



HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION.
BALANCE BETWEEN LAWS AND VALUES





HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION. BALANCE BETWEEN LAWS AND VALUES

International conference October 12-13, 2016
Niguliste Museum Tallinn, Estonia
Conference proceedings

Conference team: ICOMOS Estonia NC; ICLAFI; Estonian Academy of Arts;
Tallinn Urban Planning Department Division of Heritage Protection; Estonian National Heritage Board

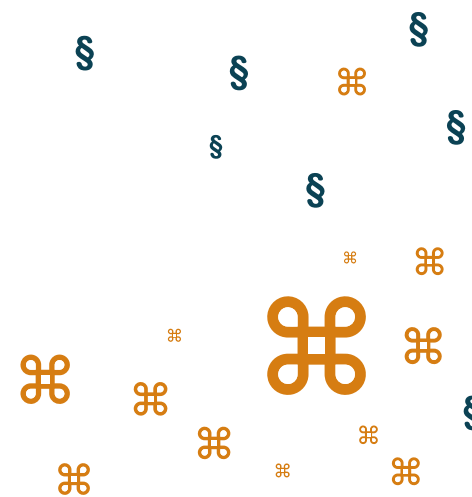
Publication: ICOMOS Estonia NC; ICLAFI; Estonian Academy of Arts
Editors: Riin Alatalu, Anneli Randla, Laura Ingerpuu, Diana Haapsal
Design and layout: Elle Lepik
Photos: authors, Tõnu Noorits
Tallinn 2017

ISBN 978-9949-88-197-0 (pdf)

The conference and meetings of ICLAFI and Nordic-Baltic ICOMOS National Committees
were supported by:
Estonian Academy of Arts, Tallinn Urban Planning Department Division of Heritage Protection, National Heritage Board,
Ministry of Culture, Nordic Council of Ministers

Published with the financial support from Estonian Cultural Foundation

© ICOMOS ESTONIA NC, 2017
© ICLAFI, 2017
© Authors of the articles, 2017



THE EVOLUTION OF A LEGISLATIVE FRAMEWORK FOR PROTECTION OF CULTURAL HERITAGE IN IRELAND

MONA O'ROURKE

This paper traces the evolution of measures for the protection of monuments in Ireland from the 19th century through to the present system, which is in place since 1930. It looks at the role played by a range of voluntary organizations and individuals in campaigning for recording of antiquities and for the introduction of statutory protection for sites of importance identified. The review contextualizes the disparate and somewhat anachronistic measures now in place.

The effectiveness of any country's approach to the conservation of cultural heritage is assisted or constrained by the national context of public commitment defined by the value which society places on its built heritage and the priority, which it accords to its conservation. In Ireland there is no single piece of legislation, which deals with the protection of the cultural heritage. There are two main strands of legislation in place, first the National Monuments Acts, 1930-2004¹, which constitutes a broad piece of legislation dealing with the protection of historic monuments and secondly, the Planning and Development Acts, 2000 - 2015 where measures affecting historic buildings² form an integral part of a broader framework for local authority planning. Both of these strands are tempered by the provisions of our written Constitution (Bunreacht na hEireann), 1937.³ The primary means through which protection of the architectural heritage is achieved is through the operation of local government planning legislation.⁴

In presenting this paper about the history of protection of cultural heritage in Ireland, I would like to acknowledge my deep indebtedness to the unpublished research of my dear friend Rachel MacRory (R.I.P.), a former President of ICOMOS Ireland.⁵ The concern for historic monuments in the early part of the 19th Century was a European wide phenomenon, arising out of the Romantic Movement and the increased sense of nationalism in individual countries at this time. When we view laws in the context of the time of their passing as an inheritance of the history of the time in which the provisions were enacted, the anachronistic nature of the current monuments legislation is better understood.

In Ireland it was through the Ordnance Survey⁶ that the first official recording of monuments was made. This work had the effect of initiating much discussion about the care of monuments. The Ordnance Survey had been extended to Ireland for civil purposes in 1824. The House of Commons recommended that a Survey of Ireland be

executed under the direction of Colonel Thomas Colby, director of the English Survey at that time. This was to facilitate a uniform valuation for local taxation and was a prelude to a nationwide valuation of land and buildings (the Griffith's Valuation).

The Ordnance Survey was directed to map the whole country at a scale of 6": 1 mile. This was so that the boundaries of the 60,000 or so townlands could be accurately and uniformly mapped.⁷ The scale selected dictated the level of detail. Each officer was instructed to enter in a journal all the facts he could obtain about communications, manufactures, geology and antiquities⁸. It was intended from the outset that as much archaeological detail as possible should be included on the maps, but in reality routine survey work could not encompass comprehensive field archaeology.⁹

Colby appointed Lieutenant Thomas Aiskew Larcom (who had worked with him on the English Survey) to manage the project locally from the O.S. H.Q. at Mountjoy House, Phoenix Park, Dublin.¹⁰

The task was to provide place-names and to provide historical data for the Memoir. Field officers were to collect in name-books the various versions of the place name by consulting the best available authorities, landowners, clergy, schoolmasters, and

Mona O'Rourke, an executive member of ICOMOS Ireland, recently completed a Graduate Diploma in World Heritage Management. She has a Masters Degree in Urban and Building Conservation and is a Barrister. She has worked as a conservation and heritage consultant for over 20 years.



She is a member of the Irish World Heritage Reflective Working Group. She sits on the Steering Group for the Brú na Bóinne World Heritage Site. She sat on the Expert Advisory Group established by the Irish Government, concerning Part IV of the Local Government (Planning and Development) Act 2000. She lectures on the Urban and Building Conservation Masters Programme in the School of Architecture, Planning and Environmental Policy, University College Dublin, and on the Post Graduate Diploma in Conservation in the School of Engineering, Trinity College Dublin.

agents. Larcom had the final decision on what to engrave on the map and he opted for the version, which came nearest to the Irish form of the name. He employed an Irish scholar John O'Donovan as part of the team. To get as near to the original name as possible O'Donovan had to listen to the names pronounced by Irish speaking residents and to study them in the context of local topography and antiquities. The authority listed in the name books had to be supplemented by spellings collected from historical documents. A new division, the Topographical Department, was established to execute the research of achieving a suitable orthography for place names, which were to be printed on the final map. The superintendent of this department was the painter and archaeologist George Petrie and he gathered a team around.¹¹ The division was based in Petrie's house in Great Charles Street, Dublin.

Larcom got ready to publish what became known as the Ordnance Memoir in a series of volumes in conjunction with the maps, organized by parish. The Memoir idea was not new but the comprehensive nature of the Memoir envisaged by Larcom certainly was. The compilation of these 'Memoirs' commenced in 1830. During the 1830s vast amounts of material pertaining to history and monuments were collected. The field officers of the Ordnance Survey, gathered a wealth of historical and socio-economic information for many parishes in their notebooks.¹² Letters and drawings sent back to Dublin from O'Donovan, Wakeman, Du Noyer etc. provide a good record of the work done. The scale of the work was ambitious and the results not always accurate.¹³ The first volume was published in 1837 and sold over 1,250 copies in six years, which was at the time a success.¹⁴

The Memoir was not well received within government. The Chancellor of the Exchequer, Thomas Spring Rice who had approved the project changed his mind as he did not envisage a county and city history of all Ireland.¹⁵ Colby opposed the employment of a non-engineer namely Petrie as head of a topographical department. It would appear that Spring Rice feared the potential of the research to "open all debatable in Irish party division".¹⁶ There was much deliberation and ultimately Larcom was told by Colby to revert to the original object under the Valuation Acts to arrange existing material but not to collect any more. After this Petrie and the topographical team continued to work on place name research, which allowed some historical and archaeological material to be collected.

In 1842 an anonymous letter signed by 'a protestant conservative' went to government complaining that the Catholic staff in the topographical department were opponents of government who gave work to political sympathizers.¹⁷ There was political unease with the surveys work and within a year the department was closed.

The public debate once the project ceased was kindled. Lord Adare enlisted the support of the Royal Irish Academy (R.I.A.), which led to furious debate over reviving the Memoir. From this debate came the first serious discussion about the need for official

means of preserving historic monuments. A deputation from the R.I.A. to the Lord lieutenant of Ireland calling for the restoration of the Topographical Department held a meeting with some members of the Irish aristocracy at the house of the Marquis of Downshire in 1843. From this a resolution seeking the reinstatement of the work of the Memoir was presented to Sir Robert Peel, Prime Minister. Peel yielded to pressure and agreed to appoint a Commission to consider the history of the Memoir and to make proposals for its future.¹⁸ The Report was published in 1843.¹⁹

From the original Memoir 22 pages out of 320 were devoted to history and antiquities. Yet this stimulated the most discussion. Opinion was unanimous as to the invaluable contribution made by the work of the Topographical Department and the Ordnance Memoir to the recording and preservation of Ireland's National Monuments.²⁰ The national press gave a great display of interest.²¹ There was also great awareness shown in the public debate about the activities on the continent concerning the preservation of monuments.²²

One other question considered was whether the work could be carried out in the absence of the Ordnance Memoir and it was not considered to be possible even by the R.I.A., which had at that stage published 19 volumes of Transactions but the only part relating to antiquities which could satisfy a reasonable mind was the Memoir on the antiquities of Tara by Petrie, a specimen of what had been conducted in the survey. The debate did not result in the re-establishment of the Topographical Department and the Memoir was put to rest in July 1844 by Peel's government. So although the capabilities of voluntary societies were deemed inadequate by the commission it still fell to them to continue the work.

Volunteer activity in creation of a monuments record

Many historical and archaeological societies were formed at this time which for the following few decades provided an important vehicle for the study and preservation of historic monuments. The types of societies formed in Ireland were typical of those formed throughout Europe and the type of work publications and debate were not unique to Ireland. The activities of a range of volunteers in relation to the recording of monuments is an important if inconsistent record but it also served to raise awareness of historic monuments and the need to preserve them. Post 1840, these societies undertook a vast amount of recording on a voluntary basis most of which was published in their journals. These organisations contributed to the campaign for monument legislation. Many societies, some of which were not directly architectural or archaeological, contributed to the climate of concern for monuments.

The Royal Irish Academy (R.I.A.) founded in 1785,²³ played a key role in the development in particular, of archaeological studies,²⁴ but also in medieval architectural history.

The R.I.A. promoted recording and publishing as a step to monument preservation they also took part in a campaign for official means of protecting monuments.

The Royal Society of Antiquaries of Ireland (R.S.A.I.) was founded in 1849 and was formulated on the lines of the Archaeological Institute of Great Britain and Ireland (1844). Originally a local Kilkenny Archaeological Society, it grew and took on national status quite quickly. It campaigned for the preservation of architectural remains and recorded and published extensively. It also sought to implement any of the existing limited legislation for the protection of historic monuments and campaigned for new legislation and, in the absence of legislation undertook emergency repair work to historic ruins in immediate danger. The Society set up a system of reporting from members on the state of remains in their neighbourhood and to give notice of wanton injury inflicted so that influence could be exerted for their preservation. Secretaries of local groups prepared reports and arranged outings to sites of interest.²⁵

In 1850 the Kilkenny Archaeological Society had published "Hints and Queries" to advise on the investigation and recording of archaeological or architectural remains.²⁶ This step replicated the example set to all archaeological associations by the Royal Society of Northern Antiquaries in Copenhagen.²⁷ Members of the R.S.A.I.'s attention was drawn to the Act for better Protection for Works of Art, 1845 which contained a provision making it a crime to destroy a monument. In relation to preservation works for monuments in danger of collapse the Society intervened only where ownership or responsibility for a monument could not be established. The society also sought to assist with costs of repairs.²⁸ A number of national campaigns were run.²⁹ Work was initiated at Glendalough and Monasterboice but these properties became vested in the Crown (in effect the State) by virtue of the Church Act, 1869 section 25, so it is unclear how much work was completed by the Society. In the Society the driving force behind the works were founding members and cousins, Reverend James Graves and John Prim³⁰, editor of the *Kilkenny Moderator*, and upon their deaths in 1875 and 1886 respectively, all practical works to monuments ceased. This change may also be due to the establishment of the National Monuments Branch of the Board of Works, which from the early 1870s undertook responsibility for the major monuments on which the Society had focused attention. Because the focus of the Society had been on medieval ecclesiastical ruins the transition from unofficial to official means of preservation was easy.

With well over 1,000 members by the 1890s the then secretary, Robert Cochrane claimed that it was "not only the largest Antiquarian Society in Great Britain and Ireland, but also the largest in the world". Contacts abroad were maintained with the Danish Royal Society of Northern Antiquaries and with France through Boucher de Perthes who was elected an honorary member in 1850. The sphere of influence of the Society was great.

So, when the Bill for the disestablishment of the Church of Ireland was proposed in the 1860s, the Royal Irish Academy, with the Royal Society of Antiquaries fought for the inclusion of a clause, which would cater for the protection of ecclesiastical buildings, which were no longer in use. This was secured in the provisions of section 25 of the Irish Church Act, 1869. The R.S.A.I. efforts throughout the century led to the Society's appointment with the R.I.A. as advisors to the Office of Public Works, National Monuments Branch. The Irish Church Act was seen as a bad omen for many in Britain and in Ireland. Concern within the established church led to a drive for reform. A manifestation to show strength in the church was the restoration of cathedrals.

The developments in archaeology, architectural history and subsequently preservationism was in the Irish context a by-product of a variety of forces both nationalist and unionist all of whom "wanted to lay claim to an essential Irishness, but none could agree on what it's identifying marks were - Catholicism, the Gaelic culture, the Protestant tradition" and in effect "the cultural renovation of Ireland became for unionists and nationalists alike, a political project".³¹ Reclaiming history was on both the Catholic and Protestant agenda. Restoration however, was on the other hand almost exclusively the concern of the Protestant church as very few medieval buildings were in Catholic hands.

The study of ecclesiastical history for which architectural remains offered the most tangible expression, was an intrinsic part of this renewed interest in securing a credible legacy to the early Christian and medieval church in Ireland. In the Protestant church this was enhanced by the theological revivalism initiated in Britain with the Oxford Movement, 1833, which in Ireland expressed itself in the drive to convert Roman Catholics, while in the Irish Catholic Church there was an intensification of activity before and as a result of emancipation (1829). The Camden Society founded in Cambridge had a broad readership of their journal, *The Ecclesiologist* in Ireland and they reported regularly on Irish ecclesiastical architecture, encouraging restoration projects and reporting on them. The integration of antiquarian study with the furtherance of religious political ideology was a key factor in Irish developments.³²

The Royal Institute of the Architects of Ireland (R.I.A.I.) was founded in 1839.³³ In 1850 a series of lectures was given relating to Irish antiquities and measured drawings of medieval buildings were displayed. Toward the end of the century the R.I.A.I. became involved with the conservation of historic monuments. Many members were also members of various archaeological societies. In 1915 the R.I.A.I. formed the Ancient and Historic Buildings Committee.³⁴ One act of the Committee was to send a statement regarding the current state of protective legislation highlighting weak points and necessary changes to a wide range of individuals and institutions. It fought to have the cover extended to post-medieval buildings.

The Committee became active in campaigning for the preservation of certain buildings e.g. Weavers Hall (erected in 1745 in Dublin) in the 1920's.³⁵ It became concerned about the Casino, in Marino, Dublin, in the 1920's as a unique 18th century building which was in poor condition and decaying rapidly. Detailed survey drawings were prepared by Alfred E. Jones. Members of the R.S.A.I. and the R.I.A.I. committee came together and met the Church of Ireland Archbishop of Dublin (as the Charlemont Estate, where the Casino was situated, was the property of the Church) with a view to enlisting help to rescue the Casino from total decay. Progress was slow. Harold Leask was appointed Inspector of Ancient and National Monuments with the Board of Works in 1923, and was an active member of the R.I.A.I. Committee. That Committee thought that the Casino should be taken into State care and a letter was sent to the Archbishop requesting that the Casino be placed in Guardianship. It was the drive to take it into State care that was largely responsible for the wording of the 1930 National Monuments Act, which opened the service to post medieval buildings for the first time.

Returning to the 19th century, many periodicals, journals and newspapers carried articles on architectural monuments and could be said to have provided a platform for discussion of conservation ideology.³⁶ *The Dublin Builder* was one of the most important periodicals published in this period as it acted as a forum for discussion and debate, particularly on the subject of restoration. There was much debate on various approaches to restoration. New modes of travel, such as inland navigation, and the development of railways increased visitor numbers to sites. Voluntary organisations influenced public opinion creating an awareness of the need for architectural preservation. In Ireland a major factor was the politicisation of history and culture in which historic buildings represent a tangible element.³⁷ The rehabilitation of historic buildings was a development from the study of medieval buildings growing since the end of the 18th century through antiquarianism and the Gothic Revival. A number of churches were restored totally or partially in the early part of the century.³⁸ The approach taken by the Royal Society of Antiquaries of Ireland in practical conservation works to ecclesiastical ruins followed the principles established by John Ruskin and William Morris through the medium of the English Society for the Preservation of Ancient Buildings (S.P.A.B.) founded in 1877,³⁹ e.g. as demonstrated at the rebuilding of the chancel arch in the nun's Church Clonmacnoise, Co. Offaly, where plain voussoir blocks have been inserted to differentiate from the Romanesque chevron.

It was primarily the Royal Irish Academy and the Royal Society of Antiquaries of Ireland that played an active role in seeking to change the official position on protection of cultural heritage.^{40 and 41} In April, 1849, John Prim told the Royal Society that the law offered them some assistance in the protection of ancient monuments from wanton injury. The Act For the Better Protection of Works of Art and Scientific and Literary Collections, 1845⁴² made a misdemeanour punishable by imprisonment not exceeding six months, and by public or private whipping once, twice, or thrice at the discretion

of the court to unlawfully or maliciously destroy or damage "any picture, statue, monument or painted glass in any church chapel or other place of worship, or any statue or monument exposed to public view". This act (as amended) in 1861⁴³ was used by the R.S.A.I. to prosecute a case of vandalism at Clonmacnoise, at a court in Birr, Co. Offaly. The alleged offender was acquitted due to the circumstantial nature of the evidence. There was, however a considerable amount of publicity arising from this and as a direct result the government issued an order to the constabulary highlighting the provisions and their duties under the Act in relation to such misdemeanours. As a result, the R.S.A.I. published handbills for circulation about this legislation at Clonmacnoise and Glendalough, Co. Wicklow.⁴⁴

Concern arose within the R.S.A.I. when local Burial Boards were appointed to enclose churchyards so as to prevent cattle grazing and damaging the graves. The Society was concerned about building contractor's engaged by the Burial Boards practice of using stones from the churches to build the enclosure walling. It wrote to the Poor Law Commissioners who had overall statutory responsibility for the work. In 1868 the Poor Law Commissioners agreed to include in all future contracts a clause against the use of any portions of the ruins of ancient churches or monuments or sculpted stones found within cemeteries.⁴⁵ The Public Works (Ireland) Act, 1831 established a separate Board of Works for Ireland by virtue of which three Commissioners could be nominated under Royal Warrant.⁴⁶ The Public Works (Ireland) Act, 1839 provided for an extension of the types and varieties of public works that could be carried out in Ireland by the Commissioners. The Board of Works was the official organisation with responsibility for the care of historic monuments. The R.I.A. continued its watchdog role suggesting monuments which should be taken into State care on an ongoing basis. Representatives of the R.I.A. were in time appointed as an unofficial advisory committee, which was made official through the 1930 Monuments Act.

As already referred to, section 25 of the Irish Church Act 1869⁴⁷ provided protection for churches no longer in use in that these were to be vested in the Commissioners of Public Works for Ireland.⁴⁸ This Act disestablished the Church of Ireland from the Crown, and partially dis-endowed the Church of Ireland, and its churches still in use were vested in a new entity, the Representative Church Body. Graveyards other than those privately owned were vested in the local Burial Boards and ultimately with the reorganization of local government in 1898 became the property of the relevant Local Authority. The Church Act vested a number of disused ecclesiastical buildings or groups of buildings in the Commissioners of Public Works in Ireland. These buildings were deemed National Monuments. Funds for their maintenance were provided for from the Commissioners of Church Temporalities, which had been established by the 1833 Church Act referred to earlier, and a part time post of Inspector of Monuments was established.

The Ancient Monuments Protection Act, 1882 permitted owners of scheduled monuments, being “ancient or medieval structure” to appoint the Commissioners of Public Works in Ireland as owners or guardians of those monuments. This applied to monuments other than ecclesiastical monuments which had been provided for by the Church Act. The 1882 act allowed for purchase of ancient monuments with treasury consent. Initially this was applied only to prehistoric monuments. The 1882 act vested a number of scheduled prehistoric monuments in the Commissioners of Public Works with provision to take into their care (with the permission of the owner) any monuments of like character. These structures were deemed ancient monuments. It provided funds for the maintenance of these monuments from annual parliamentary grant. It was made a criminal offence to injure or deface any ancient monuments. The Act established a part time post of Inspector of Ancient Monuments. Building had to be taken into care with the consent of owner but if an owner did not avail of this provision, they were not punishable for injury to their own monument.

The Ancient Monuments Protection (Ireland) Act, 1892 extended the range of monuments provided for in the 1882 Act, allowing the Commissioners to accept any medieval or prehistoric monument or a “monument in respect of which the Commissioners are of the opinion that its preservation is a matter of public interest by reason of the historic, traditional or artistic interest attaching thereto”. This act applied to Ireland only. By the Local Government (Ireland) Act, 1898, local government in Ireland was reorganised and among other authorities, County Councils were brought into being. Now with the consent of owners County Councils were permitted to become guardians of ancient and medieval structures.

The Church Act 1869, together with the Ancient Monument Protection Acts, 1882 & 1892 provided protection for many of the more important early Christian and medieval ecclesiastical ruins as well as for numerous prehistoric monuments. The Board of Works (colloquially referred to as the Office of Public Works or the O.P.W.) had responsibility for the care of monuments scheduled in those Acts.⁴⁹ Funds were provided from central government and from the Church Temporalities Commissioners so at this time the official expenditure on historic monuments was far greater in Ireland than in Britain. The Acts had established two part-time posts of Inspector of National Monuments and Inspector of Ancient Monuments.^{50 and 51} In formulating the schedule for the Ancient Monuments Protection (Ireland) Act 1892, the Commissioners of Public Works sought the opinion of the R.S.A.I., the R.I.A., the Kildare Archaeological Society and the Cork Historic and Archaeological Society.⁵² As a result of the passing of this legislation many voluntary organisations devoted to historical and archaeological matters were given an advisory role in relation to the responsibilities of the Commissioners of Public Works concerning monuments. They have continued their watch-dog role and their campaign for more comprehensive legislation.

The new system had limitations e.g. there was no provision for recording monuments other than those scheduled under the Acts. Royal Commissions for Historic Monuments were formed in England, Scotland and Wales but none was established in Ireland, notwithstanding representations made by the R.S.A.I.. It was suggested that this would be left for the consideration of the Irish administration at some future time, and so it remained with the voluntary organisations and societies to continue this function. Ireland was excluded from the Ancient Monuments Consolidation and Amendment Act, 1913, which provided more control over scheduled monuments, created an official advisory board and instituted a system of Preservation Orders. A further limitation was that the concept of historic monuments appearing in the legislation was narrowly construed. It was only towards the end of the 19th century that attention began to turn to post medieval buildings and that such structures began to be considered worthy of preservation.

The Irish Georgian Society (I.G.S.) was formed in 1908 initially to inspect and note 18th century architectural and decorative work in Dublin and to record by sketches, measured drawings or photographs.⁵³ This approach was similar to the practice of the various archaeological and historical groups in awareness raising and recording in the hope of encouraging preservation. With a focus of recording 18th century structures, this indicated a new interest in later architecture. Post medieval buildings began to feature in Irish archaeological journals but were not the main focus. The first five volumes of the Irish Georgian Society Records (1909 – 1913) mark the first serious recognition in Ireland of Georgian Architecture as having historic significance and being worthy of preservation. After the publication of the five volumes the I.G.S. disbanded, to be revived in 1958 with the purpose of “preserving buildings of architectural merit in Ireland especially those built in the 18th century”.

After the establishment of the Irish Free State in 1922, there was an opportunity for an independent policy for Ireland. Pressure for more comprehensive legislation was increasing on many fronts particularly from the various societies and organizations referred to earlier by reason of the fact that there had been no replacement for the type of work carried out by the Ordnance Memoir and the fact that no Commission for Historic Buildings had been established. The call was for work to be initiated comparable to the work of the English Commission on Ancient and Historic Buildings. There was also debate about ruins and about key sites such as the Rock of Cashel, Co. Tipperary in the context of bringing them back into use. That debate remains open to this day.

The National Monuments Acts 1930-2004⁵⁴ provide the current framework

The 1930 Monuments Act sought to redress the limited provisions of the earlier legislation which was confined to ruinous ecclesiastical buildings or prehistoric remains. The intention was to introduce a coherent piece of legislation to reduce the earlier

fragmentation. The 1930 Act repealed section 25 of the Irish Church Act, 1869, the Ancient Monuments Protection Acts, of 1882 and 1892 and is the basis of our current National Monuments Service. The 1930 Act was wider in scope than earlier provisions. It differentiated between monuments in the architectural sense and archaeological sense and was the first piece of legislation to provide protection for archaeological objects (apart from treasure trove provisions). The distinction between National and Ancient monuments was abolished and the single category of National Monument was applied to these structures. The two part-time posts of Inspector of Monuments were merged into one. The separate funding arrangements were abolished so that all work concerning National Monuments was funded from the annual central government grant administered by the Minister for Finance who was given overall responsibility for the O.P.W.

The term "monument" was given a broad definition to encompass any man-made or natural structure adapted for use by man. A National Monument was separately defined as: "a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic or archaeological interest attaching thereto" and included all monuments already in either ownership or guardianship of the Commissioners of Public Works, as vested under the 1882 Act. It is unclear why the wording does not mention the monuments scheduled under the Church Act 1869, or the later 1892 Act when the monuments continued in State care as before. This ambiguity was clarified in the 1954 Act. The new definition expanded the range of monuments, which could be included. Some months after the passing of the Act the Casino, Marino, Dublin was taken into State Guardianship. Apart from the Casino, few 18th century structures have been considered for designation as national monuments. The 1930 Act established a National Monuments Advisory Council (N.M.A.C.) and Local Monuments Advisory Committees (L.M.A.C.s). The Act placed the monuments service on a much firmer footing. Ecclesiastical buildings in regular use for worship were still excluded and the 1930 Act did not apply to buildings occupied as dwellings. Compulsory Purchase provisions and Preservation Orders could only be made for unoccupied buildings.

The Monuments Act, 1987 introduced the concept of "Historic Monument" which included "any monument associated with the commercial, cultural, economic, industrial, military, religious or social history of the place where it is situated or the country and all monuments predating 1700 A.D", that is to say there are seven factors to be taken into account when assessing whether a monument comes within the definition.

"Historic monuments" is intended to introduce a general concept by which monuments can be described. The term "National Monument" is reserved for a monument the protection of which is a matter of national importance. The concept of "historic monuments" is broader in that the factors to be taken into account for a monument

to be so registered are more numerous. Thus all national monuments are also historic monuments but not all historic monuments will be national monuments. All monuments prior to 1700 A.D. are automatically accorded the status of "Historic Monument". However there is nothing to prevent a post 1700 A.D. site or building from qualifying as an historic monument so long as the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs (AHRRGA) considers that the factors to be taken into account are satisfied.⁵⁵

The 1987 Act introduced the term "archaeological area" which means an area which the Minister for AHRRGA considers to be of archaeological importance. This marked the enshrinement of the concept of an archaeological landscape.

The scope of the legislation has been extended since the Principal Act of 1930 and many issues not originally addressed had to be provided for including provision for underwater archaeology and control of treasure hunting. A review of archaeological policy and practice in Ireland was announced in 2007 and an Expert Advisory Committee was established. The work that was carried out should pave the way for the enactment of consolidated and where appropriate, revised and extended piece of legislation to replace the five existing pieces of legislation which comprise the National Monuments Acts. The review concentrated on providing effective mechanisms for the protection of monuments and effective but streamlined regulation activities such as archaeological excavation which require a licence. The new legislation will introduce some new concepts such as historic landscapes.

The heads of the Bill were approved by the then Government and were sent to Parliamentary Counsel in the Attorney General's office for the formal drafting of the Bill. The next stage should involve the introduction of the Monuments Bill to the Houses of the Oireachtas and subsequently the enactment. Unfortunately, the Bill does not form part of the current Government's Programme as set out when it came into power in March 2016. Implementation of any Act when passed will require preparation of regulations, policy documents and guidelines as appropriate. Sad to report, there has been no announcement about the fate of this proposed Bill, a significant and important piece of cultural heritage protection, let alone the publication of its terms in the course of this Government's lifetime to date.⁵⁶

1 There are five Acts, (construed as one): *The National Monument Act 1930* known as *the Principal Act*; *The National Monuments (Amendment) Act 1954*; *The National Monuments (Amendment) Act 1987*; *The National Monuments (Amendment) Act 1994*; and *The National Monuments (Amendment) Act 2004*.

2 *The Local Government (Planning and Development) Act 1999* was an important milestone in the history of legislative protection for the architectural heritage in Ireland. The Act brought about the most significant change in relation to the protection of the architectural heritage that has been known in this country. The changes were introduced to give effect to *the Granada Convention of 1985*, which was ratified by Ireland in 1997, and it is this ratification which provides the basis for national commitment to the protection of the architectural heritage. Apart from *the 1999 Planning Act*, the other piece of legislation which implemented national obligations under *the Granada Convention*, was the Act which formally established the National Inventory of Architectural Heritage (NIAH) and placed it on a statutory basis. (*Architectural Heritage (National Inventory) & Historic Monuments (Misc. Provisions) Act, 1999*). The Heritage Service of the Department of Arts, Heritage, Rural, Regional and Gaeltacht Affairs (AHRREGA) has responsibility for the compilation of the NIAH. *The Planning and Development Act, 2000* revises and consolidates the law relating to planning and development by repealing and re-enacting with amendments *the Local Government (Planning and Development) Acts 1963-1999* etc. An Expert Advisory Committee Report on the operation of Part IV of the Act is due to be published in December 2016.

3 The provisions of our written Constitution take precedence over acts of the Óireachtas in the event of there being a conflict. Under the Constitution certain fundamental personal rights such as property rights are guaranteed by the State. There is a constant search for balance between the need to protect cultural heritage and the need to have regard for individuals' rights and freedoms. The Constitution also guarantees freedom to religious denominations to manage their own affairs and to own and to administer property. The whole area of protection of churches is complex since it involves the constitutional guarantee, the churches own code of law *the Canon code*, and civil laws. Suffice it to say that *the Monuments legislation* circumvents this complexity by excluding churches, which are in use for ecclesiastical services, from its ambit. There are special provisions in current planning law in relation to development to churches which impose an obligation on planning authorities to respect liturgical requirements and to consult appropriately when making declarations or assessing planning applications which affect the interiors of those structures.

4 The State relies on *Planning Legislation* to protect buildings in use. Many major 18th century public buildings as adopted for state use such as the Custom House (Headquarters of the Department of Arts, Heritage, Rural, Regional and Gaeltacht Affairs (DAHRRG) and Leinster House (Dáil / Parliament Building) are all in control of OPW. They are looked after independently of the monuments service. State owned buildings were for many years as a matter of practice considered to be exempt from planning requirements, however this was successfully challenged in the Irish courts.

5 Rachel MacRory, *The Evolution of Policy for the Conservation of Historic Monuments in Ireland*, M.U.B.C. (University College Dublin, 1994).

6 The Ordnance Survey took its name from the Board of Ordnance which was reconstituted in 1683 under the Master General of the Ordnance. Its purposes were to deal with fortification and national defence, to take charge of commissariat and ordnance supplies to fighting services and to control the regiment of artillery and the corps of engineers. MacRory, *The Evolution of Policy*, 1.

7 J. H. Andrews, *History in the Ordnance Map* (Dublin, 1993), 1.

8 MacRory, *The Evolution of Policy*, 4.

9 J. H. Andrews, *A Paper Landscape, The Ordnance Survey in the 19th Century Ireland* (Oxford, 1975).

10 MacRory, *The Evolution of Policy*, 3.

11 including the Irish Scholar Eugene O'Curry, the poet James Clarence Mangan and the topographical artists William Wakeman and Georges du Noyer.

12 All the original manuscripts are deposited in fifty boxes in the Royal Irish Academy in Dublin. They cover nineteen of Ireland's counties.

13 Much editing was required for the publishing of this material in the 1990s by the Institute of Irish Studies at Queens University and Royal Irish Academy.

14 MacRory, *The Evolution of Policy*, 8.

15 Larcom Papers ex MacRory, *The Evolution of Policy*, 8.

16 Larcom Papers 7553.

17 Larcom Papers ex MacRory, *The Evolution of Policy*, 10.

18 The commission was led by Lord Adare, John Young, and Captain H.J. Boldero. Peel's instruction to the commission included a list of people they should interview. Larcom, Colby, Petrie, J.H. Todd and the Rev Dr. Romley Robinson, practically all of whom were supportive of the Memoir.

19 MacRory, *The Evolution of Policy*, 13. Evidence I.W. Croker in *Ordnance Memoir of Ireland: Report of Commissioners appointed to inquire into the facts relating to the Ordnance Memoir of Ireland*: "There are at present more monuments of early antiquity existing in Ireland than in England. Some districts are particularly rich in them; but from the injuries of the weather, neglect and the increase of cultivation, they are rapidly disappearing. So that if Irish Antiquities are "to escape the shipwreck of time" it would seem they must do so now or never-there are at hand admirable instruments, framed as they have been in the orthographic department of the Survey."

20 MacRory, *The Evolution of Policy*, 12.

21 As did Thomas Davis, founder of *The Nation* newspaper.

22 Within the debate Thomas Wyse M.P. in 1844 pointed out that systematic recording of monuments was already taking place in France, Belgium and Germany. Wyse summarised the function of the French Comité des Artes et Monuments: first, to encourage enquiry into certain practices of archaeology hitherto inadequately cultivated in France and in the course of such inquiry to search and collect such remains of antiquity as may have escaped the devastation of time second, to reduce this material into a shape as to be easily reachable for a range of purposes and third, to preserve such monuments and relics as still existed from further injury and decay by enlisting public knowledge and interest, the public sympathy to ward off that destruction. The *Dublin University Magazine* published the Ordnance of the Grand Duke of Hesse Darmstadt concerning preservation of monuments from 1818.

23 Founded by Lord Charlemont to promote exclusively scholarly matters such as pure science, history, and antiquities and literature.

24 Much of the Academy's focus was on prehistoric archaeology, excavation and the preservation of artefacts. Much energy went into its museum, which was incorporated later into the National Museum of Ireland.

25 In 1853 the London Society of Antiquaries initiated a similar practice.

26 Medieval monuments tended to be the focus and within that primarily ecclesiastical buildings tended to be the principal focus. Wherever possible the preparation of accurate drawings (plans and sections) of unexcavated archaeological sites and standing remains was actively encouraged. Developments in photography meant that visual record could be photographic.

27 The Ossory Archaeological Society adopted a simplified version of this enquiry as an obligatory requirement of membership. MacRory, *The Evolution of Policy*.

28 e.g. by ceasing to post notice of meetings to members and placing a notice in the newspapers instead and using the money to assist the cost of repairs.

29 e.g. Jerpoint Abbey, Co. Kilkenny, became a national campaign in 1853 as did the campaign for repair of the nun's church at Clonmacnoise, Co.Offaly the round tower at Temple Finghin, Co Offaly and the restoration fund for St. Francis' Abbey in Kilkenny and so on.

30 Founders of R.S.A.I. with Charles Vignoles, Dean of Ossory.

31 Seamus Deane, ed., *The Field Day Anthology of Irish Writing*, Volume 2 (Derry, 1991), 4, MacRory, *The Evolution of Policy*, 40.

32 In 1818 a Protestant based Irish Society was founded to teach clergy to preach through the medium of Irish. The College of St Columba's was founded in 1841 to supply the church with clergy who could appeal to their countrymen in their native language. St Columba's also had the additional aim of promoting the study of Irish History and antiquities within the college with people like du Noyer and Wakeman teaching drawing and familiar names like J.H. Todd and the Earl of Dunraven as founding members.

The Irish Ecclesiastical Society was founded in 1848 by J.J. McCarthy, Charles Gavin Duffy and Charles Russell. In St. Patrick's Maynooth, the St. Patrick's Society for the study of ecclesiology was founded in 1855 by J.H. Todd and George Petrie.

33 "To facilitate the acquirement of knowledge of the various branches of science connected with civil architecture, and for influencing the right practice of the profession among its members."

34 The committee sought to intervene where buildings in immediate danger came to its attention. It campaigned for comprehensive education in the protection of monuments and fought to have the cover extended to post-medieval buildings. It sought feed responses on buildings of architectural interest that required protection.



35 The building was erected thanks to funds provided by the Huguenot banker David Digges La Touche. It was demolished in 1956. Flora H. Mitchell (Nebraska 1890 – 1973 Dublin), *Weavers' Hall, 1745, The Coombe, Dublin*, c.1950s.

36 Petrie had established *The Dublin Penny Journal* in 1832 with articles on history, biography, poetry, antiquities, natural history and folklore.

37 MacRory, *The Evolution of Policy*, 52.

38 In the early years there was little philosophy about the way in which work should be undertaken. No identifiable philosophies of how to treat a medieval building, which incorporated generations of alterations and change existed. In the 1830s and 1840s in Britain ecclesiologists promoted restoration by which they understood “to revive the original appearance... lost by decay, accident or ill-judged alteration.” The debate only found a forum in Ireland 20 years after Britain in the 1840s, during the work to St. Patrick's Church of Ireland Cathedral in Dublin under the patronage of Benjamin Lee Guinness. Repair of St. Patrick's with the famine as a background meant that funds were not forthcoming until Guinness agreed to fund the works on condition that there be no architect and that he himself would supervise the works. There was criticism from J.J. McCarthy and some praise from others. *The Dublin Builder* provided the forum for debate. There was debate around works to many buildings including St. Mary's Church of Ireland Cathedral, Limerick, St. Canice's Church of Ireland Cathedral, Kilkenny and Christ Church Cathedral, Dublin.

39 “That every stone be set back in its actual place after any operation necessary for the safety of the building. That if any stones are added instead of being made to resemble the old ones they should be left blank of sculpture and have the date of insertion engraved on it.”

40 In the early years much cry for protection was directed at what we would now categorise as archaeological finds or movable works of art. Both the R.I.A. and the R.S.A.I. formed a museum to act as repositories for such artefacts.

41 As part of their concern for the vulnerability of movable works of art both of the societies campaigned to have the provision of Treasure Trove, whereby the Crown could claim right to objects of art found either through excavation or by accident, extended to Ireland. If the Crown decided to make good its claim the Trove was usually donated to the museum and the finder given a sum of money. In 1861 the grant of Treasure Trove was given to the Royal Irish Academy, so it protected those who sold antiquities to the Academy against claims from the Crown.

42 8th & 9th Vict. Cap. 44 s. 1.

43 24th & 25th Vict. Cap. 97 s. 39.

44 MacRory, *The Evolution of Policy*, 86.

45 MacRory, *The Evolution of Policy*, 86.

46 Section 5.

47 An Act to end the Establishment of the Church of Ireland, and to make provision in respect of the Temporalities thereof, and in respect of the Royal Colleges of Maynooth, 26th July, 1869, 32 & 33 Vict. Cap. 42.

48 There are 195 entries in the schedule.

49 Baldwin Brown, *The Care of Ancient Monuments* (Cambridge, 1905), based on *Report of Commissioners of Public Works in Ireland*, 1904.

50 Technically two separate roles but both held by Thomas N. Deane until his death in 1899 when he was succeeded by Robert Cochrane.

51 The provisions were supplemented by further limited protection established under *the Local Government (Ireland) Act*, 1898 and the various *Land Acts* of the 1890s.

52 *Annual Report of Commissioners of Public Works in Ireland* (Dublin, 1893).

53 In England, *The Survey of London* had been in place and during the 1870s. There was discussion about the formation of legislation as well as the formation of The Society for the Protection of Ancient Buildings (S.P.A.B.) and the work of the Society for the Photographing of Old Relics of London formed in 1875, which recorded 17th Century coaching inns.

54 There are five Acts: *The National Monument Act 1930* known as the *Principal Act*; *The National Monuments (Amendment) Act 1954*; *The National Monuments (Amendment) Act 1987*; *The National Monuments (Amendment) Act 1994*; and *The National Monuments (Amendment) Act 2004*.

55 The Minister for AHRRGA has primary responsibility for implementation of the Acts. The Minister is also the legal owner/guardian of almost 1,000 National Monuments. Responsibilities are exercised by the Minister through the Nation-

al Monuments Division of the Department AHRRGA and also through the Office of Public Works, National Monuments Service. In terms of the protection given to buildings with monument status, the powers and duties of the Minister for AHRRG are set out in the Acts, as are the mechanisms for protection. Monuments, National Monuments, Historic Monuments or Archaeological Areas are not afforded legal protection simply by being such. Certain mechanisms must also come into play before protection comes into effect.

56 The recommendations made suggest that a new Monuments Bill should provide for:

- A broad definition of monuments
- The establishment of a single Register of Monuments
- That the interface between planning and national monuments legislation be improved
- A requirement to report discoveries of certain classes of monuments and protection for such monuments prior to entry into the register
- The continuation in revised form of ownership / guardianship by Minister and local authorities
- The role of the O.P.W. to be set out in primary legislation
- The protection of certain prescribed classes of monuments (under regulation)
- The Minister being able, following a consultation process, to designate Outstanding Historic Landscapes
- The provision of management plans developed in consultation with local communities
- In relation to archaeological and historic objects, a statutory path from discovery to disposition; and consideration for a system of protection for a wider category of moveable objects than archaeological objects / “historic objects”
- The protection of underwater archaeological heritage

The integrated licensing of all works and activities for which the minister has capacity to license.

