

‘Jamaican legislation and the transatlantic constitution, 1664-1838’

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‘Any person that shall inspect the minutes of our assembly and peruse only the titles of those acts which they annually frame, alter or amend will be convinced that our claim of legislation ... is grounded in reason, just policy and the necessity of the case’, concluded the Jamaican planter Edward Long in his history of Jamaica in 1774. He added that ‘the greater part of them are merely local or provincial, some calculated for only temporary ends, others to take effect as probationary, and to be rescinded again or gradually enlarged and amended, according as experience may determine their good or evil operation’.¹ Thirty years later his successor Bryan Edwards similarly noted that, ‘the English laws being silent, the colonial legislature has made and continues to make such provision therein as the exigencies of the colony are supposed to require’, not least the system of slavery and plantation agriculture, ‘[and] where the principle of the English law has been adopted, it has been found necessary to alter and modify its provisions so as to adapt them to circumstances and situation’.² Both Long and Edwards therefore assumed the operation of an active colonial legislature, which dealt not just in matters of high constitutional principle but also the mundane political and legislative business needed to make society – and slavery – function effectively.

These assumptions reflected the development of legislative bodies in the British Isles and North America in the eighteenth century. Beyond their celebrated constitutional triumphs in seizing power at different points from a reluctant executive, there was a parallel legislative revolution that transformed these legislatures into instruments of public policy. Quantitative studies of British and Irish law-making up to 1800 have demonstrated that there was a vast upsurge in legislative output during this period,

¹ Edward Long, *The History of Jamaica, or, General survey of the antient and modern state of that island* (3 vols., London, 1774) vol. i, 21-2

² Bryan Edwards, *The history, civil and commercial, of the British colonies in the West Indies* (3 vols., London, 1793-1801) vol. i, 273-4

much of it intended to reshape the societies and economies that lay within – and, in the case of the Westminster parliament, beyond – their borders. The colonial houses of assembly of North America similarly expanded in scope and scale throughout this period. The ‘transatlantic constitution’ of imperial law and institutions emerged as a framework to try regulate and manage the exercise of this legislative capacity, in a process that also extended to the numerous British colonies in the West Indies and continued well beyond the withdrawal of the North American colonies from this transatlantic constitution in 1783. However, viewing the legislative process instead from West Indies rather than from North America emphasises not only their political and institutional overlaps, and thus the highly contingent nature of the many factors which forced the mainland colonies out of the transatlantic constitution, but also the parallel evolution of these overlapping elements beyond the break of 1783.

This article therefore offers a quantitative survey of the legislative process in Jamaica, the largest and richest island in the British West Indies, between the first assembly in 1664 and the major social and political reconfigurations that ended enslaved labour in 1838. It concludes that the volume of legislation increased massively in this period, in line with similar increases in Britain and Ireland, reflecting the growing political power of the assembly and a continuing upsurge in demand from local interest groups. It was, moreover, a collaborative process. Although studies of Jamaica, the West Indies and North America generally place the most stress on violent confrontations between colonial and imperial elites, this tended to be the exception rather than the rule, and served mainly to delineate spheres of influence within which each side could operate. The transatlantic constitution was able to accommodate these developments, providing an alternative path for political development that differed from Britain,

Ireland and North America but amounted, in ways that the historiography has not yet recognised, to a transatlantic legislative revolution.

-I-

‘It has been a commonly-received opinion’, Long admitted, ‘that the people of this island are fond of opposition to their governors, [and] that they are ever discontented and factious’. He laboured to prove otherwise, but this view was broadly accepted by contemporaries, and by historians Agnes Whitson and George Metcalf in their studies of island politics up to 1783, as well as broader surveys of the West Indies by Lowell Ragatz and others.³ Studies from the imperial perspective by Helen Taft Manning and others tended to endorse this picture, perhaps reflecting their imperial focus, in which colonial elites appeared many as obstacles unable to conceive of the unity of empire.⁴ ‘Perhaps nothing is more extraordinary in English institutional history than the part played by these little bodies’, noted Manning, for example, ‘... [as] the British constitutional tradition sustained them in a sense of their own importance and allowed them to make good their pretensions in the eyes of the highest legal authorities in Great Britain’.⁵ More recent work by Jack Greene and others has offered a valuable corrective by stressing the ideological sophistication of elites in Jamaica and the West

³ Agnes M. Whitson, *The constitutional development of Jamaica, 1660 to 1729* (Manchester, 1929) pp. 158-67; George Metcalf, *Royal government and political conflict in Jamaica, 1729-1783* (London, 1965) pp. 232-7; Lowell J. Ragatz, *The fall of the planter class in the British Caribbean, 1763-1833: a study in social and economic history* (New York; London, 1928) pp. 44-54; Frederick G. Spurdle, *Early West Indian government: showing the progress of government in Barbados, Jamaica and the Leeward Islands, 1660-1783* (Palmerston North, New Zealand, 1962) pp. 7-27, 50-75; Neville A.T. Hall, ‘Constitutional and political developments in Barbados and Jamaica, 1783-1815’, (DPhil Thesis, University of London, 1965) pp. 26-9, 47-57

⁴ Helen Taft Manning, *British colonial government after the American Revolution, 1782-1820* (Hamden, Conn, 1966), esp. pp. 108-9, 128-9; D. J. Murray, *The West Indies and the development of colonial government, 1801-1834* (Oxford, 1965) pp. xi-xiii; William A. Green, *British slave emancipation: the sugar colonies and the great experiment, 1830-1865* (Oxford, 1976) pp. 65-74, 90-3

⁵ Manning, *British colonial government*, pp. 128-9

Indies, and the political languages of liberty and property that they shared with their counterparts on the mainland.⁶ A controversy over legislative privilege in the 1760s, for example, ‘was one of many similar incidents during which men on opposite sides of the Atlantic had been hammering out constitutional arrangements’ since the late seventeenth century.⁷ Yet by focussing on moments of confrontation within the elite this had tended to reinforce the picture of a truculent, fractious and obstinate assembly that was more concerned with its privileges and liberties than with sound government.

Approaching this society from the bottom-up, however, has suggested that the white societies of the West Indies were not entirely dysfunctional. Elsa Goveia and others have highlighted how comprehensive laws and legal codes were successfully created by assemblies to structure slavery and slave-holding in various islands.⁸ The claim that Jamaica developed a stable ‘creole society’ between 1770 and 1820, which mingled European and African elements to find a social equilibrium, has focussed attention on the mundane social and cultural transactions that held this white society together, and structured its relations to slaves and ‘free coloureds’.⁹ Most recently, Diana Paton has demonstrated the collaboration between governors, assembly and parish vestries created the legislative framework for a complex penal system that

⁶ Jack P. Greene, ‘The Jamaica privilege controversy, 1764-1766: an episode in the process of constitutional definition in the early modern British empire’, *Journal of Imperial and Commonwealth History*, 22 (1994) pp. 16-53 and, more broadly, see *Peripheries and Center: constitutional development in the extended politics of the British Empire and the United States, 1607-1788* (Athens, GA, 1986) and *The constitutional origins of the American Revolution* (Cambridge, 2011). See also Christer Petley, *Slaveholders in Jamaica: colonial society and culture during the era of abolition* (London, 2009) pp. 35-43; Michael Watson, ‘The British West India legislatures in the seventeenth and eighteenth centuries: an historiographical introduction’, *Parliamentary History*, 14 (1995) pp. 89-98; Andrew O’Shaughnessy, *An empire divided: the American Revolution and the British Caribbean* (Philadelphia, 2000) pp. 81-126; P.J. Marshall, *The making and unmaking of empires: Britain, India and America, c.1750-1783*, (Oxford, 2005), pp. 158-181.

⁷ Greene, ‘Jamaica privilege controversy’, p. 16

⁸ See below nn. 73

⁹ Kamau Brathwaite, *The development of Creole society in Jamaica, 1770-1820* (Oxford, 1971) pp. 9-23, 68-79; Petley, *Slaveholders in Jamaica*, pp. 53-67; Trevor G. Burnard, *Mastery, tyranny, and desire: Thomas Thistlewood and his slaves in the Anglo-Jamaican world* (Jamaica, 2004) pp. 70-100

supported the wider slave society of the island. ‘State decisions were not simply worked out in conflict between local and imperial elites’, she notes, ‘...[but] in ways that were significantly influenced by local contestation and negotiations’, and worked out both in the assembly itself and through the expanding public sphere in Jamaica.¹⁰

This suggests that the assembly in Jamaica was expanding both the range and extent of its power and responsibilities at a moment when parliaments in Britain, Ireland and North America were undergoing in a similar process of evolution. Nearly 19,000 bills were introduced into the Westminster Parliament between 1660 and 1800, around half of these in the forty years after 1760, and about 14,000 became law.¹¹ ‘This dramatic rise in legislative output was a most remarkable development’, notes Hoppit, ‘and one of significance for historians of all shades’, since it helped to integrate local interests into a national system and made legislative intervention matters a norm.¹² Work since then has focussed on identifying the provincial, mercantile and social interest groups that began to use the powers of parliamentary legislation for their own ends, shaping areas such as the criminal code and poor law in ways that owed little to government.¹³ The conceptual scope and geographical ambitions of legislation also increased. Not only did the Parliament in Westminster now increasingly legislate for Scotland and Ireland, it also claimed the right to pass laws for its imperial territories, even after the salutary lessons of 1776. At least 191 imperial acts were passed between 1660 and 1800 relating to imperial trade alone, most of them after 1760, and this pattern did not

¹⁰ Diana Paton, *No bond but the law: punishment, race, and gender in Jamaican state formation, 1780-1870* (Durham, NC, 2004) pp., quotation on p. 17

¹¹ Julian Hoppit, ‘Patterns of parliamentary legislation, 1660-1800’, *Historical Journal*, 39 (1996) pp. 109-31.

¹² *Ibid.* p. 109

¹³ Joanna Innes, ‘The local acts of a national Parliament: Parliament’s role in sanctioning local action in eighteenth-century Britain’, in Joanna Innes, ed., *Inferior politics: social problems and social policies in eighteenth-century Britain* (Oxford, 2009) pp. 78-105; Joanna Innes, ‘Parliament and the shaping of eighteenth-century English social policy’, in Joanna Innes, ed., *Inferior politics: social problems and social policies in eighteenth-century Britain* (Oxford, 2009) pp. 21-44 and below n. 63.

radically alter until the 1860s.¹⁴ ‘The volume of imperial legislation passing through Parliament was hardly burdensome’, concludes Miles Taylor, noting that it comprised only two percent of total legislation between 1801 and 1840, ‘...but even as a steady drip as opposed to a flood, imperial legislation could be complex’, encompassing contentious issues as trade, religion and slavery that trespassed on internal matters.¹⁵

David Hayton and James Kelly have likewise demonstrated that the Irish Parliament, itself simultaneously a colonial state and ancien regime, also expanded the range and scope of legislative activity in this period, with about 3,450 bills between 1692 and 1800 producing about 2,300 acts, at least half of them between 1771 and 1800.¹⁶ This was achieved despite the restrictions imposed by Poynings’ Law before 1782, which gave the Irish and British privy councils control of the legislative process and could only be evaded by a legal loophole which allowed the parliament to debate ‘heads of bills’.¹⁷ Westminster occasionally legislated for Ireland, as noted above, and used its power under Poynings’ Law to amend or disallow bills, but the bulk of legislation in Ireland was therefore domestic in origin. It was used, among other things, to create an extensive set of fiscal-military state structures and a corpus of discriminatory social and religious legislation known as the ‘penal laws’, described in more detail below, but also a wide range of social and economic legislation urged by interest groups

¹⁴ Julian Hoppit, ‘Economic legislation and Britain's empire’ (unpublished working paper, 2016); Joanna Innes, ‘Legislating for three kingdoms: how the Westminster Parliament legislated for England, Scotland and Ireland, 1707-1830’, in Julian Hoppit, ed., *Parliaments, nations and identities in Britain and Ireland, 1660-1850* (Manchester, 2003) pp. 15-47; Miles Taylor, ‘Colonial representation at Westminster, c. 1800-65’, in Julian Hoppit, ed., *Parliaments, nations and identities in Britain and Ireland, 1660-1850* (Manchester, 2003) pp. 207-10

¹⁵ Taylor, ‘Colonial representation’, p. 209. For an overview of imperial legislation and slavery, see Robert Livingston Schuyler, *Parliament and the British Empire: some constitutional controversies concerning imperial legislative jurisdiction* (New York, 1929) pp. 117-92

¹⁶ David Hayton, ‘Introduction: the Long Apprenticeship’, *Parliamentary History*, 20 (2001) pp. 7-12

¹⁷ *Ibid.* pp. 13-4; James Kelly, *Poynings' law and the making of law in Ireland, 1660-1800* (Dublin, 2007), esp. pp. 8-11, 309, 358-61

within the island.¹⁸ ‘The impression conveyed, as early as the 1730s’, notes Hayton, ‘...[is] one of an institution whose members believed it had already come of age’.¹⁹

Quantification and categorisation of legislative output in Britain and Ireland therefore captures an important process of political development, and can be extended to assess the nature of political, social and economic change in the transatlantic world, where most British territories had active – many imperial officials thought over-active – assemblies. They have nevertheless been examined by Jack Greene and others mainly as political and constitutional, rather than legislative, institutions. ‘Understandable and useful as this approach is’, noted Alison Olson in 1991, ‘... it has obscured other questions’, particularly how interest groups began to look to assemblies in the mid-eighteenth century to solve issues that could not be addressed at a local or imperial level, eventually making it possible to envisage outright independence.²⁰ If one half of the transatlantic constitution recently described by Sarah Mary Bilder was the framework of imperial courts and councils that reviewed colonial legislation, the other half was the system of colonies assemblies that created it.²¹ However, these have not yet been studied systematically for their quantitative patterns of legislation, and both Bilder and Olson have in any case focussed in assemblies in North America rather than their counterparts in the West Indies.²² The next three sections show that the

¹⁸ Charles Ivar McGrath, *Ireland and empire, 1692-1770* (London, 2012) pp. 69-216. For the penal laws, see below n. 74. For social and economic legislation, see Eoin Magennis, ‘The Irish Parliament and the regulatory impulse, 1692-1800: the case of the coal trade’, *Parliamentary History*, 33 (2014) pp. 54-72; Andrew Sneddon, ‘Legislating for economic development: Irish fisheries as a case study in the limitations of improvement’, in David Hayton, James Kelly, and John Bergin, eds., *The eighteenth-century composite state: representative institutions in Ireland and Europe, 1689-1800* (London, 2010) pp. 146-59

¹⁹ Hayton, ‘Long Apprenticeship’, p. 15

²⁰ Alison Olson, ‘Eighteenth-century colonial legislatures and their constituents’, *Journal of American History*, 79 (1992) pp. 543-67. Quotation on p. 544

²¹ Mary Sarah Bilder, *The transatlantic constitution: colonial legal culture and the empire* (Cambridge, MA, 2004)

²² See below n. 65

assembly of Jamaica developed along very similar lines to its counterparts in Britain, Ireland and North America in this period, suggesting an overlapping experience of political and legislative development that continued beyond the rejection of the transatlantic constitution by the colonies of North America in 1783.

-II-

Jamaica was Britain’s largest and richest possession in the West Indies, its population rising from several hundred at the time of its first assembly in 1664 to about 410,000 in 1800. Its wealth, like the other islands of the West Indies, was built on sugar, and ninety percent of the population were therefore black slaves imported from West Africa to labour under brutal conditions on behalf of the small white elite, which did not exceed about 30,000 in 1800. The need to control this large, hostile and alien population shaped the politics, society and culture of the island, but this small white elite, as noted above, also created a ‘creole’ society that attempted to replicate the ancien regime society they had left behind in England. Hierarchies persisted, despite the racial solidarity and egalitarianism required by the slave society, and women and Jews were excluded from power, limiting the franchise to a smaller group of planters, merchants and professionals who satisfied the property qualification and could act as judges and magistrates, serve as public officials, and elect members of the assembly, or even sit there themselves.²³ The assembly itself was composed of just over forty members, elected by the freeholders of about twenty parishes, though high franchise requirements made for tiny electorates. About 1,572 votes were cast in elections in 1816, for example, representing perhaps about six percent of the white population and

²³ Brathwaite, *Creole society*, pp. 40-59; Petley, *Slaveholders in Jamaica*, pp. 60-2

less than half a percent of the total population. This was narrower than all but the most rotten boroughs in Britain, but many elections were nevertheless conducted in much the same way, with candidates placing advertisements in local newspapers and offering hospitality to voters in order to confirm their obligations to local interests.²⁴

The political machinery of Jamaica was also modelled, very deliberately, on English practice. The house of assembly was first convened in January 1664 and immediately insisted that it had the same powers and privileges as its counterpart in Westminster to initiate legislation, with the island’s council acting as the upper chamber and revising bills and the governor, as representative of the Crown, accepting or rejecting them.²⁵ Bills were initiated on the motion of individual members, or by order of the house, often prompted by petitions or the advice of standing and *ad hoc* committees.²⁶ The bill was laid before the house for its first reading, and if it was approved a date would be fixed for its second reading. It would then be debated and was generally sent to a committee, sometimes a committee of the whole house, to be examined and amended, and once these were approved the bill would be engrossed and read a third time, then carried up to the council for discussion. Opponents had multiple chances to wreck the bill, however, by calling divisions, adding wrecking amendments or even simply by deferring discussion until the assembly was dissolved or prorogued. The council in turn might also chose to accept or reject the bill, or amend it and send it back to the house, who could then only accept the amendments or reject them *in toto*, though sometimes a joint committee was convened to hammer out a compromise. Once the council was satisfied, it was passed to the governor of the island for his assent.

²⁴ Petley, *Slaveholders in Jamaica*, pp. 62-4; Brathwaite, *Creole society*, pp. 47-9

²⁵ Whitson, *Jamaica*, pp. 20-4, 40-51; Spurdle, *Early West Indian government*, pp. 29-30; Metcalf, *Royal government*, pp. 23-30; Hall, ‘Political developments’, pp. 76-98; Brathwaite, *Creole society*, pp. 50-9

²⁶ Spurdle, *Early West Indian government*, pp. 30-2; Brathwaite, *Creole society*, p. 51

As in Ireland though, this was only the first stage in the process, since the Crown and Parliament in Britain insisted they had the right to approve or disapprove acts passed by colonial assemblies. Efforts to impose a version of Poynings’ Law on Jamaica were abandoned in 1681, and the assembly usually refused to incorporate suspending clauses into bills that would defer their operation of the act until they were approved in London, but some degree of oversight remained.²⁷ At the end of a session the acts were sent to the secretary of state for the southern department – or, after 1795, for the colonies – and were then passed to the Board of Trade to be reviewed.²⁸ The privy council was then duly advised whether to confirm or disallow them, or let them ‘lie by’ without any further action. The process therefore lacked the very close level of imperial control exercised in Ireland under Poynings’ Law before 1783, where the Irish and British privy councils could both amend and disallow bills, but it still had multiple veto points which permitted parties in the assembly or council in the island, or the governor, of the Board of Trade, Colonial Office, Privy Council and Parliament to block colonial legislation. For example, the ‘West India lobby’ of merchants, absentee planters and slave traders in London generally proved useful in helping legislation through the privy council, but also blocked several efforts by the assembly to undermine their interests by taxing slave imports or non-resident proprietors.²⁹

[Insert **Figure A** here]

²⁷ Whitson, *Jamaica*, pp. 70-109; Alexander L. Murray, ‘The constitutional development of Jamaica, 1774-1815’, (MA Thesis, University of London, 1956) pp. 15, 21-39

²⁸ Spurdle, *Early West Indian government*, pp. 28-9; Douglas M. Young, *The Colonial Office in the early nineteenth century* (London, 1961) pp. 196-200; David B. Swinfen, *Imperial control of colonial legislation, 1813-1865: a study of British policy towards colonial legislative powers* (Oxford, 1970) pp. 11-42

²⁹ Metcalf, *Royal government*, pp. 47, 185-6; Frank Wesley Pitman, *The development of the British West Indies: 1700-1763* (London, 1967) pp. 31-40, 79-85; Murray, ‘Constitutional development’, pp. 5-7; Lillian M. Penson, *The colonial agents of the British West Indies: a study in colonial administration, mainly in the eighteenth century* (London, 1924) pp. 70-6, 121-32, 216-25

It is all the more remarkable then that the island actually saw an exceptional high level of legislative activity. There were at least 5,657 legislative initiatives introduced into the assembly between its first session in 1664 and the end of the system of enslaved labour in 1839, ranging from successful statutes to bills that were ‘ordered’ but never even brought to their first reading. More were probably introduced between 1664 and 1709, but the loss or damage of early volumes of assembly minutes means that these were not included in the printed volumes and indices used for this study, which relies mainly on the fourteen volumes produced between 1811 and 1829 as the *Journals of the House of Assembly* and covering the years 1664 to 1826, or the *Votes* subsequently printed and collated during each session between 1826 and 1839. The sparse nature of the minutes themselves also makes it impossible systematically to include petitions and other appeals that were clearly intended to elicit legislation. At least 3,325 passed in some form, a rate of success that was broadly comparable with the legislatures of Britain and Ireland before 1800. The volume of acts passed rose even faster, hitting about fifteen or twenty per year between 1730 and 1765, a level that was broadly in line with other major colonial legislatures in North America such as Massachusetts, New York, Pennsylvania, Virginia and South Carolina.³⁰ It occurred because a series of political victories enabled planters to secure control of their assembly and use this power to respond to the immense demand for legislation, as the following two sections with respectively demonstrate.

[Insert **Table I** and **Table II** here]

³⁰ Olson, ‘Colonial legislatures’, p. 563

-III-

Both Hoppit and Hayton argue that the growing importance of parliaments as the most prominent instrument of public policy in Britain and Ireland after 1692 was due partly to their growing capacities to ‘supply’ legislative solutions to key political, social and economic problems. For example, parliamentary sessions in England before 1688 were irregular and unpredictable, which made for a low success rate and discouraged the introduction of legislation.³¹ This changed after 1714 and both houses also began to develop administrative procedures to regulate business efficiently, a process that can be quantified rather crudely by tracking the number of bills and acts per day of the session (III).³² In Britain the volume of bills doubled from 1.18 to 2.56 between 1660 and 1800, but the number of acts quadrupled from 0.50 to 1.95 per day, demonstrating an unprecedented rise in efficiency.³³ The Irish Parliament initially handled far less business, but the volume of bills per day had doubled by 1800, and the volume of acts tripled, as the parliament increasingly became ‘a relatively efficient and productive legislative machine’.³⁴ Administrative refinements, political stability and greater skill and experience from legislators, lobbyists and petitioners therefore meant that more bills passed successfully even as the volume increased. In Britain the chances fell from three quarters to less than one quarter between 1660 and 1800, and in Ireland they fell to forty percent before 1782, and converged in British rates thereafter.³⁵ The same was true in Jamaica, where the assembly became more efficient and successful at producing legislation in this period.

³¹ Hoppit, ‘Patterns’, pp. 113-14

³² Ibid. pp. 110-11

³³ Julian Hoppit and Joanna Innes, *Failed legislation, 1660-1800* (London, 1997) pp. 4-5

³⁴ The figures are based on Hayton, ‘Long Apprenticeship’, pp. 8-9, 13; Kelly, *Poyning’s Law*, pp. 160-4, 242-4, 310-12, 355-7. The quotation is from Hayton, ‘Long Apprenticeship’, p. 11

³⁵ Hoppit, ‘Patterns’, pp. 111-13; Hayton, ‘Long Apprenticeship’, p. 12; Kelly, *Poyning’s Law*, pp. 160-4, 242-4, 310-12, 355-7

This reflected administrative refinements and legislative experience, but also a reshaping of relations within the assembly and the transatlantic constitution that created favourable conditions for passing legislation.

[Insert **Figure B** here]

Calculating bills and acts passed per day in the house of assembly in Jamaica suggests that its legislative efficiency was mixed. It spent far more days in session than the Irish Parliament, but debated fewer bills, and its efficiency may even have decreased between 1714 and 1760 as factional confrontations disrupted the politics of the island.³⁶ However, in general the average length of sessions fell even as the volume of business increased, declining from one hundred days before 1714 to just under seventy by 1839, demonstrating that the assembly were getting through more business in less time. The number of bills introduced per day increased from 0.37 bills to 0.73 bills in this period, and peaked in 1828, when the assembly debated at least sixty bills in only thirty six days. Rates of success also rose, to match rates in Britain and Ireland.³⁷ Only forty percent of bills were successful between 1714 and 1760, but this grew to nearly seventy percent after 1800, and the number of acts that were passed per day tripled from 0.16 to 0.49 in the same period. During the benign political environment between 1788 and 1828, the rate of failure fell further to twenty percent, but then rebounded to about fifty percent as this gave way to acrimonious clashes in the 1830s over the end of slavery, contributing to an extraordinary upsurge in bills and a collapse in success rates. This culminated in the constitutional crisis of 1838, as

³⁶ For these conflicts, see below n. 51.

³⁷ Hoppit, ‘Patterns’, pp. 111-13; Figures for Ireland are calculated from Hayton, ‘Long Apprenticeship’, p. 12; Kelly, *Poynings’ Law*, pp. 160-4, 242-4, 310-12, 355-7

noted below, which saw the assembly dissolved after only seven days without introducing any bills.³⁸

[Insert **Table III** here]

Representative institutions in Britain, Ireland and Jamaica therefore all became more effective legislative machines in this period, albeit at different rates that shed a great deal of light on their common causes. One was growing administrative efficiency and experience. ‘Parliament only gradually came to terms with its newfound potential to conduct a heightened volume of legislation’, notes Hoppit, ‘[and] perhaps it took time to learn how to timetable bills, to order select committees or to ensure that only high-quality proposals were considered’, though the rise of professional drafters helped to accelerate this process.³⁹ The types of legislative initiatives also changed in Britain, shifting away from general measures towards specific local measures that were less likely to generate widespread opposition.⁴⁰ In Jamaica the standing orders remained in flux for longer, probably because the assembly and its business was small enough that it could be carried on informally. It nevertheless slowly enacted several measures in response to the rising tide of legislation, such as an order in 1769 ‘that no bill of a private nature shall take rise in the house but by petition from the party desiring such a bill, and after a report from a committee appointed to enquire into the allegations of such a petition’.⁴¹ As in North America, it was increasingly common to print statutes either singly or in collections, and from 1749 the minutes or ‘votes’ of each session were printed for the public, which would have helped to regularise proceedings and

³⁸ Paton, *No bond*, pp. 118-19; Green, *British slave emancipation*, pp. 164-70. For the 1830s, see below nn. **Error! Bookmark not defined.** and 76.

³⁹ Hoppit, ‘Patterns’, pp. 114-16; For Ireland, see Hayton, ‘Long Apprenticeship’, p. 12

⁴⁰ Hoppit, ‘Patterns’, pp. 116-18; Innes, ‘Local acts’, pp. 78-108

⁴¹ JHA III p. 40; VI, p. 39. For America, see Olson, ‘Colonial legislatures’, pp. 559-60

facilitate drafting by lobbyists.⁴² The chief justice and attorney-general of the island noted in 1827 that bills were still generally prepared by the person that introduced them, and were only occasionally drafted by ‘a professional friend ... [or] the Clerk of the House, ...[or] the professional assistance of counsel’.⁴³

More important than such administrative refinements, however, was the gradual shift in political power in Britain, Ireland and Jamaica that led to a new consensus between Crown and Parliament. In England (or Britain) the Glorious Revolution of 1688 was a crucial watershed. ‘After 1688 parliament quickly asserted the power of the purse’, notes Hoppit, ‘which, with the full consequences of William III’s military operations, ensured that the timing of sessions soon became a matter of routine’.⁴⁴ The Crown and its ministers accepted the principle that they would work through Parliament, and although partisan conflict between whigs and tories probably prevented an immediate improvement in success rates, this changed after 1714. The same was true in Ireland, where a workable compact between the Irish Parliament and the Lord Lieutenant, who represented both the Crown and the wishes of the British Parliament, did not emerge until 1713.⁴⁵ Hayton argues that the increasing efficiency of the Irish Parliament in the eighteenth century reflected a shift away from ‘the relatively disturbed state of Irish politics ... [in] periods marked by managerial instability and popular ‘patriotic’ campaigns’.⁴⁶ Collaboration between Irish interests and the lords lieutenant in Dublin Castle, either through direct management or parliamentary ‘undertakers’, made for

⁴² Frank Cundall, *The press and printers of Jamaica prior to 1820* (Worcester, MA, 1916) pp. 290-354. For America, see Olson, ‘Colonial legislatures’, pp. 547-50, 559, 562

⁴³ UK Parliamentary Papers, 1826-7 (559), pp. 44, 164, 182.

⁴⁴ Hoppit, ‘Patterns’, pp. 113-14

⁴⁵ Hayton, ‘Long Apprenticeship’, p. 9; Kelly, *Poyning’s Law*, pp. 164-240

⁴⁶ Hayton, ‘Long Apprenticeship’, p. 12

more regular and predictable sessions, and there were fewer legislative failures from bills caught short by unexpected dissolutions or held hostage to partisan squabbles.

Reducing the influence of the governor and the imperial metropole from legislation in Jamaica took much longer, and until 1783 successive governors usually envisaged a proactive role for themselves that required contentious management of the assembly through local allies and interest groups.⁴⁷ The disastrous experience of American independence, however, persuaded the imperial metropole to adopt a more ‘hands-off policy’, and Murray concluded that ‘Jamaica’s legislative freedom ... reached its zenith during the years between 1783 and 1813’.⁴⁸ The negative checks exercised by the privy council remained, as noted below, but the power of the governor was mainly used to defend certain red lines concerning commercial regulation, imperial defence and, from 1807, the abolition of the slave trade and slavery. For instance, in December 1808 the duke of Manchester chose to dissolve the assembly after it demanded that he withdraw the unpopular West India Regiments of black troops garrisoned on the island.⁴⁹ The planters objected because the sight of black soldiers exercising authority threatened the strict racial boundaries erected in society. Two thirds of the bills were lost by this dissolution, and had to be laid before the assembly again during its next session, which Manchester then dissolved in December 1809 after a further clash, this time over a bill the planters had brought forward that banned

⁴⁷ Whitson, *Jamaica*, esp. pp. 148-67; Metcalf, *Royal government*, pp. 16-19, 83-103, 117-33, 159-91, 210-19; Spurdle, *Early West Indian government*, pp. 33-4, 68-75; O’Shaughnessy, *An empire divided*, pp. 185-96

⁴⁸ Murray, ‘Constitutional development’, pp. 16-23, 32-95. Quotation on p. 95; Metcalf, *Royal government*, p. 237; Manning, *British colonial government*, pp. 61-73

⁴⁹ Roger N. Buckley, *The British Army in the West Indies: society and the military in the revolutionary age* (Gainesville, FL, 1998) pp. 121-22, 193-4; Manning, *British colonial government*, pp. 238-48

nonconformist ministers and missionaries from preaching to slaves.⁵⁰ Legislative failures were also caused by intense partisan divisions within the assembly, such as the clashes between planters, merchants and privateers in the 1680s and 1690s, and planters and merchants in the 1750s.⁵¹ Renewed clashes between pro- and anti-slavery parties in the 1820s and 1830s contributed to the fall in success rates noted above, as parties tried to sabotage contentious legislation or rendered the sessions unmanageable.⁵²

The same applied to the assembly’s relationship with the council in Jamaica and the privy council in Britain, which were both intended to act as checks on the chamber and guardians of imperial interests. Appointed by the governor from among planters and merchants in the island, the council asserted that it had the same rights as the upper houses of Britain and Ireland, to initiate its own bills, though only forty or so were introduced before the practice ceased in the 1770s, and the assembly rejected all but four of them. It retained, however, its power to amend and reject bills sent up to it from the assembly, and although the assembly continued to clash with the council over the exercise of its executive powers, by the late eighteenth century there was a more cooperative legislative relationship.⁵³ Nearly ten percent of bills were amended across this period, a proportion that remained relatively stable despite the increasing volume of legislation, but whereas over forty percent of amended bills ultimately failed up to 1760, this fell by more than six percent before 1800, and in the early

⁵⁰ Murray, ‘Constitutional development’, pp. 23-33; Mary Turner, *Slaves and missionaries: the disintegration of Jamaican slave society, 1787-1834* (Urbana, 1982) pp. 14-18; Murray, *West Indies*, pp. 42-6

⁵¹ Whitson, *Jamaica*, pp. 116-39; Metcalf, *Royal government*, pp. 23, 37-8, 80-91, 121-44, 173-91, 207-10. See also, more broadly, Brathwaite, *Creole society*, pp. 105-34

⁵² Petley, *Slaveholders in Jamaica*, pp. 84-150, 154-6; Murray, *West Indies*, pp. 89-105, 140-5, 187-204; Gad J. Heuman, *Between Black and White: race, politics, and the free coloreds in Jamaica, 1792-1865* (Westport, Conn, 1981) pp. 83-112

⁵³ Whitson, *Jamaica*, pp. 163-5; Spurdle, *Early West Indian government*, pp. 34-47; Metcalf, *Royal government*, pp. 30, 43-7, 159, 171; Murray, ‘Constitutional development’, pp. 121-44, 256-67

nineteenth century just under three quarters of amended bills ultimately passed. Bills on slavery and the courts had a higher chance of being amended, but bills on finance and government had a much higher failure rate, because the assembly firmly refused to concede that the council had the right to amend supply bills.⁵⁴ It therefore looks like the council began to play a far more constructive role in legislation, and although the percentage of failed bills lost there actually increased in this period, from sixteen percent of bills before 1760 to about a quarter between 1760 and 1839, this may be because the assembly was now secure enough not to feel the need to turn every minor dispute into a tussle over fundamental constitutional principles.

[Insert **Table IV** here]

By the same token, studies focussing on specific areas of legislation such as slavery, or the constitutional conflicts between Jamaica and the imperial metropole, can give the misleading impression that the Board of Trade and the privy council in Britain began to crack the whip with increasing frequency in this period, using their power to disallow legislation to shape colonial policy. In fact the statistical survey confirms that the privy council exercised its authority very sparingly indeed (V).⁵⁵ More than forty acts were disallowed between 1664 and 1760, mostly during the political clashes of the 1750s, but this was only around four percent of the total acts passed, and the colonies in North America experienced broadly similar rates.⁵⁶ Another forty or so were disallowed between 1760 and 1839, but more than half of them occurred during in the 1820s and 1830s, and still represented only two percent of acts passed,

⁵⁴ Metcalf, *Royal government*, pp. 30, 45-6, 171, 177-8, 184-5

⁵⁵ Elmer Beecher Russell, *The review of American colonial legislation by the King in council* (New York, 1915), esp. pp. 203-27; Swinfen, *Imperial control*, pp. 64-76, 95-146; Murray, ‘Constitutional development’, pp. 1-39; Manning, *British colonial government*, pp. 76-82;

⁵⁶ Russell, *Review*, pp. 57, 221

though for Ireland between 1783 and 1800 this was less than half a percent.⁵⁷ Acts relating to slavery were twice as likely to be disallowed as others, reflecting the particular efforts by the metropole to check abuses.⁵⁸ The ratio of acts confirmed by the privy council also fell throughout this period, from fifteen percent before 1760 to three percent thereafter. More than forty percent of these were private acts, in which the privy council took a particular interest, though only a quarter of all private acts were formally confirmed.⁵⁹ As in Ireland, the privy council therefore exercised its powers increasingly judiciously, and mainly in areas of key imperial concern such as trade, defence, slavery and the rights of individuals.⁶⁰

[Insert **Table V** here]

Of the 2,569 or so failed legislative initiatives introduced in Jamaica between 1664 and 1839, about twenty percent were blocked by council, four percent by the privy council, and only one percent by the governor. Three quarters of all legislative failures therefore occurred within the assembly itself, a ratio that largely remained static. This was lower than in Britain, where nearly ninety percent of bills failed in the lower house, but similar to Ireland between 1782 and 1800.⁶¹ This points to a remarkable degree of constitutional stability, and suggests that a focus on points of political conflict risks misrepresenting the real experience of colonial legislation for elites in North America and the West Indies. Most bills were generally defeated by internal opposition, and colonial resentment at imperial obstruction – the Crown ‘has

⁵⁷ Kelly, *Poynings' Law*, pp. 355-7, 362-3

⁵⁸ Manning, *British colonial government*, pp. 76-82, 488-509; Swinfen, *Imperial control*, pp. 20-31, 122-45

⁵⁹ Russell, *Review*, pp. 106-8, 152-6

⁶⁰ Kelly, *Poynings' Law*, pp. 210-27, 273-302

⁶¹ Hoppit and Innes, *Failed legislation, 1660-1800*, pp. 13-15; Kelly, *Poynings' Law*, pp. 339-54, 355-7

refused his assent to laws’, Jefferson noted first in 1776, ‘the most wholesome and necessary for the public good’ – was restricted to a very small subset of laws, though the experience of Jamaica suggests that these tended to be the most controversial and important ones. The experience of Jamaica also challenges Olson’s assumption that growing legislative activity created the conditions for outright independence, a point that is discussed in more detail in the conclusion. Legislation was not disallowed at a lower rate than elsewhere, and neither did the transatlantic constitution weigh less heavily. Elites in Jamaica were equally determined to enjoy legislative autonomy but did not resort to rebellion to secure it, and were consequently able after 1783 to enjoy this autonomy within the circuit of the transatlantic constitution, at least until the rise of abolitionism in the early nineteenth century undermined this relationship.

[Insert **Table VI** here]

-IV-

The experience of Jamaica also suggests that the decision not to rebel in 1776 did not reflect any lack of legislative experience. As noted above, the volume of legislation had already increased enormously by this period, and, as in other territories, much of it was intended to serve the needs of local interest groups. Hoppit notes that between 1660 and 1800 three quarters of the business that came before the British Parliament had very little to do with ‘official’ government business such as taxation and warfare, and instead reflected the private interests of individual members.⁶² ‘Much legislation was local’, he concludes, ‘and much of it demand led’. Recent work has shown the

⁶² Hoppit, ‘Patterns’, pp. 116, 119, 120. Quotation on p. 126

impact that various lobbying groups – such as the ‘West India interest’ – could have in driving forward legislation at Westminster.⁶³ As the Irish Parliament developed it similarly began to be used by local social and economic interest groups, who set up sophisticated mechanisms to lobby key parties in both Britain and Ireland.⁶⁴ Olson suggested that interest groups in North America began to look to assemblies for the opportunities they offered for ‘the regulation of competing economic, ethnic and religious groups in an increasingly pluralistic society’, a conclusion supported by the growing extent of legislative petitioning in colonies such as Virginia, Pennsylvania and New Jersey.⁶⁵ The same was true in Jamaica, where the bulk of legislation was introduced by local elites and was intended to serve local needs and interests.

In Jamaica the members of the assembly set the legislative agenda. As noted above, most of the bills introduced by the council were rejected, and the British privy council had virtually no legislative role after 1679, though both the Colonial Office and the privy council sometimes tried to suggest or recommend legislation to the assembly.⁶⁶ The imperial parliament in Westminster legislated for Jamaica and other possessions with increasing frequency, and the threat of imperial legislation was sometimes more than enough to prompt bills in the assembly, such as the slave registration act of 1817 and the emancipation act of 1834, which were passed specifically to forestall imperial

⁶³ See for example the essays in Perry Gauci, ed., *Regulating the British economy, 1660-1850* (Farnham, 2011) and Stuart Handley, ‘Local legislative initiatives for economic and social development in Lancashire, 1689-1731’, *Parliamentary History*, 9 (1990) pp. 14-37

⁶⁴ See above n. 19.

⁶⁵ Olson, ‘Colonial legislatures’, pp. 550-6, 562-3; Raymond C. Bailey, *Popular influence upon public policy: petitioning in eighteenth-century Virginia* (Westport, CN, 1979) pp. 55-64, 90-131; Alan Tully, *William Penn's legacy: politics and social structure in provincial Pennsylvania, 1726-1755* (Baltimore, 1977) pp. 99-102; Thomas L. Purvis, *Proprietors, patronage, and paper money: legislative politics in New Jersey, 1703-1776* (New Brunswick, NJ, 1986) pp. 176-89

⁶⁶ Murray, ‘Constitutional development’, pp. 13-26, 50-95, 88-92; Manning, *British colonial government*, pp. 68-73

intervention.⁶⁷ These were exceptions, however, and an attempt to force Jamaica and other islands to reform their prisons in 1838 led to a constitutional crisis that nearly brought down governments in both Britain and Jamaica.⁶⁸ Governors could try to recommend bills to the house, but usually needed allies and patronage to get anything done who would pass them.⁶⁹ ‘So long as the Mother Country abstains from asking support from her colony, ... the Governor is under no necessity of having recourse to party or to any leading interest’, one governor told the Colonial Office in 1799, for instance ‘...but the moment pecuniary assistance is asked ... [the governor] must be a party man to carry the objects asked for’.⁷⁰ Bills therefore mainly arose from petitions laid before the house, by the advice of standing or *ad hoc* committees in the assembly, or by members on behalf of their constituents, on matters ranging from the state of the island’s prisons to the civil rights of Jews and free people of colour.⁷¹

The broader role of such groups in creating legislation can be seen by breaking down the assembly’s legislative output into individual categories. The study of failed legislation in the British parliament by Hoppit and Innes identified ten categories of legislation, which were then adopted by Hayton and Kelly in their work on the Irish parliament and have been adapted here. All have noted that this approach has its limitations, given thematic overlaps that inevitably occur.⁷² For Jamaica this process is complicated even further by the ubiquity of slavery, which was addressed both by unique measures such as the consolidated slave codes issued in 1795, 1816 and 1826

⁶⁷ Hoppit, ‘Economic legislation’; Schuyler, *Parliament*, pp. 117-92; Murray, ‘Constitutional development’, pp. 65-93; Hall, ‘Political developments’, pp. 164-78; Murray, *West Indies*, pp. 93-105, 198-203

⁶⁸ Green, *British slave emancipation*, pp. 93-4, 168-70; Paton, *No bond*, pp. 118-19

⁶⁹ Hall, ‘Political developments’, pp. 57-63; Murray, ‘Constitutional development’, pp. 107-13, 127-46

⁷⁰ TNA, CO137/101, Balcarres to Portland, 9 Feb. 1799, in Hall, ‘Political developments’, p. 53

⁷¹ Murray, ‘Constitutional development’, pp. 65-95; Hall, ‘Political developments’, pp. 99-121, 147; Brathwaite, *Creole society*, pp. 22-3, 40-9; Petley, *Slaveholders in Jamaica*, pp. 61-6, 70-102, 135-50.

⁷² Hoppit, ‘Patterns’, p. 116; Innes, ‘Three kingdoms’, p. 42 n. 12

and also in a piecemeal fashion as subsidiary clauses in other legislation. The decision has been taken here to reallocate bills on public and private finance (2) to government (1) and the economy (7) respectively, and instead to use this category to cover all public bills related to issues of slaves and slavery, but also to allocate personal bills relating to individual grants of rights to the category for private bills (1). For ease of analysis, these categories have also been grouped into four major themes. ‘Personal’ legislation (A) includes all private bills, and ‘Slavery’ (D) all slavery bills, while ‘Public’ (B) includes government (1), law and order (3) and the military (5), and ‘Society’ (C) contains bills relating to religion (4), society (6), the economy (7) and transportation (8). Although no substitute for the detailed studies of individual initiatives noted earlier that have exposed the workings of legislation in the British Isles, a broad survey of these categories nevertheless confirms that the bulk of the acts passed by the assembly reflected the needs of interest groups in the island.

[Insert **Table VII** here]

Despite central importance of slavery to the society and economy of the island, only 369 legislative initiatives and 190 acts specifically dealt with slaves, free persons of colour and maroons, just under seven percent of all bills and legislation. This reflects the effectiveness of the slave codes created by the island in the late seventeenth century, which made it unnecessary for substantial subsequent legislation change. Though mainly uncoordinated and largely *ad hoc* responses to events, albeit shaped by a relatively consistent culture of racial prejudice and economic concern, the slave laws gave planters essentially discretionary authority over their slaves, backed up by a system of courts, prisons and workhouses, allowing new issues to be accommodated

in a relatively informal manner.⁷³ A very useful parallel can be drawn with the penal laws of Ireland, which were created to address a very similar problem of controlling a hostile population.⁷⁴ Sean Connolly has concluded that they were, nevertheless, ‘a series of measures emerging piecemeal ... out of complex negotiations ... [with] successive Irish executives, their masters in London and the parliament ... in Dublin’, which were enforced either informally or through local courts, and required only occasional tweaking. In both islands, large-scale legislation was therefore only necessary once the underlying principles of the codes had been brought into question, such as during the brief period of Catholic relief in Ireland from 1778 to 1793⁷⁵, and the eras of abolition, amelioration and emancipation in Jamaica between 1783 and 1839, when society and its institutions had to be overhauled.⁷⁶

The legislative agenda in Jamaica was instead dominated throughout this period by bills relating to the business of government, administration, taxation, law and order and the military. At least 3,137 bills were introduced, nearly sixty percent of all bills, and 1,902 were passed into law, with the rate of success rising from more than forty percent in the early eighteenth century to more than seventy percent after 1800, even as the total number of bills doubled from fifteen to thirty per year. The bulk of these were the annual votes of supply, which by the late eighteenth century included bills for the land, poll, deficiency, stamp, rum and customs taxes, and the bills regulating

⁷³ For the creation of the slaves laws, see Elsa V. Goveia, *Slave society in the British Leeward Islands at the end of the eighteenth century* (New Haven, 1965) pp. 152-7; Richard S. Dunn, *Sugar and slaves: the rise of the planter class in the English West Indies, 1624-1713* (Chapel Hill, 1972) pp. 238-56. For their operation, see Goveia, *Slave society*, pp. 157-89, 312-26; Brathwaite, *Creole society*, pp. 174-92; Burnard, *Mastery, tyranny and desire*, pp. 139-74, 251-5; Petley, *Slaveholders in Jamaica*, pp. 55-60

⁷⁴ S. J. Connolly, *Divided kingdom: Ireland, 1630-1800* (Oxford, 2008) pp. 195-207, 250-67; James Kelly, ‘Sustaining a confessional state: the Irish Parliament and Catholicism’, in David Hayton, James Kelly, and John Bergin, eds., *The eighteenth-century composite state: representative institutions in Ireland and Europe, 1689-1800* (London, 2010) pp. 44-77; McGrath, *Ireland and empire*, pp. 13-35

⁷⁵ Connolly, *Divided kingdom*, pp. 416-20, 442-6

⁷⁶ Ragatz, *Fall of the planter class*, pp. 264-79, 384-403, 447-55; Goveia, *Slave society*, pp. 189-202, 326-34; Heuman, *Black and White*, pp. 23-7, 44-51, 83-133; Paton, *No bond*, pp. 22-49, 54-94

the militia and martial law.⁷⁷ They were drawn up and shepherded through the house by a standing committee named the commissioners of public accounts, who handled financial policy in response to the directions of the house and, by the 1750s, ‘in all essence it was the Treasury Board of the island’.⁷⁸ Other issues with extensive runs of legislation included the powers of the assembly and patent officials, the needs of the parish vestries and local government, and the reform of courts and the law, all clearly in response to grievances from colonial planters and merchants. For example, from 1752 to 1820 there were at least thirteen bills aimed at reforming writs of *replevin*, a common law remedy allowing plaintiffs to recover property rather than the monetary value of it. Most seem to have been re-enactments of a statute introduced in 1752 ‘to give a recompense to persons that shall be unduly vexed by them’, but later acts included several refinements, and – illustrating the difficulty of isolating slavery from other topics – three bills in 1801, 1817 and 1819 included measures to reform the writs of *replevin* and *venditioni* when they were used by courts to confiscate slaves.

Well over half of growing legislative output of the assembly between 1664 and 1839 was therefore driven by the fiscal, military and judicial needs of colonial rule, but the sheer volume of legislation was also partly deliberate. Supply bills were voted only for one or two years at a time so that the governor would have no choice but to recall the house each year in order to renew them.⁷⁹ Similar tactics were used in Britain after 1688 and in Ireland after 1695, with considerable success, and in Jamaica the assembly continued to rely on this strategy well into the early nineteenth century, having carefully ensured that the permanent revenue would be too small to allow the

⁷⁷ Spurdle, *Early West Indian government*, pp. 113-14

⁷⁸ *Ibid.* p. 122

⁷⁹ Whitson, *Jamaica*, pp. 51-4, 113-16, 128-54; Metcalf, *Royal government*, pp. 27-9, 118-20, 170-9; Spurdle, *Early West Indian government*, pp. 116-20; Murray, ‘Constitutional development’, pp. 23-33; O’Shaughnessy, *An empire divided*, pp. 111-15; Murray, *West Indies*, pp. 39-42

governor to dispense with them.⁸⁰ Thus, although the duke of Manchester dissolved the assembly in December 1809, he had to climb down and recall it in November 1810 because it had failed to renew the grants necessary to subsidise the imperial garrison.⁸¹ Passing short bills that would expire before they could be seen and disallowed in Britain by the privy council was another tactic that artificially inflated the level of legislation.⁸² The conditions of colonial and imperial politics in Jamaica therefore generated a disproportionate amount of routine public legislation, far in excess of what would otherwise have been sufficient, but this seems to have been tolerated by elites because it secured important political concessions and perhaps also because it then created opportunities to pass other, unrelated, legislation.

Thus, at least 1,574 legislative initiatives or nearly thirty percent dealt with matters that did not relate to the core business of taxing and policing the island, but concerned social issues, religion, the economy and transportation. Just under half passed. Both the amount of legislation and the chances of success increased after 1760, despite the bills competing with a growing volume of public legislation in shorter sessions. Social and economic bills therefore did not dominate sessions the way they did in Britain, where well over fifty percent of bills concerned such matters, but in this respect the British parliament was itself exceptional. A disproportionate number of British bills were enclosure acts, but in Jamaica and Ireland these were unnecessary, since conquest and land reallocation had removed the legal obstacles and customary

⁸⁰ Hoppit, ‘Patterns’, pp. 113-14; Clayton Roberts, ‘The constitutional significance of the financial settlement of 1690’, *Historical Journal*, 20 (1977) pp. 59-76; Ivar McGrath, ‘Central aspects of the eighteenth-century constitutional framework in Ireland: the Government supply bill and biennial parliamentary sessions, 1715-82’, *Eighteenth-Century Ireland / Iris an dá chultúr*, 16 (2001) pp. 9-34

⁸¹ Hall, ‘Political developments’, pp. 67-76; Murray, ‘Constitutional development’, pp. 23-33, 113-17; Murray, *West Indies*, pp. 42-6; Turner, *Slaves and missionaries*, pp. 14-18

⁸² Manning, *British colonial government*, pp. 72-3; Swinfen, *Imperial control*, p. 17; Murray, ‘Constitutional development’, p. 15; Russell, *Review*, pp. 208-12

rights that enclosure acts were intended to address.⁸³ Economic bills predominated in Jamaica, with 673 bills compared to 375 on society and 405 relating to transport, and only 106 relating to religion. All enjoyed similar rates of overall success, with the social bills slightly more likely to pass and economic bills a bit less likely, though this varied enormously year by year. Although more work is needed to understand how these bills eventually reached the statute book and their effect on the cultural, social and economic development of the island, the process was probably not a top-down one, since the majority of bills seem to have concerned local issues and were raised, as in Britain and Ireland, by local interest groups for specific purposes.⁸⁴

For instance, although for various reasons the abundant turnpike legislation of Britain was absent, the state of the roads was a constant concern to local planters, who pushed their members to obtain both general legislation setting highway policy and local acts creating bridges, turnpikes and toll-gates.⁸⁵ The bills were clearly based on English practice but adapted to local circumstances. For instance, a toll-gate was established on the main road between the major towns of Kingston and Spanish Town in 1677 to maintain the ferry there, and William Peete was granted the right in 1736 to collect the tolls, but was also obliged to keep it in good repair, ‘and examine all negroes and other slaves travelling that way without letters or tickets, and detain and send them to their owners’.⁸⁶ Such measures helped to control the movement of slaves.⁸⁷ Other

⁸³ Hoppit, ‘Patterns’, pp. 121-3; Julian Hoppit, ‘The landed interest and the national interest, 1660-1800’, in Julian Hoppit, ed., *Parliaments, nations and identities in Britain and Ireland, 1660-1850* (Manchester, 2003) pp. 88-95

⁸⁴ Hoppit, ‘Patterns’, pp. 119, 121; Innes, ‘Social policy’, pp. 21-47; Innes, ‘Local acts’, pp. 90-101; Magennis, ‘Regulatory impulse’, pp. 54-72

⁸⁵ See, for example, Long, *Jamaica*, vol. i, 464-80.

⁸⁶ *Acts of Assembly, passed in the island of Jamaica, from the year 1681 to the year 1737 inclusive*. (London, 1739) pp. 308-10; Frank Cundall, *Historic Jamaica* (London, 1915) pp. 138-44; Spurdle, *Early West Indian government*, pp. 140-3

⁸⁷ Goveia, *Slave society*, pp. 155-67; B.W. Higman, *Slave population and economy in Jamaica, 1807-1834* (Cambridge, 1976) pp. 179-81

bills helped to regulate economic matters such as drainage, livestock, retailing, credit and currency, and weights and measures, or dealt with rivers, harbours and wharfs, or patterns of trade. About sixty bills were introduced to patent improved techniques and machinery for grinding cane, boiling and distilling sugar, for pulping and drying coffee, and for a variety of other inventions, including one granted to Ezra Waldo Weld in 1800 ‘for an exclusive privilege in the making of a newly-invented machine for the cleansing of clothes, called the New Laver’.⁸⁸ Bills on social issues included legislation concerning labour relations, charitable donations, poor relief, immigration, schools, hospitals and prisons, as well as bills for the improvement of towns such as Kingston that mirrored similar legislation in the British Isles.⁸⁹

Finally, at least 547 or ten percent of bills across this period related to private matters, compared to fourteen percent in the Irish parliament and nearly thirty percent in the British parliament up to 1800.⁹⁰ Like their counterparts in the British Isles, elites in Jamaica often complained of the inefficiency and partiality of the courts on both sides of the Atlantic, and seem to have found legislation a useful alternative for complex estate settlements, a problem exacerbated in Jamaica by a notoriously high death rate that left many estates almost hopelessly entangled and in the hands of minors.⁹¹

There were far fewer elite families in Jamaica though – perhaps only a few hundred, in a population of 20,000 or 30,000 whites – so the volume of legislation was much

⁸⁸ Brathwaite, *Creole society*, pp. 80-4

⁸⁹ See, for example, James Robertson, *Gone is the ancient glory: Spanish Town, Jamaica, 1534-2000* (Kingston; Miami, 2005) pp. 81-7, 95-105, 114-21, 143-8; Brathwaite, *Creole society*, pp. 268-77, 282-90, 293-5; Paton, *No bond*, pp. 20-3, 91-3

⁹⁰ Hoppit, ‘Patterns’, pp. 123-5; James Kelly, ‘Private bill legislation of the Irish Parliament, 1692-1800’, *Parliamentary History*, 33 (2014) p. 74

⁹¹ Trevor G. Burnard, ‘“The countrie continues sicklie”: white mortality in Jamaica, 1655-1780’, *Social History of Medicine*, 12 (1999) pp. 45-72. For complaints about the courts, see Manning, *British colonial government*, pp. 151-62; Murray, ‘Constitutional development’, pp. 193-225; Brathwaite, *Creole society*, pp. 16-20.

lower, and only 214 estate bills came before the assembly.⁹² About two thirds were successful, as in Ireland, compared to three quarters in Britain.⁹³ There were also 24 bills on miscellaneous topics, such as the dissolution of the marriage between the Kingston merchant Edward Manning and his wife Elizabeth in 1739 after a public scandal.⁹⁴ The remaining two thirds of the personal bills, just over three hundred, concerned the manumission of individual slaves or the grant of limited civil privileges to free persons of colour.⁹⁵ ‘Contrary to the assumption of many historians these acts were neither sweeping nor generous’, note Edith and Samuel Hurwitz, granting only the power to testify in criminal or (sometimes) criminal cases, but they nevertheless constituted a very substantial proportion of all the private bill legislation going through the assembly. Local circumstances therefore affected the specific make-up of public and private bills compared to Britain and Ireland, as in North America, but all these regions ultimately used law and legislation in the broadly same way.

-V-

Between its first session in 1663 and the end of slavery and enslaved labour in 1839, at least 5,657 legislative initiatives came before the house of assembly of Jamaica, of which about 3,325 passed. Although many were subsequently repealed or disallowed, or were only of temporary duration, the assembly nevertheless passed a huge corpus of legislation that aimed to reshape the politics, society and economy of the island in

⁹² Brathwaite, *Creole society*, pp. 105-50

⁹³ Kelly, ‘Private bill legislation’, pp. 84-6, 88-90, 95; Hoppit, ‘Patterns’, pp. 119, 120, 123-5

⁹⁴ Trevor G. Burnard, ‘“A matron in rank, a prostitute in manners...”: the Manning divorce of 1741 and class, race, gender and the law in eighteenth century Jamaica’, in Verene Shepherd, ed., *Working out slavery, pricing freedom: perspectives from the Caribbean, Africa and the African diaspora* (London, 2002) pp. 133-52

⁹⁵ Heuman, *Black and White*, pp. 4-6, 45-50; Brathwaite, *Creole society*, pp. 168-72; Samuel Hurwitz and Edith Hurwitz, ‘A token of freedom: private bill legislation for free negroes in eighteenth-century Jamaica’, *William and Mary Quarterly*, 24 (1967) pp. 423-31

ways that now need to be fully explored. The creation of the slave code in this period was therefore only one aspect – and, in legislative terms, a wholly unexceptional one – of its wider legislative output of the assembly. The pattern of legislation shows that most bills were mainly, as Long claimed, ‘incidental [*i.e.* relating] to the colony and calculated for the relief and benefit of its inhabitants, who ... [are] the best judges of the evils they feel and their proper remedies’.⁹⁶ As in Britain and Ireland in the same period, and North America, the island therefore experienced its own particular version of a revolution in legislative practice and power by the late eighteenth century, with vast volumes of law being produced as these societies worked to respond to political, social and economic change. The colonial legislature was therefore an important part of the system of imperial rule, in the West Indies as much as in North America, and clearly served a useful purpose for the local elites who dominated it. Over ninety percent of bills failed in the assembly or council, both staffed almost wholly by local elites, suggesting that imperial authority was usually exercised with a light touch and that the pressure for legislation mainly came from elites themselves. It also opened up the political system and allowed policy to be debated publicly, and, as in Britain, ‘focussed power and responsibilities in remarkable and relatively public ways’.⁹⁷

The confrontations that dominate the historiography of imperial rule in Jamaica and the West Indies were therefore not representative of the legislative process. They were nevertheless important, both because the most important bills tended to be the most controversial ones, and because these clashes delineated the political space in which the assembly could exercise its powers to make law. Olson argued that in North America the assemblies gained power ‘not only through their successful

⁹⁶ Long, *History* vol. i, 21

⁹⁷ Hoppit, ‘Patterns’, pp. 125-31. Quotation on p. 125.

encounters with the colonial governors but also through their developing ability to handle the legislative needs of their constituents’, but this survey has shown that the two elements were in fact interrelated, since the process of addressing these needs both reflected and extended the power of the assembly in Jamaica.⁹⁸ They were also common to both the West Indies and North America, lending support to arguments by Greene and others that the American Revolution therefore amounted to an exogenous and largely contingent set of factors specific to the mainland colonies, rather than a separate and divergent process of political and institutional development. Jamaican elites toyed with the idea of independence but went no further.⁹⁹ The transatlantic constitution buckled but it did not break, as it would do again in 1838, and provided a framework that continued to support the expansion of Jamaica’s legislative power beyond 1783 in ways that would benefit from more sustained examination that can be offered here.¹⁰⁰ The experience of Jamaica in the long eighteenth century therefore demonstrates that Britain, Ireland, North America and the West Indies all enjoyed multiple overlapping paths of political development in the eighteenth century that nevertheless shared a common focus, and amounted in general to a transatlantic legislative revolution.

⁹⁸ Olson, ‘Colonial legislatures’, p. 566

⁹⁹ For the reasons why Jamaica and the West Indies did not revolt in 1776, see O’Shaughnessy, *An empire divided*, esp. pp. 81-134; Metcalf, *Jamaica*, pp. 181-91.

¹⁰⁰ Greene, *Peripheries* pp. 207-10. For an example of such an examination, which nevertheless does deal in depth with legislation, see P.J. Marshall, *Remaking the British Atlantic: the United States and the British Empire after American Independence* (Oxford, 2012), pp. 118-35, 158-75, 281-92

‘Patterns of Jamaican legislation’: Appendix

Aaron Graham

(I) Numbers of bills and acts in Britain, Ireland and Jamaica, 1660-1839

	England/Britain			Ireland ¹⁰¹			Jamaica		
	Bills	Acts	%	Bills	Acts	%	Bills ¹⁰²	Acts	%
1660-1714	5,434	2,316	42.6	-	-	-	716	393	54.9
1714-1760	4,831	3,549	73.5	929	514	55.3	1,267	531	41.9
1760-1800	10,976	8,351	76.1	2,402	1,545	64.3	1,765	1,119	63.4
<i>1760-1782</i>				<i>885</i>	<i>488</i>	<i>55.1</i>			
<i>1782-1800</i>				<i>1,517</i>	<i>1,057</i>	<i>69.7</i>			
1660-1800	21,151	14,216	66.8	3,331	2,059	61.8	3,748	2,043	54.5
1800-1839				-	-	-	1,909	1,282	67.2
1660-1839							5,657	3,325	58.8

(II) Numbers of acts in selected colonial legislatures, 1730-65

Colony ¹⁰³	1730-35	Rank	1740-45	Rank	1760-65	Rank
Massachusetts	17.1	3	23.1	3	31.5	2
New York	13.3	7	25.2	2	27.0	3
Pennsylvania	4.3	10	5.0	10	12.1	8
Virginia	31.3	1	31.6	1	37.8	1
South Carolina	13.8	6	16.0	6	12.0	9
Average	14.98	-	16.97	-	20.8	-
Jamaica	14.0	5	12.8	7	19.0	6

(III) Numbers of bills and acts per day of sessions in Britain, Ireland and Jamaica, 1660-1839

	England/Britain			Ireland			Jamaica		
	Bills	Acts	Days ¹⁰⁴	Bills	Acts	Days ¹⁰⁵	Bills ¹⁰⁶	Acts	Days
1660-1714	1.18	0.50	4,597	-	-	-	0.21	0.11	3,481
1714-1760	1.00	0.73	4,856	0.45	0.25	2,043	0.29	0.12	4,334
1760-1800	2.56	1.95	4,286	0.90	0.58	2,667	0.55	0.35	3,223
<i>1760-1782</i>				<i>0.74</i>	<i>0.41</i>	<i>1,197</i>			
<i>1782-1800</i>				<i>1.03</i>	<i>0.72</i>	<i>1,470</i>			
1660-1800	1.54	1.03	13,742	0.71	0.44	4,710	0.34	0.19	11,038
1800-1839				-	-	-	0.73	0.49	2,604
1660-1839							0.42	0.24	13,642

¹⁰¹ I have been unable to find consistent statistics for bills and acts between 1660 and 1703. For 1703-13, see Kelly ‘Poyning’s Law’

¹⁰² Calculated from 1688. See main text.

¹⁰³ Based on Olson, ‘Colonial legislatures’, p. 563.

¹⁰⁴ Calculated from Hoppit ‘Failed’ p. 4

¹⁰⁵ Hayton, ‘Long apprenticeship’, p. 9

¹⁰⁶ See n. 102.

(IV) Number of bills amended in Council in Jamaica, as percentage of total bills, and final outcomes, 1660-1839

	Bills	Amended	% of bills	Passed	Failed	% passed
1660-1714	716	89	12.4	50	39	43.8
1714-1760	1,267	138	10.9	81	59	42.1
1760-1800	1,765	125	7.1	78	47	37.6
1800-1839	1,909	189	9.9	137	52	27.5
1660-1839	5,657	541	9.6	346	197	36.3

(V) Privy Council, confirmations and disallowances

	Acts	Confirmed	% of acts	Disallowed	% of acts
1660-1714	393	86	21.9	18	4.6
1714-1760	531	78	14.7	30	5.6
1760-1800	1,119	43	3.8	11	1.0
1800-1839	1,282	34	2.7	39	3.0
1660-1839	3,325	241	7.2	98	2.9

(VI) Final stage of failed and disallowed bills, by number and percentage, 1660-1893

	Failures¹⁰⁷	Assembly	%	Council	%	Governor	%	PC	%
1660-1714	338	239	70.1	73	21.4	8	2.3	18	5.3
1714-1760	767	626	81.7	94	12.3	17	2.2	30	3.9
1760-1800	657	502	76.4	143	21.8	1	0.2	11	1.7
1800-1839	690	479	71.9	169	25.4	3	0.5	39	5.9
1660-1839	2,452	1,846	78.4	479	19.7	29	1.2	98	4.0

¹⁰⁷ See above, n. 102, concerning 1664 to 1688. This total has been adjusted to include the 98 acts in this period that passed successfully but were then disallowed by the privy council.

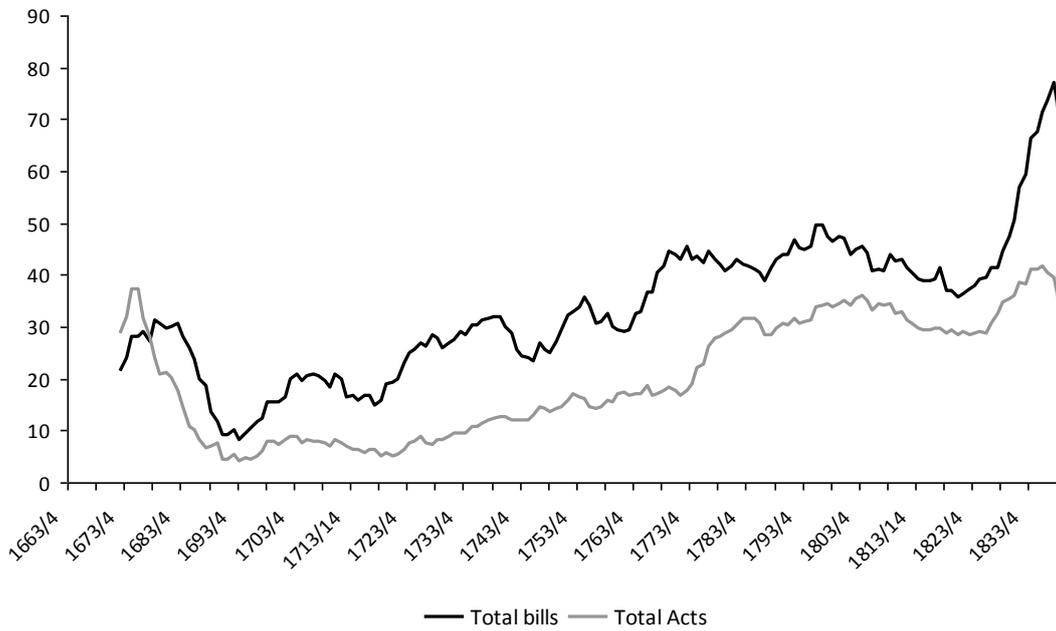
(VII) Legislative initiatives by category, with percentages of failures, 1660-1839

	0		1		2		3		4		5		6		7		8		9	
	Personal		Government		Slavery		Law		Religion		Military		Society		Economic		Transport		Misc	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1660-1714	67	44.8	209	52.6	21	47.6	119	42.0	28	25.0	55	40.0	39	46.2	100	51.0	57	40.4	2	50.0
1714-1760	93	38.7	454	52.6	97	57.7	116	62.9	14	57.1	141	57.4	74	64.9	191	70.2	84	70.2	0	-
1760-1800	192	14.1	484	30.0	124	44.4	223	55.6	17	52.9	214	32.2	135	37.8	214	43.5	159	47.2	0	-
1800-1839	195	21.5	646	22.8	127	45.7	288	51.0	47	53.2	188	14.9	127	42.5	168	42.3	105	36.2	0	-
1663-1839	547	24.7	1,793	35.8	369	48.5	746	52.8	106	46.2	598	33.4	375	45.6	673	51.9	405	48.1	2	50.0
Britain	-	23.2	-	54.5	-	n/a	-	53.9	-	47.1	-	27.5	-	48.7	-	34.1	-	25.8	-	54.3

(VIII) Legislative initiatives by theme, as percentage of total legislation (%¹) and percentage of failures (%²), 1660-1839

	A (Personal)			B (Public)			C (Society)			D (Slavery)		
	No.	% ¹	% ²	No.	% ¹	% ²	No.	% ¹	% ²	No.	% ¹	% ²
1660-1714	67	9.4	44.8	383	53.9	47.5	239	33.7	41.4	21	3.0	47.6
1714-1760	93	7.4	38.7	711	56.3	55.3	363	28.7	68.6	97	7.7	57.7
1760-1800	192	10.9	14.1	921	52.3	36.7	525	29.8	43.4	124	7.0	44.4
1800-1839	195	10.3	21.5	1,122	59.3	28.7	447	23.6	42.1	127	6.7	45.7
1663-1839	547	9.7	24.7	3,317	55.7	39.4	1,574	28.0	48.5	369	6.6	48.5

(A) Total bills and total acts in Jamaica, 1664-1839 (10 year moving average)



(B) Success rates of total acts and total bills per day of sessions in Jamaica, 1664-1839 (10 year moving average)

