

The Laws and Other Legalities of Ireland, 1689–1850

Edited by Michael Brown and Seán Patrick Donlan

The Laws and Other Legalities of Ireland, 1689–1850

Edited by

MICHAEL BROWN
University of Aberdeen, UK

and

SEÁN PATRICK DONNELLAN
University of Limerick, Ireland



ASHGATE

© Michael Brown and Seán Patrick Donlan 2011

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publisher.

Michael Brown and Seán Patrick Donlan have asserted their right under the Copyright, Designs and Patents Act, 1988, to be identified as the editors of this work.

Published by
Ashgate Publishing Limited
Wey Court East
Union Road
Farnham
Surrey, GU9 7PT
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington
VT 05401-4405
USA

www.ashgate.com

British Library Cataloguing in Publication Data

The laws and other legalities of Ireland, 1689-1850.

1. Law--Ireland--History. 2. Law--Political aspects--Ireland--History. 3. Law--Social aspects--Ireland--History.

I. Brown, Michael. II. Donlan, Seán Patrick.
349.4'15-dc22

Library of Congress Cataloging-in-Publication Data

The laws and other legalities of Ireland, 1689-1850 / edited by Michael Brown and Seán Patrick Donlan.

p. cm.

Includes index.

ISBN 978-1-4094-0131-5 (hardcover) -- ISBN 978-1-4094-0132-2 (ebook)

1. Law--Ireland--History. I. Brown, Michael, 1972- II. Donlan, Seán Patrick.

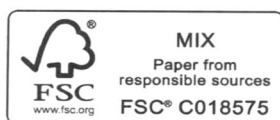
KDK156.L39 2011

349.415--dc22

2011013781

ISBN 9781409401315 (hbk)

ISBN 9781409401322 (ebk)



Printed and bound in Great Britain by the
MPG Books Group, UK

List of Figures

1.1	Diagram of Irish court system	8
7.1	Sentences of death and executions in Ireland, 1806–1850	135
7.2	Percentage of death sentences in murder cases which led to executions in Ireland, 1811–1850	152
7.3	Percentage of death sentences in murder cases which led to execution in Ireland and England, 1826–1850	153
7.4	Percentages of cases where sentence of death was commuted in Ireland, 1806–1850	156
7.5	Percentage of cases where sentence of death was commuted in Ireland and England, 1806–1850	158

List of Tables

3.1	Privy Council Bills – selected sessions 1692–1713	52
3.2	Privy Council Bills – by reign 1703–1782	53
3.3	Privy Council Bills – 1715–1760	54
5.1	County Armagh grand jury verdicts by decade 1740–1789	108
5.2	County Tyrone grand jury verdicts by decade 1750–1786	108
5.3	Petty jury verdicts and conviction rates at available sample Irish assizes 1766–1790	110

Notes on Contributors

T.C. Barnard has published numerous books and articles on Ireland and England between 1641 and 1782, the most recent of which is *Improving Ireland? Projectors, Prophets and Profiteers, 1641–1786* (2008). The results of his researches while holding a Leverhulme senior research fellowship into the cultures of print in Ireland in the seventeenth- and eighteenth-century Ireland will soon appear. He is a fellow the British Academy and an honorary member of the Royal Irish Academy.

Michael Brown is a Senior Lecturer in History at the University of Aberdeen, and acting director of the Research Institute of Irish and Scottish Studies. A past general editor of *Eighteenth-Century Ireland*, he is the author of *Francis Hutcheson in Dublin* (2002). A co-editor of *The Irish Act of Union, 1800 Bicentennial Essays* (2003) and *Converts and Conversion in Ireland* (2005), he is completing a study of the Irish Enlightenment.

Kevin Costello is a Lecturer in the School of Law, University College Dublin. His work in the field of legal history has been published in the *Journal of Legal History* and the *American Journal of Legal History*. His study, *The Court of Admiralty of Ireland 1575 to 1893*, appears in 2011.

Seán Patrick Donlan is a Lecturer in Law at the University of Limerick. In addition to publishing work on law and history, he has edited *Edmund Burke's Irish Identities* (2006) and a reprint of F.S. Sullivan's *Lectures on the Constitution and Laws of England* (2004 [1776]). A member of the executive of the *European Society for Comparative Legal History* and the *Irish Legal History Society*, he is currently researching the historical and comparative mixtures and movements of law.

Neal Garnham is a Senior Lecturer in History at the University of Ulster. He has published articles on the histories of sports, crime and the law in Ireland from the seventeenth to the twentieth centuries. He is the author of *The Courts, Crime and the Criminal Law in Ireland, 1692–1760* (1996) and *Association Football and Society in Pre-Partition Ireland* (2004).

Patrick M. Geoghegan is Associate Dean of Research at Trinity College Dublin. He is the author of books on the Irish Act of Union, Robert Emmet and Daniel O’Connell and is the presenter of ‘Talking History’ on Newstalk 106–108.

Lisa Marie Griffith completed her PhD in 2008 at Trinity College Dublin. Her thesis is entitled ‘Social Mobility and the Middling Sort: Dublin Merchants 1760–1800’, which was funded by the Irish Research Council for the Humanities and Social Sciences. She is a co-editor of the history blog *Pue’s Occurrences* and lectures in Irish and European history at Carlow College.

Jacqueline Hill is Associate Professor of history at NUI Maynooth. Her main research interests are eighteenth- and nineteenth-century Irish history, with particular reference to the history of political thought and the history of Dublin. She is the author of *From Patriots to Unionists: Dublin Civic Politics and Irish Protestant Patriotism, 1660–1840* (1997). She is currently researching the political career of an Irish loyalist, John Giffard of Dublin (1746–1819).

Niamh Howlin is a Lecturer in the School of Law, Queen’s University Belfast. Her research interests lie primarily in the area of jury trials, criminal procedure and the law of evidence. Her 2007 PhD, funded by the IRCHSS, examined the composition and operation of nineteenth-century Irish trial juries. Her recent publications on Irish juries appear in the *Journal of Legal History* (2009) and the *Law and History Review* (forthcoming, 2011).

James Kelly, MRIA, is Cregan Professor of History at St Patrick’s College, Drumcondra. His recent books include *Sir Edward Newenham, MP (1734–1814): Defender of the Protestant Constitution* (2004); *The Liberty and Ormond Boys: Factional Riot in Eighteenth-Century Dublin* (2005); *Poyning’s Law and the Making of Law in Ireland* (2007) and *Sir Richard Musgrave, 1746–1818: Ultra-Protestant Ideologue* (2009). His edition of *The Proceedings of the Irish House of Lords, 1771–1800* (3 vols) was published by the Irish Manuscripts Commission in 2008.

Eoin Magennis is Policy Research Manager with InterTradeIreland, one of the North/South bodies, and Research Associate with the OECD. His research interests centre on the politics of economic development and crowd protest in eighteenth-century Ireland, a subject on which he has published various articles. General Editor of the journal *Eighteenth-Century Ireland*, his most recent publication is *Politics and Political Culture in Britain and Ireland, 1750–1850*, co-edited with Allan Blackstock (2007).

Richard Mc Mahon is a Government of Ireland Postdoctoral fellow at NUI, Maynooth, funded by the Irish Research Council for the Humanities and Social Sciences. He has published a number of articles on Irish legal and criminal justice history and is the editor of *Crime, Law and Popular Culture in Europe, 1500–1900* (2008). His current research interests lie in the history of violence and the legal history of Ireland and North America.

Lesa Ní Mhunghaile lectures in the Department of Irish at Mary Immaculate College, University of Limerick, and is Irish-language editor of the journal *Eighteenth-Century Ireland/Iris an dá chultúr*. She has published on various aspects of Gaelic scribal culture and the interaction between Protestant antiquarians and Gaelic scribes during the eighteenth century and is currently working on a major study of the prevalence of the Irish language in nineteenth-century Ontario. Her annotated edition of Charlotte Brooke's *Reliques of Irish Poetry* (1789) was published by the Irish Manuscripts Commission in 2009.

W.N. Osborough, Emeritus Professor of Law, University College Dublin, is the author of *Law and the Emergence of Modern Dublin* (1996), *Studies in Irish Legal History* (1999), and, most recently, *Literature, Judges and the Law* (2007). He has also edited several books in the Irish Legal History Series, including *Adventures of the Law: Proceedings of the 16th British Legal History Conference* (2005).

Martyn J. Powell is a Senior Lecturer at Aberystwyth University. His books and essays on eighteenth-century Irish social and political history include *Britain and Ireland in the Eighteenth-Century Crisis of Empire* (2003) and *Piss-Pots, Printers and Public Opinion in Eighteenth-Century Dublin* (2009).

Contents

<i>List of Figures</i>	<i>vii</i>
<i>List of Tables</i>	<i>ix</i>
<i>Notes on Contributors</i>	<i>xi</i>
1 The Laws in Ireland, 1689–1850: A Brief Introduction <i>Michael Brown and Seán Patrick Donlan</i>	1
2 Local Courts in later Seventeenth- and Eighteenth-Century Ireland <i>T.C. Barnard</i>	33
3 The Privy Council of Ireland and the Making of Irish Law, 1692–1800 <i>James Kelly</i>	47
4 Eighteenth-Century Ireland's Legislative Deficit <i>W.N. Osborough</i>	75
5 The Limits of English Influence on the Irish Criminal Law and the Boundaries of Discretion in the Eighteenth-Century Irish Criminal Justice System <i>Neal Garnham</i>	97
6 English and Irish Jury Laws: A Growing Divergence 1825–1833 <i>Níamb Howlin</i>	117
7 'Let the law take its course': Punishment and the Exercise of the Prerogative of Mercy in pre-Famine and Famine Ireland <i>Richard Mc Mahon</i>	133

8	The Ouzel Galley Society in the Eighteenth Century: Arbitration Body or Drinking Club? <i>Lisa Marie Griffith</i>	165
9	Dublin Corporation and the Levying of Tolls and Customs, <i>c.</i> 1720– <i>c.</i> 1820 <i>Jacqueline Hill</i>	187
10	Regulating the Market: Parliament, Corn and Bread in Eighteenth-Century Ireland <i>Eoin Magennis</i>	209
11	Ireland's Urban Houghers: Moral Economy and Popular Protest in the Late Eighteenth Century <i>Martyn J. Powell</i>	231
12	'Regular Obedience to the Laws': Arthur Browne's Prelude to Union <i>Seán Patrick Donlan</i>	255
13	Daniel O'Connell and the Magee Trials, 1813 <i>Patrick M. Geoghegan</i>	283
14	Farmer and Fool: Henry Brooke and the Late Irish Enlightenment <i>Michael Brown</i>	301
15	The Legal System in Ireland and the Irish Language 1700– <i>c.</i> 1843 <i>Lesa Ní Mhúngaile</i>	325
16	A court 'for the determination of causes civil and maritime only': Article Eight of the Act of Union 1800 and the Court of Admiralty of Ireland <i>Kevin Costello</i>	359
	<i>Index</i>	379

Chapter 1

The Laws in Ireland, 1689–1850: A Brief Introduction¹

Michael Brown and Seán Patrick Donlan

Essentially, the tale was trivial. A scoundrel named Síobharán stole a cockerel, which had been bought at a fair by Father Aengus. A local court quickly denounced the theft and a warrant for his arrest was promptly issued. It was a local drama, a conflict within a community that was replicated across the countryside and across rural societies everywhere. But the poet and scribe Aogán Ó Rathaille (1675–1729) found something emblematic, drawing from its mundane universality a tense political specificity that twisted the tale away from the ordinary and placed it into the mythic world of the symbolic. The poem he composed, ‘Ar Choileach a Goideadh Ó Shagart Maith’ (A Good Priest’s Stolen Cock) metamorphosed the event from the banalities of local spite into a profound parable of cultural, religious and political conflict.

Blending the English and the Irish language, the opening stanza revealed Ó Rathaille’s intent. The simple inclusion of the word ‘whereas’, as well as demanding the reader’s attention, placed the case in a court where Anglophonic law encountered Irish-speaking communities:

Whereas Aonghus fáithchliste,
Sagart cráifeach críostaitheach,
Do theacht inniu im láthairse
Le gearán cáis is firinne

Whereas the learned Aengus
A pious Christian priest
Came today before me
To make a sworn complaint²

¹ An earlier version of this introduction was presented to the Toronto Legal History Group (14 January 2009).

² ‘Ar Choileach a Goideadh Ó Shagart Naith’ in Sean Ó Tuama and Thomas Kinsella (eds), *An Duanaire: Poems of the Dispossessed 1600–1900* (Dublin, 1981), pp. 146–7.

So too, in an intriguing subversion of the reader's expectations, the perspective taken is that of the court official; yet the bulk of his declaration is written in Irish. The confrontation is at once between the demands of the Catholic priest and the Gaelic thief and between the two linguistic worlds that uncomfortably jostle for space in the inhabitants' cultural imagination.

This second theme in many ways trumps the first, for while Síobharán is condemned and law maintained, the thief has disappeared, leaving the complainant to declare him some 'síofra draíochta' (druid phantom) – the cultural resonance of the term 'druid' is significant – and forcing the judge to inaugurate a search.³ The geography of this hunt again replicates the cultural divide, with the highways that traverse the landscape and provide access to the order of the state signifying the civilised terrain, while the stranger, esoteric, mythic world beyond is captured in the term 'lios' – a historic meeting place such as a ring fort – and in the reference to the fairy world. Thus, to find the miscreant the judge directed:

A bháillí stáit mo chúirte-se,
Déinidh cuartú ardshlite,
Is sin le díograis dúthrachta.

Ná fágaidh lios ná síchnocán
Ina gcluinfidh sidh glór na gliogarnáil

State bailiffs of my court,
Examine every highway
And that with earnest care

Omit no lios or fairy hill
Where you hear cluck or cackle⁴

In this vignette, Ó Rathaille captured the everyday structural contentions that characterised much of the experience of the Catholic community in the early eighteenth century. That a Catholic priest was forced to throw himself upon a Protestant court for legal recompense indicated the dilemma in a precise and explicit fashion. And that the genre of the *barántas*, or warrant poem, of which this is an example, was sprinkled with legal English jargon – Ó Rathaille also included the word 'wheresoever' and the phrase 'for your so doing' – at once enabled a

³ Ibid., pp. 146–7.

⁴ Ibid., pp. 148–9.

parody of contemporary legal formulas and a commentary on the impotency of Gaelic culture to take control over its own affairs.⁵ But the poem suggested a problem which faced the state in turn. Until the Famine, the Irish state was confronted by a population that failed to assimilate to the linguistic, confessional and cultural demands of the polity, the political nation. Alternatively, we might say that the polity failed the people. In this introduction, we present in general terms the context in which the contributions to this collection, each attempting to add to our understanding of the uses and abuses of the many ‘legalities’ in Ireland, should be placed.⁶ In doing so, this collection will explore the reach of the rule of law in Ireland, in the period from 1689 to 1850.

I: English Laws and Irish Manners

The gulf between a nation’s laws and its culture suggested by Ó Rathaille’s poem became increasingly problematic, both in theory and practice, over the course of the eighteenth century in Ireland, running against the presumption of increasing consonance of the two that informed Enlightenment writers. In his *l’Esprit des lois* (1748), Charles de Secondat, Baron de Montesquieu suggested a vision of a functioning state in which law was in significant respects unique, and appropriately specific, to each nation.⁷ His broad descriptive analysis gave central place to ‘manners’, the mores and social practices of particular peoples. It was, in fact, commonplace to note that law arose out of manners and was central to the development of Europe’s civilised society. Montesquieu added a practical admonition and prescriptive directive, insisting that the state or ‘government most comfortable to nature is that which best agrees with the

⁵ See also Criostóir O’Flynn (ed.), *The Maigue Poets: Filí Na Máighe* (Dublin, 1995), pp. 173–94 and Lesa Ní Mhugháile, ‘The Legal System in Ireland and the Irish Language 1700–c. 1843’, this volume.

⁶ In contrast to law narrowly understood, ‘[l]egality ... is a condition with social and cultural existence; it has specificity, its effects can be measured, its incarnations investigated. In their Foucauldian sense, legalities are the symbols, signs, and instantiations of formal law’s classificatory impulse, the outcomes of its specialized practices, the mechanisms through which law names, blames, and claims. But legalities are not produced in formal legal settings alone. They are social products, generated in the course of virtually any repetitive practice of wide acceptance within a specific locale, call the result rule, custom, tradition, folkway or pastime, popular belief or protest’. C.L. Tomlins and B.H. Mann (eds), *The Many Legalities of Early America* (Chapel Hill, 2001), pp. 2–3.

⁷ Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, Thomas Nugent (tr.), revised by J.V. Prichard (London, 1952 [1750]), i.3.

humour and disposition of the people in whose favour it is established'.⁸ An obvious corollary was that law 'should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another'.⁹ While such an idea should not be confused with popular self-government, the Montesquieuan dilemma was of tremendous imaginative power. This was certainly true in Ireland where English law had been slowly received over centuries. *L'Esprit des lois* thus carried heightened significance for Irish political and philosophical thought. Indeed, *The Spirit of Laws*, translated into English in 1751 by the Irish litterateur Thomas Nugent, suggested the potential of transposing Montesquieu's masterpiece into a dialogue about law and governance in Ireland.

The terms of the engagement were long common currency in Ireland where English law had been imposed or received from at least the twelfth century.¹⁰ The English jurist Sir John Davies, solicitor general and attorney general in Ireland in the early seventeenth century, had made a similar correlation between laws and manners, going so far as to suggest that English law was 'connatural' to the people.¹¹ This strong claim was, at least, ironic coming as it did in an introduction to Irish law reports. In fact, English critics had long argued that both Irish law and manners – including the Irish language – prevented social and economic progress. In its most humanist form, legal and cultural anglicisation would civilise the Irish. Davies made this same argument in his *Discovery of the True Causes why Ireland was Never Entirely Subdued ...* (1612). This cultural-linguistic exceptionalism was long-lived. Over a century later, in 1740 in the midst of famine, Sir Richard Cox noted in charging a grand jury that '[i]t cannot escape any man's notice, that where-ever the English language and customs altogether prevail, the good effect is instantly visible by a peaceable demeanour, improving conversation, and courteous polite behaviour, accompanied by frugality and industry'.¹² Davies' account, and his actions

⁸ Montesquieu, *Spirit of Laws*, i.3.

⁹ Ibid.

¹⁰ F.H. Newark, 'The Bringing of English Law to Ireland', *Northern Ireland Legal Quarterly*, 23 (1972): pp. 3–15.

¹¹ Sir John Davies, *A Report of Cases and Matters in Law* (1762), p. 6. The text is an anonymous translation, from Law French into English, of Davies' *La primer discours des cases et matters in ley* (1615). It was published in Dublin. See S.P. Donlan, "Little better than cannibals": Property and Progress in Sir John Davies and Edmund Burke, *Northern Ireland Legal Quarterly*, 54 (2003): pp. 1–24.

¹² Sir Richard Cox, *A Charge Delivered to the Grand-Jury at a General Quarter Sessions of the Peace held for the County of Cork at Bandon-Bridge, on the 13th of January, 1740* (Dublin, 1741).

in the Irish administration, helped to secure the marginalisation of Ireland's native Brehon tradition.¹³ This was itself part of a wider tendency towards legal consolidation in Britain and Ireland and if Davies' *Discovery* could be read as a plea for the 'rule of law' in Ireland, it was invariably the rule of *English* law.¹⁴

Paradoxically, some constitutional and legislative uniformity was copper-fastened by an act of republican, rather than monarchical, conquest. At the end of the 'Eleven Years War' (October 1641–April 1652), the invasion of Oliver Cromwell's New Model Army and the imposition of English rule on Ireland erased many of the theoretical anomalies and ensured the destruction of residual Gaelic legal practices.¹⁵ Along with the deaths of a fifth or more of the Irish population from war and famine, the aftermath of the Cromwellian conquest brought a revolutionary shift in property ownership. Far from combining the state and its people in beneficial harmony, Cromwell's actions contained many of the characteristics that Montesquieu later depicted as being integral to despotism. The Commonwealth flattened out local differences, crippled or replaced the established aristocracy, confiscated large tracts of Catholic-owned land, and governed the population by military diktat and fear:

fear must beat down everyone's courage and extinguish even the slightest feeling of ambition ... In despotic states the nature of the government requires extreme obedience, and the prince's will, once known, should produce its effect as infallibly as does one ball thrown against another ... there men's portion, like beasts', is instinct, obedience and chastisement.¹⁶

While some property was returned following the Restoration of monarchy, the Irish Act of Settlement (1662) largely reinforced the new order. Yet soon after the Cromwellian conquest, local networks of power, privilege and negotiation

¹³ Hans S. Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge, 1985) and Hans S. Pawlisch, 'Sir John Davies, *Law Reports* and the Case of the Proxies', *Irish Jurist*, new series, 17 (1982): pp. 368–83.

¹⁴ Sir John Davies, *A Discovery of the True Causes why Ireland was never Entirely Subdued, [and] Brought Under Obedience of the Crown of England until the Beginning of his Majesty's Happy Reign*, James P. Myers, Jr (ed.) (Washington, 1969 [1612]).

¹⁵ Micheál Ó Siochrú, *God's Executioner: Oliver Cromwell and the Conquest of Ireland* (London, 2008).

¹⁶ Montesquieu, *Spirit of Laws*, Part 1, ix–x. pp. 28–9. It is worth noting that Montesquieu proceeded to argue that 'there is, however, one thing with which one can sometimes counter the prince's will: that is religion ... The laws of religion are part of a higher precept, because they apply to the prince as well as to the subjects. But it is not the same for natural right; the prince is not assumed to be a man'. *Ibid.*, part 1, x, pp. 29–30.

began to send up new shoots. As in centuries past, a dynamic, complex ecology of governance developed, suggesting the hardy nature of local institutions.¹⁷

Ireland's constitutional condition as a kingdom was reasserted by the Restoration and defended in the wake of the 'War of the Two Kings' (1689–91). Neither event saw a return to an ancient Irish constitution, however loosely that was understood.¹⁸ Instead, Williamite victory over the Jacobites further secured Protestant control of Irish property and politics. But the Irish Protestant community, old and new, rejected and resented any implication that Ireland was a mere dependency of its British neighbour. William Molyneux gave this antagonism classic expression in his 1698 polemic, *The Case of Ireland being Bound by Act of Parliament in England Truly Stated*. There Molyneux plainly asserted how, since the grant of the country to King John:

Ireland was most eminently set apart again, as a separate and distinct kingdom by itself from the kingdom of England; and did so continue until the kingdom of England descended and came unto King John after the death of his brother Richard the First, king of England, which was about 22 years after his being made King of Ireland.¹⁹

In other words, Ireland could claim independent and equal status with England as a fully cohered kingdom conjoined to its neighbour solely by the accident of hereditary succession. As a result, the *legislature* of England could not claim authority over Ireland.

'Poynings' law', originally initiated by Sir Edward Poynings in the Irish parliament in 1494, is central to this argument. By requiring that the Irish parliament consider only that legislation requested by the Irish executive and Privy Council and approved by the king and English Privy Council, it effectively established English legal supremacy over Ireland through the king's ministers. This had been contested both before and after Protestant hegemony. In the eighteenth century, the contest became more heated as the parliaments of both islands became regular and financially significant institutions.²⁰ This dispute

¹⁷ T.C. Barnard, *Cromwellian Ireland: English Government and Reform in Ireland 1649–1660* (Oxford, 2000).

¹⁸ Aidan Clarke, *Prelude to Restoration in Ireland: The End of the Commonwealth, 1659–1660* (Cambridge, 1999); J.G. Simms, *Jacobite Ireland* (Dublin, 2000).

¹⁹ William Molyneux, *The Case of Ireland ... Truly Stated*, J.G. Simms (ed.) (Dublin, 1977), pp. 47–8.

²⁰ For Ireland specifically, see Charles I. McGrath, *The Making of the Eighteenth-Century Irish Constitution: Government, Parliament and the Revenue, 1692–1714* (Dublin, 2000); D.W. Hayton (ed.), *The Irish Parliament in the Eighteenth Century: The Long Apprenticeship*

continued into the eighteenth century, but the passage of the 1720 Declaratory Act in Westminster confirmed the British parliament's pre-eminence and the British House of Lords as the final court of appeal for Irish cases. While a separate kingdom, Ireland had, as a consequence, less political autonomy than did many of England's colonies.²¹ The Irish chief executive, the lord lieutenant, represented the crown, but was in practice responsible to the British executive. The lord lieutenant was advised by the Irish Privy Council and assisted by the chief secretary and the 'lords justice' (typically the lord chancellor, the speaker of the Irish House of Commons, and the established Church's Primate of All Ireland). Until 1767, the lord lieutenant was not permanently resident in Ireland; until the appointment of Richard Wellesley in 1821, no Irishman held the office. Like the colonies, Ireland's commerce was subservient to that of England. And if a standing army of thousands, supported by Irish taxation, was obnoxious to much British and Irish thought, Irish Protestants accommodated themselves throughout the long eighteenth century in exchange for the security it entailed.

II: The Spirit of the Common Law

By the eighteenth-century, as with its political institutions, Ireland's legal system and judicial structures looked little different from those of England.²² Indeed, if anything, it was comparatively simplified, though hardly simple (see Figure 1.1). Ireland's superior courts of common law and equity – king's bench, common pleas, exchequer, and chancery – exercised jurisdiction from Dublin's 'Four Courts'. The assizes brought the state to the farthest corners of the country. As in England and Wales, there were numerous narrower jurisdictions: admiralty and ecclesiastical, local and manorial, urban and commercial courts.²³ The inferior courts were probably more important for most people most of the time. Justices of the peace, sheriffs and grand juries all played vital roles exercising functions

(Edinburgh, 2001). More widely, see Julian Hoppit (ed.), *Parliaments, Nations and Identities in Britain and Ireland, 1660–1850* (Manchester, 2003).

²¹ James Kelly, *Poyning's Law and the Making of Law in Ireland 1660–1800* (Dublin, 2007).

²² See generally Toby Barnard, *The Kingdom of Ireland, 1641–1760* (Basingstoke, 2004), pp. 99–124.

²³ On the diversity of British and Irish laws, see S.P. Donlan, "'Our laws are as mixed as our language': Commentaries on the Laws of England and Ireland, 1704–1804," *Journal of Comparative Law*, 3 (2008): pp. 178–96. See also Kenneth Milne, *The Dublin Liberties, 1600–1850* (Dublin, 2009).