatives of the Irish Parliament before and after 1782–83 reveals a strong element of continuity.

Foster’s Corn Law is an example of an Act passed after 1783 that had a visible beneficial impact on the Irish economy, although favourable economic conditions were also significant. This statute, passed in the first parliamentary session after legislative independence, granted

The Challenge of Originalism, Theories of Constitutional Interpretations (Cambridge, 2011), 12, in particular 22–4; B. H. Bix, ‘Constitutions, Originalism, and Meaning’ in G. Huscroft and B. W. Miller (eds.), *The Challenge of Originalism, Theories of Constitutional Interpretations* (Cambridge, 2011), 285; F. Gárdos-Oroz and Z. Szente, ‘The Art of Constitutional Interpretation’ in F. Gárdos-Oroz and Z. Szente (eds.), *Populist Challenges to Constitutional Interpretation in Europe and Beyond* (Abingdon, 2021), 29.

²⁹ Kelly, *Poynings’ Law*, 162, 244, 312, 357.

³⁰ Coquelin, ‘Grattan’s Parliament (1782–1800)’, 46–7; J. Innes, ‘Legislating for Three Kingdoms, How the Westminster Parliament Legislated for England, Scotland and Ireland, 1707–1830’, in J. Hoppit (ed.), *Parliaments, Nations and Identities in Britain and Ireland, 1660–1850* (Manchester, 2003), 15, 30–1; O’Brien, ‘The Grattan Mystique’, 177.

subsidies on the export of grain, and restricted the import of grain except in times of scarcity.³¹ The Act undoubtedly had a positive impact, and encouraged tillage farming and flour milling; but it also came into force at an opportune time. Foster's Corn Law may have supported the upturn in the Irish corn trade, but it did not initiate it. An increase in English imports of corn from Ireland (that was very profitable to Ireland) was already discernible in the early 1770s. That Ireland had become the principal supplier of corn to England was the main reason for the success of Foster's Corn Law.³²

As with Foster's Corn Law, the majority of the Acts passed by the Irish Parliament after 1783 that dealt with the economy and society tended more to maintain long-established trends than to effect major change in their own right. This can be seen when analysing legislation affecting the linen trade, infrastructure projects to do with canals and roads, and the Dublin 'Paving Board'. The first two examples belong to the most important areas of the economic legislation of the Irish Parliament. The linen industry was at the time the most important industry in Ireland, and infrastructure was the backbone of a thriving trade on the island. The Dublin Paving Board is a representative example of the municipal legislation of the Irish Parliament, which had similar effects in most Irish towns.

Linen Laws

Several Acts, by different means, supported the Irish linen industry. These included Acts on export bounties, grants, premiums for applying new techniques, the establishment of spinning schools, and above all the establishment of the Linen Board in 1710.³³ The linen industry is the only industry that received continuous subsidies from the Irish state from the seventeenth century until the nineteenth century.³⁴ After legislative

³¹ 23 & 24 Geo. III, c. 19 [IR] (1783).

³² A. P. W. Malcomson, *John Foster (1740–1828), The Politics of Improvement and Prosperity* (Dublin, 2011), 69–70; L. M. Cullen, *Anglo-Irish Trade, 1660–1800* (Manchester, 1968), 49.

³³ The Board of Trustees of the Linen and Hempen Manufactures of Ireland promoted and controlled the Irish linen industry as a regulatory authority. It was established by the Act 9 Anne, c. 3 [IR] (1710).

³⁴ D. Dickson, *Old World Colony, Cork and South Munster 1630–1830* (Cork, 2005), 203–4. Even the infamous English Woollen Act (10 Wil. III, c. 16, [GB] (1698)) indirectly supported the Irish linen industry. It prohibited the export of Irish woollen products to

independence, about twenty-five linen laws were passed by the Irish Parliament between 1783 and 1800. Most of these Acts related to duties, bounties and grants, and most of them usually extended expiring earlier Acts.³⁵ The last Act of Parliament which introduced a new element into the linen legislation was an Act passed by the Irish Parliament in the same parliamentary session as 'Yelverton's Act' in 1782, namely 21–22 George III, chapter 35. This Act of 57 sections provided for various measures. Among others, it prohibited the use of lime in bleaching, amended the regulations regarding linen seals, and introduced linen inspectors. The provisions on linen seals and the prohibition of lime in bleaching were not new, both measures being a continuation of existing laws.³⁶ The introduction of linen inspectors was a new element. The Act of 1782 provided for nine 'inspectors for the counties' and two 'inspectors general', one for the province of Ulster and one for the three other provinces.³⁷ The inspectors undertook a supervisory role in the linen industry. 'County inspectors' were supposed to travel through their allocated areas to resolve disputes in the linen markets and to report to the Linen Board in Dublin about the current state of linen manufactures. The 'inspectors general' also travelled through their provinces and informed the Linen Board about the state of the linen markets.³⁸ Although the Linen Board had already appointed inspectors who travelled through the country to report on the state of linen manufacture before the Act of 1782, it was the first time that such an institution was created by an Act of Parliament. This measure was the last entirely new element introduced in the linen laws. The statutes passed after legislative independence dealt mainly with export and import bounties regarding flax seeds and also provided for grants, essentially representing a continuation of previous policy. The later Acts did not introduce new

England but instead England supported the Irish linen industry through favourable duties. Ireland could develop the linen industry as it was not competing with English interests.

³⁵ For example, 25 Geo. III, c. 11 [IR] (1785); 28 Geo. III, c. 8 [IR] (1788); 32 Geo. III c. 4 [IR] (1792).

³⁶ For example, 7 Geo. II, c. 10 [IR] (1733); 19 Geo. II, c. 6, s. 18 [IR] (1746); 3 Geo. III c. 34 [IR] (1763).

³⁷ 21 & 22 Geo. III, c. 35, s. 12, 27 [IR] (1782). One 'county inspector' was appointed for Co. Antrim, Armagh, Derry, Donegal, Down and Tyrone; one for Co. Cavan, Fermanagh and Monaghan; one for Co. Louth, Meath and the town of Drogheda; one for Co. Sligo, Mayo and Galway.

³⁸ Whereas the 'county inspectors' had certain rights to enforce the laws, the 'inspectors general' could only advise and report back to the Linen Board.

measures to reform the linen industry, such as those passed in the first half of the eighteenth century, when the Linen Board was established.

Infrastructure: Turnpike Roads and Inland Navigation

A continuation after legislative independence of the policy of the first half of the eighteenth century can also be seen when analysing the Irish Acts on infrastructure, in particular Acts on turnpike roads and inland navigation. The main legal incentives for improving roads were provided by the Irish Parliament in the first half of the eighteenth century. Acts of Parliament transferred the management of certain roads to turnpike trusts which could charge tolls in compensation for the maintenance of the roads. Those Acts were copies of English Acts,³⁹ but all originated as Heads of Bill in the Irish Parliament. Between 1729 and 1837 about 2,040 miles of turnpike roads were created by Acts of the Irish Parliament.⁴⁰ However, by 1782 it had been acknowledged that the system of turnpike roads was defective. The tolls on the roads that were intended to finance their maintenance were never sufficient, with the result that the turnpike trusts became heavily indebted and were forced to take on continuing loans. Some Acts tried to diminish the debts by restricting the interest payable, expanding the duration of the time allocated to the turnpike trusts, or increasing the amount of the toll. The extension of the Turnpike Acts continued after legislative independence, but, although the financial problems of the trusts were known, no legislative attempt was made to relieve the trusts or to change the system. The turnpike road system existed unmodified from 1729 until its abolition in the 1850s. From beginning to end, it was shaped by the Acts of the Irish Parliament.

Similarly, Acts dealing with inland navigation were a continuous policy of the Irish Parliament before and after 1782. Throughout the eighteenth century the Irish legislature had promoted inland navigation, first through the founding of statutory corporations, later through encouraging private investment in canals. There was no shift in the policy after legislative independence. A first Act encouraging inland navigation was passed in 1715.⁴¹ In 1729, in the same session in which the first statute for a turnpike road was passed, four commissions, one for

³⁹ D. Broderick, *The First Toll-Roads, Ireland's Turnpike Roads 1729–1858* (Cork, 2002), 44.

⁴⁰ *Ibid.*, 232.

⁴¹ 2 Geo. I, c. 12 [IR] (1715).

each province, were set up to promote further inland navigation.⁴² This led to the building of the Newry Canal and the Coalisland (Tyrone) Canal in Ulster. In 1751 the Corporation for Promoting and Carrying on an Inland Navigation in Ireland was established by another Act of Parliament.⁴³ This corporation took charge of the inland navigation throughout the whole island of Ireland. Constructions at the Grand Canal towards Sallins and along the Shannon commenced in the mid-1750s. Further works were undertaken along the Boyne, the Barrow and the Lagan Canal.⁴⁴

The major legislation regarding inland navigation after legislative independence was passed in 1787, 1789 and 1790. The Corporation for Promoting and Carrying on an Inland Navigation of 1751 had been found to be inefficient. This body was heavily in debt, for which reason it was dissolved by an Act of 1787.⁴⁵ Instead, local corporations for each of the rivers were set up, although in the long term these proved to be equally inefficient. In 1789, a scheme was set up to encourage individuals to invest in inland navigation through debentures. The Royal Canal, as seen in an Act of 1790, was mainly financed through this scheme.⁴⁶

The legislation regarding canals passed after 1782 placed inland navigation in private hands, the better to finance its construction. This was a major shift in the financing of inland navigation, yet it did not take place because the Irish Parliament had gained more powers after legislative independence but because of the failed policy of the same parliament before 1782.

The Dublin Paving Board

The municipal legislation shaped by the Irish Parliament in the eighteenth century was likewise relatively unaffected by the constitutional legislative changes of 1782–83. Various institutions existed in the city of Dublin and other Irish towns that aimed at improving living conditions and promoting trade. Each institution was founded for a specific purpose by an Act of Parliament. Best known is the ‘Wide Street

⁴² 3 Geo. II, c. 3 [IR] (1729).

⁴³ 25 Geo. II, c. 10 [IR] (1751).

⁴⁴ P. Clarke, ‘The Royal Canal 1789–1993’ (1993) 46 *Dublin Historical Record* 46.

⁴⁵ 27 Geo. III, c. 30 [IR] (1787).

⁴⁶ 30 Geo. III, c. 20 [IR] (1790). Works on the Royal Canal began in Dublin at the Cross Guns Bridge, Phibsborough and lead towards Kilcock; on the development of the Royal Canal see Clarke, ‘The Royal Canal 1789–1993’, 46–9.

Commission', founded in 1757, which built and expanded some of Dublin's narrow streets and bridges to their modern size.⁴⁷

The Paving Board in Dublin, which was founded in 1774, was one of the last such institutions established in the Irish capital.⁴⁸ Between its foundation and the Act of Union three further Acts were passed, two that preceded and one that followed legislative independence.⁴⁹ These Acts extended the competences of the Board, which was responsible for a variety of tasks that influenced both the street surfaces of Dublin and everyday life.⁵⁰ As its name suggests, the Board was responsible for paving the streets properly. In addition, it bore responsibility for cleaning the streets, and for lighting them at night. It initiated street signs and house numbers and was responsible for erecting fountains that provided drinking water for the poor. It regulated the markets and played an important role in the design of buildings, influencing the ornamentation of the façades of houses. The most controversial of the three Acts was that of 1784, which changed the structure of the Board and provided for the transfer of its supervision from the Corporation of Dublin to the House of Commons.⁵¹ There were debates about the Board, its structure, members, tasks and finances, but there was no major shift in the policy of the Paving Board after 1782, which throughout its history was an institution that was entirely shaped by the legislation of the Irish Parliament.

The conclusion from studying these examples of the Irish Parliament's enactments is that no major changes occurred after legislative independence, and that no visible and tangible changes internally within Ireland were attributable to the acquisition of the right to initiate legislation. Reform of the legislative process did not affect the laws

⁴⁷ 31 Geo. II, c. 19 [IR] (1757). Among others, the Wide Street Commission was responsible for the building and expanding of the Essex-bridge, Sackville Street, Parliament Street and Westmoreland Street. Another example of such a municipal institution is the Ballast Board which aimed to expand the Dublin harbour and was founded in 1707 by an Act of the Irish Parliament (6 Anne c. 20). Similar Ballast Boards were founded in Cork, Galway, Sligo, Drogheda and Belfast in 1729 by another Act of the Irish Parliament (3 Geo. II, c. 21).

⁴⁸ 13 & 14 Geo. III, c. 22 [IR] (1774).

⁴⁹ 15 & 16 Geo. III, c. 20 [IR] (1775–76); 21 & 22 Geo. III, c. 60 [IR] (1781–82); 23 & 24 Geo. III, c. 57 [IR] (1783–84).

⁵⁰ For detail on the Paving Board, see F. O'Cionnaith, *Exercise of Authority, Surveyor Thomas Owen and the Paving, Cleansing and Lighting of Georgian Dublin* (Dublin, 2015).

⁵¹ *Ibid.*, 83–9.

themselves, which remained the same; and continuity was the hallmark of Irish economic and social policy.

A Constitutional Change ‘On Paper’ that Contemporaries Regarded as a Great Issue of Principle

English Influence on the Irish Parliament after 1782–1783

Looking at English influence on the Irish legislature after 1782–83, there is no more sign of constitutional change externally than there was internally. Despite the constitutional changes, Great Britain retained its substantial influence on the Irish legislature. While the United Kingdom Privy Council could no longer change the wording of an Irish Bill, it still retained a right of veto, which meant that the government of the United Kingdom retained a vital tool of control over Irish legislation. No Bill of which it did not approve would pass the Privy Council.⁵²

The United Kingdom Privy Council used its veto only rarely, but the British executive still asserted influence.⁵³ The best example of continuing British influence on the Irish legislature is found in the passing of the Catholic Relief Acts of 1792 and 1793, which were not home-grown initiatives of the Irish Parliament but passed because of pressure from Britain even against concerns of Dublin Castle.⁵⁴ A ‘recommendation’ from London was like an order; and the Irish Parliament deferred to the United Kingdom’s wishes.⁵⁵ The Lord Lieutenant of the day, John Fane, tenth Earl of Westmorland, pointed this out incisively:⁵⁶ ‘The object of England must be to govern Ireland. She has in the present constitution a parliament formed of such materials that England always has and probably always will be able to manage; and she has a sect deficient in numbers but possessing the property, magistracy, and influence in the country pledged to maintain that establishment.’ Grattan’s Parliament was not at all independent of the influence of the United Kingdom executive.

⁵² J. Kelly, *Prelude to Union, Anglo-Irish Politics in the 1780s* (Cork, 1992), 235–6, 241, 247.

⁵³ Between 1783 and 1800, only four bills were rejected. Thirty bills were sent back to Ireland with ‘objections’. Kelly, *Poynings’ Law*, 344–50, 357.

⁵⁴ T. Bartlett, *The Fall and Rise of the Irish Nation: The Catholic Question 1660–1830* (Dublin, 1992), 131–4, 155–62; G. O’Brien, ‘Revolution, Rebellion and the Viceroyalty 1789–99’, in P. Gray and O. Purdue (eds.), *The Irish Lord Lieutenantcy, c. 1541–1922* (Dublin, 2012), 114, 117–18.

⁵⁵ Bartlett, *The Fall and Rise of the Irish Nation*, 138.

⁵⁶ Quoted in *ibid.*, 132.

*Absence of Evidence that the Constitutional Changes Influenced
Subsequent Legislation*

The conclusion to which we come is that the constitutional changes of 1782–83 that might have had an effect on the legislative process in fact had little direct impact either internally in Ireland or externally in the relationship with Great Britain. This is not surprising given that the Irish Parliament, with the Heads of Bills procedure, had invented an effective method of making its own laws before 1782, and that after that year the United Kingdom Privy Council still retained its right of veto. Both before and after 1782, only Acts that did not threaten British interests became law. Things effectively remained the same, and the changes of 1782–83 were changes ‘on paper’, changes *de jure* but not *de facto*. The Irish Parliament gained no more real power; and recognition of the right to initiate legislation was largely symbolic.

The Symbolic Importance of 1782–1783

If the changes of 1782–83 are viewed with scepticism from today's perspective, it is clear that they were very significant for the people who articulated public opinion in 1782. As pointed out above, in determining the significance of a constitutional change, the point of view of contemporaries, those proximately concerned, should be taken into account. In the eighteenth century, the restrictions imposed on the Irish Parliament by Poynings' Law and the Declaratory Act were continually being discussed as a grievance. Indeed, Henry Grattan pithily asked the rhetorical question: ‘What is Poynings' law, and the unconstitutional power of the Irish or English Privy Council, but a grievance?’⁵⁷ From the perspective of contemporaries, ‘legislative independence’ was a ‘flexing of muscles’ in the direction of Great Britain, and the result a victory in a cause for which they had long contended. It was an important symbolic step for Ireland in the constitutional relationship with the United Kingdom. On this basis, from contemporaries' point of view, a ‘principal question’ was raised, and a significant constitutional change did indeed take place in 1782–83.

Reflecting that the constitutional changes of 1782–83 were introduced by three Acts of Parliament that did not of themselves much affect later

⁵⁷ ‘The Parliamentary Register: or History of the Proceedings and Debates of the House of Commons of Ireland of 1781–2’, Tuesday, 16 April 1782, at 185.

laws, it falls to consider what else might have been needed for a constitutional change to have had a significant impact on subsequent lawmaking. Going back to the Constitution Committee's 2001 Report, we find that an essential element in the definition of 'constitution' involves arrangements for the regulation of the relationship between the institutions of state and the individual.⁵⁸ A constitution has the aim of maintaining peaceful coexistence in a society. Any constitutional change that affects the relationship of the state's institutions to the individual may automatically have a significant impact, notwithstanding that the terms of the change itself deal only with the institution and not with individuals directly.

Parliamentary reforms of a type that would have affected the people were not sought in 1782–83, and at the time they would have stood little prospect of enactment. After legislative independence, when reforms were called for, which would have included Catholic enfranchisement, they foundered for a decade on the rock of the Catholic Question.⁵⁹ When that question was partially tackled, in the Catholic Relief Act of 1793, which extended the franchise to Catholic forty-shilling freeholders, this was a statute that had a greater potential to have a long-term effect on the constitution than the legislative independence of 1782 itself, for it might ultimately have effected a great change in the composition of the Irish Parliament. In 1793, that Parliament had only seven more years of existence, and the sole election that took place before the Union was that of 1797, which produced no significant change in the representative composition of the House of Commons; but the effect that laws such as the Relief Act which impact individuals directly might ultimately have had on the Irish Parliament is a proper subject for conjecture.

However, even though the importance that Irish public opinion placed on the constitutional changes in 1782–83 was much exaggerated, we yet may retain a lingering sense that the Irish Parliament, had it survived and been able to reform itself, might justly have looked back to 1782 as a significant step in an evolutionary constitutional legislative process.

⁵⁸ '[A]nd stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual.' Constitution Committee, *First Report* (2001–2), para. 20.

⁵⁹ J. Kelly, 'The Parliamentary Reform Movement of the 1780s and the Catholic Question' (1988) 43 *Archivium Hibernicum* 95.