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Conversions among the legal profession in Ireland in the eighteenth century

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THE BROAD OUTLINES of the experience of conversion among catholics in eighteenth-century Ireland are now reasonably clear.¹ That experience exhibited a pragmatic response by members of the catholic upper class and by other sections of catholic society to the strictures of penal legislation. What emerged in the course of the century was a hybrid class of crypto-catholics who had conformed in order to maintain or improve their landed status, career prospects, or political opportunities—a development which gave them an important influence locally and nationally.

In this context, a study of conversions among members of the legal profession is important for four reasons. First, it permits concentration on a well-defined group of catholics, thereby enabling the precise dimensions of the conversion experience for this specific group to be established. Second, it can reveal interesting patterns so far as career trends are concerned. Third, it is important in relation to an assessment of law enforcement, particularly of the penal legislation itself. The final importance of such a study derives from the wider influence that these particular converts exerted on eighteenth-century Irish society. While certain broad aspects of this question have recently been addressed,² greater consideration needs to be given to the relationship between conversions among catholic lawyers and initiatives in the legal domain (both statutory legislation and court judgment) and to their chronological spread over the century, and to such other issues as social background, regional distribution, and the pattern

1. T.P. Power, 'Converts' in T.P. Power and K. Whelan (ed.), *Endurance and emergence: catholics in Ireland in the eighteenth century* (Dublin, 1990).

2. C. Kenny, 'The exclusion of catholics from the legal profession in Ireland, 1537-1829', *IHS*, xxv, no. 100 (Nov. 1987), 337.

of attendance at the London inns of court, and how these may have influenced the timing of conversion.

The materials for such a study consist of a published list of converts, manuscript notes on individual converts, and contemporary directories.³ Although there are problems in the use of such sources, from the point of view of completeness and full identification, they undoubtedly permit determination of overall trends. Utilising these sources, one can identify 229 converts in the legal profession for the period 1704–78.⁴ Despite the evidence of alarm raised by the primate, Hugh Boulter, in the 1720s as to the great increase of convert lawyers, there were only 49 for 1704–27, with the greatest incidence of conformity actually occurring in 1728–36 with 55 and in the 1760s with 53 (see Appendix).

The articles of Limerick and Galway, made at the conclusion of hostilities between the Jacobite and Williamite armies in 1691, included provision for catholic lawyers, qualifying under these articles, to continue the practice of their profession. The liberality of these provisions, however, was shortly to be circumscribed due to the exertions of an expatriate group of Irish protestants who obtained a new law requiring Irish catholic lawyers and aspirants to the profession to subscribe certain oaths. Catholics found such oaths objectionable on grounds of conscience and faith, and so were disinclined to subscribe them. Increasingly, therefore, qualification under the articles of Limerick or Galway, for those who could lay claim to it, was becoming the criterion whereby catholic lawyers might practise openly.⁵

The access of other catholics to the profession was further restricted by an act (10 Will III, c.13) of 1698 which cited two reasons. The first was that 'papist solicitors have been and still are the common disturbers of the peace and tranquillity of his majesty's subjects in general' (s.1). This emphasises the security consideration which was to be the characteristic motivation behind the passage of the penal laws. Secondly, that 'at this time there are a great number of papist solicitors and agents practising within the

3. E.O'Byrne, *The convert rolls* (Dublin, 1981) (hereafter *Rolls*); Irish Genealogical Research Society, London: Fr Wallace Clare, 'Notes on the converts' (hereafter *Notes*); *Wilson's Dublin directory 1765* (Dublin, 1765).

4. This figure is arrived at as follows: the *Rolls* and the Clare ms notes give a total of 186 (17 of whom conformed twice), so giving a net figure of 169; from the *Dublin directory* of 1765 a further 60 converts can be identified, consisting of attorneys (43), barristers (14), and solicitors (3), supplementary to the above; thus giving a total of 229.

5. For the foregoing see Kenny, 'Exclusion of catholics', 350–1.

several courts of law and equity in this kingdom, by whose numbers and daily increase of them, great mischiefs and inconveniences are likely to ensue to the prejudice and disquiet of his majesty's subjects' (s.1). This statement highlights the over-representation which was to be a general feature of the profession in the eighteenth century. Together these two elements—security and over-representation—were to be mutually reinforcing factors in government attempts to control catholic access to the profession thereafter.

In pursuance of its objective, the act of 1698 reiterated the requirement concerning oaths of loyalty to King William, a disavowal of papal power, and a declaration concerning transubstantiation (s.1). Practising catholic solicitors, having taken these oaths, were required to educate their children as protestants (s.2). Although those in practice during the reign of Charles II and those qualified under the articles of Limerick were exempt from these provisions (s.4), it was obvious that within a generation this immunity would no longer persist. This process of attrition and the restrictions on access to the profession would in combination serve to reduce and ultimately eliminate catholic influence in the area of the law. This reductionist approach duplicates that taken towards the catholic clergy during this period also.

Significantly, however, within a brief time the act of 1698 was judged to be ineffective. By 1707 an amending act (6 Anne, c.6) was passed which sought to rectify the deficiencies in the earlier act: first, that catholics simply continued to act openly as solicitors despite a penalty of £100 which was now deemed too low, 'in respect of the great gains they make by their practice'; and secondly, as the act itself declared, because of 'the difficulties attending the prosecution thereof' (s.1). In response to this evasion, the new act specified in more detail the different courts wherein catholic solicitors might not function (s.1); it added the oath of abjuration denying the Stuart succession, to those oaths already required (s.1); the penalty for non-compliance was doubled to £200 (s.2); an informer system was introduced (s.3), and, in association with this, it was enacted that 'no barrister, attorney, officer, or other practiser in law or equity', was to be exempt from giving testimony (s.4).

Further, the act stipulated that attorneys, solicitors, and other legal practitioners in the courts concerned were forbidden to take catholic apprentices henceforth (s.6). The exemption of those who practised in the reign of Charles II or who came under the articles of Limerick was reiterated, but all of these were now obliged to take the oath of abjuration (s.8). This condition would have been objectionable to many of those concerned as it further

curtailed the concessions which the articles of Limerick gave to certain catholic lawyers. Finally, catholics were not to be selected for grand jury service unless there was an insufficient number of protestants available (s.5).

All in all, the act of 1707 further restricted access to legal practice for catholics, by penalising those already enjoying this privilege through requiring them to take a politically sensitive oath, and by imposing a variety of other conditions, which together indicated that the political establishment was moving closer to an outright insistence that catholics must convert to anglicanism before they could practise.

In fact, the Act to prevent the further growth of popery (2 Anne, c.6) of 1704 introduced a range of provisions whereby inducements to conformity were held out to catholics. For a brief period catholics were able, by various devices, to avoid the act's more repugnant clauses. Expressive of this was an upsurge in litigation in the courts, by which catholic lawyers fought cases on behalf of those affected by the new act, especially landowners.⁶ The act of 1707, while in part an attempt to strengthen the earlier act of 1698, was directed at curbing this growth in litigation. Because of the ability of catholics to circumvent the act of 1704, the compulsion on them to conform was reduced. This created a need for a more comprehensive and unambiguous law, and this came with the act of 1709 (8 Anne, c.3). This contained clauses tightening up the process whereby conversions were registered, and it obliged members of the legal profession who conformed to educate their children under fourteen years of age at the time of conversion, in the protestant faith (s.12).

The act of 1709 was to be decisive in compelling a greater degree of official conformity among catholics. Only two persons of legal background are on record as having conformed prior to the 1709 act: Richard Malone of Westmeath (1704) and James Farrell of Longford (1708), both resident in Dublin at the time of conversion.⁷ But in 1709 six conformities are recorded: Gerald Burke, Denis Daly jnr., and Patrick French all of Galway, Cornelius O'Callaghan of Cork, Terence Geoghegan of Westmeath, and Terence Quin.⁸ In 1710 Darby Egan of Tipperary and Mathias

6. R.E. Burns, 'The Irish popery laws: a study of eighteenth century legislation and behavior', *Review of politics*, xxiv, no.4 (1962), 498-9.

7. *Rolls*, pp. 95, 192. Farrell is described as 'councillor at law' at the time of his conformity.

8. *Ibid.*, pp. 66, 303, 304, 305; *Notes*, pp. 45, 338. The Denis Daly jnr. of Park, Co. Galway, who had his certificate of conformity enrolled 16 Dec. 1709, is probably the same person as Denis Daly, French Brook, Co. Mayo, who took the oath 22 Dec. 1709 (*Rolls*, pp. 66, 304).

Reilly of Dublin conformed.⁹ Thus by the end of the first decade of the century 10 conversions of persons of legal background had been obtained, and these persons came from some important catholic families.

Even though official conversions among catholic lawyers were not substantial again until the 1720s—being 17 for 1711-22 inclusive (Appendix)—the impact of the first group of convert lawyers was significant. The general intention in having catholics convert was to bind them more intimately to the political and religious outlook of the protestant establishment, and thereby enhance the landed and security balance within the state. While individual catholics were prepared to conform in the early decades of the century, the expected transformation in religious and political preferences did not necessarily follow. In relation to convert lawyers the result was cogently outlined in 1714 by the author of *The conduct of the purse of Ireland*:

These persons, till the very moment of their being called to the bar, or till they have certain expectation of other advantage . . . continue in the profession of the Romish religion.

They frequently, after their conversion, retain their former intimacy with the papists, and are as well and as cordially received by them as ever. They never make or endeavour to make any new acquaintance or alliance with the old protestants; they rejoice with the papists and when they are cast down it is so with them also. . . . In a word, excepting that they sometimes go to church, they remain in all respects to all appearance the very same men they were before their conversion.¹⁰

This observation identifies in embryo a section of the hybrid group in Irish society which was to become more numerous and characteristic as the century progressed. Thus these convert lawyers came to possess a dual capacity: they conformed officially and occasionally outwardly, but on the whole retained their catholic allegiance and connections. The emergence of such a class of convert lawyers came to be influential in relation to law enforcement.

By the 1720s it was realised in official circles that the penal legislation was not achieving its desired end of a neutralisation of catholicism. Indeed, the contrary was the case, as it was recognised that catholicism was vibrant, and that convert lawyers were using their position to defeat the application of the law. In 1723 a report

9. *Rolls*, pp. 88, 240.

10. Quoted in W.E.H. Lecky, *History of Ireland in the eighteenth century* (5 vols., London, 1892), i, 283 (1912 ed.).

to the Irish house of commons from a committee of enquiry into the state of catholicism admitted that there was widespread evasion of the laws; that this was in part due to the neglect of the magistrates in enforcing the laws sufficiently; and that a situation where persons in state employment had catholic wives was prejudicial to the proper application of the laws.¹¹ In addition, those who had converted were identified as having contributed to the ineffectiveness of law enforcement. At an earlier date it had been thought prudent to appoint qualified, recent converts to positions in the commission of the peace as a means of allowing them to become part of the establishment.¹² But by the 1720s it was recognised that the optimism of such materialising was over-hasty and self-defeating, as such appointees simply favoured their former co-religionists in the application of the law.¹³ A similar criterion applied to the activities of convert lawyers, and the report recommended that in future such persons not be allowed to practise until seven years following their conformity.¹⁴

These recommendations did not come to fruition until four years later. It came in the context of an admission that the number of all catholic conversions obtained in the period 1703–27–494—was not impressive, did not meet with expectations, and were, on the whole, insincere.¹⁵ In response to this critical situation a more active evangelisation was forced on the Church of Ireland by 1730. This took two forms: the first was one of expansion, whereby leading figures in church and state sponsored the foundation in 1733 of the Incorporated Society for Promoting English Protestant Schools in Ireland (later known as the charter schools), for the purpose of an active conversion of catholic children. The second form was one of limitation whereby in the period 1727–34 a series of laws were passed, inspired by the primate Hugh Boulter, which further restricted catholics and converts functioning as openly as formerly in various areas of political and professional life, including the law.

Boulter's influence in the formulation of this legislation was decisive. His analysis of the critical position in relation to converts in the legal profession is instructive. In 1727 he wrote to the duke of Newcastle that:

11. *Commons' jn. Ire.*, iii, pt.i, 346.

12. Power, 'Converts' (note 1, above).

13. *Ibid.*; *Commons' jn. Ire.*, iii, pt.i, 346.

14. *Commons' jn. Ire.*, iii, pt.i, 346.

15. Power, 'Converts', Table I.

The practice of the law from the top to the bottom, is at present in the hands of new converts, who give no further security on this account than producing a certificate of their having received the sacrament in the Church of England or Ireland, which several of them, who were papists at London, obtain on the road hither, and demand to be admitted barrister in virtue of it at their arrival; and several of them have popish wives, and mass said in their houses, and breed up their children papists. Things are at present so bad with us, that if about six should be removed from the bar to the bench here, there will not be a barrister of note left that is not a convert.¹⁶

Boulter's remarks may seem exaggerated when one considers the number of convert lawyers up to the time he wrote. As indicated, there were 10 for 1704–10, 17 for 1711–21, and 21 for 1723–7, being 48 in all (Appendix). These numbers were not overbearing as it would have taken many practitioners some years to become established before having expectations of being raised to the bench, as suggested by Boulter. Nevertheless it is true that in the 1720s a greater number of conversions were occurring in a shorter period than previously. However, the interesting aspect that Boulter's remarks bring out is that many of these lawyer converts obtained their certificates of conversion in England before arriving in Ireland, and hence are not reflected in the official Irish conversion returns.

The second dimension to Boulter's observation is that lawyer converts had been negligent in fulfilling the requirement under the acts of 1698 (s.2) and 1704 (s.12) that they raise their children under fourteen years as protestants. They were able to do so because of a technicality: they interpreted the relevant clauses as not affecting children born *subsequent* to their conversion as these were not under fourteen years *at the time* of conversion.¹⁷ The implications were clear: such converts were free to marry catholics and raise their families as catholics without legal impediment. Due to this technicality, the practice became widespread, with the obvious detrimental results for the objectives of the penal legislation in general and for the laws against catholic lawyers in particular. The protestant interest suffered as a result.

The third, and perhaps most crucial element in Boulter's analysis was his declaration concerning the infiltration of the legal establishment by recent converts. In a further letter he was more specific on this point, stating that:

16. *Letters written by his excellency Hugh Boulter, D.D., lord primate of all Ireland* (2 vols., Dublin, 1770), i, 182. Significantly, a similar outline of the problem was given by Boulter to the bishop of London (*ibid.*, p.184), in whose diocese, no doubt, many of the Irish received their certificates of conformity, and who, therefore, would need to be alerted to the problem.

17. Boulter, *Letters*, i, 184.

Much the greatest part of the attorneys, solicitors, deputy officers, sub-sheriffs, sheriffs' clerks, are new converts and the old protestants are every day more and more working out of the business of the law, which must end in our ruin.¹⁸

This development, though it is difficult to quantify the accuracy of the assertion, is highly significant for an interpretation of the enforcement of the penal laws. Traditionally, in the catholic-nationalist school of historical writing, best represented by W.P. Burke, the contention was that those laws were applied to the letter.¹⁹ More recently, a revisionist school of writing represented in the work of M.Wall, L.M.Cullen, and S.J. Connolly, has stressed that the rigorous enforcement of the penal laws was not axiomatic, and that much depended on the administrative resources of the eighteenth-century state, and the vagaries, personalities, and conditions in particular localities.²⁰ To the factors militating against the full operation of the laws, must now be added that of the infiltration of the legal profession by converts, who by virtue of their position were able to compromise the application of the penal statutes. The magnitude of that influence cannot be easily quantified, but what is important is that establishment figures like Boulter by the late 1720s perceived the threat to be serious, all the more so because its dimensions were inter-related: insincere conversion by lawyers for the purpose of professional qualification and advancement, their marriage to catholic women, and the raising of their children as catholics together undermined the intent of the penal laws.

Boulter's resolution in the matter resulted in the passing of an act of 1727 (1 Geo II, c.20) for regulating admission to the legal profession, and particularly for the prevention of catholic practitioners.²¹ It enacted that from 1 August 1728, before any lawyer (whether barrister, attorney, solicitor, or other) be admitted to practice, they must first take the required oaths and make the declaration as laid down by the act 2 Anne, c.6, while converts seeking to be admitted must, in addition, prove that they were practising protestants for two years prior to such application (s.1).

18. Ibid.

19. W.P. Burke, *The Irish priests in the penal times, 1660-1760* (Waterford, 1914; repr. Shannon, 1969).

20. M.Wall, *The penal laws, 1691-1760* (Dundalk, 1961); L.M.Cullen, 'Catholics under the penal laws', *Eighteenth century Ireland*, i (1986), 23; S.J.Connolly, *Priests and people in pre-famine Ireland, 1780-1845* (Dublin, 1982).

21. Froude is incorrect in his statement that Boulter was unsuccessful in getting the bill he sponsored passed in 1727 (Froude, *English in Ireland* (3 vols., London, 1881), i, 580).

Boulter had originally wanted this period to be five years and to apply to all categories, but the act applied the five-year rule only to sub-sheriffs or sheriffs' clerks (s.4).²²

The deficiency in earlier legislation concerning the education of children in the protestant religion by converts was rectified. Henceforth, converts were to educate their children as protestants irrespective of whether they were under fourteen years of age at the time of conversion, or whether they were born later. This was to apply to existing converts and to those who might convert in future (s.2). Those comprehended as coming within the articles of Limerick or Galway were to be exempt (s.5), a ruling which must have increasingly become inapplicable as the generation it affected began to die off.

The immediate effect of the act was to occasion a sharp rise in conformities in 1728 to 9, the highest annual figure recorded thus far. Amongst those who conformed were Ignatius Blake and John Dillon, both of Galway, Charles Callaghan of Dublin, James Sexton of Limerick, Matthew Lyster of Roscommon, Robert Dillon of Dublin (for the second time), and Patrick Brady also of Dublin.²³ In addition to new converts there is evidence that the two-year rule requiring persons to show that they were practising protestants was being enforced before converts would be admitted to the Irish bar. In 1729, for instance, the bench of King's Inns requested such proof from James Roche, which he was able to provide from Robert Allen and Ignatius Hussey, the latter of whom was himself a convert in the law since 1718.²⁴

Subsequent developments in Ireland concerning legal converts were influenced by changes in the rules of legal practice and apprenticeship made in England at this time. In 1729 the British parliament passed an act that required attorneys and solicitors to take a professional oath before admission to practice, and from 1 December 1730 an apprenticeship or clerkship of five years was obligatory before admission.²⁵ The act was to be a milestone in

22. Boulter, *Letters*, i, 182, 185.

23. *Rolls*, pp. 14, 20, 76, 77, 170, 253; *Notes*, p 61.

24. T.P. Power, 'The "Black Book" of King's Inns: an introduction with an abstract of contents', *Ir Jur*, xx (1985), 211; *Rolls*, p.140. Roche does not appear in the official roll of converts.

25. 2 Geo II, c.23 (Eng.), ss.1, 2, 5, 7. The oath was: 'I AB do swear that I will truly and honestly demean myself in the practice of an attorney [or solicitor] according to the best of my knowledge and ability' (s.13). The act was in force for an initial period of nine years from 1 June 1729, but was renewed again in 1739 (12 Geo II, c.13) and in 1749 (22 Geo II, c.46), which continued it until 1757.

the evolution of the lower stratum of the legal profession in terms of the advent of formal control by parliament over it, and in laying down a specific training period.²⁶ In the Irish context, the parliamentary control of the profession inevitably at this point meant regulating access by converts and catholics. Although the secondary purpose of an act of the Irish parliament in 1733 (7 Geo II, c.5) was to prevent 'obscure and ignorant persons from practising as attorneys and solicitors' (s.1), its primary objective was to rectify the continuing problem of catholic influence in the area of the law. Not merely were the earlier acts of 1698 and 1707 deemed to have been ineffective in this respect, but also, as the preamble stated, 'by means of such popish solicitors, the acts against the growth of popery have been and daily are greatly eluded and evaded' (s.1).

At this stage the problem of such influence must be viewed in the context of the overall threat which protestants believed an irrepressible catholicism posed. It was clear that by 1730 the penal laws had failed to achieve their purpose; indeed the contrary was the case as catholicism was virulent in many areas. For instance, so high was the level of participation of catholics as voters in the general election of 1727, that an act of 1728 (1 Geo II, c.9, s.7) specifically deprived them of the parliamentary franchise. Moreover, the report on the state of catholicism commissioned by the house of lords in 1731 revealed a well-organised church, in terms of its personnel, physical fabric, attendance, and open functioning. In this context, the position of convert lawyers was of key importance, since the effectiveness of the penal laws depended, in large part, on the state's ability to obtain successful prosecutions in the courts. This applied not merely to the wider catholic population, but more specifically to catholic legal practitioners. When the laws against the latter were deemed ineffective, the consequence was a diminution in the effectiveness of the legal system as a whole. In endorsing the sentiments of the house of commons in this matter, the lord lieutenant, the duke of Dorset, in his transmission of the bill which became the act of 1733, stated that:

the influence of the popish lawyers has been heretofore found so fatal, that several acts have passed since the Revolution to prohibit their practice but have all proved so ineffectual by reason of the obloquy and danger of enforcing publicly against such offenders, that the protestant professors of the law observe with concern the great share of business

26. B. Abel-Smith and R. Stevens, *Lawyers and the courts: a sociological study of the English legal system 1750-1965* (London, 1967), pp.19-21.

which is thrown by means of these solicitors into the hands of the converts.²⁷

From this statement three facts are apparent. Firstly, catholic lawyers had established such an entrenched interest as to make the laws against them unenforceable. Secondly, they channelled much legal business into the hands of convert associates who used their special position to oppose the penal laws in the courts, where it was said in 1739 that 'two thirds of the business of the Four Courts consists of popish discoveries'.²⁸ In this context, it is noteworthy that catholic lawyers who had conformed, such as Richard Burke (conformed 1723), father of Edmund Burke, were to establish their reputations and wealth at this time, due to the amount of business diverted their way. Thirdly, protestant practitioners suffered in consequence and, by extension, so did the entire apparatus of the law.

The act of 1733 attempted to deal with this critical situation by the introduction of further restrictions on the licensing of lawyers and by making the definition of 'protestant' more comprehensive. It enacted that from the end of Michaelmas term 1734, no solicitor was to practise in the Four Courts unless properly licensed; masters and six clerks in chancery, attorneys and officers in the Four Courts, their clerks and apprentices were exempted (7 Geo II, c.5, s.1). A stringent admission procedure had to be followed henceforth before a lawyer was admitted to practice. The act stipulated that none were to be admitted an attorney or licensed as a solicitor, unless he was a protestant from the age of fourteen, or for two years before being admitted an apprentice, and who had served an apprenticeship of five years to a six clerk in Ireland or England, to an attorney, or to a licensed solicitor, and be able to produce evidence of such (s.2). Indentures of apprenticeship had to be registered (s.3); a new oath had to be taken by practitioners whereby they declined to allow disqualified lawyers to act on their behalf in the courts, or to take catholic apprentices as solicitors or clerks (s.4); and the number of such apprentices was to be limited (s.9).

Practitioners (with the exception of those subject to the articles of Limerick) who married catholic women or who educated their present or future children as catholics, would be considered to be legally catholic themselves, and would be disqualified from

27. Dorset to Newcastle, 17 Jan. 1733 (PRO, S.P. Ire., Eliz-Geo III, vol. 397).

28. Quoted in P.F. Moran, *The catholics of Ireland under the penal laws in the eighteenth century* (London, 1899), p. 7.

1734 a further act (7 Geo II, c.6) reinforced this clause on marriage and education by enacting that converts with catholic wives or educating their children as catholics were to be excluded from acting as justices of the peace, and be subject to a fine of £100 and one year's imprisonment for non-compliance.³⁰

This legislation of 1727 and 1733 was comprehensive and unambiguous. The response to it in subsequent years was marked. The number of converts climbed to 12 in 1731, 10 in 1734—the year following the 1733 act—and 8 in 1736 (Appendix). Indeed the period 1728–36, during which the most determined effort was made to purge the legal profession of catholic or convert influence, saw the highest number—55—for a period of similar duration in the entire century, even for the 1760s. From the mid-1730s until 1760 conversions among lawyers were only a trickle.

The upsurge in conversions again in the 1760s is related to wider forces. The key event was a judgment handed down in a case between a protestant discoverer and Edward O'Farrell, a lawyer and Longford landowner, who had conformed in 1741 and who had been admitted to the Middle Temple in 1747.³¹ The judgment, delivered in December 1759 and upheld on appeal in the British house of lords in 1761, decreed O'Farrell's property to the discoverer on the basis that O'Farrell had completed the registration of his conformity within six calendar months instead of six lunar months (the shorter of the two), as required by law.³² Because of this difference of a few days, O'Farrell was judged to be still legally a catholic and therefore not entitled to the full benefits of conformity. The insecurity created as a result accounts for the high number of conversions, or re-conversions in many cases, as individuals desired to have their conformity fulfil the proper legal requirements.

Such conversion was also high for lawyers in the 1760s, reaching a peak with 12 in 1763 (Appendix). Among those who conformed as this time were Philip Barry, Cork (1761), Martin Blake, Mayo (1765), Thomas Coffey, Longford (1765), Patrick Corbett, Dublin

29. If his wife died and he survived her, then the disqualification would cease (s.13).

30. The description of the act given in T.W.Moody, F.X.Martin, and F.J.Byrne (ed.), *A new history of Ireland, viii: a chronology of Irish history to 1976* (Oxford, 1982), p. 266 is inaccurate. It should read: 'Apr.29. Act (7 Geo II, c.6) prohibits converts to established church, who have catholic wives or educating their children as catholics, from acting as justices of the peace'.

31. *Rolls*, p. 61; *Notes*, p. 138.

32. For further details see Power, 'Converts'.

(1761), Daniel Feely, Dublin (1761), Charles Doyle, Kilkenny (1762), and John Murphy, Cavan (1761). Those who re-conformed included Edward O'Farrell himself (1761), Dominick Sarsfield (1759), Patrick Brady (1759, 1762), and Thomas Fitzgibbon (1761). Sarsfield, who was admitted to the Middle Temple in 1733 and who was called to the Irish bar in 1749, conformed in Cork on 4 May 1740, obtained the bishop's certificate of conformity on 30 May, had it enrolled on 4 July, took the oaths on 21 October, and had his certificate enrolled accordingly on 24 October.³³ With a lunar month equivalent to 28 days, Sarsfield had not filed his certificate within six lunar months, and therefore, in the light of the 1759 judgment, would have been technically still a catholic, and subject to all the disabilities this entailed. On 17 November 1759 Sarsfield, by then a well-established barrister, conformed in Dublin, before the outcome of the O'Farrell case was known, but obviously as a precaution.³⁴ On the same day he initiated a collusive discovery in order to protect leasehold property he held in Cork, his title to which he assumed was safe under his 1740 conformity, but which now appeared precarious. Thus, for Sarsfield, a timely re-conformity and a discovery proceeding helped to forestall any potentially debilitating effects from the O'Farrell judgment.

In the 1770s conversions among catholic lawyers declined, in common with the overall fall in conversions after 1770 (Appendix).³⁵ The relaxation of the penal laws from 1778 substantially accounts for this drop. The relief acts of 1778 (17 & 18 Geo III, c.49) and 1782 (21 & 22 Geo III, cc.24, 62) contained no specific concessions in relation to catholic legal practice. Rather, the change must be viewed in terms of the chronology of reform within the legal profession as a whole in the last two decades of the eighteenth century. Already an act of 1774 (13 & 14 Geo III, c.23) had tried to ensure against growing malpractice by having attorneys being admitted to the courts screened more closely, and by having a stricter probationary period for their apprentices. Within a decade, another act (21 & 22 Geo III, c.32) dealt with the other half of the profession, by stating that none were to be admitted as barristers unless they attended King's Inns for five years (s.1). More specifically the act declared that none were to be admitted to the Inns who were not protestant (s.2). This act was subsequently overriden, however, when the powers of King's Inns were confirmed

33. NLI D.25,483; *Rolls*, p.250; *Notes*, p.360.

34. *Ibid.*

35. Power, 'Converts'.

by letters patent in 1792.³⁶ In the same year, the restrictions imposed on catholic lawyers and converts by the acts of 1698, 1707, 1727, 1733 and 1782 were repealed by a catholic relief act (32 Geo III, c.21). Henceforth, the oaths required by those former acts were repealed and replaced by the more acceptable oath of allegiance of 1774 (13 & 14 Geo III, c.35). Those taking the oath were entitled to be admitted as barristers and to practise as attorneys and solicitors, though they could not become king's counsel (s.1). They did not have to conform to the Church of Ireland (ss.5, 6, 7, 8). They could now take catholic apprentices and clerks who subscribed the oath (s.2); they could have catholic wives without penalty (ss.3, 9); and they were no longer required to educate their children as protestants (s.4). Despite these important concessions, the higher legal offices in the state such as prime serjeant, attorney general, solicitor general and chief justice, were still to remain the preserve of protestants (33 Geo III, c.21, s.9). Nevertheless, the restrictions which had operated for almost a century were now gone, and no longer did the ordinary lawyer have to resort to conformity as a method of professional advancement.

The vast majority who conformed over the century did so to practise as attorneys, solicitors, or other court officials. Of the barristers, attendance at an English inn has been identified in 92 cases, divided as follows:

Middle Temple	68
Gray's Inn	17
Lincoln's Inn	4
Inner Temple	3

From these figures it is clear that, despite the restrictions pertaining to the profession in Ireland, it was still possible for catholics to attend the English inns of court, as they had done in the past.³⁷ That this was the case is supported by Boulter's remark in 1727, quoted above, where he referred to the fact that the converts 'were papists at London'.³⁸ In the majority of cases such persons did not conform until their return to Ireland, usually within seven years on average of their admission to an English inn. In a few cases, exceptionally long periods elapsed between admission to an English inn and conformity following their return to Ireland. For instance, the period was in excess of 20 years for John Aylward of

36. 32 Geo III, c.18. By 33 Geo III, c.44 (1793), the act confirming the patent was repealed.

37. Kenny, 'Exclusion of catholics' (note 2, above), 340, 351.

38. See above p.159.

Galway, Richard Dease (given as of Dublin, but probably of Meath), Darby Egan of Tipperary, and Valentine Quin of Limerick.³⁹ But all of these persons were eldest sons and heirs who conformed primarily to inherit property and whose attendance at the inns reflected the initial, rather than the ultimate, career choice of catholic gentry families. A good example of this is Richard Kirwan of Galway, who had originally attended St Omer in pursuit of a medical career, but the death of an elder brother caused him to return to Ireland; in 1756 he entered the Middle Temple, he conformed in 1764, and although he did not practise, he proceeded to a distinguished career devoted to science and theology.⁴⁰ Although it is uncertain what proportion of those qualified to practise actually did so, it is likely that since the majority of Irish conformed within a decade of entering the English inns, most proceeded to practise at the bar, and that the small minority who conformed in the longer term were not primarily concerned with the pursuit of the law as a first choice of career.

In 25 instances candidates conformed before entry to the English inns, usually within a year prior to admission or in the same year. This again suggests a commitment to practise, and prior conformity was the case with individuals from well-known legal families such as Thomas Fitzgibbon, Thomas Rice, Dominick Rice, Thomas Duhigg, John and Matthew Ryan.⁴¹ Ignatius Hussey of Kildare, who, as noted above, attested to the protestantism of James Roche in 1729, is recorded as having entered Gray's Inn in 1705 and Middle Temple in 1719, but conformed in 1718 before the bishop of London, and when he formally registered his certificate of conformity in Dublin in 1724, he is described as 'late of [the] Middle Temple'.⁴²

In 31 instances there is a record of converts who had attended English inns being called to the Irish bar. Three such persons—Felix O'Neill, Dominick Rice, and John Taaffe—were also called to the English bar. In one case, that of Richard Dease, there was a call to the English bar alone.

The bulk of those who conformed came from well-established catholic, landed gentry families. These included those of Blake, Daly, Burke, French and Martin of Galway; Carroll, Dwyer, Egan and Ryan of Tipperary; O'Farrell of Longford; Fitzgerald

39. *Notes*, pp.5, 105, 130, 338.

40. *Ibid.*, p.232; A.Webb, *A compendium of Irish biography* (Dublin,1878; repr. New York, 1970), p.277.

41. *Rolls*, p.140; *Notes*, pp.208–9.

42. *Notes*, pp.123, 152, 347, 350, 356–7.

Geoghegan of Westmeath; Meade and Barry of Cork; Rice of Kerry; Savage of Down; and Taaffe of Louth. Some were from titled families. For instance, Ulick Burke entered the Middle Temple in 1738, was called to the Irish bar in 1743, conformed in 1748, and succeeded as eighth baronet of Menlo in 1749, yet was a practising barrister in Dublin in 1765.⁴³ Similarly with Edmund Butler who conformed and entered the Middle Temple in 1744, was called to the Irish bar in 1749, was a practising barrister in Dublin in 1765, and succeeded as tenth viscount Mountgarret.⁴⁴ At least four converts are described as the sons of merchants: Robert Dillon and James French, both of Dublin, David Power of Limerick, and George Stackpoole of Cork.⁴⁵

Where regional identification is possible, the vast majority of converts came from Dublin (56), followed by Galway (27), Cork, Limerick, and Clare (11 each), Mayo (8), Tipperary (7), Kilkenny and Kerry (5 each), Westmeath and Longford (4 each), Roscommon, Kildare, Louth, and Derry (2 each), and one each for Meath, Carlow, Queen's, Waterford, Wexford, Cavan, and Down. This broadly reflects the catchment area where the catholic interest was strongest in the century.

The statements made by Boulter in the 1720s attest to the wider influence convert lawyers had in Irish society: not merely were they dominating the legal profession, but their actions were serving plainly to diminish the effectiveness of the penal laws. As Professor Burns has shown, those laws became the focus for catholic agitation in the courts when parliament denied catholics the customary form of political expression.⁴⁶ As a generalisation, this contention is true and adequately reflects the situation of the first generation of convert lawyers. However, even though the courts became the centres of catholic effort, that did not mean that parliament was entirely outside their realm of influence. For instance, of the nine converts elected to serve in the 1713 parliament, four—Cornelius O'Callaghan, Darby Egan, Patrick French, and Denis Daly—had a legal background.⁴⁷ Egan, who sat for Kilkenny city 1713–15, held the important position of recorder of the corporation of that city from 1705 until 1736, and

43. *Notes*, p.27; *Wilson's Dublin directory 1765*, p.18.

44. *Notes*, p.53; *Wilson's Dublin directory 1765*, p.18.

45. *Notes*, pp.111, 162, 332, 373.

46. Burns, 'Popery laws' (note 6, above), 498–9.

47. E.M.Johnston, *Ireland in the eighteenth century* (Dublin, 1974), p.65.

Egan was involved in the re-acquisition of former family property in Co. Tipperary associated with the break-up of the Ormond estate there in the early part of the century.⁴⁸ A similar process of land purchase operated in the case of O'Callaghan who in the 1720s acquired the bulk of the heavily indebted Everard estate in south Tipperary.⁴⁹ The conversion experience was important not only in gaining access to the landed class for the family (it was granted a peerage as Lord Lismore in 1785), but it also helped to determine and shape the family's political position: it came to have an influence in the borough of Fethard, Co. Tipperary. And though it supported protestant settlement on the estate in the 1740s, in the long term the family favoured catholic emancipation.⁵¹ Estate acquisition is also known to have featured in the case of two attorneys of the exchequer: Patrick Brady, who accumulated a large fortune and purchased an estate in Co. Carlow, and Terence Geoghegan of Westmeath.⁵²

In addition to the above, there are other instances of political participation by converts of legal background. Another Kilkenny member of parliament was Nicholas Aylward of Shankill, Co. Kilkenny, an eldest son who was admitted to the Middle Temple in 1706, conformed in 1711, was admitted to King's Inns, was MP for Thomastown, Co. Kilkenny from 1727 until his death in 1756 (of which corporation he was also recorder), and, in addition, was high sheriff of the county in 1742.⁵³ Other instances of membership of parliament include: James Brown, MP for Jamestown, a lawyer and son of viscount Westport; Denis Daly, MP for Co. Galway; Cornelius O'Callaghan, MP for Fethard; and Windham Quin, MP for Kilmallock.⁵⁴

Within the legal profession itself there are some impressive examples of advancement by catholics due to conformity. For instance, James Fitzgerald of Co. Clare, who conformed in 1767,

48. Kilkenny Corporation minute book, 1730–60, p.122. See also T.P. Power, 'Parliamentary representation in county Kilkenny in the eighteenth century' in W.Nolan (ed.), *Kilkenny: history and society* (Dublin, 1990).

49. *Notes*, p.130; T.P. Power, 'Land, politics and society in eighteenth century Tipperary' (unpublished Ph.D. thesis, University of Dublin, 1987), pp.11, 32–9, 85–92.

50. Power, 'Tipperary' (note 49, above), pp.39–42.

51. *Ibid.*, pp.101, 121–2.

52. *Notes*, pp.34, 177–8.

53. G.D.Burtchaell, *Members of parliament for the county and city of Kilkenny* (Dublin, 1888), pp.132–3; *Notes*, p.7; Power, 'Kilkenny' (note 48, above).

54. D.Large (ed.), 'The Irish house of commons in 1769', *IHS*, xi, no.41 (Mar.1958), 30, 32, 38, 39.

was by 1775 a third servant at law.⁵⁵ Arthur Dougherty, who conformed in 1757, was by 1767 public notary and deputy registrar for the diocese of Derry, and was also an MP for Londonderry.⁵⁶ Others progressed to achieve advancement professionally outside Ireland, the two most outstanding examples being Andrew Arcedeckne of Galway and Bryan Finucane of Clare.

Arcedeckne, who was born c.1691, entered Gray's Inn in 1710 and conformed in 1712.⁵⁷ Moving to Jamaica—the West Indies being a traditional destination for Galway families in the seventeenth century though by now declining in importance—he acted as attorney general there, 1716–17.⁵⁸ In 1718 he was elected to the local assembly, a position he was to hold for the next forty years. That assembly was dominated by planters, and by 1750 Arcedeckne was the second largest landowner in the assembly, owning over 12,000 acres.⁵⁹ This landed wealth gave him great political influence, which the British administration on the island tried to malign in the 1730s by referring to him as a papist, and the governor, Robert Hunter (1729–39), also complained of 'a turbulent faction of Irish lawyers', a reference to Arcedeckne and his associate, Dennis Kelly, chief justice of Jamaica and an assembly man also.⁶⁰ Significantly, this complaint was made to, amongst others, the duke of Newcastle in London, who at this time was also receiving representations from Boulter on similar matters of concern. In Arcedeckne's case, when the charge against him was brought before the assembly for debate, the assembly declared him a 'loyal protestant', a sign of the influence he could exert in that house.⁶¹

Finucane, who was born in 1737, came from a leading catholic family of Co.Clare. After reaching his majority in 1758, he conformed in April 1758, was admitted to the Middle Temple in

55. *Rolls*, pp.100, 281 n.15.

56. *Rolls*, p.83; *Notes*, p.120.

57. *Notes*, p.3.

58. F. Cundall, *The governors of Jamaica in the first half of the eighteenth century* (London, 1937), pp.xix, 70; L.M.Cullen, 'Galway merchants in the outside world, 1650–1800' in D. O'Cearbhaill (ed.), *Galway, town and gown 1484–1984* (Dublin, 1984), p.70.

59. E. Brathwaite, *The development of Creole society in Jamaica 1770–1820* (Oxford, 1971), p.40. By 1820 the Arcedeckne estate had 717 slaves, the largest on the island (*ibid.*, p.121).

60. G. Metcalf, *Royal government and political conflict in Jamaica 1729–1783* (London, 1965), pp.38, 93, 93n.3). Kelly does not appear in the convert rolls. Other Irishmen who held positions of importance were Matthew Concanon, attorney general, and Nicholas Bourke, speaker of the assembly.

61. *Ibid.*, p.93n.3.

1759, and in 1764 was called to the Irish bar.⁶² The influence of the secretary of state, Lord George Germain, through his connections in the Irish legal establishment, was instrumental in securing the appointment of Finucane as chief justice of Nova Scotia in 1776, the only Irish-born person to hold that office. Until his death in 1785, Finucane wielded considerable influence by virtue of his office: he acted to get a fellow Irishman, John Parr, appointed governor of the province; he advanced Richard J. Uniacke (from the Co. Cork family, which had conformed in the seventeenth century), to the position of solicitor general, who was to advocate the cause of catholic emancipation in Nova Scotia until his death in 1830; and he promoted the interests of a group of Halifax Irish merchants, getting one of their number, Thomas Cochran, elected to the council.⁶³ The final person whose overseas career can be traced is Edward Savage of Co. Down, who entered the Middle Temple in 1749, conformed in 1754, was called to the Irish bar in 1760, was a practising barrister in Dublin in 1765, and subsequently became a judge in South Carolina.⁶⁴

These represent the exceptions: those who advanced to high careers in the law in British overseas possessions where Irish communities already existed, but, in the case of Finucane and Arcedeckne, making use of their position achieved through conversion, to challenge the British establishment. For the most part, however, the first generation of catholics conformed in order to advance professionally in the law, and to use their position to challenge the clauses of the penal laws in the courts. In this, they enjoyed some success. The next generation brought the process a stage further by a more active political participation, especially on the central issue of catholic relief.

This can be best illustrated by an examination of key legal families. Richard Malone of Westmeath conformed in 1704, having been called to the Irish bar in 1703, and proceeded to establish a lucrative practice.⁶⁵ The next generation of the family built upon the achievement of the first and were to have distinguished careers in the law. Thus Anthony Malone was called to the bar in 1726 and progressed to being king's first counsel at law; Edmond

62. *Notes*, p.142; *Rolls*, p.98.

63. For the foregoing see B.Cahill, 'The career of chief justice Bryan Finucane', *Collections of the Royal Nova Scotia Historical Society*, xlii (1986), 153; B.C. Cuthbertson, 'Uniacke and the struggle for patronage in Nova Scotia', in C.J.Byrne and M.Harry (ed.), *Talamh an Eisc: Canadian and Irish essays* (Halifax, 1986), 148.

64. *Rolls*, p.251; *Notes*, p.362.

65. *Notes*, p.273.

Malone was called to the bar in 1740, and became second serjeant at law; and Richard Malone was called to the bar in 1758, and with the two others was a practising Dublin barrister in the 1760s.⁶⁶ Not only did the family advance professionally, but it also came to achieve influential political office. Thus, following his call to the bar, Anthony Malone became MP for Westmeath in 1727 (a seat he held until 1760); he was later made prime serjeant (1740–54) and chancellor of the exchequer (1757–61).

Malone was closely involved in the political crisis brought about by the money bill dispute in 1753 on the side of a faction led by Henry Boyle, speaker of the commons, opposed by the Castle administration and its followers. One of the main protagonists for the Castle side was George Stone, archbishop of Armagh, who in 1752 presented the following view of Malone to the duke of Newcastle:

... there is a growing disinclination to the speaker's influence here, as he has been for some few years under the sole direction of Mr Malone, a name extremely displeasing to the protestant and whig interest in Ireland; and as he was born and bred in a popish family, and as many of his nearest relations still remain in those connections, his own conversion (it being necessary to his appearing in his profession of the law) does not give such full satisfaction to zealous protestants as not to make them greatly averse to the thoughts of his arriving to the principal possession of power here which he is known to aim at, and which, with his own talents, with his constant leaning to an Irish interest (which name will always have a popular following after it) with his absolute dominion over the speaker, and with a dominion over the lord lieutenant also, he could not fail to acquire.⁶⁷

This comment bears witness to the position of political influence which Malone acquired by virtue of professional advancement obtained through conversion, and how he retained a sympathy with the catholic interest.

Another example is Richard Burke, who conformed in March 1723, was admitted an attorney in June 1723, and proceeded to establish a respectable legal practice. His son, Edmund Burke, following a period of study at Trinity College in the 1740s, entered the Middle Temple. From the 1760s onward, following his alignment with the Rockingham party in England, Burke advanced his political reputation, and was particularly influential

66. *Wilson's Dublin directory* 1765, p. 21.

67. Stone to Newcastle, 3 Mar. 1752 (C.L.Falkiner, 'Correspondence of Archbishop Stone and the duke of Newcastle', *EHR*, xx (1905), 512).

in promoting the cause of catholic relief. His son Richard was agent to the Catholic Committee in the 1790s.

While, in the cases of Malone and Burke, eminence in the law in the first generation propelled the second generation into the mainstream of political life on the catholic side, a contrary outcome resulted in the case of the Fitzgibbons. John Fitzgibbon of Co. Limerick conformed in 1731, the same year as he was called to the Irish bar, and gained a fortune from his practice. His son, also John, proceeded to have a more illustrious career in the law paralleling that of the Malones, being called to the bar at the young age of twenty-three in 1772. From June 1772 to June 1798 he reputedly earned almost £46,000 from legal practice.⁶⁸ In the 1780s and 1790s, his political career advanced rapidly, Fitzgibbon attaining the office of attorney general (1783–9) and lord chancellor (1789–1802), and in 1795 being raised to the peerage as earl of Clare. On the political issues of the day Fitzgibbon was a staunch supporter of the Anglo-Irish ascendancy, and, in particular, he was a strong opponent of catholic emancipation.

The laws which gave a legal basis to the traumatic changes of the seventeenth century and the penal legislation of the period 1695–1728, together created a situation where Ireland became an extremely litigious nation. The result was a growth in the demand for legal services leading to an over-representation in the legal profession. Catholics were able not merely to participate in the fulfilment of this demand—despite policies of professional exclusion imposed by the state—but also to utilise their position to challenge the penal laws in their application in the courts and, in a subsequent generation, in addition, to stimulate the movements in favour of catholic emancipation.⁺

68. Webb, *Compendium*, p.196.

⁺ I am grateful to Colum Kenny for comments on an earlier draft.

APPENDIX

*Yearly figures of conversions by catholics of
legal background, 1704-78*

<i>Year</i>	<i>Number</i>	<i>Year</i>	<i>Number</i>	<i>Year</i>	<i>Number</i>
1704	1	1735	3 (1)	1758	3 (3)
1708	1	1736	5 (3)	1759	4 (1)
1709	6	1737	(1)	1760	2
1710	2	1739	2 (2)	1761	4 (3)
1711	2	1740	1 (2)	1762	5
1712	1 (1)	1741	2 (2)	1763	9 (3)
1715	1	1742	1 (2)	1764	3
1716	2	1743	3 (1)	1765	5 (3)
1717	1 (1)	1744	1	1766	1
1718	2 (1)	1745	(2)	1767	5
1719	3	1746	2 (2)	1768	4
1721	2	1747	(2)	1769	3
1723	4 (2)	1748	2 (1)	1770	3
1724	4	1749	2 (1)	1771	3
1725	5 (1)	1750	3 (2)	1773	6
1726	3	1751	2	1774	1
1727	1 (1)	1752	2 (2)	1775	2
1728	8 (1)	1753	1 (5)	1776	2
1730	3	1754	3	1777	3
1731	9 (3)	1755	1	1778	2
1732	4 (1)	1756	3 (1)		
1734	7 (3)	1757	3 (1)		

Figures in brackets are for those who are likely to have been of legal background.

Source: E.O'Byrne, *The convert rolls*; Clare, Notes on converts; *Wilson's Dublin directory* 1765.