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Government, parliament and the constitution: the reinterpretation of Poynings' Law, 1692-1714

The history of Poynings' Law is complex and multifaceted. Much has been written about it, at times with the end result being a recognition that to investigate Poynings' Law is to venture into a quagmire. At the same time, a number of important works have been published over the years that throw light upon specific periods in the history of that law. Until recently, much of the focus has been on the period stretching from the passage of the law in 1494-5 up to 1641, with some significant excursions into the eighteenth-century history of the law.[1] Two newer studies demonstrate a shift in focus: one a detailed study of the 1640s; the other a broader work on the history of the law from 1660 to 1800.[2] However, at present, gaps still remain in our knowledge of the subject, particularly for the last one hundred and forty years of the law's existence. This article aims to fill one such gap, by focusing upon the period 1692-1714.

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[1] Some of the most significant works are D. B. Quinn, 'The early interpretation of Poynings' Law, 1494-1534' in *I.H.S.*, ii (1940-1), pp 241-54; R. D. Edwards and T. W. Moody, 'The history of Poynings' Law: part I, 1494-1615' in *I.H.S.*, ii (1940-1), pp 415-24; Aidan Clarke, 'The history of Poynings' Law, 1615-41' in *I.H.S.*, xviii (1972-3), pp 207-22; James Kelly, 'Monitoring the constitution: the operation of Poynings' Law in the 1760s' in *Parl. Hist.*, xx (2001), pp 87-106. Other important works are given in the footnotes hereafter in this article.

[2] Micheál Ó Siochrú, 'Catholic Confederates and the constitutional relationship between Ireland and England, 1641-1649' in Ciaran Brady and Jane Ohlmeyer (eds), *British interventions in early modern Ireland* (Cambridge, 2005), pp 207-29; James Kelly, *Monitoring the constitution: Poynings' Law and the making of law in Ireland, 1660-1800* (Dublin, forthcoming). I would like to thank Dr Ó Siochrú and Dr Kelly for allowing me to read their work prior to publication.

The Glorious Revolution of 1688 has long been identified in English and British history as a significant stage in the emergence of parliamentary government centred at Westminster. Implicitly acknowledged by Irish historians, though rarely commented on, is the significant impact those predominantly English events also had upon the nature of government, parliament and the constitution in Ireland. Poynings' Law is central to any such considerations, given that it was one of the cornerstones of the early modern Irish constitution. This unique law established the nature of the relationship between the executive (both Irish and English) and legislative arms of government in Ireland. Before any change in the nature of that relationship could take place, Poynings' Law had to be reinterpreted. The early history of the law demonstrated that such reinterpretation could and, on occasion, did occur. Thus a brief outline of some of the most significant periods in that early history is required.

I

Poynings' Law was passed in 1494/5 – the uncertainty in dating the act to either year stems from the fact that the first session of the parliament convened under the chief governorship of Sir Edward Poynings in Drogheda commenced sitting at the beginning of December 1494 and continued to February 1495, during which time the law was enacted, along with a number of other measures. In the statute book it is listed as chapter IV, though it was actually chapter IX.[3] Occasionally, this act is confused with a later act of the same parliament for making existing English statutes

[3] Edmund Curtis, 'The acts of the Drogheda parliament, 1494-5, or "Poynings' Laws"' in Agnes Conway, *Henry VII's relations with Scotland and Ireland, 1485-1498. With a chapter on the acts of Poynings' parliament, 1494-5, by Edmund Curtis* (New York, 1972), pp 120-21.

apply to Ireland,[4] a confusion that has led to a misconstruction being placed upon Poynings' Law, namely that it made English legislation binding in Ireland.[5]

It is therefore necessary first to clarify the central aspects of Poynings' Law. In the first half of the sixteenth century the statute came to be interpreted as enacting that an Irish parliament could not be convened without prior licence from the English monarch and council. In order to obtain such licence, an Irish chief governor and council had first to certify into England, under the great seal of Ireland, the causes and considerations for calling parliament, along with all bills to be enacted in that parliament. If the causes and considerations were deemed valid, some or all of the bills, along with the monarch's licence for holding parliament, would be transmitted back to Ireland under the great seal of England (it should be noted that the act did not explicitly grant the English monarch and council the power to amend or reject any of the bills sent from Ireland, though this certainly occurred and seems to have been taken as implicit in the legislation). Thereafter parliament could be summoned and such bills as had been returned from England presented to that assembly either to be passed or rejected.[6]

Not least because of the lack of clarity in the act itself,[7] a certain amount of flexibility of interpretation was apparent from the outset: there is some evidence of bills being drafted and transmitted by the Irish executive during the sitting of

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[4] Ibid, p. 129.

[5] This confusion was warned against by J. G. Simms in 'The case of Ireland stated' in Brian Farrell (ed.), *The Irish parliamentary tradition* (Dublin, 1973), p. 128.

[6] *Stat. Ire.*, i, 44.

[7] Steven G. Ellis, 'Henry VII and Ireland, 1491-1496' in James Lydon (ed.), *England and Ireland in the later middle ages* (Dublin, 1981), p. 237.

parliament; of returned bills being amended by parliament and re-transmitted to England by the executive; and even of bills originating in parliament and of bills passing without being first transmitted to England.[8]

It is generally accepted that the original, primary intention of Poynings' Law was to prevent independent action by Irish chief governors, and that, almost as a side effect, it simultaneously imposed certain constitutional restrictions upon the English executive and the Irish parliament. Certainly the act meant that the Irish executive, particularly in relation to the drafting of legislation, was to be more closely monitored and governed from England in the future. But likewise, parliament was to be greatly circumscribed in relation to its role as a judicial and administrative body, while also being restricted as a legislature. While this latter aspect did not appear to be a concern for parliament in 1494-5, in time it was to become the focal point of parliamentary discontent.[9] And as Brendan Bradshaw in particular has demonstrated, the English executive's freedom of action was also restricted in relation to the initiation of legislation.[10]

There were two temporary suspensions of Poynings' Law in the sixteenth century, in 1536-7 and 1569-70.[11] However, the first permanent legislative amendments to the law were made in 1557, because of 'diverse and sundry

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[8] Quinn, 'Poynings' Law', pp 241-54; Edwards and Moody, 'Poynings' Law', pp 415-24.

[9] Quinn, 'Poynings' Law', pp 241-54; Edwards and Moody, 'Poynings' Law', pp 415-24; Clarke, 'Poynings' Law', pp 207-22; Brendan Bradshaw, 'The beginnings of modern Ireland' in Farrell (ed.), *Parliamentary tradition*, pp 69-71.

[10] Brendan Bradshaw, *The Irish constitutional revolution of the sixteenth century* (Cambridge, 1979), pp 147-54.

[11] *Stat. Ire.*, i, 89-90, 157-9, 320-22.

ambiguities and doubts' which had arisen 'upon the true understanding and meaning' of the 1494-5 statute. The 1557 act clarified the central aspects of Poynings' Law as practiced in the preceding years and confirmed a number of the other practices where a flexibility of interpretation had been prevalent. Thus, the power of the English executive to alter or amend bills certified from Ireland was made explicit, as was the restriction of all legislation to be considered by parliament to such bills as were 'returned under the said great seal of England'. Likewise, the Irish executive was explicitly empowered to make further certification of bills into England while parliament was actually sitting.[12]

While the 1557 act clarified and confirmed the prevailing interpretation of Poynings' Law, it also enshrined in statute what in time became identified as a loophole. Allowing the Irish executive to certify further bills while parliament was sitting made sense in that issues might arise during any given session that had not been thought of when the first, formal and official certification of causes, considerations and bills were sent to England prior to summoning parliament. And, given that parliament in the mid-sixteenth century had not yet developed a particularly forthright or confrontational view with regard to its rights as a legislature, there was no obvious reason to enact an explicit preclusion of parliament from initiating legislation. Over time, however, the relevant clause was to lead to a reinterpretation of the law to parliament's advantage, as that assembly developed a clearer sense of its own purpose as a legislature.

Changing attitudes towards Poynings' Law started to emerge in the early seventeenth century. The Irish parliament of 1613-15 demonstrated some desire to

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[12] Ibid., 246-8; Edwards and Moody, 'Poynings' Law', pp 419-20.

renegotiate the then current interpretation, on occasion addressing the Irish executive with proposals for amending government bills and for drafting new ones. Although these activities received a favourable response from the executive, few of either type of bill actually made it into law. The request by the Commons in 1615 for permission to send a deputation from the House to England in order to present actual drafts of bills to the king and English council was refused by James I, and soon after parliament was prorogued.[13]

By the time parliament met again, in 1634-5, a major reinterpretation by government had occurred. Under the chief governorship of Thomas Wentworth, Poynings' Law was used to deny parliament any initiative whatsoever and 'to empower the government to regulate the proceedings of parliament in minute detail'. Aidan Clarke has described Wentworth's intentions as 'revolutionary'.[14] Certainly, Wentworth's reinterpretation of the law severely curtailed the activities of parliament and led to that assembly becoming for a time little more than a cipher for crown policy in Ireland. Yet Wentworth's actions also inspired, when the first opportunity arose, a more forceful expression by M.P.s of a desire to reinterpret the law in parliament's favour, in a manner and to a degree not made explicit before that time. In 1640-1 the Commons pursued a programme aimed at clarifying the procedural forms for certification of bills under Poynings' Law and for confirming their existing rights, based upon their interpretation of the law, to initiate and draft legislation. A significant number of bills were thus drafted by parliament (though the method by which this was done remains unclear). Eventually, in April 1641, the executive transmitted a number of these bills to England. However, few were returned to

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[13] *Commons' jn. Ire.* (3rd ed.), i, 27, 42, 44, 46, 53-6; Edwards and Moody, 'Poynings' Law', pp 421-3.

[14] Clarke, 'Poynings' Law', pp 210-11.

Ireland and no permanent reinterpretation of the law was achieved, as the 1641 rebellion brought a unique period to a close.[15]

Following the Restoration in 1660, the Irish parliament picked up where it had left off in 1641, expressing a more forthright opinion with regard to its rights as a legislature. During 1661 the use of a 'Declaration' (which resembled the interregnum Ordinances) for continuing the customs and excise for short periods was the closest the Commons came to establishing a successful legislative initiative. At the same time, as in the past, the Commons on occasion asked the Irish executive to draft specific bills, while also setting up select committees to prepare other bills (none of which appear to have made much progress).[16] Concurrently, the Commons began to consider 'the manner and method of preparing and drawing of bills, in order to the transmission of them into England, according to Poynings' Act', an action that suggested that the Lower House wanted to establish and define a procedure, and set a precedent, for initiating legislation in parliament.[17]

In 1662 the first formal steps in that direction occurred with the commencement of a practice that was to become known as the heads of bills procedure. The use of the word 'heads' in connection with bills predated 1662. On 27 October 1640 the Commons had ordered that a committee appointed for drafting bills should 'draw up the heads of such acts as they have already drawn up',[18] while on 27 July 1661 they ordered that the

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[15] *Commons' jn. Ire.*, i, 69, 70-71, 80, 90, 141-2, 145-8, 155, 157, 161-7, 169-71, 174-7, 183, 186, 196; Clarke, 'Poynings' Law', pp 207-22.

[16] *Commons' jn. Ire.*, i, 394, 396-401, 419, 440-41, 459-60, 463-9, 479-80; Fergus O'Donoghue, 'The Irish parliament under Charles II' (M.A. thesis, University College, Dublin, 1970), pp 57-8.

[17] *Commons' jn. Ire.*, i, 401.

[18] Ibid., 161.

executive be desired to draw up 'a bill, according to such heads as shall be propounded by both Houses'.[19] However, the progression from the drawing up of mere headings of what parliament desired the executive to draft into bills, to a procedure whereby the actual text of the bill was drafted in parliament under the guise of heads of bills, only began in 1662. The first substantive, and unsuccessful, heads of a bill was the result of the activities of the Commons in May and June 1662 on the 'heads and considerations' for a bill of explanation for the recently passed Act of Settlement.[20]

Despite such innovation, however, it was still the case that the vast majority of legislation originated with government. Although bills that originated in parliament were transmitted from Ireland and some were returned, few made it as far as the statute book, and those that did remained exceptions to normal practice.[21] Yet the commencement in the 1660s of an apparently minor and peripheral procedure for initiating legislation, by means of heads of bills, was a sign of things to come. It was also evidence that the Irish parliament (or at least a significant number of the members of that assembly) was no longer prepared to accept an interpretation of Poynings' Law that allowed parliament little initiative as a legislature.

II

The fact that the Irish parliament was not convened between 1666 and 1689 occludes consideration of attitudes towards Poynings' Law during those years, while the

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[19] Ibid., 440-41.

[20] Ibid., 503-5, 513-14, 526-9; O'Donoghue, 'Irish parliament', pp 99-100; F. G. James, *Ireland in the empire, 1688-1770* (Cambridge, Mass., 1973), pp 11-13.

[21] Edwards and Moody, 'Poynings' Law', pp 421-4; Clarke, 'Poynings' Law', pp 211-22.

activities of the Jacobite parliament complicates matters further.[22] At the same time, the gap from 1666 to the convening of the first Williamite parliament in 1692 makes what occurred thereafter seem all the more significant. In a commentary on the 1660s, Sir William Temple made the observation that the promoters of the heads of bills procedure had been especially concerned to establish that supply legislation in particular 'should begin' in the Lower House.[23] That observation, recorded on the eve of the second Williamite parliament in 1695, focused on the crux of the matter with regard to the reinterpretation of Poynings' Law to the advantage of parliament in the aftermath of the Glorious Revolution. From 1692 onwards, the Commons used the issue of supply legislation as their main weapon in the battle to reinterpret the law.

While the histories of the Wentworth era and of the 1660s heads of bills procedure played a part in influencing Irish M.P.s after the Glorious Revolution, the impact of English 'constitutional revolution', or Whig, rhetoric upon Irish Protestants must also be taken into account. A large number of Irish Protestants in exile in 1688-90 experienced first-hand the constitutional developments at Westminster, and many appear

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[22] Despite the fact that parliament did not meet between 1666 and 1689, both Arthur Capell, earl of Essex, and James Butler, duke of Ormonde, gave some consideration towards Poynings' Law and possible attitudes thereto in Ireland following suggestions that a parliament might be convened during their respective tenures as lord lieutenant in the 1670s. See Essex to William Harbord, 30 Nov. 1674 (N.A.I., Wyche MSS, 1/4/1); J. E. Aydelotte, 'The duke of Ormonde and the English government of Ireland, 1677-85' (Ph.D. thesis, Iowa University, 1975), pp 30-194. For the Jacobite parliament see J. G. Simms, *The Jacobite parliament of 1689* (Dundalk, 1974), pp 3-28.

[23] A discourse of Ireland by Sir William Temple, 1695 (B.L., Add. MS 27382, f. 4). Although the 'discourse' is credited to Sir William Temple, it is possible that the author was in fact his younger brother, John. See John Gibney, 'Select document: A discourse of Ireland, 1695' in *I.H. S.*, xxxiv, no. 136 (Nov. 2005), pp 449-61.

to have returned to Ireland imbued with the rhetoric of both the Revolution and the Whig party.[24] These ideas, combined with a general sense of grievance over government corruption and mismanagement,[25] provided the impetus for Irish M.P.s to pursue a course of action aimed at reinterpreting Poynings' Law, at a time when fundamental aspects of other parliamentary constitutional frameworks were being reinterpreted in England, Scotland and the American colonies.[26]

In the aftermath of the war of 1689-91, the English ministry chose to allow 'government by consensus' in Ireland.[27] Their main concerns were to ensure that England did not have to subsidize Irish government and that finance to meet the growing

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[24] A discourse of Ireland by Sir William Temple, 1695 (B.L., Add. MS 27382, ff 5-6); S. J. Connolly, 'The Glorious Revolution in Irish Protestant thinking' in idem (ed.), *Political ideas in eighteenth-century Ireland* (Dublin, 2000), pp 27-63; idem, 'Precedent and principle: the Patriots and their critics' in ibid., pp 130-58; D. W. Hayton, *Ruling Ireland, 1685-1742: politics, politicians and parties* (Woodbridge, 2004), pp 40-41; C. I. McGrath, 'English ministers, Irish politicians and the making of a parliamentary settlement in Ireland, 1692-5' in *E.H.R.*, cxix (2004), pp 588-90.

[25] C. I. McGrath, *The making of the eighteenth-century Irish constitution: government, parliament and the revenue, 1692-1714* (Dublin, 2000), pp 74-5; Hayton, *Ruling Ireland*, pp 40-44.

[26] J. D. Mackie, *A history of Scotland* (London, 1991), pp 244-5, 253-4; R. S. Dunn, 'The Glorious Revolution and America' in Nicholas Canny (ed.), *The Oxford history of the British empire*, i*: The origins of empire: British overseas enterprise to the close of the seventeenth century* (5 vols, Oxford, 1998), pp 460-65.

[27] D. W. Hayton, 'Constitutional experiments and political expediency, 1689-1725' in Steven G. Ellis and Sarah Barber (eds), *Conquest and union: fashioning a British state, 1485-1725* (London, 1995), pp 280-84. See also J. I. McGuire, 'The Irish parliament of 1692' in Thomas Bartlett and D. W. Hayton (eds), *Penal era and golden age. Essays in Irish history, 1690-1800* (Belfast, 1979), pp 2-6; McGrath, *Irish constitution*, pp 74-8.

costs of running the country was provided by the Irish parliament.[28] To that end, during 1692 the Irish executive prepared a substantial government legislative programme, including three supply bills, as the causes and considerations for summoning an Irish parliament in accordance with Poynings' Law. The executive's approach to the Irish parliament was traditionalist: that is, that the power to initiate legislation lay primarily with the government, in accordance with Poynings' Law.[29]

In keeping with that traditionalist interpretation of Poynings' Law, in the ensuing parliament convened in October 1692 the executive presented ten bills (including two supply bills), of which four (including one supply bill) became law. Although a few heads of bills were ordered, none came to fruition. An end was put to proceedings in precipitate fashion by the lord lieutenant, Henry, Viscount Sydney, on 3 November. As such, it was not an overly impressive return for either government or parliament.[30] The crux of the matter, however, was the 'sole right' resolutions of 27 and 28 October, in which the Commons made their first clear statement of how they wished to reinterpret Poynings' Law. On 27 October the Commons resolved that it was 'the undoubted right of the Commons of Ireland … to prepare and resolve the

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[28] McGuire, 'Irish parliament', pp 2-3; McGrath, *Irish constitution*, pp 49-117; D. W. Hayton, 'Introduction: the long apprenticeship' in *Parl. Hist.*, xx (2001), pp 8-10.

[29] *Cal. S.P. Dom., 1691-2,* pp 111-12, 174, 179, 214-15, 357, 375-6, 380, 382; *Cal. S.P. Dom., 1695 & Addenda,* pp 189-92, 194, 197, 203-5, 207-8; McGrath, *Irish constitution*, pp 76-8; McGuire, 'Irish parliament', pp 5-9. The convoluted and long-drawn-out process of preparing the government legislative programme for the 1692 parliament, and the extent to which that process (if not the outcome) was to some degree exceptional because of uncertainty arising out of the breakdown in government in the preceding years, is detailed in Kelly, *Monitoring the constitution*, ch. 2.

[30] *Commons' jn. Ire.*, ii, 10-36; McGrath, *Irish constitution*, pp 78-88; McGuire, 'Irish parliament', pp 11-22.

ways and means of raising money', and that it was 'the sole and undoubted right of the Commons to prepare heads of bills for raising money'. The House then agreed to read the first of the government's two supply bills, for a one-year additional inland excise duty, on the understanding that they did so because of the 'exigencies of affairs' and that their action in receiving a supply bill transmitted from England would not be 'drawn into precedent hereafter'. On 28 October a motion to read the second government supply bill passed in the negative and the bill was rejected. It was then resolved 'that it be entered in the Journal of this House, that the reason why the said bill was rejected is, that the same had not its rise in this House'. Thereafter, the first supply bill passed successfully through both Houses.[31]

A number of central points emerge from these proceedings. First and foremost, the 'sole right' resolutions, and the stated reasons for the rejection of the government's second supply bill, represented a direct attack upon Poynings' Law, a fact acknowledged by the lord lieutenant in his closing speech.[32] The first resolution of 27 October was not particularly contentious, though it made clear that the Commons felt the need to assert their right to prepare and decided upon the ways and means for raising taxation, a right which they would in time use to ensure regular sessions by restricting all taxation to short durations of time.[33] However, the second resolution of 27 October, combined with the stated reason for rejecting the second supply bill on 28 October, directly contravened Poynings' Law. While it might be argued that the sole

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[31] *Commons' jn. Ire.*, ii, 28; McGrath, *Irish constitution*, pp 84-6; McGuire, 'Irish parliament', pp 19-21.

[32] *Commons' jn. Ire.*, ii, 35-6.

[33] C. I. McGrath, 'Parliamentary additional supply: the development and use of regular short-term taxation in the Irish parliament, 1692-1716' in *Parl. Hist.*, xx (2001), pp 27-54.

right claim could be construed as only applying to heads of bills, as oppose to standard bills, the rejection of the second supply bill on the grounds that it had not originated in the Commons (that is, that it had been transmitted from England in accordance with Poynings' Law), made clear that the Commons meant that the sole right for initiating supply legislation of any kind, regardless of the terminology used to describe such legislation, lay with the Commons alone. Thus the Commons were trying to reinterpret Poynings' Law, by placing a limitation upon the type of legislation that the Irish and English executives could initiate.[34] Such a view is supported by the fact that the probable precedent for the sole right claim was the earlier claim made by the English House of Commons in 1678 to an 'undoubted and sole right' in relation to supply legislation originating in the Lower House at Westminster.[35] Finally, the explicit reference to heads of bills as the method for preparing legislation signalled that the irregular practice of the 1660s was now viewed by the Commons as the normal practice for initiating legislation in parliament.

The prorogation placed all such considerations on a theoretical level until the ensuing constitutional crisis over the sole right claim was resolved. The pressure to resolve it came primarily from the worsening circumstances of the public finances in Ireland, while the political will to resolve it was provided by the emerging Whig predominance in English government and the concomitant rise to favour of the leading Irish sole right advocates. Despite misgivings in government circles in both England and Ireland over the extent to which a negotiated solution might lead to the reinterpretation of Poynings' Law in parliament's favour, by early 1695 a compromise

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[34] McGrath, *Irish constitution*, pp 85-6.

[35] J. P. Kenyon (ed.), *The Stuart constitution 1603-1688: documents and commentary* (Cambridge, 1966), p. 419.

had been reached, the relevant details of which were thus: the Commons were to pass a government bill for a one-year additional inland excise duty (to be a copy of that passed in 1692) which originated with the Irish council as a cause and consideration in accordance with Poynings' Law; the executive was to prepare a comprehensive legislative programme acceptable to the Protestant political community, again in accordance with the law; and the Commons, having passed the government's supply bill, were to be allowed to decide upon the ways and means of imposing further taxation and to prepare heads of bills for providing the remainder of the required financial supplies.[36]

By means of this compromise Poynings' Law was seen to be upheld when parliament was summoned in August 1695. The Irish executive prepared fourteen bills, including the compromise government supply bill, as causes and considerations for summoning parliament, while further government bills were presented during the session.[37] However, in fact, much ground had been conceded to parliament in terms of how Poynings' Law was being interpreted. For the first time ever, the executive, explicitly in the opening speech from the throne in August 1695 and thereafter through regular practice, gave official recognition to the heads of bills process and thereby acknowledged it as a legitimate procedure within the dictates of Poynings' Law. At the same time, responsibility for initiating the majority of supply legislation passed from government to parliament: the government's one-year additional inland excise duty bill raised a paltry amount in comparison to the three heads of supply bills drafted by the Commons in 1695. Furthermore, the right of the Commons to decide

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[36] McGrath, 'English ministers', pp 591-613; idem, *Irish constitution*, pp 90-100.

[37] English privy council minutes, 11 July 1695 (P.R.O., PC 2/76, p. 160). I wish to thank Dr John Bergin for this reference.

the ways and means of raising taxes and to settle the duration of such taxation was also conceded in the opening speech and in practice thereafter.[38] By such means control of public income was handed to the Commons, with the result that short-duration taxation and regular sessions became the norm.

It was also the case that the heads of bills procedure was not just being countenanced as some sort of peripheral practice with which to placate parliament, but rather it was being acknowledged as the accepted procedure for initiating the most important legislation, from the government's perspective, that arose in any given session of parliament. While this might not have been apparent in 1695, the validity of such a statement was demonstrated by events thereafter. Throughout the eighteenth century the most consistent, regular and constant legislative activity in the Irish parliament was with regard to supply. For the government, it quickly became the case that the main business in any given session was the vote of supply in the Commons, the preparation of the heads of the relevant supply bills, and the successful passage in both Houses of the resulting supply bills on their return from England.[39]

The developments relating to control of public income enabled parliament to force further concessions from government on Poynings' Law. In the *de facto* second session in 1697, the first such inroads were made. Although the Irish executive prepared a government legislative programme in accordance with Poynings' Law, it was smaller than that prepared in 1695, and it did not include a supply bill. Instead,

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[38] *Commons' jn. Ire.*, ii, 44-5; McGrath, *Irish constitution*, pp 100-17.

[39] McGrath, 'Parliamentary additional supply', pp 27-54; idem, 'Central aspects of the eighteenth-century constitutional framework in Ireland: the government supply bill and biennial parliamentary sessions, 1715-82' in *Eighteenth-Century Ireland*, 16 (2001), pp 9-34.

the Commons drafted the heads of two supply bills to provide for the financial needs of government.[40]

The decision not to present a government supply bill to the Commons in 1697 was arrived at because of two uncertainties. The first related to the question of whether the 1697 session was a continuation of the 1695 session or a genuine second session. The second uncertainty related to the question of whether the 1695 compromise required the passage of a government supply bill at the beginning of every session of the same parliament, or just in the first session. These uncertainties also prompted a further question: under Poynings' Law, was it incumbent upon government to prepare and present a general legislative programme as the causes and considerations for convening second and ensuing sessions of the same parliament? Certainly that appeared to have been implicit in the procedures adhered to in 1613-15, 1634-5, and 1640-1. In 1697, however, the fact that many of the bills in the government legislative programme originated as heads of bills in 1695 seemed to diminish the degree to which Poynings' Law was being adhered to with regard to the certification by the Irish executive of the causes and considerations by means of government bills.[41] Ultimately, whatever the justification, the executive's failure to present a supply bill in 1697 meant that clarification of the issue was, by dint of practice, veering towards the view that a government supply bill should only be presented in the first session of a newly-elected parliament.

The same issue over a general government legislative programme arose in the 1698-9 session, with many of the government bills having originated as heads in 1697, while the question on the government supply bill was fudged by both the

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[40] McGrath, *Irish constitution*, pp 118-34.

[41] Ibid.

English and Irish executives. Although a bill for imposing high duties on woollen manufactures was drafted as part of the government legislative programme, the refusal of both the English and Irish executives to take responsibility for such a potentially contentious bill resulted in the Irish executive making no reference to it in the opening speech from the throne, and thereafter withholding it because the Commons had commenced drafting their own version. However, slow progress on the heads of the woollen duties bill in the Commons resulted in the eventual presentation of the government bill, though not until long after the Lower House had drafted the heads of the two main supply bills. As such, the government bill failed to signify anything other than that both executives had become wary of upsetting parliament on the related issues of supply and Poynings' Law. For the government woollen bill to have made an impact, either with a view to redefining the 1695 compromise or as a cause and consideration, it should have been referred to explicitly in the opening speech and presented to the Commons before they commenced drafting their own heads of supply bills.[42]

The activities in 1698-9 demonstrated the extent to which the reinterpretation of Poynings' Law was an ongoing, and not always wholly logical, process. Queen Anne's reign, however, provided clarification of the reinterpretation in parliament's favour. The first session of a new parliament, summoned in 1703, laid the foundations for future practice. In accordance with Poynings' Law, a legislative programme was prepared by the Irish executive and certified into England as the causes and considerations for summoning parliament, with five of the original nine

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[42] Ibid., pp 134-52.

bills being returned for presentation in the first session.[43] Despite a certain amount of debate in government circles over the nature of the 1695 compromise (and a degree of confusion on the whole matter in England), eventually it was agreed that only one supply bill should be included in that programme. As in 1695, the bill was for a one-year additional inland excise duty. The Irish executive justified that decision on the grounds that the same bill was presented to parliament in 1692 and 1695, and that 'this was only done to assert the right of the crown under Poynings' Act. Afterwards the heads of a new bill for the further continuance of the excise were prepared in the House [of Commons], and the same method may be pursued now.'[44]

So it was that the government bill for a one-year additional inland excise duty was presented in the Commons in the early stages of the first session of the new parliament and that the Commons were left to prepare the more substantive heads of a bill for providing the rest of the required financial supplies. In the next five sessions of the same parliament, no government supply bill was presented, or even contemplated: all of the eight supply acts passed during those sessions originated as heads of bills in the Commons. It was clear that the 1695 compromise had evolved to a point where one short-duration government supply bill was presented at the beginning of a newly-elected parliament in accordance with Poynings' Law and that all further supply legislation originated with the Commons in the first and all ensuing

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[43] English privy council minutes, 4, 30 July 1703 (P.R.O., PC 2/79, pp 413-14, 430-31). I am indebted to Dr John Bergin for the preceding reference. See also McGrath, *Irish constitution*, pp 156-60.

[44] Edward Southwell to the earl of Nottingham, 22 July 1703 (*Cal. S.P. Dom., 1703-4*, pp 56-7).

sessions of the same parliament.[45] Therein, since 1692, Poynings' Law had been substantially reinterpreted in parliament's favour.

It did not end there, however. During 1697-9 parliament had begun to initiate a variety of other, non-supply, legislation by means of the heads of bills procedure. Once the government had accepted the method for supply legislation, the thin end of the wedge had been inserted, and the acceptance of the procedure for most legislation quickly took hold. Thus in Anne's reign the number of acts originating as heads of bills increased rapidly, while the number of government bills decreased. Prior to the 1705 session, only four bills were certified into England as a government legislative programme in accordance with Poynings' Law.[46] In 1707 the government presented an even smaller legislative programme at the start of the session, while there was no government legislative programme at all at the start of the final three sessions in 1709, 1710 and 1711.[47] The reinterpretation had reached the point where the initiation of legislation by the Irish executive (the mainstay of Poynings' Law for two centuries)

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[45] For details of the various supply acts passed during the years 1703 to 1711, see McGrath, 'Parliamentary additional supply', pp 40-49, 54. For the politics of supply in the same period, see McGrath, *Irish constitution*, pp 153-264.

[46] Edward Southwell, Dublin, to John Ellis, 3 Jan. 1705 (B.L., Add. MS 28893, f. 3); same to Secretary Hedges, 8 Jan. 1705 (B.L., Add. MS 9715, f. 110); William Wogan, London, to Southwell, 16, 18, 20 Jan. 1705 (B.L., Add. MS 37673, ff 57, 59, 61); Southwell to Ormonde, 12, 14 Dec. 1704 (N.L.I., Ormonde MS 2462, pp 18-22, 62-6); Irish privy council to --------, 8 Jan. 1705 (P.R.O., SP 63/365/25). The four bills were: illegal raising of money by grand juries; suppression of blasphemy; relief of creditors; repeal of penalties relating to the linen industry.

[47] McGrath, *Irish constitution*, pp 212, 234, 250. It should be noted, however, that the Irish council did initiate some government legislation following the commencement of the 1709, 1710 and 1711 sessions. See Kelly, *Monitoring the constitution*, ch. 3.

had quickly come to be representative of little more, in terms of the number and significance of bills, than a token recognition of the dictates of Poynings' Law with regard to the summoning of parliament, the certification of causes and considerations, and the drafting of legislation.[48]

Having last sat in 1711, the parliament first elected in 1703 was eventually dissolved in May 1713. In November 1713 a new parliament was summoned in accordance with Poynings' Law. On this occasion, the causes and considerations consisted of only two bills, one of which was a government supply bill for extending all of the existing additional duties for a three-month period only.[49] The session ended prematurely because of party political conflict between Irish Whigs and Tories, and soon after the parliament was dissolved as a result of the death of Queen Anne.[50] However, although the only act passed was the government supply bill, the failure to bring any heads of bills to fruition should not detract from the fact that the parliament had been convened on the basis of a token, two-bill government legislative

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[48] Between 1692 and 1710 the Irish parliament enacted about 190 acts, the majority of which, especially after 1703, originated as heads of bills. See Hayton, 'Long apprenticeship', pp 11-13. For the most comprehensive statistical assessment of the origin and number of bills in the Irish parliament in the period 1703 to 1713, see Kelly, *Monitoring the constitution*, tables 1-5.

[49] Lords justices to the duke of Shrewsbury, 19, 23 Sept. 1713; same to Viscount Bolingbroke, 10 Oct. 1713 (P.R.O., SP 63/369/154, 158, 160). The 1713 government supply bill was a variation on a theme, in that instead of imposing the usual additional inland excise duties for one year, it imposed a wider range of duties for a shorter period of time. The purpose was to ensure that the existing taxes did not expire during the time that it took parliament to consider their re-imposition. The bill was not interpreted as an attempt to undermine the 1695 compromise. See McGrath, *Irish constitution*, pp 267-8.

[50] For the details of this complex and crucial period, see Hayton, *Ruling Ireland*, pp 159-85.

programme.[51] Clearly, the primacy of the Irish parliament in originating almost all legislation had been conceded by both the English and Irish executives.

III

Prior to the convening of a new parliament in late 1715, five government bills (including one for the imposition of a range of additional duties for six months) were prepared as causes and considerations in accordance with Poynings' Law.[52] Yet this was a far cry from the days when the majority, if not all, of the legislation to be passed in the Irish parliament originated with the government as the central part of the causes and considerations for summoning that parliament. Four of the five government bills, including the supply bill, were passed in the 1715-16 session. However, all other legislation passed in that session (incorporating at least twenty-seven acts) and all legislation passed in the ensuing five sessions of that parliament, which sat biennially from 1717 to 1726, appears to have originated as heads of bills.[53] Thereafter, for the parliaments convened in 1727, 1761 and 1776, the constant practice was for three government bills to be presented to parliament in the first

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[51] McGrath, *Irish constitution*, pp 264-83.

[52] English privy council minutes, 9, 14-15 Sept., 18 Oct. 1715 (P.R.O., PC 2/85, pp 279-80, 282-4, 293-4); *Commons' jn. Ire.*, iii, 9, 14, 16, 20, 22, 29, 38, 40, 43, 50, 64-5, 73, 77-8.

[53] *Commons' jn. Ire.*, iii, 73, 92, 111-12, 160, 173, 175, 225, 238-9, 295, 306, 371-2, 389, 441, 454. On the basis of those bills that originated as heads of bills and later received the royal assent as acts of parliament, at least eighteen such acts were passed in 1717, twenty-seven in 1719, sixteen in 1721-2, twenty-two in 1723-4 and seventeen in 1725-6. These figures can be confirmed through an examination of the five volumes of the English privy council minutes covering the years 1714 to 1727 (P.R.O., PC 2/85-9).

session.[54] For the parliament convened in 1769, only two government bills were presented in the first session.[55] As far as can be ascertained, all of the other legislation passed in both the first and all ensuing biennial sessions of all of the aforementioned parliaments originated as heads of bills.[56]

Thus, from 1715 until 1782, the vast majority of legislation passed by the Irish parliament originated as heads of bills (between 1711 and 1780 the Irish parliament passed about 932 acts).[57] Although on rare occasions a further government bill of some kind might be presented to parliament during a later session of the same parliament, such occasions were the exception rather than the rule.[58] In normal circumstances, from 1715 onwards (in practice since 1709), the preparation and presentation of government legislation in accordance with Poynings' Law only applied to and occurred in the first session of a new parliament.

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[54] *Commons' jn. Ire.*, iii, 463, 468, 470, 475, 479-85; ibid., vii, 12, 16, 20-21, 24, 30, 54, 63-5, 67-89, 70-71, 73, 76-7, 90-92; ibid., ix, 296; English privy council minutes, 1727 and 1761 (P.R.O., PC 2/90, pp 51-3, 66-8, 78-80; PC 2/108, pp 191-2, 208-10, 213-15). In 1727 and 1761 all three government bills were passed. In 1776 one bill was passed, one was rejected and the other was postponed indefinitely. In 1727 five bills had been prepared by the Irish privy council of which three were returned from England, while in 1761 four bills were prepared of which three were returned. See also Kelly, 'Monitoring the constitution', pp 91, 93-4.

[55] Viscount Townshend, Dublin Castle, to Viscount Weymouth, 21 Nov. 1769 (P.R.O., SP 63/430/162-6; *Cal. H.O. Papers, 1766-9*, ii, 520-22); *Commons' jn. Ire.*, viii, 288, 323, 328. Neither of the government's bills were passed in 1769.

[56] For a comprehensive analytical and statistical assessment of the origin and number of bills in the Irish parliament from 1715 onwards, see Kelly, *Monitoring the constitution*, chs 4-5 and tables 6-11.

[57] Hayton, 'Long apprenticeship', p. 13.

[58] In 1746 a government tillage bill was presented in and passed by the House of Lords, but was rejected in the Commons on the grounds that it was a supply bill (*Commons' jn. Ire.*, iv, 503-5).

Such a significant change in the manner in which Poynings' Law was enforced in the eighteenth century had occurred because the law had been reinterpreted to the advantage of parliament in the period 1692-1714. Primarily as a result of financial pressures on government in the aftermath of the Glorious Revolution, the Irish parliament, through control of public income, had been able to secure regular parliamentary sessions and negotiate the reinterpretation of the application of Poynings' Law, so that instead of the majority of legislation originating with government and the minority with parliament, the opposite held sway. Of course, it could be argued that acceptance of the heads of bills procedure was not a significant loss of control over legislation on the part of the Irish and English executives, as the heads still had to go before both the Irish and English privy councils before being presented to parliament as standard bills in accordance with the dictates of Poynings' Law. During the eighteenth century, however, any amendments beyond literal changes were contemplated with trepidation by government, knowing full well the sort of negative reaction that might be expected from the Irish parliament. And, as far as parliament was concerned, at least in the first decades of the eighteenth century, the issue was primarily about initiating legislation, and not about denying the privy councils a role in the process. In time, having established a clear right to such an initiative, parliament's focus turned to the more specific questions relating to the process for dealing with heads of bills within the dictates of Poynings' Law, in particular the amending, altering and respiting powers of the councils. In 1782, these concerns were to be dealt with in parliament's favour as well. Thus, the history of Poynings' Law would seem to confirm D. W. Hayton's suggestion that the reforms of

1782 were the conclusion of 'a succession of incremental gains, rather than … the triumph of a short-term political struggle'.[59] Among those incremental gains, the reinterpretation of Poynings' Law to the advantage of parliament in the period 1692-1714 was a highly significant stage in the history of government, parliament and the constitution in early modern Ireland.[60]

[59] Hayton, 'Long apprenticeship', pp 7-8.

[60] I wish to acknowledge the financial assistance provided by the Irish Research Council for the Humanities and Social Sciences, which facilitating the researching and writing of this article.