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Dependency and Subservience: The Irish Parliament as a ‘Small-State Parliament’¹

I.

Despite the protestations of the so called ‘Aristocratic Home-Rulers’ of the parliament of 1460 and those later such as Molyneux in 1699, the Irish parliament more often than not had a relationship with the executive in Dublin and London, and indeed the Westminster parliament which usually saw it fulfil a roll as an inferior and submissive institution within the system of government, legislation and legal jurisdiction in British and Irish government in the early modern parliament. Irish historiography has been reasonably well served by historians eager to understand what the bold declarations of Darcy, the patriot parliament of 1689, Molyneux, and indeed the Yorkist dominated parliamentarians of 1460 meant, both at the time and what it could mean in the struggle for a parliamentary independence later in the eighteenth century and afterwards.² This paper will attempt to instead look at the practical development of the Irish parliament, or what Tadhg Ó hAnnracháin terms ‘the grubby actuality’, and look at where it sits in the context of Irish political development and also what role it played in the parliamentary developments of a three kingdoms

¹ Much gratitude is due to Dr Aoife Duignan for very useful discussions concerning many of the concepts and ideas in this article.

² A. Clarke, ‘Patrick Darcy and the constitutional relationship between Ireland and Britain,’ in: J.H. Ohlmeyer (ed.), *Political thought in seventeenth-century Ireland. Kingdom or colony?*, Cambridge 2000; A. Carty, *Was Ireland conquered. International law and the Irish question*, London 1996; B. Farrell, ‘The patriot parliament of 1689’, in: B. Farrell (ed.), *The Irish parliamentary tradition*, Dublin 1973; J.G. Simms, ‘The case of Ireland stated,’ in: Farrell (ed.), *The Irish parliamentary tradition*; P. Kelly, ‘Recasting a tradition. William Molyneux and the sources of *The case of Ireland...stated*,’ in: Ohlmeyer (ed.), *Political thought*; A. Cosgrove, ‘Parliament and the Anglo-Irish community. The declaration of 1460,’ in: A. Cosgrove / J.I. McGuire (ed.), *Parliament and community. Historical Studies XIV*, Belfast 1983; J.F. Lydon, ‘“Ireland corporate of itself”. The parliament of 1460,’ in: *History Ireland* 1995.

history.³ There will be a particular focus on attempting to determine to what extent the Irish parliament can be considered a small-state parliament, or in other words to consider and evaluate to what extent there was a narrow focus of the Irish parliament in the medieval and early modern period.

One of the interesting aspects of those aforementioned declarations of parliamentary independence is that, despite the intentions of such declarations, they actually tended to be followed by the creation of a closer relationship between the Irish parliament and the English executive and parliament, a relationship where Ireland had a reduced role to play. Two examples illustrate this point. As a refugee from English justice, Richard, duke of York, held and presided over a parliament in 1460 in Drogheda, just to the north of Dublin. By way of avoiding a summons to England and nullifying his attainder for treason, a declaration was made by the Irish parliament which claimed that Ireland 'is and at all times has been corporate of itself, by the ancient laws and customs used in the same, freed of the burthen of any special law of the realm of England, save only such laws as by the lords spiritual and temporal and the commons of the said land had been in great council or parliament there held, admitted, accepted, affirmed and proclaimed'.⁴ Such a claim was indeed bold, and it should come as no surprise that, with the conclusion of the civil wars towards the end of the fifteenth century, Henry VII should look at the position more closely. Not only was he to reconsider the position of Ireland to England but also the power wielded by those lord lieutenants who were supposed to rule in his interest. Because Henry could never possibly hope to afford an administration in Ireland that was independent of local magnate influence and could govern in the king's interest, he decided instead to adapt the process of law creation in Ireland, so as to ensure that the Irish parliament's legislative programme could not be controlled in the fashion it had been under Richard, duke of York. The support shown by the Irish parliament for the pretender, Lambert Simnel, in 1487 had also proven more than inconvenient for Henry VII.⁵ Poyning's Law ensured that parliament could no longer be called and legislation no longer passed without prior approbation from the king in council in England. One of the long term implications of this law was that the Irish parliament lost most of its capacity for independent law creation, although this may not have been the primary objective of it.⁶ There were some minor adjustments to the law and two brief suspensions during the sixteenth century, all of

³ T. Ó hAnnracháin, 'Imagining political representation in seventeenth-century Ireland,' in: R. Armstrong / T. Ó hAnnracháin (ed.), *Community in early modern Ireland*, Dublin 2006, 50.

⁴ 32 Henry VI, c. vi.

⁵ S.G. Ellis, *Ireland in the age of the Tudors. English expansion and the end of Gaelic Rule*, Harlow 1998, 83-96.

⁶ R.D. Edwards / T.W. Moody, 'The history of Poyning's Law.' Part I, 1494-1615, in: *Irish Historical Studies* 1940/41, 415-24; J. Kelly, *Poyning's Law and the making of law in Ireland, 1660-1800*, Dublin 2007, 8-14.

which were introduced for the benefit of royal governors.⁷ Otherwise the law was to remain on the statute books until the major constitutional change of 1782.⁸ Once it became obvious during the earlier half of the seventeenth century that the act was of more use to the government than its original purpose of protecting parliament, it was attempted to amend and even repeal it.⁹

The second example selected came in the aftermath of Molyneux's defence of the woollen industry in 1699, when he published 'The case of Ireland being bound by acts of parliament in England stated'. The pamphlet claimed, as Darcy had done in the 1640s, that Ireland was not bound by English legislation.¹⁰ The English house of commons not only ordered the document burned by the common hangman, but also carried out its threat to enact legislation amending the rates on the exportation of wool from Ireland to England, which of course it was legally entitled to, but it also forbade Irish wool to be exported to continental Europe.¹¹ This was not the first time that the Westminster parliament had regulated trade between Ireland and countries other than England, but the furore created by Molyneux's pamphlet did much damage both to Irish trade and the confirmation of Ireland's position within the empire.

This was followed up by the passing of what has become known as the declaratory act in 1720. The origins of this act are to be found in *Annesley V Sherlock*, a case concerning a parcel of land in Co. Kildare, which worked its way through the Irish courts up to the Irish house of lords.¹² The appeal by Hester Sherlock to the Irish house of lords prompted a second appeal by Maurice Annesley to the English house of lords at Westminster who ruled that the Irish house of lords had no appellate jurisdiction. When the Irish exchequer judges fined the local sheriff for failing to give Annesley possession, the judges were jailed for failing to recognise the rights of the Irish parliament. This episode led directly to the declaratory act of 1720, which stated in no uncertain terms that the Irish parliament had no appellate status within the Irish judicial system, that the English parliament was the final court of appeal for Irish cases, and that the English parliament was perfectly competent to legislate for Ireland. There was little new in this episode in terms of its implications for the creation of Irish law. Even a cursory glance at legislation being passed in the period shows as much. Most of the Protestant community in Ireland in the

⁷ Kelly, *Poynings' Law*, 10.

⁸ A.J. Ward, *The Irish constitutional tradition. Responsible government and modern Ireland, 1782-1992*, Washington, DC 1994, 18-20.

⁹ A. Clarke, *The Old English in Ireland, 1625-1642*, 2nd ed., Dublin 2000, 141-2; J.G. Simms, *The Jacobite parliament of 1689*, Dundalk 1966, 9.

¹⁰ A. Clarke, 'Patrick Darcy and the constitutional relationship.'

¹¹ E.M. Johnston-Liik, *History of the Irish parliament, 1692-1800* I, 6 vols, Belfast 2002, 41; J.G. Simms, *Colonial nationalism, 1698-1776*, Cork 1976, 39. There is some dispute as to whether the document was actually burned or not.

¹² I. Victory, 'The making of the 1720 Declaratory Act,' in: G. O'Brien (ed.), *Parliament, politics and people. Essays in eighteenth-century Irish history*, Dublin 1989.

later 1660s was dependent upon the English act of oblivion and was happy enough to reject a specific Irish act, which was deemed to be imperfect to its needs, on the basis that they had protection by the English act in any case.¹³ The first all-Protestant parliament in 1692 also seemed content to conform to the English act of 1691 which prevented Roman Catholics from taking seats in either Irish house of parliament from 1692 onwards.¹⁴ Indeed this is an interesting issue, as the commons in Ireland, and the lords to a lesser extent, had in previous parliaments taken great pains to insist on their right to decide upon their own composition.¹⁵ However a brief look at the research conducted by Alfred Donaldson also points to the unambiguous fact that the English parliament could and frequently did pass laws relating to Ireland throughout the early modern period. On occasion English law was found to be applicable and extended to Ireland either by writ, royal mandate, or being made directly by the English parliament referring specifically to Ireland.¹⁶ The use of the English parliament went some way towards undermining the role of the Irish parliament within the Irish constitution. In many cases the legislation was neither offensive nor was it complained of. In general there was not much outcry either by parliamentarians or their constituents, although the Jacobite parliament of 1689 (subsequently declared illegal) did pass a declaratory act asserting that no English legislation was binding in Ireland 'except such of them as by acts of parliament passed in this kingdom were made into laws here'. There was also a proviso forbidding the use of English courts, including the house of lords, to act as a court of appeals.¹⁷ One important aspect of English legislation is that there was never an attempt to raise money in Ireland by subsidy through the English parliament.

II.

Before we can get down to the nature of the early modern Irish parliament, we need, firstly, to look at the medieval heritage. The medieval conquest of Ireland, begun in 1169, was never completed. Gaelic Ireland as a political force was essentially vanquished after the flight of the last of the significant Ulster aristocrats in the early years of James I's reign. These facts are impor-

¹³ C.A. Dennehy, *Parliament in Ireland, 1661-6*, M.Litt. thesis, University College Dublin 2002, 211.

¹⁴ J.I. McGuire, 'The Irish Parliament of 1692,' in: T. Bartlett / D.W. Hayton (ed.), *Penal era & golden age. Essays in Irish history, 1690-1800*, Belfast 1979, 2-3.

¹⁵ In the house of lords the system of allowing several proxy votes to be held by a few government supporting peers, drastically over-used in Wentworth's time, was in 1661 reduced to a maximum of just two proxy votes to be held by a peer at any one time. *Lords' Journals*, Ireland, 10, 14 May 1661.

¹⁶ A.G. Donaldson, *The application in Ireland of English and British legislation made before 1801*, Ph.D. thesis, Queen's University, Belfast 1952, 189-222.

¹⁷ Simms, *The Jacobite parliament*, 8-9, 27.

tant for two reasons. In the first instance, in trying to identify Ireland's relationship to its medieval parliament, we must realise that parliament, like any other branch of the king's administration, extended only so far as it was safe to. The geographical island never had a consistent parliamentary heritage as it never bore resemblance to the theoretical feudal lordship. Previous to James I's reign, in Ireland's northern province of Ulster, only two parliamentary boroughs existed, Carlingford and Downpatrick.¹⁸ Although both of these towns have early origins, particularly that of Carlingford which can possibly trace its original charter to the reign of King John (1199-1216), both of these were at best on the fringe of the medieval colony. Particularly after the slide of the lordship in the fourteenth century, many towns on the fringe partook in the parliamentary process to a much lesser extent, and frequently at their own will. In the western province of Connaught, again there were only two boroughs of Galway City and Athenry.¹⁹ They also, on occasion, tended not to send members as, like the situation of the northern towns, the land route was too dangerous and the sea route was much longer and no less dangerous. In any case for all four of these towns, parliament could be of little relevance as the king's justiciar or lieutenant could not always provide protection for the enfranchised towns nor could he extract taxation that parliament may have voted.²⁰ Although these outposts may never have fully dropped out of the medieval colony, they certainly never had a constant relationship with the pale area.²¹

Although at its zenith, the medieval colony extended into all four provinces, it had entered a period of decline towards the end of the fourteenth century. The Bruce invasions followed by the black death, far more malignant in the Anglo-Norman colony due to the higher density of urban centres, was followed by inaction or an inability to give long term consistent support to the colony, which meant that it steadily shrank over time.²² The exchequer court, based in Carlow, an important military and administrative centre on the main route from the pale of the greater Dublin area into Munster, had to be evacuated for the safety of the capital by Richard II in 1394.²³ Many towns within the pale area were regularly attacked, and as late as 1539 Navan, a town less than 45 kilometres from Dublin, was burned to the ground.²⁴ As the power of Dublin Castle wilted over time, the more the Anglo-Irish aristocrats morphed.

¹⁸ Johnston-Liik, *History of the Irish parliament II*, 170, 221.

¹⁹ *Ibid.*, 240-242.

²⁰ H.G. Richardson / G.O. Sayles, *The Irish parliament in the middle ages*, Philadelphia 1952, 126.

²¹ For a useful re-thinking of the issues of thirteenth and fourteenth century English Ireland, see R.F. Frame, 'English political culture in later medieval Ireland,' in: *The History Review* 2002, 1-11.

²² See A. Cosgrove, *Late medieval Ireland, 1370-1541*, Dublin 1981, 29-46; M. Kelly, *History of the black death in Ireland*, Stroud 2001; *The great dying. The black death in Dublin*, Stroud 2003; J.F. Lydon, *The lordship of Ireland in the middle ages*, Dublin 2003, 121-177; T.W. Moody et al (ed.), *A new history of Ireland II, 1534-1691*, Oxford 1976, 4-6.

²³ M. Richter, *Medieval Ireland*, Dublin 1988, 170.

²⁴ T.W. Moody et al (ed.), *A new history of Ireland, 1534-1691*, 45.

The former Norman magnates 'degenerated' in the centuries after the invasion to become *Hiberniores ipsis Hibernis* (more Irish than the Irish themselves).²⁵ The earls of Desmond in the Limerick area are a very good example of a large part of the lordship dropping out of the Anglo-Irish political community and, as a consequence, the parliamentary tradition.²⁶

Thus a parliamentary tradition was never really established over the entire island and the fact that for the entire medieval period Ireland experienced almost constant low-intensity, and occasionally high-intensity warfare with the Gaelic Irish, meant that it would never be a part of the Gaelic Irish political scene. There were occasions when a Gaelic Irish person did attend parliament, usually a bishop or an abbot, or indeed the first baron of Upper-Ossory sat in the lords when he traded in his Gaelic Irish chieftom for an anglicised title, although his attendance could only be effective with the help of a translator.²⁷

However, the story of the colony and its colonial representative assembly is not all negative. The institution did develop during the medieval period, but it developed only because those boroughs and shires within the ever-decreasing pale area used it for law creation, judicature, and on occasion as a forum for representation of their constituents. As such, partially because of the example of its big-brother parliament in England, and partially due to particularly Irish circumstances, the Irish parliament did develop as a medieval institution of government. It had by the beginning of the Tudor period a developed system of passing legislation, considering petitions, acting as a senior law court, and using parliamentary meetings to trade finance for the king in return for his tending to their grievances.²⁸

There were, however, some more significant changes to the Irish parliament in the Tudor period. Apart from the dependency of Irish legislation upon the English council and monarch created by Poyning's Law, the Irish parliament seems to have been called far less frequently. A quick look at the appendix of the tenth volume presented to the International Commission for the History of Representative and Parliamentary Institutions, Richardson and Sayles's masterly account of the medieval Irish parliament, shows that that institution was a very regular part of government. Between 1264 and 1485, it is exceedingly rare to have more than a gap of four years between each parliamentary meeting. Frequently the gap is much less, and in 1450 regular attend-

²⁵ A. Cosgrove, 'Hiberniores ipsis Hibernis,' in: A. Cosgrove / D. McCartney (ed.), *Studies in Irish history presented to R. Dudley Edwards*, Dublin 1979, 1-14.

²⁶ A. Cosgrove (ed.), *A new history of Ireland: Medieval Ireland II, 1169-1534*, Oxford 1987, 593.

²⁷ Richardson / Sayles, *The Irish parliament*, 182 n49; Ellis, *Ireland in the age of the Tudors*, 154; Moody et al (ed.), *A new history of Ireland, 1534-1691*, 47. This 1541 session of parliament enacted the legislation which redefined Ireland from a lordship to a kingdom, an act which was printed in Irish.

²⁸ S.G. Ellis, *Reform and revival. English government in Ireland, 1470-1534*, Woodbridge 1986, 141-5.

ance at parliament became such a burden that parliament legislated 'that it shall not be lawful for any lieutenant, deputy, justice, or any other governor under our lord the king in Ireland, to ordain, summon or hold any parliament of our lord the king in the said land except once a year'.²⁹ However, in the Tudor period between the establishment of the kingdom in 1541 to the first parliament of the seventeenth century, parliaments were called only in 1541, 1556, 1560, 1569, 1585, and again in 1613. In all of the Tudor period, Irish parliaments compared to English ones come to a total of 14 Irish as opposed to 31 English parliaments, and the English ones generally sat for considerably longer.³⁰ Particularly there was a reluctance to call parliament at the latter end of Elizabeth's reign due to Catholic opposition in both the commons and the lords, but also the governments were more inclined to getting business conducted through other constitutional innovations such as the provincial presidencies, castle-chamber and the privy council.³¹ In any case, it should be no surprise that when parliamentarians did assemble for the first parliament of the seventeenth century in 1613, there seems to have been a lack of experience in parliamentary affairs both in terms of MPs and administrators.

The decrease in the frequency of parliament and the collapse over time of the colony at the end of the medieval era, meant that when parliament was to be resurrected in the early modern period, it would be a difficult passage. With the collapse of Gaelic power completed in Ulster in 1607, the Brehon (Gaelic) legal system, which had survived in Gaelic areas along with a hybrid marcher law in the borderlands, was overturned and replaced by English common law, which was extended throughout the kingdom. This was quite a sudden development for Ulster in particular and it had an effect that the old political elite, or what remained of them, were inexperienced in English law and particularly so in relation to parliament. There were some Gaelic Irish who did sit in parliament in the seventeenth century after their localities had come under the control of Dublin Castle, but generally they did not make much of an impression in parliamentary politics and tended to make or break their political careers outside of the forum of parliament. The O'Briens of Clare and the O'Haras of Sligo stand out as families of Gaelic Irish origins who had conformed to the state religion, but they are the exception. Even in the Catholic dominated parliament of James II's reign, the membership was more representative of the Old English descendents of the original Anglo-Irish colonists than of the Gaelic Irish.³²

²⁹ 29 Henry VI, c.v.

³⁰ Ellis, *Ireland in the age of the Tudors*, 372-5; M.A.R. Graves, *Elizabethan parliaments, 1559-1601*, 2nd ed., Harlow 1996, 125; Richardson / Sayles, *The Irish parliament*, 332-365.

³¹ J.G. Crawford, *A star chamber court in Ireland. The court of castle chamber, 1571-1641*, Dublin 2005; Anglicizing the government of Ireland. The Irish privy council and the expansion of Tudor rule, 1556-1578, Dublin 1993; Ó hAnnracháin, *Imagining political representation*, 34.

³² J.G. Simms, *Jacobite Ireland*, Dublin 2000, 76.

If the Gaelic Irish elite which remained in Ulster after the flight of the earls failed to (or were not allowed to) partake in the parliamentary forum with any gusto, who did? A consideration of the new boroughs created in Ulster in the months before the 1613 meeting of parliament will show that they were designed to ensure a Protestant-planter majority in the house of commons. The policy was a massive success. The seventeenth century saw representation go from a Catholic dominated parliament (in the commons in particular) at the end of Elizabeth's last Irish parliament, to an exclusively Protestant parliament at the beginning of William & Mary's reign. This is in no small measure from the granting of charters, which allowed for borough representation in parliament, to towns, and sometimes mere projected settlements, which provided for an entirely Protestant town council. The immediate result of the work of Sir John Davies, the Irish attorney general, was that the balance of power swung in favour of Protestants and their share of the MPs in the house of commons held a majority of 32 (84 new seats had been created in advance of this parliament).³³ Gentlemanly behaviour reached what may have been an all-time low when, during a dispute over the election of a speaker for the commons, Everard, the Catholic choice was placed in the chair whilst the Protestants dumped the rather portly Davies, their candidate, on his lap. We should not be surprised that this parliament had such a disastrous start. The Catholic party had probably arranged their subsequent walk-out in advance and perhaps because of the last minute creations of boroughs, in general Sir Arthur Chichester, head of the administration, admitted that in advance of the first meeting 'all things are so out of order and unprepared'.³⁴

The majority of these 'new men' were of the planter community, particularly in Ulster, with its high proportion of Scots. It is highly unlikely that many of them had an experience of what parliament was and how it should be. No more than 15 had sat in the English parliament either before or after 1613. Obviously the Scots had a tradition of parliament going back several centuries previous to 1613, although very different in its composition and organisation. In any case, the fact that most of those who came to Ireland from the mid-1500s, both the Scottish and the New English, were social climbers, and as such a community with little parliamentary heritage or indeed much political experience at all.³⁵ One critic of these innovations argued that the parliamentary tradition had been cheapened by the introduction of so many men of such low social origins.³⁶ It was not just the MPs who lacked experience. The next

³³ J. McCavitt, *Sir Arthur Chichester. Lord deputy of Ireland, 1605-16*, Belfast 1998, 169-89; H.S. Pawlisch, *Sir John Davies and the conquest of Ireland. A study in legal imperialism*, Cambridge 1985, 31.

³⁴ BL, Lansdowne MS. 159, f. 191; McCavitt, *Sir Arthur Chichester*, 184.

³⁵ Ó hAnnracháin, *Imagining political representation*, 38.

³⁶ B. Jackson (ed.), 'A document on the parliament of 1613 from St Isidore's College, Rome,' in: *Analecta Hibernia* 1986, 47-58.

projected parliament, due to sit in 1628, had to be abandoned due to the inability of the administration to perform some of the basic requirements in keeping within the provisions of Poynings' Law when calling parliament.³⁷

It is easy to be dismissive of the newcomers and the cynical arrangements made for their domination of the institution. However, it was unlikely to have been anything else. A process had begun under Elizabeth whereby English law and the reach of the administration was being spread over the entire island. Almost all of her enfranchised boroughs were returning Protestant MPs. Once Ulster had been subjugated militarily and later planted, the province was shired and all the normal local and provincial political structures (including boroughs) were put into place. It would be rare for an imperial government to strengthen native control of such an important arm of its administration, especially when parliament sat just ten years after a war on the island which put the kingdom in the most severe difficulty. Parliament in Ireland had always been an assembly of the few. The elite were defined by blood. In the medieval parliament it was an assembly for the Anglo-Irish or as they liked to term themselves 'the King's liege subjects'. This elitist nature did not change in the seventeenth century. All that changed was how the parliamentary elite were to be defined. Despite the formal extension of equality before the law to both Gaelic Irish and the Scots in the 1613 parliament, the elite was now being defined by religion.³⁸ In a similar fashion, the apartheid-like ordinances of 1351, confirmed by the Kilkenny parliament of 1366 which sought to protect and preserve the Anglo-Irish community were to return in the form of the penal laws in the decades after 1692, but instead of using race or ethnicity as a defining feature, religion was used.³⁹

In many ways, Chichester and Davies had originated a process which was to continue throughout the century. Wentworth had intimidated many boroughs in advance of the parliaments and exercised control in the lords by concentrating proxy votes of absent lords in the hands of a few loyal peers. Orrery and Mountrath had kept the Catholics out of the towns (and thus out of the commons) in advance of the elections in 1661 and, on the advice of the house of commons, stopped the courts sitting for a time so as to, amongst other things, prevent reversals of outlawries of Catholic lords who wished to take their seats in the lords.⁴⁰ Tyrconnell's *quo warranto* proceedings guaran-

³⁷ Cal.S.P.Ire., 1625-32, 386.

³⁸ 13 James, cc. v, vi.

³⁹ For some useful discussions of Irish anti-Catholic legislation see S.J. Connolly, *Religion, law, and power. The making of Protestant Ireland, 1660-1760*, Oxford 1992, ch. 7; M. Wall, *The penal laws, 1691-1760*, Dundalk 1967.

⁴⁰ Commons' Journals, Ireland, 22, 24, 25 May, 7, 13, 15, 18, 22 June 1661; C.A. Dennehy, 'The Restoration Irish Parliament,' 1661-6, in: C.A. Dennehy (ed.), *Restoration Ireland: Always Settling and Never Settled*, Aldershot 2008, 54-5; H.F. Kearney, *Strafford in Ireland, 1633-41. A study in absolutism*, 2nd ed., Cambridge 1989, 46-7, 50-1; B. McGrath, 'The Irish elections of 1640-41,' in: C. Brady / J.H. Ohlmeyer, *British interventions in early modern Ireland*, Cambridge 2005, 195-99.

teed an overwhelmingly Catholic parliament during James II's time in Ireland.⁴¹ As has been mentioned above, the role for Catholics in parliament from 1692 was removed by an English act of parliament.⁴²

So as a community with little parliamentary heritage was assuming the ascendancy, the Old English community was, slowly but surely, being edged out of parliament, just as it had been or would be removed from all other areas within the administration either at local, provincial or national level. At this stage, with two communities in contention within parliament, it is to be of little surprise that a lord deputy with political acumen, such as Sir Thomas Wentworth (later earl of Strafford) managed to dominate proceedings within parliament with such relative ease. One of the main ways in which he did this was to compose a middle party in the house of commons made up of government men, loyal only to Strafford and not part of either the Catholic or planter interest. With this middle party in place he could then 'bow and govern the Native by the Planter and the Planter by the Native'.⁴³ Wentworth was also the first governor to become convinced of the use of Poyning's Law as a way of reducing the independent action of the Irish parliament in the area of law creation and thus further emasculating the institution.⁴⁴ However, although parliament was a damaged institution, it was not a broken one. It revived in the 1640s in the extraordinary circumstances of crippling financial difficulties in the mother kingdom, war against the Scots, and the beginnings of what was to later become the civil wars. Wentworth, partially because of his attitude and behaviour towards parliament, managed to do what very few politicians had managed to achieve: to get Catholic and Protestant politicians working together.⁴⁵ The Irish parliament and Irish politicians who went to London played an important part in bringing about the end of Wentworth and, to a certain degree, produced some of the conditions which allowed for the outbreak of hostilities in Ulster in October 1641.⁴⁶ We may view the events of 1640-1 in parliament

⁴¹ Simms, *Jacobite Ireland*, 35-6.

⁴² The act to prevent the future growth of popery (2 Anne, c. vi) contained a sacramental test clause which did some damage to the influence of the non-conforming Protestants in parliament, particularly their exclusion from the boroughs of Ulster. See D.W. Hayton, *Ruling Ireland, 1685-1742. Politics, politicians and parties*, Woodbridge 2004, 186-208, also published as: 'Exclusion, conformity and parliamentary representation. The impact of the sacramental test on Irish dissenting politics,' in: K. Herlihy (ed.), *The politics of Irish dissent, 1650-1800*, Dublin 1997, 52-73.

⁴³ Cited in Kearney, *Strafford in Ireland*, 44.

⁴⁴ A. Clarke, 'The history of Poyning's Law, 1615-41,' in: *Irish historical studies* 1972-3, 207-22.

⁴⁵ Clarke, *The Old English in Ireland*, 125-52.

⁴⁶ J. McCafferty, "'To follow the late precedents of England": The Irish impeachment proceedings of 1641,' in: D.S. Greer / N.M. Dawson (ed.), *Mysteries and solutions in Irish legal history. Irish legal history society discourses and other papers, 1996-1999*, Dublin, 2001, 51-72; B. McGrath, 'Parliament men and the confederate association,' in: M. Ó Siochru (ed.), *Kingdoms in crisis. Ireland in the 1640s*, Dublin 2001, 90-105; M. Perceval-Maxwell, 'Ulster 1641 in the context of political developments in the three kingdoms,' in: B. MacCuarta (ed.), *Ulster 1641. Aspects of the rising*, Belfast 1993; *Outbreak of the Irish rebellion of 1641*, Montreal 1994.

as a reassertion of the traditional rights of the Irish parliament with a view towards a realignment of the relationship between the representative assembly and the executive. In some ways, perhaps we could also view this parliament as moving towards an assembly which was far more representative of the island than it ever had been: a parliament which represented all counties of the island, which had the two religious groups working together to bring the executive to account. This was not to last. Once Wentworth had been removed, the necessity for cooperation between the different religious groups no longer existed.

The outbreak of the rebellion in mid-Ulster in October 1641 had spread throughout the island within a few months, and the Irish parliament reverted to being a 'small-state' parliament, both in its functions and its composure. Its attendance levels were poor, despite the regular fining of members for non-attendance, and it passed only one piece of legislation between November 1640 and its conclusion in the summer of 1648.⁴⁷ During the session which followed the outbreak of the rebellion, most Roman Catholic members began to absent themselves from parliament (frequently in favour of the Catholic confederate alternative at Kilkenny), and the use of the oath of supremacy by the commons made the religion of the lower house exclusively Protestant.⁴⁸ Even without the implementation of the oath for all members, it is perhaps unlikely that the house would have had any Catholics. The lords became an almost exclusively Protestant house in the years after the outbreak of hostilities, but there were some Catholic loyalists who sat, such as Richard Nugent, second earl of Westmeath.⁴⁹ Military successes by the Catholic confederate forces during the course of the 1640s made areas of royal authority more similar to the medieval pale, which meant that the Irish parliament was reduced to being a parliament representing an area roughly the size of Corsica.⁵⁰ At the same time, the English parliament was expanding its zone of influence in the early 1640s to include legislating for the future ownership of estates in Ireland in 1642 to embarking on a conquest in 1649.⁵¹ This obviously further reduced the influence

⁴⁷ *Lords' Journals*, Ireland, 17 November 1642. On 6 May 1645 royal assent was given to 'An act remitting to his majesty's protestant subjects, and their adherents, all arrears of rent, services, compositions, first fruits and twentieth parts, due to his majesty at Michaelmas 1641, ever since, and at Easter 1645'. It passed through the commons on 17 and 18 March 1645, but readings in the lords have not been recorded.

⁴⁸ *Commons' Journals*, Ireland, 21 June 1642.

⁴⁹ Westmeath was definitely in the chamber in April 1644. It is not certain whether Taaffe and Clanrickard were sitting in the lords after the start of hostilities, although it is highly likely as they were later fined one hundred pounds for non-attendance in June 1644, which would indicate that they were in attendance on occasion before that date. *Lords' Journals*, Ireland, 15 April, 4 June 1644.

⁵⁰ See Map, P. Lenihan, "'Celtic' warfare in the 1640s," in: J.R. Young (ed.), *Celtic dimensions of the British civil wars*, Edinburgh 1997, 117.

⁵¹ K.S. Bottigheimer, *English money and Irish land. The 'adventurers' in the Cromwellian settlement of Ireland*, Oxford 1971; M. Ó Siochru, *God's executioner. Oliver Cromwell and the conquest of Ireland*, London 2008.

and necessity of the Irish parliament. It is little wonder that the Cromwellians effectively abolished the Irish parliament when they created a union parliament in London to which Ireland sent MPs.⁵²

When parliament did sit in Ireland it tended to look towards the English parliament for its lead in procedure. This is very much in keeping with the fact that the Irish assembly was heavily based upon the English model. Developments in English procedure tended to be followed in Ireland, partially because a similar set of circumstances may have prevailed in Ireland and so it makes sense that the institution would react to these circumstances in the same fashion.⁵³ The king of the medieval lordship of Ireland and the kingdom of England needed taxation for his wars in Scotland, Wales and Ireland, and so there was a necessity for parliament. The fact that similar governmental structures and political theories were in place in both jurisdictions meant that a similar institution would organically emerge.⁵⁴ However, it is also quite likely that personnel who sat in the English parliament also sat in Ireland and transferred procedural knowledge. For instance on 18 July 1634, just four days into the sitting, it was recorded in the journals of the commons that 'It is ordered by the house, for avoiding of disorder in the proceedings of the house, that the orders and usages of the house be entered with the clerk; and that he shall give copies thereof unto such as desire them, to the end, [that] those, that have not been formerly acquainted with the orders of parliaments, may the better inform themselves, how to demean themselves in the house'.⁵⁵ This is almost certainly a reference to John Hooker's *Orders and Usages*. It was published by an Exeter MP, but one who had also sat in the Irish parliament for Athenry in Galway in 1569.⁵⁶ 'Hooker provided his readers with an up-to-date description of parliament – its purpose, composition, structure, personnel, and *modus operandi*.'⁵⁷ It is quite likely that the book originated due to the close friendship between Hooker and James Stanihurst, three time speaker of the Irish house of commons.⁵⁸

Fifteen members of the 1613 parliament sat in an English parliament, and a similar number, if not more, sat in both parliaments throughout the rest of the century. This would seem, therefore, to be another obvious source for the dissemination of information whereby the examples seen in the English parliament could be put into use in the early modern Irish parliament. For example on 2 May 1615, the house of commons considered the petition of the baron of

⁵² P. Little, *Lord Broghill and the Cromwellian union with Ireland and Scotland*, Woodbridge 2004.

⁵³ M.A.R. Graves, *The parliaments of early modern Europe*, Harlow 2001, 7-31.

⁵⁴ Richardson / Sayles, *The Irish parliament*; G.O. Sayles, *The king's parliament of England*, London 1975.

⁵⁵ *Commons' Journals*, Ireland, 18 July 1634.

⁵⁶ V.F. Snow, *Parliament in Elizabethan England. John Hooker's 'Order and Usage'*, New Haven 1977, 12-5.

⁵⁷ *Ibid.*, 58.

⁵⁸ *Ibid.*, 14-5.

Howth against one of its members, Thomas Lutterell, for slander against the peer (it does seem strange in the first place that a peer is petitioning the lower house when normal procedure in the century would have been to petition his own house and then move the issue forward by conference). In the case that followed, two precedents were mentioned in the English parliament. The first of these was the case of the Earl of Hertford, who when he attended the commons in a similar case, was allowed to sit on a stool, and the second referred to the right of the earl of Huntingdon to produce witnesses in such a case.⁵⁹ There are several other incidents throughout the seventeenth century where members of both houses confirm that precedent in the English parliament was to be followed in its Irish counterpart. The evidence in the parliamentary journals is of the growth in the amounts of petitions and also the development of impeachment proceedings in Ireland followed on from English examples some fifteen years earlier.⁶⁰

Indeed Sir John Davies, speaker of the Irish house of commons, Irish attorney-general and English serjeant at law is a perfect example of one of those who ensured the transition of English precedent to the Irish parliament. He was a speaker and senior legal officer in Ireland and also one of the king's serjeants in England where he went on circuit as a judge and was a keen observer of constitutional affairs. He was not the only observer of the English parliament. There seems to have been a considerable amount of contact between the officers of the Irish house and their English counterparts. At the beginning of most parliaments, the clerks tended to write to the clerks in the English parliament to enquire as to what fees were being charged in England, with an obvious attempt to avoid being left short on what other clerks were collecting. Indeed in advance of one parliament, the clerk was sent to England to serve, what in essence was a brief apprenticeship.⁶¹

Although Ireland could never be described as a small country, the parliament which sat in the lordship and kingdom tended to be a dependent and small institution. Its initial progress may have been healthy, but the decreasing size of the colony throughout the later medieval period meant that the area where MPs came from steadily decreased. So too did those areas where the laws created by the Irish parliament could be enforced. Once we have more regular journals being kept in the early modern period, we see through legislation passed by the English parliament and also the taking of precedent by the Irish parliament showed that it was in many ways a parliament dependent on its mother parliament in England.

⁵⁹ *Commons' Journals*, Ireland, 2 May 1615.

⁶⁰ See G. Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages*, Oxford 2007; J. Hart, *Justice upon Petition. The House of Lords and the Reformation of Justice, 1621-1675*, London 1991; McCafferty, "To follow the late precedents...".

⁶¹ Cal.S.P.Ire., 1611-4, 11, 14, 18, 291, 491.

