

‘REFORM’ TREATISES ON
TUDOR IRELAND

Edited by
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INTRODUCTION

On 10 January 1581 a package of letters arrived in Dublin via the post from the English secretary of state, Francis Walsingham.¹ Amongst these was a letter to the lord deputy of Ireland, Arthur, Lord Grey de Wilton,² and a letter to the multiple Irish office-holder, Edward Waterhouse.³ Although these two pieces of correspondence are now lost, we know something about the content of Walsingham's letters from the responses which Waterhouse and Grey penned to the secretary on 14 and 15 January respectively.⁴ In them Walsingham had apparently related the details of a 'conference had with her Majesty for the conformity of Ireland'.⁵ Pursuant from this Walsingham had dispatched the letters to Grey and Waterhouse seeking their views on 'the setting down of a plat' for the governance of Ireland.⁶ Both Grey and Waterhouse prevaricated in their responses. Each stated that the gravity of the situation in a war-racked Ireland and the burden of their responsibilities precluded them from devising such a 'plat' or treatise at that time. In any event, Grey stated 'no just thing can be set down, neither can any plat take place before force have plained the ground for the foundation'.⁷ However, Waterhouse took some steps in preparation for devising such a 'plat'. For instance, while he could remember in manner every particular' of a 'plat' for Ulster laid down during the time of the first earl of Essex's⁸ attempted plantation of Antrim and Down between 1573 and 1575, he did not have a copy of the paper, and thus requested Walsingham to 'send it by the next'. Along with this he sought 'a note of Mr Piers his body politique, and such collections as Sir Nicholas Malby sent you about a year since for Connacht'. Finally, he noted that he already possessed a copy of 'the last devise for Munster and Mr Ussher's concept for Leinster'.⁹

Thus, either in the final days of 1580 or early in January 1581, a conference had been held in England between Elizabeth I and the secretary of state, Francis Walsingham, possibly with other senior ministers present, at which the necessity of devising some plan for the 'reform' of Ireland was expressed. Following this Walsingham had

¹ Sir Francis Walsingham (c. 1532–1590): *ODNB*.

² Arthur Grey (1536–93), 14th Baron Grey of Wilton: *DIB*.

³ Sir Edward Waterhouse (1535–91): *DIB*.

⁴ Edward Waterhouse to Francis Walsingham, 1581 (TNA, SP 63/80/9); Arthur Grey to Francis Walsingham, 1581 (TNA, SP 63/80/10).

⁵ TNA, SP 63/80/10, f. 31r.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Walter Devereux (1539–76), 1st earl of Essex: *DIB*.

⁹ TNA, SP 63/80/9, f. 29r.

written to Grey and Waterhouse, requesting them to set down their opinions on how to govern Ireland in the form of a 'plat', treatise or policy paper. Neither man responded with such a treatise. But Waterhouse, in preparation for doing so, noted that he possessed both a recently written paper on Munster and a proposal for the governance of Leinster written by the Dublin alderman John Ussher, and he requested Walsingham to send him copies of a tract on Ulster, most likely that written by the 1st earl of Essex in 1574; a treatise by William Piers,¹⁰ until recently the long-standing constable of Carrickfergus; and a scheme for Connacht devised by the lord president of the province, Nicholas Malby,¹¹ most likely in 1579.¹² Though it was not explicitly stated as such by Waterhouse, he no doubt intended to consult these treatises in order to derive ideas from them for his own 'plat' on the 'reform' of Ireland.

This simple exchange encapsulates the role of the 'reform' treatise in Tudor Ireland.¹³ Firstly, they were the medium by which officials and interested parties on the ground in Ireland conveyed their views on Irish policy either to Dublin or, more usually, to the metropolitan government in England. Yet, as Walsingham's solicitation of Grey and Waterhouse attests, they were also one of the principal mediums through which senior ministers expected counsel to be offered. As such they were vital to the conversation or discourse between successive Tudor administrations and their servants in Ireland, and were a key part of the bureaucratic workings of government in sixteenth century Ireland.

But they were more significant still. These treatises were the medium in which the key policies which were developed during the sixteenth century for conquering and assimilating Ireland into the wider Tudor state were expressed and developed. However, that the evolution, or at least the progression, of ideas on how to 'reform' Ireland could be traced through the treatises is not just clear to the historian, but was tangibly felt at the time. Waterhouse, in requesting that copies of previously written treatises be sent to him, was declaring his intention to study the thoughts on Tudor government in Ireland offered by others in their papers and to borrow, and possibly develop, these ideas. As such the significance of the treatises should be clear, in that for both contemporaries such as Waterhouse and modern historians they were, and are, the best means through which to study, and comment upon, the perceived difficulties facing the crown in sixteenth century Ireland, and how best to confront those difficulties.

The treatises, then, were concerned with what might broadly be termed the 'problem' of Ireland. Accordingly the writers of these documents sought to analyse the state

¹⁰ William Piers (d. 1603): *DIB*.

¹¹ Sir Nicholas Malby (c. 1530–1584): *DIB*.

¹² The 'Mr Ussher' referred to was almost certainly John Ussher, who was a notable treatise writer; see *DIB* under John Ussher (1524–1585?) and see below pp ----. The tract on Ulster was quite possibly 'The earl of Essex's opinion for the government and reformation of Ulster', written in 1574 and which is printed below; see pp ----. Piers composed numerous treatises, nearly all of them concerned with Ulster, but it is unclear what 'his body politique' might refer to; see below pp ----. The paper by Malby which Waterhouse refers to may have been, 'An opinion touching the government of Ireland, foreign invasion only excepted, 26 September 1579', 1579 (*Cal. Carew MSS, 1575–1588*, app. 8). However, while the dating corresponds to Waterhouse's description, this treatise is concerned with all of Ireland, rather than Connacht exclusively.

¹³ Heffernan, 'Reform'.

of Ireland and then put forward ideas on how to ‘reform’ the specific ailments they identified. Often there was a broad consensus on what the ailments were. For instance, throughout the century treatise writers uniformly identified ‘coign and livery’, the catch-all term used to describe the system of Gaelic bastard-feudal exactions taken in the Irish lordships, as one of the central problems facing English government in Ireland.¹⁴ Similarly, the degeneracy – or what historians often term the Gaelicisation – of those of English descent in Ireland was a typical complaint in the tracts. Moreover, the ubiquity of certain Gaelic cultural practices, which fundamentally contradicted English political norms, such as the practice of succession by tanistry, posed a fundamental problem for the Tudor state in Ireland, and was repeatedly identified as such in the treatises. Equally, the major impediments to the spread of the protestant faith in Ireland found in the decay of the physical church, the language barrier and the lack of suitably trained ministers were regularly noted by those who examined the issue of religious reform in Ireland. Conversely there was often a lack of consensus amongst treatise writers about the problems faced by the English state in Ireland. For example, several Elizabethan commentators argued that the growth of the standing army in Ireland and the abuses committed by the rank-and-file troops against the civilian population, particularly in the Pale, were actually jeopardising English rule in Ireland. But others contended that what was needed in Ireland was an even greater military build-up, one which could finally reduce Gaelic and Gaelicised Ireland, and create a *tabula rasa* on which a new English polity could be constructed.

This in broad outline was the analysis of the political, social and cultural problems posed by Ireland that was offered in the treatises. Such assessments though were of course only prefatory to proposing solutions, but here too there was substantial disagreement as to the best approach. For instance, while almost all were agreed that ‘coign and livery’ should be dispensed with, there were conflicting views on what should supersede it, with different individuals arguing for different systems of royal taxation to take its place. One of these, ‘composition for cess’ devised by Edmund Tremayne,¹⁵ was to have a significant impact on the government of late sixteenth and early seventeenth century Ireland.¹⁶ Similarly, different proposals were made on how to confront or ‘reform’ Gaelic culture. Observers such as Thomas Cusack¹⁷ argued for a conciliatory approach, specifically by granting English titles to Irish lords and encouraging the cultural and political Anglicisation of their lordships in tandem.¹⁸

¹⁴ Paul Heffernan (ed.), ‘Six tracts on “coign and livery”, c. 1568–78’ in *Anal. Hib.*, no. 45 (2014), pp 1–33 (hereafter cited as Heffernan (ed.), ‘Six tracts on “coign and livery”, c. 1568–78’); C. A. Empey and Katharine Simms, ‘The ordinances of the White Earl and the problem of coign in the later middle ages’ in *RIA Proc.*, lxxv C (1975), pp 161–87.

¹⁵ Edmund Tremayne (c. 1525–1582): *DIB*.

¹⁶ Ciaran Brady, *The chief governors: The rise and fall of reform government in Tudor Ireland, 1536–1588* (Cambridge, 1994), pp 140–46 (hereafter cited as Brady, *Chief governors*); Nicholas Canny, ‘Review: revising the revisionist’, in *IHS*, xxx, no. 118 (Nov., 1996), pp 242–54, esp. pp 247–9.

¹⁷ Thomas Cusack (c. 1505–1571): *DIB*.

¹⁸ Thomas Cusack, ‘Cusackes Devise to your most Noble and Honorable Wisdomes, concernyng soche yeftes, as the Kingis Majestie shall make to Irishmen of the landes and cuntreis which nowe they have, and to give them name of honor, and upon what conditions they should have the same, and ther requestes to have ther landes by yeft, as is aforseide’, 1541 (*SP Henry VIII*, iii, no. 347).

Others, such as Humphrey Gilbert,¹⁹ were less genial, and recommended the elimination of major Gaelic lordships through targeted conquest and colonisation. The perceived lawlessness of the country also elicited different responses. Many, such as William Gerrard and Robert Gardener, advocated the extension of the common law throughout the country as the best means to bring about an end to this instability. But more coercive views were also to the fore, with officials such as Robert Cowley, Edmund Spenser and John Dowdall recommending the use of martial law and unbridled military force to stabilise Ireland.²⁰

The implementation of certain policies could have unintended consequences that in turn required subsequent consideration and the development of corrective measures. For instance, the growth of the military executive led to a significant increase in the levels of corruption amongst officials from the 1550s onwards. This gradually spread through all parts of Irish officialdom and by the 1580s officials such as Robert Legge and Nicholas White²¹ were complaining of rampant abuses within the military, the judiciary, the legal establishment, the exchequer offices, and in the heart of Dublin Castle itself. To counter these developments such reformers recommended the reining in of martial law, an end to the excessive granting of pardon, and the appointment in future of well-qualified, suitable officials.

Often the analysis of Ireland's problems put forward and the nature of the solutions proposed, in the treatises were determined by the background of the author. Treatises were written by a wide range of individuals in Tudor Ireland, from senior officials such as the viceroys, lord chancellors, vice-treasurers and masters of the rolls, to lower ranking bureaucrats in Dublin and the regions. But it was not just civic officials who wrote treatises. Military officers were just as prominent as treatise writers. Additionally, from as early as the 1530s would-be colonists composed papers proposing the plantation of certain areas, while numerous bishops of the Church of Ireland were regular writers of treatises. Merchants and victuallers also sent treatises to Dublin Castle and London. Finally, casual observers without office, such as Andrew Trollope, sent reports to senior ministers offering their observations on the state of Ireland.²²

While broad generalisations are somewhat hazardous, an overall tendency for individuals of a certain background to espouse certain views, or at least to concentrate on specific aspects of government, is evident. Military officers were more concerned with military strategy. Legal officials dealt in greater depth with the normalisation of English government in Ireland through the fostering of common law institutions. Aspiring colonists unsurprisingly were interested in establishing colonies. Often these backgrounds could produce a more militant or sanguine approach. For instance,

¹⁹ Sir Humphrey Gilbert (1537–83): *DIB*.

²⁰ Ciaran Brady, 'The road to the *View*: on the decline of reform thought in Tudor Ireland' in Patricia Coughlan (ed.), *Spenser and Ireland: An interdisciplinary perspective* (Cork, 1989), pp 25–45 (hereafter cited as Brady, 'The road to the *View*'); David Edwards, 'Beyond reform: Martial law & the Tudor reconquest of Ireland' in *History Ireland*, v, no. 2 (summer, 1997), pp 16–21; idem, 'Ideology and experience: Spenser's *View* and martial law in Ireland' in Hiram Morgan (ed.), *Political Ideology in Ireland, 1541–1641* (Dublin, 1999), pp 127–57; Heffernan, 'Reform', i, 251–6.

²¹ Nicholas White (d. 1593): *DIB*.

²² Andrew Trollope to Francis Walsingham, 1581 (TNA, SP 63/85/39); Andrew Trollope to Burghley, 1587 (TNA, SP 63/131/64).

1. ANONYMOUS

‘DEVICES FOR THE ORDERING OF THE KAVANAGHS, THE BYRNES,
TOOLES AND ‘OMAYLES’ [IMAALS] FOR SUCH LANDS AS THEY
SHALL HAVE WITHIN THE COUNTY OF CARLOW AND THE
MARCHES OF THE SAME COUNTY, AND ALSO OF THE MARCHES
OF THE COUNTY OF DUBLIN’, 1537

LPL, MS 602, ff 162–3

A surprisingly small number of treatises were written in the 1530s and 1540s on the policy known to posterity as ‘surrender and regrant’. This is despite the fact that the process whereby Gaelic lords and wayward Anglo-Irish lords surrendered their lands to the king and had those same lands re-granted, often with title, was adopted as a central pillar of Anthony St Leger’s viceregal government in the early 1540s. Yet apart from a ‘Devise’ written by the lord chancellor, Thomas Cusack, in 1541, there is no extant memorandum which explicitly addressed the policy.¹ It is perhaps for this reason that historians of the period in the twentieth century conceived the term ‘surrender and regrant’ to describe a policy which was seldom addressed directly at the time, and had not been named contemporaneously. Consequently the treatise printed here is especially interesting as it, along with Cusack’s treatise, provides the clearest exposition of this policy. The paper was most likely written in 1537 as an internal reference to ‘the good strength the King’s highness hath now of mere Englishmen in those parts [Carlow]’ and other parts of south Leinster is suggestive of using the military force available to the crown near the Pale following the Kildare rebellion. The author of the text is unclear, but a statement that ‘it doth appear by the council’s letters’ would suggest an individual not sitting on the Irish council, but with enough contacts, or occupying a significant enough position, to warrant being privy to the contents of the council’s correspondence. Indeed it is tempting to suggest Cusack as the author.² The scheme outlined was virtually identical to that initiated under St Leger, except in two important respects: no symbolic surrender of lands was required and no titles of nobility were to be granted. Taking the MacMurrough Kavanaghs as a starting point, the author argued that they should have lands appointed to them from the king to hold by knight’s service. In return for

¹ ‘Cusackes Devise’ (*SP Henry VIII*, iii, 133–5, no. 347).

² Montano, *Roots of English colonialism*, p. 319, asserts that St Leger wrote the treatise while serving as a commissioner in Ireland, but no evidence is given to support this attribution.

this recognition by the crown of their right to hold those lands they would initiate a programme of Anglicisation in their domains, for instance by prohibiting 'coign and livery', and dispensing with Irish apparel in favour of English modes of dress. This should first be applied to the MacMurrough Kavanaghs, O'Byrnes and O'Tooles. The success of these experiments, the author argued, would in turn lead those lords of English descent in Munster and Connacht, who were deemed to have degenerated, to submit to the crown's authority. This scheme differed from what was initiated in 1541 only in that no explicit prescription was made of any symbolic surrendering of lands by the lords, and there was no recommendation of the creation of Gaelic peers. Nevertheless, the remainder of the text was a clear blueprint for 'surrender and regrant' and as such is of some consequence for the period. The version presented here is a copy, probably of late sixteenth century provenance. It is found amongst the papers of George Carew and is the only extant copy. Although the entry for the document in the nineteenth century *Calendar of the Carew manuscripts* was extensive, the document is here presented in full to draw attention to one of the few extant treatises dealing of the conciliatory approach that resulted in the programme of 'surrender and regrant'.³ The paper is written in a clear hand.



DEVICES FOR THE ORDERING OF THE KAVANAGHS, THE BYRNES, TOOLES AND
'OMAYLES' [IMAALS]⁴ FOR SUCH LANDS AS THEY SHALL HAVE WITHIN THE COUNTY
OF CARLOW AND THE MARCHES OF THE SAME COUNTY, AND ALSO OF THE
MARCHES OF THE COUNTY OF DUBLIN

First, that he that is now called MacMurrough, and every one of the gentlemen of the Kavanaghs, have a certain lands appointed to them, and to the heirs of their bodies lawfully begotten and every one of them to hold the said lands of the King's highness by knight's service, some by one whole knight's fee, some by half a knight's fee, some by the 4th part and some by the 6th part, after the rate of the lands that every of them shall have appointed to him.

Item, that it shall be lawful to every of the said gentlemen to make freeholders under him at his or their pleasures, giving to the said freeholders such portion of lands of that that shall be appointed to them as they shall list to do.

Item, that none of the said gentlemen shall be obeisant to any other of them, but every one to be obedient to the King's Majesty only, or to such as shall have the rule there under his highness.

Item, every gentleman's freeholder to be servant and obedient to his landlord so that he keep his duty of allegiance to the King's Majesty, or else not, and in that case to the King's highness and his deputy only.

³ *Cal. Carew MSS, 1515–1574*, pp 133–5, no. 113.

⁴ This certainly refers to the O'Tooles of Imaal or Imayle; see Patrick Laurence O'Toole, *History of the Clan O'Toole* (Dublin, 1890), *passim*.

Item, every of the said gentlemen to pay some certain small rent for a knowledge to his Majesty yearly at the feast of All Saints.

Item, forasmuch as the King's highness, like a most gracious and virtuous prince, doth consider how miserably the gentlemen and men of war do handle the poor husbandmen with coign and livery in those parts, and also forasmuch as the said gentlemen's countries are not marching⁵ upon any Irishman, but that the counties of Dublin, Kildare and Kilkenny do lie between them and the said Irishmen, it is thought they should no more need to charge the poor tenants with coign and livery than the county of Dublin, wherefore his highness will in no wise that any of the said gentlemen shall take coign or livery of any of his tenants, nor keep or wage any galloglass⁶ or kern⁷, and that the countries be charged with no such impositions by the commandment of any man, save only by the King's Majesty's deputy, and he not to put any upon them unless it be in time of great need and when he shall put the like upon the county of Dublin and none otherwise.

Item, that all the said gentlemen be bound to answer the King's Majesty's Lieutenant or Deputy in all times of war as the gentlemen of the county of Dublin do.

Item, that forasmuch as there is no part of the said county of Carlow above 45 or 46 miles distant from the city of Dublin where his Majesty's courts be kept it is thought convenient that his highness' writs do run there in like manner as they do in the counties of Dublin, Meath, Uriel⁸ and Kildare, and in likewise to be obeyed.

Item, that all the King's holds and fortresses within the said countries, that is to say the castles of Carlow, Leighlin, Duiske Abbey⁹, Baltinglass, Ferns, Tintern, Arklow, and Wicklow, be occupied and kept by such as his highness, or his Lieutenant, or Deputy and council, shall appoint, and that no man of inheritance dwelling beyond the water of Barrow do keep nor meddle with any of them.

Item, that all the gentlemen and inhabitants of those countries do clearly relinquish and leave all their Irish apparel, save only their harness and habiliments of war in time of need and go arrayed of such sort as those of the county of Dublin do.

Item, that all the Byrnes be ordered of like sort as the Kavanaghs, and that the Tooles, and Imaals, be of like manner ordered.

Item, that forasmuch as the county of Waterford hath no Irishman dwelling within the same¹⁰ and is environed of all sides either with the main sea, or else on the other side with the river that cometh to the city of Ross, which is not passable but only by boat, or on another part with the county of Kilkenny, which is wholly under the Earl

⁵ That is, bordering.

⁶ From the Irish *gallóglagh* meaning foreign fighting men. The term generally referred to Scots mercenary forces that had been settled in Ireland for some time, in contrast to Scots mercenaries brought in from Scotland, generally referred to as Redshanks.

⁷ From the Irish *ceatharnaigh*, meaning trooper, applied to troops of an Irish background, generally followers of the Gaelic and Anglo-Irish lords, but sometimes employed by the crown in the sixteenth century.

⁸ Louth.

⁹ The Cistercian abbey at Garryhill in Carlow.

¹⁰ A reference to Waterford being primarily settled by Old English families such as the Powers, and the lack of a strong Gaelic sept in the region.

of Ormond, and on the other end closed with the King's lordship of Dungarvan¹¹, which the said earl now hath of his highness' gift, etc. It is thought that all the gentlemen and inhabitants of the said county should not only answer the King's writs as other obeisant shires do, but also wear English apparel, and neither take coign, nor livery, upon the King's poor subjects, unless the King's Lieutenant or Deputy and council shall give them licence so to do.

Item, it is thought that the premises being well handled and finally brought to perfection, which never was so like to be done as now, as well for the good inclination it doth appear by the council's letters the gentlemen of the Kavanaghs, Byrnes and Tooles be of, as also for the good strength the King's highness hath now of these Englishmen in those parts, much to his Majesty's costs and charges, ready to chastise offenders that the rest of Englishmen of Munster, as the Earl of Desmond and his kinsmen, the White Knight, the Lord Barry, the Lord Roche, and such others as reckon themselves for Englishmen, would for their own commodity, and for their heirs after them, with good will follow the same, being assured that the King's Majesty's deputy will at all times help with his highness' power in that land to defend them for their duties to be done to his Majesty.

Finally, it is thought that these parties being reduced to this good order the rest of the Burkes which call themselves Englishmen¹² and the King's kinsmen will ensue the said order, and consequently the rest of all Irishmen of that land will follow the same for their own commodity, and nothing shall sooner bring them thereunto than the good handling of the said Kavanaghs, Byrnes, Tooles and Imaals.

¹¹ The lordship of Dungarvan had passed to the crown under the terms of the treaty of Windsor (1175) negotiated between Henry II and Ruaidrí Ua Concobair. Custody of the castle and lordship had generally been granted to high-ranking Anglo-Irish lords such as the Desmond Geraldines and the Butlers of Ormond throughout the late medieval period, but the lordship was still in the possession of the crown in the sixteenth century.

¹² This appears to refer to the Clanricard Burkes, rather than the MacWilliam Burkes.

2. THOMAS WALSH

REPORT ON THE STATE OF IRELAND, 1552

BL, Add. MS 48,015, ff 259–65r

Proposals for the establishment of provincial councils overseen by presidents were made regularly from 1533 through to their establishment in Munster and Connacht in the late 1560s.¹³ Of these, none was as detailed as Thomas Walshe's scheme for a Munster presidency, which he composed in 1552. Walshe's background is unclear. He may have been of Old English descent, though it has alternatively been suggested that he was born in England and served as a baron of the exchequer there during the reign of Henry VIII.¹⁴ Whatever his background he first appears on the official record in Ireland in 1540 as a member, along with St Leger, John Wynne and William Cavendish, of the commission charged with investigating the extent of monastic possessions prior to dissolution.¹⁵ He then disappears from the record, before resurfacing again in 1548, when he obtained a position taking musters under Edward Bellingham.¹⁶ He was later appointed as first clerk of the court of castle chamber. Other than this Walshe's major contribution to Tudor Ireland was in the composition of the paper published here, which he wrote in 1552, the only extant treatise which he is known to have composed. His proposed council was to consist of seven officers: the president, two justices, a captain, a surveyor, a receiver and a clerk of the council. Walshe believed the archbishop of Cashel should serve as president, a proposal which had been given some consideration in 1546.¹⁷ He also gave details on the proposed presidential court, even providing a sketch.¹⁸ A prison and presidential house was to be erected in each town, so that the presidential court could proceed on circuit throughout Cork, Waterford, Limerick, Tipperary and Kilkenny, over which the president would hold jurisdiction, with Kerry excluded. Six

¹³ The king's proposal was made in a treatise most likely written by Walter Cowley in 1533; see 'Report to Crumwell', 1533 (*SP Henry VIII*, ii, no. 64). For an analysis of the various treatises proposing a presidential scheme, see Kennedy, 'Presidency of Munster', esp. pp 13–23, and Heffernan, 'Reform', i, 88–9, 112–15, 153–8.

¹⁴ For the latter view, see White, 'Tudor plantations in Ireland before 1571', i, 144–9 (hereafter cited as White, 'Tudor plantations in Ireland before 1571').

¹⁵ The king to Anthony St Leger, Thomas Walshe, John Mynne, and William Cavendish, 1540 (TNA, SP 60/9/42; 58).

¹⁶ Thomas Walshe to Edward Bellingham, 1548 (TNA, SP 61/1/73); Thomas Walshe to Edward Bellingham, 1548 (TNA, SP 61/1/81).

¹⁷ Minutes of council, with the king's commands, 1546 (*SP Henry VIII*, iii, 448, 583), including a recommendation that a council be established at Limerick presided over by the archbishop of Cashel.

¹⁸ See plate 1.