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Provincial government and administration in Jacobean Munster

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Thesis submitted for the degree of PhD
National University of Ireland, Cork,
Department of History

Volume 1 of 2

Supervisor **Dr. David Edwards**
Head of Department **Prof. Dermot Keogh**

July 2006

Abstract

This is a study of government and administration in the province of Munster, Ireland, in the reign of James I. After the 1601 Battle of Kinsale the whole fabric of life of the Gaelic and Old English sections of the population changed irrevocably. A new influx of New English planters heightened tensions between Catholics and Protestants. Using the Council Book of Munster (BL, Harleian 697) I have reconstructed the administrative structure through which the south of Ireland was controlled. The role of the lord president's court and its operation are examined and its impingement on the lives of the general population is considered. I have identified the lower ranks of officialdom which supported the institution of the presidency and compared the operation of this system of local government with that in Wales and the North of England. At this period local government officials of longer-standing – such as sheriffs – supported the presidency. They were augmented with new (or renewed) officials such as justices of the peace, collectors, and escheators. These local government structures, together with many minor posts, are examined and many of the personnel identified. This work demonstrates that military adventurers were replaced by bureaucratic adventurers and examines whether government intentions of making Ireland a mirror-image of English law and civility were attained. The study shows how upwardly-mobile, impecunious individuals were able to amass wealth and influence courtesy of the many government positions available in the reinvigorated plantation of Munster. This small group of people, in virtue of their Protestantism, supplanted the traditional Catholic community leaders and changed the face of Munster. Volume 2 of the thesis is a transcription of the Council Book of Munster (BL, Harleian 697), making this unique document available to a wider audience and facilitating early modern scholarship.

Dedication

To my Clayton and Curtis families: your constant support and encouragement is deeply appreciated

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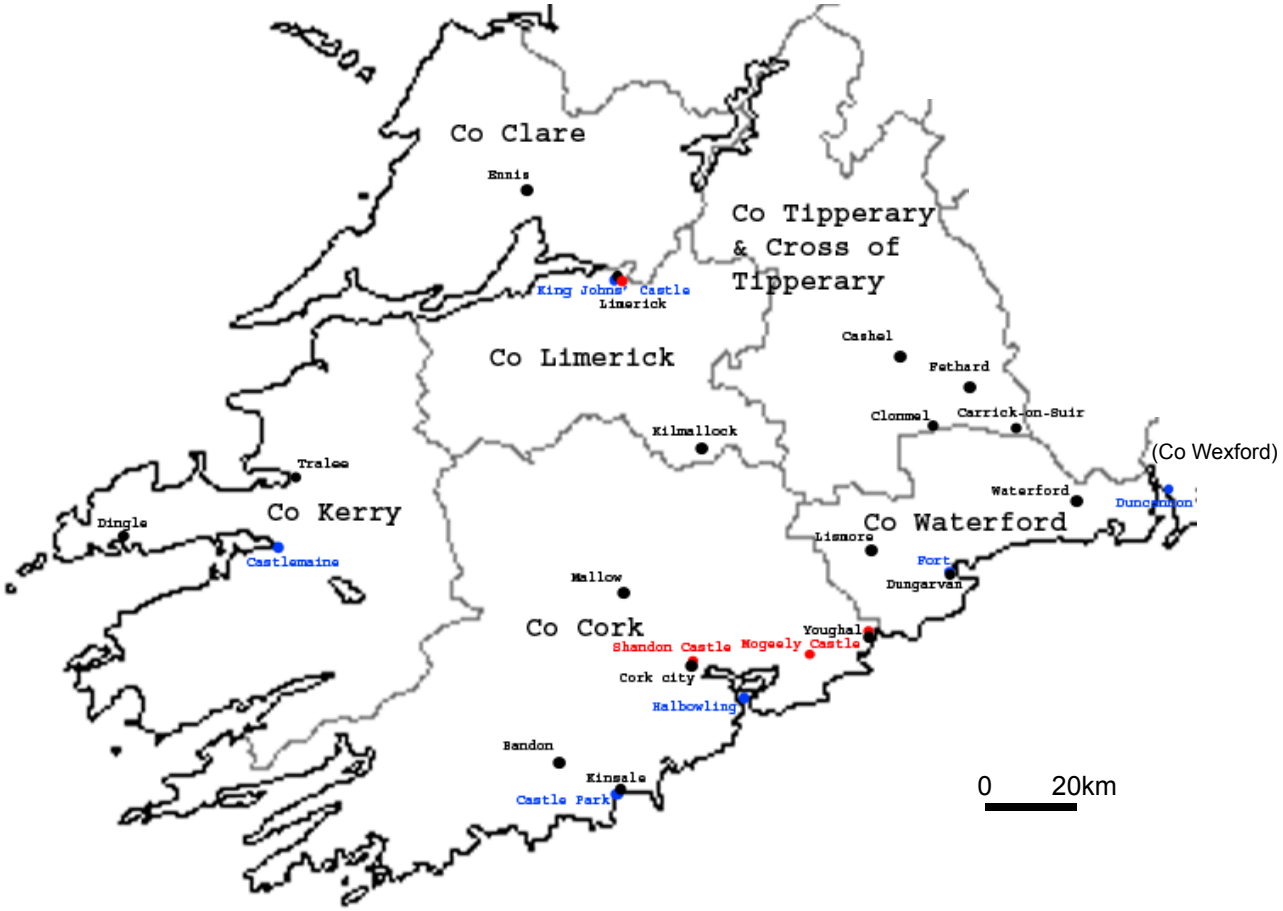
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Legend:

- cities/towns
- forts/garrisons
- residences of lords president

Acknowledgements

My first approach to the Council Book of Munster in May 1999 was simply utilitarian (to decipher seventeenth-century handwriting) but I was soon hooked on the slices of life hidden beneath the myriad 'hands'. From that time my life has been an exhilarating learning curve – often dangerously precipitous – and I would have not managed to hold on but for the constant encouragement of my supervisor. His support throughout has been inspirational.

There are so many other people who helped me along the way that it would be impossible to name them all so I hope those not mentioned here will forgive me. Mr. Kenneth Nicholls has always been generous with his vast knowledge and supported me constantly over the years especially with the Council Book. He also trusted me with his precious Petworth notebooks. The support of my fellow students has been very important especially those who frequented Q-1. It was a group that changed constantly as some moved on and new people arrived.

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I am grateful for the professional support of the various research libraries I consulted: the British Library (who kindly gave permission for the reproduction, in

the Appendix, of fols. 1-2 of Harleian Ms. 697), West Sussex Record Office in Chichester, the National Library of Ireland, the National Archives of Ireland, the Royal Irish Academy, Trinity College, Dublin, Marsh's Library, Dublin, Henry E. Huntington Library, California, and our own Boole Library here at UCC – in particular Special Collections.

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Finally I must thank my family who never complained about my obsession over the past years and willingly put their shoulders to the wheel in the last few weeks: proof-reading, making maps, photocopying, and finally lifting the heavy load from binder to exams office. To them I dedicate this work.

Abbreviations

Ald.	Alderman
Am.J.L.H.	*The American Journal of Legal History*
Anal. Hib.	*Analecta Hibernica*
APC	*Acts of the Privy Council of England, 1591-1631,* ed. J. R. Dasent *et al*.
Arch. Hib.	*Archivium Hibernicum*
BL	British Library
Bod. Lib.	Bodleian Library
c.	*circa* (approximately)
Cal. Carew	J. S. Brewer & William Bullen (eds.), *Calendar of the Carew Manuscripts, preserved in the Archiepiscopal Library at Lambeth* (1867, reprinted 1873)
C.P.R.I.Eliz.	*Calendar of the Patent & Close Rolls of Chancery in Ireland from the 18th to the 45th of Queen Elizabeth*, vol. ii, (Dublin & London 1862).
C.P.R.I.Jas.I.	*Calendar of the Irish Patent Rolls of King James I* (IMC Dublin, 1966)
C.P.R.I.Ch.I.	*Calendar of the Patent and Close Rolls, Chancery, Ireland, of the Reign of King Charles I*, (Dublin & London, 1863)
Caulfield, *Cork*	Richard Caulfield, *The Council Book of the Corporation of the City of Cork, from 1609 to 1643, and from 1690 to 1800* (Surrey, 1876)
Caulfield, *Kinsale*	Richard Caulfield, *The Council Book of the Corporation of Kinsale from 1652-1800* (Surrey, 1879)
Caulfield, *Youghal*	Richard Caulfield, *the Council Book of the Corporation of Youghal, from 1610 to 1659, from 1666 to 1687, and from 1690 to 1800* (Surrey, 1878)
CP	Chancery Pleas
C.J., Ir.	*Journals of the House of Commons of Ireland*, vol. I, 2 pts. (1613-1666) (Dublin, 1796)
CSPI	*Calendar of State Papers of Ireland*
Des. Cur. Hib., vol.	John Lodge, *Desiderata Curiosa Hibernica*, 2 vols., (Dublin, 1772)
DKRI	*Report of the Deputy Keeper of the Records, Ireland*
DIAS	Dublin Institute for Advanced Studies
Erck	John Erck, *A Repertory of the Inrolments of the Patent Rolls of Chancery in Ireland*, (Dublin, 1846)
Engl.	English
EHR	*English Historical Review*
fol./ff.	folio/folios
Grosart, *Lismore Papers*, 1, i	A. B. Grosart (ed.), *The Lismore Papers*, 10 vols., (London, 1886-8)
HMC	Historical Manuscripts Commission
Ir. Eccl. Rec.	*Irish Ecclesiastical Record*
IESH	*Irish Economic & Social History*
IHS	*Irish Historical Studies*
Ir. Fiants	*The Irish Fiants of the Tudor Sovereigns* (Dublin 1994)

Lib. Mun.	*Liber Munerorum Publicorum Hiberniae* (1819), 2 vols.
JCHAS	*Journal of the Cork Historical & Archaeological Society*
JEccH	*Journal of Ecclesiastical History*
JRSAI	*Journal of the Royal Society of Antiquaries of Ireland*
Ms./Mss.	Manuscript/Manuscripts
n.	note/footnote
n/a	not applicable
n.d.	no date
NHI	*New History of Ireland*
NAE	National Archives of England
NAI	National Archives of Ireland
NH	*Northern History*
NLI	National Library of Ireland
OED	*The Oxford English Dictionary*, 2nd edn.
Pacata Hibernia, vol. I,	Standish O'Grady (ed.), *Pacata Hibernia*, 2 vols. (London, 1896)
PHA	*Petworth House Archives*
PRIA	*Proceedings of the Royal Irish Academy*
r	recto
Rep.	*Report*
RIA	Royal Irish Academy
RSAI	Royal Society of Antiquaries of Ireland
stg.	sterling
TCD	Trinity College, Dublin
UCC	NUI University College Cork
UJA	*The Ulster Journal of Archaeology*
U.P.	University Press
v	verso
WHR	*The Welsh Historical Review*

Preface

The transcription of the Council Book of Munster[1], which is the appendix to this work, has provided an opportunity to look again at the government and colonisation of Munster during the reign of James I. This unique document is the only extant record of the proceedings of the council which operated from 1570-1672. There is no similar manuscript for the Council of Connacht or, for that matter, for the longer-lasting Council of the North of England. The extant record for the prestigious Council in the Marches of Wales[2] covers a greater time frame in fewer folios. The Council Book of Munster is calendared as dating from 1601-1622 but internal evidence takes the last major document to April 1625 (fol. 93r) and the last entry to 1648 (fol. 131v). The Council Book is the point of departure in a quest to seek out and identify the layers of adventurer officials who sought political and social advancement in the ruined landscape of early seventeenth-century Munster where the acquisition of land and office was the basis of regional power and authority.[3]

The colonisation of Munster has already been expertly and broadly covered in Michael MacCarthy-Morrogh's book *The Munster Plantation*[4] while Kennedy's monumental MA thesis[5] examined each of the lords president of Munster between 1570 and 1625. My work sheds light on the lower layers of the council administration in the province, on the people who propped up the presidents, and were directly responsible for English colonial government from the chamber of the Munster Council to the localities. For the first time many local government officials, like collectors and justices of the peace, can be identified and discussed. Sir Richard Boyle, first earl of Cork, has been studied by several historians including Nicholas Canny, Dorothea Thownshend, T. O. Ranger, and Brian FitzGerald. This planter is regarded as unique in his accumulation of wealth and power in the frontier-style atmosphere of early Stuart Munster. But was

[1] BL, Harleian Ms. 697. The Council Book was among the manuscripts of Edward Stillingfleet (Bishop of Worcester, died 1699) purchased for Robert Harley in 1701 at a cost of £2.3s., BL, Harleian Ms. 7055; Cyril Ernest Wright, *Fontes Harleiani: A study of the sources of the Harleian collection of Manuscripts preserved in the Department of Manuscripts in the British Museum*, (London, 1972), p. 316.
[2] Called the Dovaston Ms., it is in the British Library at Egerton Ms. 2882 and is calendared in the *Thirteenth Report, Appendix, Part IV*, (HMC, London, 1891) by R. Lloyd Kenyon: 'A manuscript volume in the possession of John Dovaston, Esq., of West Felton, Co. Salop', pp. 247-282.
[3] J. Gwynfor Jones, *Early Modern Wales, c. 1525-1640*, (St. Martin's Press, N.Y., & Macmillan, Basinstoke 1994), p. 2.
[4] Michael MacCarthy-Morrogh, *The Munster Plantation: English Migration to Southern Ireland 1583-1641*, (Oxford, 1986).
[5] Dennis J. Kennedy, 'The Presidency of Munster under Elizabeth and James I' (UCC, 1973).

Boyle unique? My MA thesis on Randall Clayton, early seventeenth-century clerk of the Council,[6] showed how a lowly clerk (in the mid-1620s) became one of the richest men in Munster.[7] I intend to show that Boyle was one of a type (though undoubtedly the most successful), and that Munster was a honey-pot for unscrupulous officials wishing to accumulate wealth. The Council Book lets us lift the lid on a dark period and its pages contain glimpses of the lives of ordinary people. What was life like for the conquerors and the conquered, for the colonists and the dispossessed? The Council Book lets us look differently at issues that have been raised before, questions that have been asked before, some whose conclusions (for instance that Munster benefited from the 'Stuart peace') can be readjusted. Government and administration in Munster, and Ireland, was intended to be a mirror-image of that in England. But the notion of government as relatively benign must be adjusted to view it as one that kept its eyes closed to the systematic ransacking (in various guises) of a helpless population. For a contrary view, which emphasises the moderation and restraint of English rule, see John G. Crawford's work on the Dublin Castle Chamber.[8]

This is a provincial administrative history in a colonial setting. I have chosen the time-frame of the Council Book which is approximately that of the reign of James I, 1603-1625 (with a little leaching into the reigns of Elizabeth I and Charles I as appropriate), to examine the extent to which the colonial agenda of settlers and officials assisted or hindered anglicisation and made government acceptable or not to provincial Munster. Among the documents consulted were the Ferguson Notes, the Lismore Papers, the Huntington Irish archives, the State Papers (many of which are either uncalendared or so briefly cited as to be unhelpful) and archive collections in England. These, with the Council Book, were woven together to create a picture of early Stuart Munster.

The Introduction sets the scene in looking at the province of Munster in 1603, in the wake of the 1598 rebellion and the Battle of Kinsale, from the point of view of the government and the population. Chapter 1 examines the administration of the province by the lord president and considers the presidential court, law and order, taxation,

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[6] Margaret P. Curtis, 'The Claytons and their Circle: New English arrivals in early Seventeenth-Century Cork', (UCC, 1998).
[7] *CSPI, 1625-1632*, p. 211.
[8] John G. Crawford (ed), (ed.), *A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571-1641* (Four Courts Press, Dublin, 2005); idem., 'The Origins of the Court of Castle Chamber; A Star Camber Jurisdiction in Ireland', *Am.J.L.H*, Vol. 24, 1980, pp. 22-55.

security, and religion. Chapter 2 focuses on the assistants of the lord president and scrutinizes the roles of the councillors and the council officials, with comments on the tensions between them. Chapter 3 investigates the work of the local officials who were bound to support the Council of Munster and assist the lord president in his task of governing the province. Finally, the Conclusion gives a brief overview of the province in the late 1620s and takes into the account the impact of the 'Graces'.

The transcription of the Council Book in the appendix has been done *verbatim* with the English contractions (apart from signatures) extended by means of italic letters. This has been done to make the text more readily accessible to those unfamiliar with seventeenth-century abbreviations. Generally superscriptions have been aligned, unless the clarity of the text should be in doubt. Several of the folios have been difficult to decipher because of fading, wearing, or difficult hands. Gaps are indicated by […]; letters cut from the edge when the volume was bound[9] are shown in italic in square brackets, when the meaning is obvious. Lists of names and attendant figures have been tabulated to obviate confusion in interpretation. Folio 131v would be impossible to reproduce in its current form as there is so much squeezed into the margins – therefore the marginal material has been reproduced by date. This is a large document of 207 folios and in order to present it in one volume it has been necessary to compact it and produce it in single spacing. Any errors are my own.

[9] It was the custom of binders to crop off the edges of the pages of documents before binding, C.E. Wright, 'Humfrey Wanley: Saxonist and Library-Keeper' in *Proceedings of the British Academy*, vol. xlvi, 1960, p. 118.

Introduction

The early modern period in Irish history is characterised by a general paucity of documents. One result of this is that although considerable advances have been made in recent years in the study of English colonial government in the Irish capital at Dublin, nonetheless the history of law and administration in the provinces outside Dublin has remained very much in its infancy. Steven Ellis is the only historian to attempt to understand provincial government and administration during the late fifteenth and early sixteenth centuries.[1] There is no general complementary understanding of the early seventeenth century. Several recent historical works have put the spotlight on colonial Ireland within the frame of the three kingdoms of James I,[2] and in the wider context of England's colonial American interests.[3] Other studies have examined individual Dublin-based administrators, like Sir Arthur Chichester and Sir John Davies;[4] Jon Crawford's transcription of the Castle Chamber documents builds on his earlier work in this area but stays firmly rooted in Dublin;[5] Victor Treadwell has studied patronage, defective titles and customs and, though he does venture beyond the Pale, plantation Munster is not a major concern.[6] While these works have improved our knowledge of the workings of the central government machine and on the efforts to reform it in the face of vested interests both in Ireland and England, the same cannot be said of local government. No work has been done on the roles of important officials like sheriffs (aside from threadbare lists of county sheriffs); there are no studies of the roles of justices of the peace, coroners, and

[1] Steven G. Ellis, *Reform and Revival, English Government in Ireland, 1470-1534* (London, 1986).
[2] Ciaran Brady & Raymond Gillespie, *Natives & Newcomers: Essays on the making of Irish colonial society 1534-1641* (Irish Academic Press, Dublin, 1986); Nicholas Canny, *Making Ireland British 1580-1650* (Oxford University Press, Oxford 2001); Steven G. Ellis & Sarah Barber, (eds.), *Conquest and Union: Fashioning a British State, 1485-1725*, (London & N.Y., 1995); Steven G. Ellis, 'Writing Irish History: Revisionism, Colonialism, and the British Isles', *The Irish Review*, 19 (1996), pp. 1-21; Brendan Bradshaw & John Morrill (eds.), *The British Problem, c. 1534-1717: State Formation in the Atlantic Archipelago*, (Macmillan, London 1996).
[3] Nicholas P. Canny, 'The Ideology of English Colonization: From Ireland to America', *The William and Mary Quarterly*, 3rd ser., 30, no. 4 (October 1973), pp. 595-598; Nicholas Canny & Anthony Pagden (eds.), *Colonial Identity in the Atlantic World, 1500-1800*, (Princeton, N.J., 1989).
[4] John McCavitt, *Sir Arthur Chichester: Lord Deputy of Ireland 1605-16* (Institute of Irish Studies, Queens University of Belfast, 1998); Hans Pawlisch, *Sir John Davies and the conquest of Ireland: a study in legal imperialism*, (Cambridge U.P., 1985).
[5] Jon G. Crawford, (ed.), *A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571-1641* (Four Courts Press, Dublin, 2005); idem., 'The Origins of the Court of Castle Chamber; A Star Camber Jurisdiction in Ireland', *Am.J.L.H.*, 24, 1980, pp. 22-55.
[6] Victor Treadwell, *Buckingham and Ireland, 1616-1628: A Study in Anglo-Irish Politics* (Four Courts Press, Dublin, 1988).

collectors, while provost marshals have only recently been examined.[7] Extant town corporation books, of which *Liber Antiquissimus Waterfordiae* is the most complete, are economical in their entries and do not comment on government policies which affected their citizens.[8] Likewise county histories are sparse in their dealings with the effects of administrative procedures, while diocesan histories are equally reticent – they generally concentrate on the clerical personnel and ignore the laity.[9] The trend in England is entirely different where an abundance of extant administrative and legal documentation has assisted the growth of local history and enabled historians to replicate the lives of early modern citizens, no matter how humble.[10] My work will attempt to redress the balance in its examination of the aggrandising opportunities available in early seventeenth-century Munster.

Irish historiography of the early modern period has tended to focus on the plantation of Ulster and the perceived threat that province posed to the security of England. But Munster, not Ulster, was the weak spot particularly after 1607 when changing international circumstances dimmed the importance of the earls of Tyrone and Tyrconnell as pawns of Spain and the papacy. Ireland as a whole was judged on an evaluation of the situation in the Pale: but the Pale was the most anglicised part of Ireland, closer to the fount of influence and its nobles more consulted than those in the provinces. Munster was administered, as was Wales and the North of England, by a council, and has attracted a lot of attention in the last 25 years from historians such as Michael MacCarthy-Morrogh, Raymond Gillespie and Nicholas Canny.[11] But this has been on the broad canvas of the establishment and operation of the plantation. The only individual undertaker to receive any sustained attention is the earl of Cork.[12]

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[7] David Edwards, 'Two fools and a martial law commissioner: cultural conflict at the Limerick assize of 1606', in idem. (ed.), *Regions and Rulers in Ireland, 1100-1650*, (Four Courts Press, Dublin, 2004); Patrick Fitzgerald, 'Poverty and Vagrancy in early modern Ireland', (PhD thesis, QUB 1994), pp. 89-97.

[8] Niall J. Byrne, (ed.), *Liber Antiquissimus Civitatis Waterfordiae* (IMC, Dublin, forthcoming). Other town records are: Bríd McGrath (ed.), *The Minute Book of the Corporation of Clonmel 1608-1649* (IMC, Dublin, 2006); Richard Caulfield (ed.), *The Council Book of the Corporation of the City of Cork,* (Surrey, 1876); idem., *The Council Book of the Corporation of Kinsale,* (Surrey, 1879); idem., *The Council Book of the Corporation of Youghal,* (Surrey, 1878).

[9] The effects of government policy on the laity is mentioned briefly by Evelyn Bolster, *A History of the Diocese of Cork from the Reformation to the Penal Era*, (Cork, 1982), pp. 140-50.

[10] E.g., Cynthia B. Herrup, *The Common Peace*, (CUP, 1987, paperback 1989); J. S. Cockburn, *Calendar of Assize Records: Kent Indictments, James I*, (HMSO, 1980).

[11] Michael MacCarthy-Morrogh, *The Munster Plantation: English Migration to Southern Ireland 1583-1641*, (Oxford, 1986). See footnote 1.

[12] Nicholas Canny, *The Upstart Earl* (Cambridge University Press 1982); Dorothea Townshend, *The life and letters of the Great Earl of Cork*, (London, 1904); Terence O. Ranger, 'Richard Boyle and the making of an Irish fortune, 1588-1614', *IHS,* 10, no. 39, March 1957, pp. 275-97; Brian FitzGerald,

As already mentioned in the Preface, MacCarthy-Morrogh's monograph is the only work dedicated exclusively to the Munster plantation, while the political role of the lord presidency has been studied by Dennis Kennedy and Liam Irwin.[13] These, with my own unpublished work on Sir Randall Clayton, clerk of the council between 1602 and 1637,[14] constitute the only efforts to address the personalities involved in the fledgling bureaucracy of the seventeenth century. There are no publications to emulate the work done on the councils in Wales and the North of England.[15] The following study, building on the work of earlier surveys, mines the rich source of the Council Book of Munster, and addresses the imbalance in current historiography by examining the roles of council and local government officials – all products of the growth of the English state apparatus – in their support of the lord president of Munster. In uncovering the layers of officialdom I also show why Munster attracted the new breed of upwardly-mobile adventurer officials and how their avarice affected both the indigenous population and the government they swore to serve. My transcription of the Council Book will make this significant document available to a wider audience. It is currently accessible only to those who can visit the British Library or who have access to a microfilm copy. The document, containing court cases, proclamations, and correspondence, will be particularly valuable to legal and social historians, both professional and amateur.

The most important concern of the English government was its security and this was at risk because of the vulnerability of Ireland – England's backdoor – to

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The Anglo-Irish: Three Representative Types: Cork, Ormonde, Swift, 1602-1745 (London & New York, 1952).

[13] Dennis J. Kennedy, 'The Presidency of Munster under Elizabeth and James I' (MA thesis, Cork, 1973); William G. Irwin, 'The Presidency of Munster 1660-1672' (MA thesis, Cork, 1976).

[14] Margaret P. Curtis, 'The Claytons and their Circle: New English arrivals in early Seventeenth-Century Cork' (MA thesis, UCC, 1998).

[15] Penry Williams, *The Council in the Marches of Wales under Elizabeth I* (Cardiff, 1958); idem., 'The activity of the Council in the Marches under the early Stuarts', *WHR*, i, 1960-63, pp. 133-60; J. Gwynfor Jones, *Early Modern Wales, c. 1525-1640*, (N.Y., & Basinstoke, 1994); Glanmor Williams, *Renewal and Reformation Wales c. 1415-1642* (OUP, 1993); R. Lloyd Kenyon, 'A manuscript volume in the possession of John Dovaston, Esq., of West Felton, Co. Salop', *Thirteenth Report, Appendix, Part IV*, (HMC, London, 1891), pp. 247-82; Mark Ellis Jones, '"An invidious attempt to accelerate the extinction of our language": the abolition of the court of great sessions and the Welsh language', *WHR*, 19, Dec. 1998, no. 2, pp. 226-64; R. E. Ham, 'The four shire controversy', *WHR*, 8, 1976-77, pp. 381-400; G. P. Higgins, 'The government of early Stuart Cheshire', *NH*, 12, 1976, pp. 32-52; Tim Thornton, *Cheshire and the Tudor State, 1480-1560*, (The Boydell Press, Suffolk, 2000); R. R. Reid, *The King's council in the North*, (Longmans 1921; reprinted by EP Publishing, West Yorkshire 1975); J. S. Cockburn, 'The Northern Assize Circuit', *NH*, 3, 1968, pp. 118-30; G. C. F. Forster, 'Faction & County Government in early Stuart Yorkshire', *NH*, 11, 1976 for 1975, pp. 70-86; idem, 'The North Riding Justices and their sessions, 1603-1625', *NH*, 10, 1975, pp. 102-25; Phillip V. Thomas, 'The privy council and "vagrant runagate" priests in Elizabethan York', *Yorkshire Archaeological Journal*, 69, 1997, pp. 173-92.

continental enemies, both existing and potential. Therefore the security of Ireland, and Munster in particular, was of paramount importance. Munster's long, deeply indented coastline, was a magnet for both legitimate and illegitimate traffic. Policing it was, and would continue to be, a major headache for the government. The early seventeenth-century twin strategy to ensure security was anglicisation and Protestantisation with the economic tag of zero cost to the government. This meant working creatively with the raw material available in the province: to persuade the Old English ruling class to succumb to pervasive anti-Catholic rhetoric and adopt the state religion or else to replace them with Protestant New English immigrants.

What was the social landscape like in Munster in 1603 at the accession of James I with his important motto of 'Beati Pacifici' (Blessed are the Peacemakers[16])? The province was on its knees after the upheavals of the last quarter of the sixteenth-century culminating in the Battle of Kinsale in December 1601. Still suffering the effects of the 1579-83 Desmond rebellion when tens of thousands were killed,[17] Munster was war-weary and enduring all the tragedies induced by war: death and injury, famine, disease, refugees, economic difficulties, and immeasurable social problems such as depression and despair. Prior to Kinsale many people had availed of pardons offered by Lord President Carew who, as part of the security strategy, endeavoured to neutralise potential rebels. Between the end of March 1600 and September 1601 almost 23,000 rebels, or those under suspicion, in Counties Cork, Kerry, Limerick, Waterford and Tipperary were pardoned.[18] Those who resisted were subjected to a scorched earth policy which precipitated famine.[19] The war brought epidemics associated with deprivation while an added burden was plague which was still an unwelcome visitor. Outbreaks would continue to recur in the first quarter of the seventeenth century and the towns, because of the crowded conditions, suffered

[16] Adam Nicolson, *Power and Glory: Jacobean England and the making of the King James Bible* (HarperCollins London, 2003), p. 3.
[17] David Edwards, 'A haven of popery: English Catholic migration to Ireland in the age of plantations', in Alan Ford & John McCafferty, *The Origins of Sectarianism in Early Modern Ireland* (Cambridge, 2005), p. 109.
[18] SP 63/207 pt. 6, 4; *Ir. Fiants*, iii, nos: 6407, 6431, 6440-1, 6446, 6452, 6461, 6464-7, 6469-70, 6475-81, 6484-7, 6490, 6494-5, 6497-9, 6504-5, 6511, 6514-6, 6519, 6521-2, 6524, 6529-32, 6537-40, 6552, 6555, 6558, 6565-6, 6569, 6571, 6575-6.
[19] Lambeth Palace, Carew Mss, vol. 620, p. 38; Vincent Carey, "What pen can point or tears atone?": Mountjoy's scorched earth campaign', in Hiram Morgan, *The Battle of Kinsale* (Bray, Co. Wicklow, 2004), p. 209, 211

most.[20] For those that could afford it flight was the only option. Lord President Carew named 113 persons (with 'divers depending on them') who left Ireland for Spain between December 1601 and July 1602. He estimated that countless others 'stole thither' and he was of the opinion that if there had been sufficient shipping 'half of the people of Munster' would have fled. Among those who escaped to the continent was a 'multitude' of Irish noblemen, clerics, scholars and soldiers.[21] No effort was made to prevent their flight as a denuded province was easier to police and was ripe for exploitation. For those left behind there was another round of pardons, and a general pardon on 12 March 1602/3 'to all the poor inhabitants of Munster and Thomond' who would 'receive in the queen's favour, as many as shall come in and humbly submit to her clemency'.[22] The Act of Oblivion signed at Dublin Castle on 22 February 1602/3 by the Dublin council gave pardon for offences committed before 1 November 1602.[23]

James I continued the Elizabethan centralizing policy through the agency of the Council of Munster. Conciliar government, based on the presidencies of the North of England[24] and the Marches of Wales, was the prototype. In those locations, far from the central control of London, the council had proved successful in bringing civility to unruly areas.[25] The reinvigorated Munster Council (it had been in abeyance during the 'late rebellion') impinged uncomfortably on every aspect of life through its renewed drive towards anglicisation and Protestantisation. In essence it represented the imposition of an alien system of centralised government on a population the majority of whom had a different cultural and religious background.

The Stuart 'peace' in the early years of the seventeenth century enabled the revitalisation of local officialdom and the appointment of new personnel which aspired to anglicise (i.e. Protestantise) and civilise the province. The Desmond Survey shows that the bi-annual sessions held by the earl of Desmond at Tralee before 1579 with its scale of fines and officials was not all that different from the new

[20] BL, Egerton 76, f. 62v; *CSPI, 1606-08*, p. li; Niall J. Byrne, 'Jacobean Waterford, Religion and Politics, 1603-25' (PhD thesis, UCC, 2002), p. 52; BL, Harleian Ms. 697, ff. 79v, 161v.
[21] Lambeth Palace, Carew Mss. vol. 620, p. 99; *Cal.Carew 1601-1603*, pp. 200-02, 276.
[22] *Ir. Fiants*, iii, no. 6773; *C.P.R.I.Eliz*., p. 627.
[23] *CSPI, 1603-06*, p. 2; Erck, vol. I, pt. I, p. 20. Text of the act is at BL, Harleian Ms. 697, fol. 148v. This was reiterated by Sir Arthur Chichester and the Dublin Council in January 1607, BL, Add Ms. 4819, f. 241r; C. Litton Falkiner, 'William Farmer's Chronicles of Ireland', *EHR*, vol. XXII, January 1907, p. 130.
[24] This is usually referred to as the presidency of the North.
[25] Crawford, 'Origins', p. 23.

English system of justice.[26] Thus the population exchanged one set of officials for another. However, the new administrators would ultimately prove to be at least as rapacious as the earl's officers. Towns, by virtue of their charters, used their taxes for their upkeep, but that would change with the creation of private monopolies of customs farmers independent of the lord president. They weakened his authority and left the merchants prey to private interests.[27] Additional officials, like clerks of the market, reflected such posts in England and their operation was intended to facilitate greater government control of trade and, above all, bring revenue to the crown.[28]

The community in Munster was a hybrid one made up of the indigenous Gaelic, Anglo-Irish (usually called Old English) with shades in-between resulting from intermarriage, and, increasingly, New English colonists.[29] Gaelic Ireland's system of government of autonomous lordships, ideally suited to a fragmented society of individual lordships, was no match for the superior modern centralised English state.[30] Only two major Munster chiefs made the transition to the new era: the O'Briens of Thomond and the MacCarthys of Blarney, while thousands of hitherto respected lineage became men of no property.[31] The dependent septs had an especially difficult time at the beginning of the seventeenth century when increasing land grabbing, set in motion by the reinvigorated plantation of Munster, would consign many of them to the category of refugees, vagabonds or 'masterless men'.

The Old English, regarding themselves as English (not Irish) and having been involved in local and central administrations for centuries, initially welcomed the Tudor reforms, civil and religious, seeing themselves as the natural leaders of a

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[26] NAI, M. 5037, pp. 11-15.

[27] Joseph M. McLoughlin, 'The Making of the Irish Leviathan, 1603-25: statebuilding in Ireland during the reign of James VI and I', (PhD thesis, NUI Galway, 1999), p. 186; H. F. Kearney, 'Mercantilism and Ireland 1620-40', *Historical Studies I*, ed. T. D. Williams (London, 1958), p. 60; Hans Pawlisch, *Sir John Davies and the conquest of Ireland: a study in legal imperialism*, (Cambridge U.P., 1985), chapter 7; Anthony J. Sheehan, 'Provincial Grievance and National Revolt: Munster in the Nine Years War' (MA thesis, UCD, 1981), pp. 215-7.

[28] Huntington Library, San Marino, Hastings Irish Papers 2/HA 15415.

[29] Michelle O Riordan, *The Gaelic Mind and the Collapse of the Gaelic World* (Cork Univ. Press, 1990), p. 14; Donald Jackson, *Intermarriage in Ireland 1550-1650* (Montreal & Minnesota, 1970), *passim*.

[30] Hiram Morgan, 'Disaster at Kinsale', idem. (ed.), *The Battle of Kinsale*, (Bray, Co. Wicklow, 2004), p. 131. See: Kenneth Nicholls, *Gaelic and Gaelicised Ireland in the Middle Ages* (Dublin, 1972, reissued 2003); idem., 'Gaelic society and economy in the higher middle ages', *NHI*, vol. 2, part 1, pp. 397-438; Katherine Simms, *From kings to warlords: the changing political structure of Gaelic Ireland in the later Middle Ages* (Suffolk, 1987); Patrick J. Duffy, David Edwards, & Elizabeth FitzPatrick, (eds.), *Gaelic Ireland c.1250-c.1650: Land, Lordship and Settlement* (Dublin, 2001); Steven G. Ellis, 'The collapse of the Gaelic world, 1450-1650', *IHS*, 31, no. 124, November 1999, pp. 449-69.

[31] Edwards, 'Legacy', p. 283.

colonial society.[32] But posts in the new regime were destined for Protestants, few of whom were Irish. The displacement of this key Old English group would result in a political revolution in Irish society.[33] The antagonistic religious climate of the late sixteenth century – when to be Catholic was to be suspect – forced them (particularly those of the towns) to examine their status as their separate identity became increasingly untenable.[34] By the end of the sixteenth century the common thread of religion brought the townsmen closer to their ethnic brethren, the Anglo-Irish (Old English) lords.[35] By the early seventeenth century the Old English, though severely dented, still had several powerful families – for example, the Powers, Barrys, Fitzgibbons, and Roches.

Two different types of New English came to Munster. The initial colonists were minor members of the English gentry and Sir Nicholas Browne, Co. Kerry, was typical of those who married heiresses in order to acquire Irish land.[36] These new immigrants retained strong links with the English gentry and wardship and intermarriage were beginning to integrate them into the English political culture. The number of New English in Munster in the 1590s has been the subject of much speculation with a high figure of 15,000 being discounted for a more plausible figure of 4,000.[37] The New English failed to fulfil the terms of their contracts which stipulated the maintenance of a militia and although they 'foresawe manie Imminent and greate daungers … yet these feares we neglected'.[38] When O'Neill's rebellion spread to Munster in October 1598 they 'most shamefully quitted and fors[ook] their castles and houses of strength before even the traitors came near them.'[39] The New

[32] Patrick J. Corish, *The Catholic Community in the Seventeenth and Eighteenth Centuries*, (1981), p. 23; Nicholas P. Canny, *The Formation of the Old English Elite in Ireland* (O'Donnell Lecture, NUI, Dublin, 1975) pp. 10, 32; Ellis 'Writing', p.5. See also Aidan Clarke, *The Old English in Ireland 1625-42* (London, 1966).
[33] David Edwards, *The Ormond Lordship in County Kilkenny 1515-1642: The Rise and Fall of Butler Feudal Power*, (Four Courts Press, Dublin, 2003), p. 263.
[34] James Lydon, 'The Middle Nation', idem. (ed.), *The English in Medieval Ireland*, (Dublin, 1984), p. 11.
[35] Corish, *Catholic Community*, p. 24.
[36] In his undated 'Discourse concerning the Province of Munster' he said he married Sir Owen O'Sullivan's daughter, Julia, 'for my better strength and to maintain my owne', James Buckley (ed.), *JCHAS*, vol. xii, no. 70, 1906, p. 64; MacCarthy-Morrogh, *English Migration*, pp. 143-4.
[37] James Casey, 'Land Ownership in North Cork 1584-1641', (D.Phil. thesis, UCC), pp. 93-4; MacCarthy-Morrogh, *English Migration*, pp. 117-8; A. J. Sheehan 'The population of the Plantation of Munster, Quinn Reconsidered', *JCHAS*, vol. cxxxvi, (July Dec. 1982), pp. 296-317.
[38] Willy Maley, 'The Supplication of the Blood of the English most lamentably murdered in Ireland, cryeing out of the yearth for Revenge, 1598', *Anal. Hib.*, no. 36, 1995, p. 12; Sheehan, 'Provincial Grievance', p. 21.
[39] Sheehan, 'Provincial Grievance', p. 85.

English were then the refugees crowding the towns and castles such as Askeaton, Co. Limerick, and suffered the terror and displacement that had been visited on the Irish 20 years previously during the campaigns of the Desmond rebellion.[40] In November 1600 Carew appealed for their return but many were still in England after 1603.[41] After Kinsale, as the role of the Old English slipped, power passed to upwardly mobile 'new' Englishmen whose importance was based on office and the accumulation of land. For them Munster was a land of opportunity where social advancement, precluded in England, was possible.[42] In Wales this new social class had emerged in Tudor times, the difference being that it was native Welshmen who aspired to, and acquired, official posts with a consequent diminution of the Welsh language and culture among this particular class. It was native Welshmen, rather than as in Munster incoming Englishmen, who were accused of cupidity and of being ruthless, unscrupulous administrators.[43]

Religion dominated all aspects of life in the early seventeenth century. By 1603 the relaxed Catholicism of the population, both Gaelic and Old English, had been transformed by the Counter-Reformation into a strong, vibrant, courageous faith**.** In isolated areas the traditional church continued almost undisturbed while in the towns the old Catholic religion was being burnished by Tridentine enthusiasm which brought renewed norms of morality and discipline.[44] Generally in Munster the scattering of the monks was temporary and they usually stayed in the locality where they were protected by the local population. These friars were in the vanguard of the Counter Reformation[45] and continental-trained clergy were a vital component of the new religious fervour of the laity. The Munster towns rejected Protestant services earliest and most explicitly. By the time the established church hierarchy recognized the need for positive action it was already too late as the leaders of the Catholic community had switched from occasional pragmatic attendance at Protestant services

[40] For the progress of the 1598 rebellion in Munster see Anthony J. Sheehan, 'The overthrow of the Plantation of Munster in October 1598', *Irish Sword*, no. 15, 1982-83, pp. 11-22.
[41] Lambeth Palace, Carew Mss. 620, p. 37; MacCarthy-Morrogh, *English Migration*, p. 138.
[42] Curtis, 'The Claytons', pp. 17-8.
[43] J. Gwynfor Jones, *Early Modern Wales, c. 1525-1640* (St. Martin's Press, N.Y., & Macmillan, Basinstoke, 1994), pp. 32-7; John Morrill, 'The British Problem, c. 1534-1707', in Bradshaw & Morrill, *British Problem*, p., p. 6.
[44] Ford, *Protestant Reformation,* 1985, p. 15.
[45] Corish, *Catholic Community*, pp. 18, 22; W. D. O'Connell, 'Franciscan Reorganisation in Munster during the early seventeenth century', *JCHAS*, XLIV, 1939, pp. 37-45.

to public attendance at Catholic worship.[46] The hostility of the New English to the culture and social patterns of the Gaelic Irish contributed to the rejection of Protestantism.[47] The failure of the English to take full advantage of proselytism in the Irish tongue contributed to the failure of the established religion,[48] and contrasted with the fostering of the language in Wales and Scotland.[49] Linking the established church with 'anglicisation' was another reason for the resistance of the population.[50] The 'recusancy revolt' of 1603, on the accession of King James I, was confined principally to the Munster cities and towns.[51] The reasons were complex, varying from economic depression, to coping with war refugees, to suspicion of the authorities because of their religion, and was spurred by the erroneous belief that the new monarch was sympathetic to Catholicism. Lord Deputy Mountjoy arrived in Munster to put down the disturbances. The reverberations of this 'revolt' would continue for some time with the indictment of the ringleaders in Cork, the fining of the jury who refused to convict recorder William Meade (the ringleader in Cork),[52] and the 'bridling' of the citizens of Cork, Waterford and Limerick with refurbished forts.

Throughout the Jacobean period the people of Munster would live on a roller-coaster of highs and lows. The king's initial policy of appeasement was supported by the Lord Lieutenant of Ireland, Lord Mountjoy, created earl of Devonshire at the beginning of the new reign.[53] Blount's death on 3 April 1606 removed a restraining hand and left the king's policies to the mercy of current politics, a government ruled by favourites, and hostage to perennial shortage of money. England tended to ignore Ireland and the conduct of her administrators and only take an active interest when forced to do so. Thus the restraining hand was also absent from the monarch's Irish

[46] Ford, *Protestant Reformation,* 1985, p. 19; Pádraig Lenihan, *Confederate Catholics at War, 1641-49*, (Cork U.P., 2001), p. 2.
[47] Marc Caball, 'Politics and religion in the poetry of Fearghal Óg Mac An Bhaird and Eoghan Ruadh Mac An Bhaird', in *Beatha Aodha Ruaidh: The Life of Red Hugh O'Donnell Historical and Literary Contexts*, (ed. Pádraig Ó Riain) (Irish Texts Society Subsidiary Series 12, 2002), p. 96.
[48] Sarah Barber, 'Conclusion: a state of Britishness?', in Ellis & Barber (eds.), *Conquest and Union*, p. 309.
[49] MacCulloch, *Reformation*, pp. 395-6; Glanmor Williams, 'William Morgan's Bible and the Cambridge Connection', *WHR*, vol. 14, 1988-89, pp. 377-8.
[50] Patrick J. Corish, 'An Irish Counter-Reformation Bishop: John Roche', *The Irish Theological Quarterly*, vol. 25, 1598, p. 31.
[51] Anthony J. Sheehan, 'Provincial Grievance and National Revolt: Munster in the Nine Years War' (MA thesis, UCD, 1981), p. 259; idem., 'The recusancy revolt of 1603: a re-interpretation', *Arch. Hib.*, xxxviii, 1983, pp. 3-13l; Pawlisch, *Sir John Davies*, pp. 103-105.
[52] SP 63/215/77I; *Egmont*, vol. I, pt. I, p. 28; Graham Kew, *The Irish Sections of Fynes Moryson's Unpublished Itinerary* (IMC Dublin, 1998), p. 38.
[53] Aidan Clarke with R. Dudley Edwards, 'Pacification, plantation, and the catholic question, 1603-23', *NHI*, iii, pp. 190-1.

administration which was largely left to its own devices with a consequent lack of control on officialdom in Munster.

Chapter 1: A Presidential Administration

Introduction

Ever since the inception of the office of lord president in 1570[1] it was the custom for a new lord president of Munster to take his oath of office, bareheaded and on his knees, in Dublin before the chief governor or lord deputy, who sat beneath 'a clothe of state'.[2] The lord deputy, as representative of the monarch, presided over a mini royal court with all the pomp and circumstance a court attracted. The inauguration of a new lord president was a solemn and colourful occasion attended by the privy council who took their oaths after the lord president. Those who were also judges of the four courts wore black robes. The lord chancellor, dressed in black with a white neck ruff and white cuffs, carried the symbols of his office – a red-and-gold large, square, tasselled purse emblazoned with the royal seal.[3] In Wales the oath was performed before the Chief Justice of the County Palatine of Chester,[4] and the president of Wales received his instructions from the monarch.[5]

Bearing his instructions the new lord president set out on his journey to Munster accompanied by his own special advisers and his handpicked retinue of 30 horsemen and 20 footmen 'with pikes and muskets in hand'. This imposing group of soldiers, with well-maintained equipment and the best horses, had the dual function of guarding the lord president and impressing the populace. Slipping into Munster incognito was not on the cards for the monarch's representative. Fanfare and panopoly were the order of the day. A sergeant-at-arms bore the 'great mace' with its gold buttons before the lord president, a trumpeter alerted the populace to his arrival and the guydon, with his flying pennant, further enhanced the importance and dignity of his office.[6]

On the long journey (about 5 days) the most important landowners through whose property he passed rode forth to meet him. They accompanied him to his overnight accommodation in the most impressive castle of the region where he was

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[1] The best account of the origins of the presidency is, Kennedy, 'Munster', chapter 1.
[2] Luke Gernon, 'A Discourse of Ireland, anno 1620', in C. Litton Falkiner, *Illustrations of Irish History and Topography, mainly of the seventeenth century*, (Longmans Green, London, New York & Bombay, 1904), p. 351.
[3] Jon G. Crawford, (ed.), *A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571-1641* (Dublin, 2005), plates 7, 11.
[4] HMC, 13th Rep., p. 257.
[5] Ibid., p. 249.
[6] Gernon, 'Discourse', p. 354; BL, Harleian Ms. 697, ff. 145v-146r. The mace was refurbished in 1610 at a cost of £10 stg., ibid., fol. 73r.

greeted at the door by the 'Benytee' (Bean an Tí) and the females of her family. The hospitality was generous and a farewell drink ('deoch an doras') was offered as he departed the following day. In the early years of the century possible hosts were the earl of Ormond at Carrick, and Sir John Everard at Fethard. From about the second decade Sir Richard Boyle would have been a generous host. The excitement generated by the advent an important visitor is demonstrated by the 40 gentleman and 100 horsemen who greeted the lord deputy in Youghal in 1624.[7]

On his arrival at his Munster headquarters there was doubtless a another ceremony, similar to that held in Dublin, at which the lord president acknowledged the oaths of the kneeling local councillors and the council officials before beginning his administration in earnest.[8]

Presidential rule

The lords president, for the period under review, included Sir Henry Brouncker who was appointed on 4 June 1604 and died in office three years later. Henry, Lord Danvers, was appointed on 12 January 1607/8. He left the province two years later in the care of Vice-President Moryson, but he did not relinquish the post until March 1615 when he sold out to the earl of Thomond. Thomond's appointment dated from 6 May and he died in office on 5 September 1624. The final lord president of this period was Sir Edward Villiers, a relative of the Duke of Buckingham, who was appointed on 27 May 1625 and sixteen months later, on 6 September 1626, he died at his temporary residence at Youghal, Co. Cork. What is noticeable about these four gentlemen is that three of them died in office, three served a short time – Sir Richard Moryson being Vice-President during the long absence of Danvers – and that the only Gaelic Irishman, Thomond, served personally for nine years. Of the four just two were peers, whereas the lay lord presidents of the North were always peers and likewise for those of Wales for the period under review.[9]

The president was supported by a council and an executive consisting of chief justice, second justice, attorney general, clerk of the council, provost marshal, serjeant at armes, marshal of the court and gaol, general examinator, clerk/collector of fines, gentleman porter, commissary of the victuals, and pursuivant (Chapter 2). The

[7] Gernon, 'Discourse', pp. 357-61; Grosart (ed.), *Lismore Papers*, 1, ii, pp. 26, 168, 217.
[8] HMC, 13th Rep., p. 257.
[9] Reid, *Council*, pp. 487-8; Williams, 'Activity', pp. 134, 149.

presidency of Connacht, established at the same time as Munster, was similar in all these respects.[10]

Each lord president put his own stamp on the post and each was guided by the instructions of the current lord deputy and the involvement, or lack of it, of the Dublin central executive in the affairs of the province. During the crisis occasioned by the Spanish occupation of Kinsale, Sir Henry Brouncker's predecessor, Sir George Carew,[11] was actively supported by Lord Deputy Mountjoy. At this juncture the lord deputy was in control in Munster as he was again during the 'revolt' of the Munster towns in April 1603 on the accession of James I (see Introduction).

In difficult circumstances Lord President Carew kick-started the ordinary legal process with a circuit of the provincial court in Limerick, Cashel, Clonmel, and Mallow in mid-November 1600.[12] This first step was to set the tone for a busy legal programme in the province which will be reviewed below under 'Law and Order'.

When Carew left Munster in April 1603 the government of the province was committed to Sir Charles Wilmot and Sir George Thornton.[13] The appointment of these two soldiers, and the fact that Thornton was provost marshal, is indicative of the military focus of the council. Many of the commissioners appointed during the reign of James I were former soldiers and the selection of the provost marshal, as late as 1624, to assume control in the unexpected absence of the lord president demonstrates the climate of the times.[14] This military aspect was absent from the councils of Wales and the North. In Wales the Chief Justice of Chester assumed control when the president was absent.[15]

Sir George Carew's successor, Sir Henry Brouncker[16] severely eroded the grudging goodwill built up by Carew. Brouncker's instructions[17] from lord deputy Chichester show that the Dublin government was, in theory, to have considerable

[10] *Lib.Mun*, vol. i, pt. II, pp. 186-188; *CSPI, 1606-08*, p. xxxiv.
[11] For a full review of Carew's presidency see Kennedy, 'Munster', Chapter 6, pp. 173-222.
[12] *Pacata Hibernia*, I, p. 156; Kennedy, 'Munster', pp. 181-2. The records of this circuit are not extant.
[13] Undated instructions probably February 1602/3 when Carew was out of the province: BL, Harleian Ms. 697, fol. 148r; Sheehan, 'Provincial Grievance', p. 297, n. 27.
[14] Letter of Lord Deputy Falkland to the Commissioners of 29 September 1624 (BL, Harleian Ms. 697, fol. 92v).
[15] HMC, 13th Rep., p. 266.
[16] Kennedy, 'Munster', pp. 224-45. Brouncker was a protégé of the earl of Salisbury, 'the only patrone of all my fortunes'. (SP 63/219/99).
[17] BL, Harleian Ms. 697, ff. 88r-91r.

input into the Munster council.[18] Brouncker pursued an overt anti-Catholic policy and anticipated Lord Deputy Chichester's 'mandates' policy of 1605 with his proclamations of 14 August[19] and 18 August 1604[20] banishing all priests who threatened the 'new peace and quiet estate' of the province. Brouncker's efforts, which will be covered more fully under the section on 'Religion' below, earned for himself the hatred of all sections of the Catholic population and forced James I to order a mitigation of his policies. Both Brouncker and his successor Henry Lord Danvers did not welcome the regular visits of the judges of assizes which were regarded as interference and a threat to their income.[21]

Henry Lord Danvers[22] held the post of lord president for over seven years but his influence was minimal as he spent just over a year in the province. For the six years of his absence Sir Richard Moryson[23] was vice-president. Moryson, a former soldier, was an energetic administrator who greatly advanced the colonial agenda in Munster. Presidential and assize circuits, encouragement of markets, and even recreational decrees like the game laws, originally promulgated by the council in 1605 and reinforced in 1610,[24] helped to anglicize the province and provide suitable opportunities in the many administrative posts available. During his watch the crucial 1613 parliament was held (see below). When Danvers resigned from the post there was an unseemly auctioning of the position. Moryson had bought the reversion from Danvers for £3,000 but the earl of Thomond paid £3,200 to secure the post.[25] Selling of posts was not peculiar to Munster. It was also the practice in England despite official disapproval:[26] in 1619 Lord Scrope purchased the presidency of the North for

[18] The councillors included several Dublin-based officials, *ibid.*, f. 88r. See Chapter 3 for a discussion of the councillors.
[19] Bod. Lib., Carte Ms. 61, fol. 137; *CSPI, 1603-06*, pp. 190-191.
[20] BL, Harleian Ms. 697, fol. 180v.
[21] John McCavitt, *Sir Arthur Chichester: Lord Deputy of Ireland 1605-16* (QUB, 1998), p. 106.
[22] Kennedy, 'Munster', pp. 245-53.
[23] Ibid., pp. 254-68.
[24] BL, Harleian Ms. 697, ff. 184r, 192v.
[25] John MacLean (ed.), *Letters from George Lord Carew to Sir Thomas Roe, Ambassador to the court of the Great Mogul, 1615-1617*, (Camden Society, 1840), pp. 4 n. 3, 15 n. 3. In 1622 Moryson was still hopeful of acquiring the post, NLI, Ms. 8013, folder iii.
[26] The sale of office in England was forbidden by statute 5, 6 Edward VI, c. 16, apart from offices in the gift of the chief justices of the king's bench, common pleas and judges of the assizes. The statute did not come to full fruition until the beginning of the nineteenth century, W. S. Holdsworth, *A History of English Law*, (London 1939), vol. iv, p. 520.

£5,000;[27] the office of chief justice of Chester (*ex officio* vice-president of Wales) attracted a figure of over £5,000 in the late 1630s.[28]

Thomond, during his term of office, concerned himself mainly with the economic climate (such as the protection of the woollen industry) and with social issues such as the provision of almshouses and houses of correction to deal with vagrancy. He, as much as his English counterparts, was an energetic promoter of anglicisation, and Protestantisation – as his tough stance with Munster's municipalities show (discussed under 'Religion' below).[29]

Sir Edward Villiers owed his appointment to his relative the Duke of Buckingham. He was close to the local entrepreneur Sir Richard Boyle and made his headquarters at Boyle's house in Youghal where he died after a brief illness. His short time in Munster was characterised by an urgent attempt to line his pockets.[30] Villiers was succeeded by Sir William St. Leger[31] who lies outside the remit of this thesis.

Presidential court

Although the council in Munster was modelled on that in Wales it is not clear if the court system was organised, as it was in Wales, in the framework of the legal terms of Michaelmas, Hilary, Easter, Trinity.[32] In settled times the council held biannual circuits immediately following the assize circuits at the end of spring and in September,[33] but a 1613 document claims that the courts of both Munster and Connacht held four sittings.[34] Luke Gernon, second justice from September 1619 appears to confim this stating that 'the presidency is kept in the forme as it is in Wales'.[35] A regular pattern cannot be deduced from the Council Book. It shows a very busy schedule in the first years of the seventeenth century when the council was occupied with ensuring the peace by taking recognizances (or bonds) of good behaviour. Most of the records put the sittings at Cork but it is clear that the judges

[27] Reid, *Council*, p. 388.
[28] Higgins, 'Cheshire', p. 43.
[29] Kennedy, 'Munster', pp. 269-92.
[30] Ibid., p. 292.
[31] He served from 14 April 1627 – July 1642 and died in office, Terry Clavin, 'St. Leger, Sir William', *Oxford DNB*, vol. 48, pp. 658-600.
[32] HMC, 13th Rep., pp. 247–282, especially fol. 99, p. 258, instruction no. 43 p. 266, fol. 136b, p. 272, fol. 144b, p. 274.
[33] Kennedy, 'Munster', p. 288.
[34] BL, Lansdowne Mss. no. 159, fol. 123.
[35] Gernon, 'Discourse', p. 355.

travelled around the province. They were in Cashel on 21 November 1601, in Youghal on 9 June 1603 and in Kilmallock on 31 October 1603.[36]

The reader might wonder what happened to the records. Record keeping in the early seventeenth century was disorganised and embezzlement of documents was a constant problem.[37] Official records were regarded as private property and were usually kept in the officer's house.[38] The clerks of the privy council in London were regarded as extremely careless in the compilation of their records,[39] while the exchequer court in Dublin fought a battle over several months for the recovery of records retained by the relatives of a deceased chief chamberlain.[40] If this should be the case at the heart of the English and Irish governments, one cannot expect a higher standard in Munster or Wales where embezzlement or falsification of the records was a punishable offence.[41] (As late as the early nineteenth century records outside Dublin were still being kept in private homes.)[42]

The purpose of provincial courts was not to displace the common law courts but to assist them in areas where they were either ineffective or had ceased to operate. The presidencies of Munster and Connacht had been established in the mid 1560s with a wide range of political, administrative, ecclesiastical and military functions.[43] The first effective president of Munster was Sir John Perrott, appointed in December 1570. Perrott, who was concurrently lord president of Wales, brought considerable experience to the task of establishing the presidency of Munster on a firm footing. It is to be expected that the Munster presidency should echo the Welsh institution and reference to the latter should help to fill in the gaps in our knowledge of the Munster organization. The largest extant documentation of the Munster presidency is the register covering the period 1600-1622[44] with 210 folios. This is preserved in the British Library under the shelf mark Harleian 697 and is known as the Council Book of Munster. A transcription of this document forms the appendix to this thesis. Studies of the councils of Connacht, Wales and the North have been hampered by a

[36] BL, Harleian Ms. 697, ff. 53r, 62v, 64v.
[37] Exchequer Court order of 1609, NAI, Ferguson xi, p. 151.
[38] *CSPI, 1603-06*, pp. lxxv, 134; ibid., *1608-10*, p. 148.
[39] *APC, 1601-1604*, (London, 1907), p. viii.
[40] This occurred during the months of April-June 1618, NAI, Ferguson xi, pp. 257, 246, 269.
[41] *Rymeri Foedera*, Tom. xvii, 1616-1625, (London, 1717), p. 37.
[42] *1st-5th Report from the Commissioners on the Public Records of Ireland, 1810-15*, p. 409.
[43] Kennedy, 'Munster'. For the later period see William G. Irwin, 'The Presidency of Munster 1660-1672' (MA Thesis, UCC, 1976). Connacht is covered by Bernadette Cunningham, 'Political and Social Change in the Lordships of Clanricard and Thomond, 1569-1641 (MA thesis, UCG, 1979).
[44] Fol. 131v, containing names of the attorneys of the court, takes the Council Book to 26 June 1649.

paucity of extant records. Wales is the only other council to have a record similar to that of Munster. The Welsh document[45] begins 15 Sept 1586 and ends 24 July 1631, contains 179 folios of which 118 folios cover the same period as the Council Book of Munster but it does not include the same information. While there are some similarities – appointment of personnel, instructions to the lord president – the Welsh document has few court cases but has interesting sidelights on the running of the lord president's household[46] and on local affairs, such as recommendations for the posts of sheriff and escheator.

The register of Munster, like the Welsh document, is just one segment of a whole body of paperwork. Within the text there are references to 'Council books', letters and certificates which were filed by the month, lists of dependents of each lord, and a 'great store' of bonds.[47] It is to be expected that, as in Wales, the clerks would have prepared books of hearings (a schedule of cases due to be heard in the court) and books of judgements which are self explanatory.[48] The extant judgement books in Wales are more detailed than the books of hearings. The former record the county in which each suit originated, the names of the parties, the nature of the case, the court's decision and sentence. Welsh historians have the luxury of being able to cross-check surviving books of hearings and judgements against books of fines compiled annually by the clerk of the fines. These books of fines[49] provide the county, the name of the defendant, place of residence, name of plaintiff or relator,[50] type of offence, and the amount of the fine.[51] The only extant account for Munster, that of Hercules Turville, clerk of the fines, is altogether more vague. Covering the period 25 June 1605-last September 1608, it gives little personnel information. The document mentions ledger books which apparently recorded the name and amount paid by each individual.[52]

[45] BL, Egerton Ms. 2882. It is called the Dovaston Ms and is calendared in HMC, 13th Rep., pp. 247-282.
[46] Ibid., pp. 256, 263.
[47] BL, Harleian Ms. 697, ff. 44v, 64r, 85v, 96v, 127r, 163r, 178v; SP 63/216/66.
[48] Penry Williams, 'The activity of the Council in the Marches under the early Stuarts', *Welsh Historical Review*, vol. 1, 1960-63, p. 134.
[49] At BL, Harleian Ms. 4220, Williams, 'Activity', p. 135, n. 7.
[50] A relator was an informer providing information for the issuing of a writ, Henry Campbell Black, *Black's Law Dictionary* (6th edn., St. Paul, Minn., 1990), p. 1289.
[51] Williams, 'Activity', p. 135.
[52] Kent Archives, Cranfield, U269/1, Hi 15.

Procedure: Dennis Kennedy and Liam Irwin have covered the procedure of the court fully.[53] The following review of its operation is intended merely to cast further light on its *modus operandi.*

In order to compare accessibility to the court system it is first necessary to look briefly at the common law court. Here a civil case was initiated by the issuing of a writ by a plaintiff but, as there were several types of writ, choosing the incorrect one could ruin a case even before it began. The next step was informing the defendant of the complaint of the plaintiff by *subpoena* or *mesne* process.[54] This process enabled the defendant to employ certain devices or obstacles to inhibit the processing of the case. Thus it could take up to 18 months for a case to be processed – and this does not include further delaying tactics of a defendant.[55] The courts were held in Dublin before a jury which was prone to intimidation and whose records were in Latin.[56] In essence, the law was available only to the wealthy. Assize courts, conducted by Dublin-based itinerant judges were infrequent and were not established on a regular basis until the early years of the seventeenth century (see below).

In contrast to the common law court the procedure of the provincial court, which moved around the province, demonstrates its accessibility to would-be litigants. It was conducted in English, without a jury, and its records were in English. The use of Irish – or lack of it – will be discussed below.

Civil Cases: The first step in the initiation of a civil action was for a plaintiff to present (or exhibit) a bill of complaint which was presented on his behalf by one of the court attorneys such as Oliver Tyrry who presented the case of 'a very poore miserable woman a widow'.[57] Several records in the Council Book begin 'Whereas complaint was exhibited …' or 'Whereas vpon the complainte …'[58] This opening formula was different from that in Wales and the North where a petition, a less formal procedure, was used.[59] If the complaint was considered valid then came the second

[53] Kennedy, 'Munster', chapter 10; Liam Irwin, 'The Irish Presidency Courts, 1569-1672', *The Irish Jurist*, Vol. XII (1977), pp. 106-114.
[54] So called as it was the intermediate action between the first process by which a suit was commenced and the final process which concluded a case and enforced execution of the judgement, *Black,* p. 1205.
[55] Kennedy, 'Munster', p. 38.
[56] Irwin, 'Presidency Courts', p. 113.
[57] BL, Harleian Ms. 697, fol. 11r ff.
[58] Ibid., ff. 6r, 9r, 9v are examples.
[59] Kennedy, 'Munster', p. 38; Williams, *Council*, p. 77; Reid, *Council*, p. 275.

step when the court issued a *letter missive*[60] with the monarch's signet,[61] to the prospective defendant ordering him to appear before the lord president and council at a day and place appointed in order to answer the charges.[62] The third step was the personal appearance at the provincial court where one of the attornies answered the bill of complaint of behalf of the defendant. The plaintiff could then enter a replication[63] and the defendant a rejoinder,[64] witnesses were examined, and the final decree of the court included a recitation of the costs and damages.[65] The following is an example of a final decree:

> wee Doe hereby order Decree and adiudge that the said Compl*ainan*t shall recouer ag*ains*t him the said Def*endan*t the said Polo Deed to be presently[66] Deliu*ere*d vnto him by the said Def*endan*t or in liew thereof in Damadges the som*e* of fyve hundred poundes ster*ling* and for his costes of suite the some of fourty shillinges ster*ling* amountinge in the whole to the some of fyve hundred and two poundes ster*ling*. And that execution be made out accordingly. Moyalloe the xvth of January 1604.[67]

That was the plan, and a good case to look at is one of trespass brought by William Casie of Cork city against David Creagh (and several others) of Kilmallock, Co. Limerick on 2 September 1600. It was a long case with both sides trying to prove ownership and it was finally settled in favour of the plaintiff at a court held at Shandon on 20 August 1601. The reasons given for the judgement would not fit the criteria of the twenty-first century: the witnesses for the defence

> have manifestlie appeared vnto us to be persons of smale knowledge iudgement or creditt in matters of Discent and inheritance, beinge for the most parte laborers and women, persons verie incapable of suche matters

while the witnesses for the plaintiff

[60] A *letter missive* required the defendant to appear in order to answer the bill of complaint, *Black*, p. 903.
[61] The signet was set down in the instructions and has the king's arms surmounted by a crown, (BL, Harleian Ms. 697, fol. 167r, item 43).
[62] Ibid., ff. 146r, item 10; 89v; 165r. See ibid., fol. 113r where Arthur Denny explained why he could not appear in person to answer a *letter missive*.
[63] A reply made by a plaintiff to a defendant's plea, *Black*, p. 1300.
[64] The second pleading on the part of the defendant, being his answer to the plaintiff's replication, ibid., p. 1288.
[65] Kennedy, 'Munster', p. 40; Irwin, 'Presidency Courts', p. 107.
[66] The seventeenth-century meaning of this word was 'immediately'.
[67] Case between the Bishop of Cork and Sir John FitzEdmond FitzGerald, BL, Harleian Ms. 697, fol. 25v.

> were manie of them gentlemen, and persons well known to us to be men of good reputac*i*on, creditt and iugement in matter of inheritance and discent they themselves beinge ancient inheritors and gentlemen.[68]

Should a defendant wish to stall he could plead that the court had no jurisdiction in the case and try to have it transferred to a higher court in Dublin. This was an effort to force the plaintiff to drop the case which was the outcome if the plaintiff could not afford the enormous expense involved. Should a defendant fail to appear at the time specified in the *letter missive* the court dispatched, by the sheriff or constable,

> l*etter*es of contempt, Attachmentes, alleagence, p*ro*clamac*i*ons, or any other p*ro*cess to be made Dirrected or adwarded by their [the court's] Discression.

If this tactic did not succeed due to the 'obstinacy of the partie complained vpon' the provincial court had the discretion to order the sequestration of the defendant's lands or goods; copies of the *letter missive*, containing the king's signet, were to be left at his house and, if the defendant fled the province, further letters were to be left at his address; on the failure of this device the lord president and at least one member of the council could authorize the hearing and determining of the case in the absence of the defendant.[69] This was not the end of the matter as those failing to answer the summons of the court were punishable by fine, or imprisonment. Those who forcibly resisted could be arrested and either sent to the lord deputy or, alternatively, imprisoned by the lord president and council while the advice of the lord deputy was sought or until the defendant submitted to the decision of the court.[70]

Access to the provincial court was to be available to everybody and lack of finance was not to be an impediment. Thus a seventeenth-century version of free legal aid was available called *in forma pauperis*. It was covered in Lord Deputy Chichester's instructions to Lord Danvers on 13 January 1608/9.[71] Chichester's instructions to Thomond on 20 May 1615 reiterated that the poor should not be charged fees.[72] One of the attornies of the Council, James Gould, was appointed by Lord President Brouncker to make all the bills, petitions and complaints for those

[68] Ibid., ff. 6r-7r.
[69] Ibid., ff. 146r, item 10; 89v; 165r. The instructions of 1615 specify that the serjeant-at-arms should be sent to arrest a defendant refusing to answer the summons.
[70] Ibid., fol. 89v.
[71] Ibid., fol. 167r, item 44.
[72] Ibid., fol. 118r, item 5.

seeking this service. Gould was to be paid £4 per annum for past services and the attorney expressed his willingness to continue to provide the service.[73] However, availability to the less well off was probably more pious aspiration than reality.[74]

Criminal Cases: In order to process criminal cases the provincial court had a commission of *oyer and terminer* and gaol delivery equivalent to such commissions in England and elsewhere in Ireland.[75] Its jurisdiction in criminal matters was the same as that of the councils of the North and in the Marches of Wales and covered the whole range of treasons, felonies and misdemeanours.[76]

To compile evidence in criminal cases where there was suspicion of a 'great offence' against the monarch (i.e. treason), the council had the authority to use torture to extract information.[77] Torture was also permitted in Wales and was, according to Penry Williams, 'a considerable departure from the usual English tradition'. In Wales in the early years of James I there were objections to the practice but both in Munster and Wales evidence of its use is not to hand.[78] Torture was not permitted in the North,[79] and was permitted in England only when approved by the privy council.[80]

Inducements: The role of informer was often crucial in compiling intelligence and getting convictions. James Stritch of Limerick was the relator whose evidence secured the conviction of Piers Roche, also of Limerick. Stritch was rewarded with £15 of the £100 fine.[81] A proclamation of 20 January 1602/3 put a price of £300 sterling on the body of O'Sullivan Beare, £200 on his head, and gave a sliding scale for other named rebels.[82] Another proclamation of 2 April 1604 promised £10 for 6 named rebels, dead or alive, and encouraged good subjects to apprehend and take to

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[73] Ibid., fol. 70v.

[74] In the early 1650s John Cooke, appointed chief justice by Oliver Cromwell, took this aspiration literally. He removed superfluous officials, abolished judges' fees (their salaries were increased), reduced the fees of essential officers, and slashed the awards of the court. Vested interests, and particularly influential landlords, were not pleased. This radical experiment in true justice for all was short-lived. By 1654 Cooke was no longer in Munster and the provincial court appears to have been abolished,T. C. Barnard, *Cromwellian Ireland: English government and reform in Ireland, 1649-1660* (Oxford U.P., 1975), pp. 262-76.

[75] BL, Harleian Ms. 697, fol. 146r, item 7.

[76] Ibid., fol. 144v, item 12; Kennedy, 'Munster, pp. 34-5; Reid, *Council*, p. 280; Williams, *Council*, pp. 48-9.

[77] BL, Harleian Ms. 697, ff. 147r, item 15; 90v; 119r, item 16; 166r, item 25.

[78] BL, Egerton Ms. 2882, ff. 2v, 21 (item 9); Williams, *Council*, pp. 49, 56-7.

[79] Reid, C*ouncil*, p. 262, n. 5.

[80] Nicolson, *Power*, p. 15.

[81] BL, Harleian Ms. 697, fol. 85v. In 1618 Sir Laurence Parsons, attorney general, benefitted from information supplied by him, ibid., fol. 103v.

[82] Ibid., fol. 143v.

the nearest justice of the peace anybody who was not 'booked'.[83] Those who 'shopped' rebels received payment which was extorted either from the kindred of the rebels, or from the barony or county in which the rebels were arrested.[84] This and other proclamations demonstrate the concerns of the presidency for rooting out rebelliousness in the first decade of the seventeenth century.[85] The existence of informers in a locality would have engendered a climate of fear and tension with consequent revenge on real or perceived collaborators.[86]

Appearance at court: For the ordinary Irish person attendance at the provincial court must have been an intimidating experience. It was not that they were unused to legal procedures but the new court system replaced the familiar Brehon system where the proceedings were carried out in the Irish language. The new legal code was conducted by people who did not speak Irish, in a room where the judges sat at a height and the attorneys and clerks sat at a 'greate square table'.[87] How did the legal teams communicate with plaintiffs and defendants who could not understand or speak English? The instructions did not make provision for an interpreter. The problem of language would not have arisen in the North but it did in Wales. In Wales there was also no documentary provision for an interpreter but it is clear that interpreters were used and many of the court attorneys were Welshmen.[88] It appears that there was a sworn interpreter in Wales and Justice Saxey (in December 1598) called for a similar official in Munster.[89] Unlike Wales the court attorneys in Munster were not obviously Irish (see Chapter 2) apart from Oliver Tyrry and James Goulde in the early years of the seventeenth century and Thoby Walshe in the 1620s. Yet interpreters were an essential element if the native population was to be accommodated as it was 'a great

[83] Ibid., fol. 178v.
[84] Ibid., ff. 104r, 186v. In March 1604/5 Lieut. Pires Power of Lismore, Co. Waterford received £30 for the heads of 3 McOwen brothers, ibid., ff. 27r-27v.
[85] Proclamations: 5 September 1606 (BL, Harleian Ms. 697, fol. 184v); 24 March 1606/7, (ibid., fol. 181v); n.d., c. summer 1607, (ibid., fol. 186v).
[86] There are several reports of revenge attacks: Clodagh Tait, '"A trusty and wellbeloved servant": The career and disinternment of Edmond Sexton of Limerick, d. 1554', *Arch. Hib.*, vol. LVI, 2002, p. 51; *C.P.R.I.Jas.I.,* p. 251; Bod. Lib., Carte Ms. 62, fol. 279; Walter Arthur Copinger, *History of the Copingers or Coppingers of the County of Cork, Ireland, and the Counties of Suffolk and Kent, England*, (Manchester & London, 1884), p. 63; J. J. N. McGurk, 'O'Brien, Donough, fourth earl of Thomond', *Oxford DNB*, vol. 41, pp. 360-62.
[87] BL, Harleian Ms. 697, fol. 90r.
[88] Williams, *Council*, p. 82.
[89] *CSPI, 1598-99*, p. 394; Patricia Palmer, 'Interpreters and the politics of translation and traduction in sixteenth-century Ireland', *IHS*, 33/131 (May 2003), p. 273.

inconvenience in moving their suits by an interpreter'.[90] It was 1604 before a reference to this appears in the instructions to Sir Henry Brouncker when the marshal of the court (but not a judge or attorney) was required to speak both English and Irish.[91] Translation appears to have been done on an *ad hoc* basis. Patrick Crosby, *alias* McCrossan[92] provided translation services for Sir George Carew and Richard Boyle.[93] At an inquisition held at Kilmallock on 15 October 1614 a document was 'expounded into Irish'.[94] Dominick Coppinger, an Old English lawyer and freeman of the city of Cork,[95] acted as interpreter for Randall Clayton, clerk of the Council, in November 1624.[96] Those who could speak Irish were useful informers. When John Bourke was being conducted to Limerick as a prisoner he was reported to have invited people (in Irish) in the town of Carrick to rescue him, his words being reported by the soldiers who guarded him.[97] At a national level the predicament was acknowledged with the employment of Thomas Cahill as interpreter to the state at a salary of £26. 6. 8d.[98] Yet the instructions to the assizes judges in 1607 reminded them of the statute of 28 Henry VIII (1536-7) which was intended for the 'decreasinge of the Irish tongue'.[99] For the New English looking for another stick with which to beat the Old English their facility in Irish was grounds for suspicion.[100]

Punishment of offenders: Execution was permitted by the presidential court but the lord deputy was to be informed either 20 or 40 days before the sentence was carried out.[101] One can only wonder if such permission was sought – probably not. When John Bourke was executed the excuse given for not having sent notice was that poor weather stymied communications between Dublin and Munster.[102] There is no record in the Council Book of any sentence of death being handed down by the provincial

[90] Sir John Davies, *A Discovery of the true causes…*, in Henry Morley, (ed.), *Ireland under Elizabeth and James the First* (London, 1890), p. 335.
[91] BL, Harleian Ms. 697, fol. 90r.
[92] Cessor of Co. Cork, *Ir. Fiants*, no. 6589.
[93] Palmer, 'Interpreters', p. 264.
[94] NAI, M.7008, no. 71, 2nd series.
[95] Copinger, *History*, p. 93.
[96] Clayton to earl of Cork, 15 November 1624, (NLI, Lismore Ms. 13,237 (9)).
[97] *CSPI, 1606-08,* p. 104.
[98] Richard Cox, *Hibernia Anglicana* (London, 1689) pt. 2, p. 18. In 1606 he was paid £27. 7s. 6d., *CSPI, 1603-06*, p. 431.
[99] BL, Add. Ms. 4819, fol. 243r, no. 19.
[100] Palmer, 'Interpreters', pp. 272-3.
[101] BL, Harleian Ms. 697, ff. 147r, item 16; 166r, item 25; 90v.
[102] SP 63/221/15.

council but records of executions are contained in other sources.[103] Sir Henry Brouncker, on circuit from 24 August-24 September 1606, 'executed many' for relieving Maurice McGibbon and other traitors and refused bribes to reprieve them.[104] Ten years later Lord President Thomond informed the lord deputy that he had executed 'some notorious malefactors'.[105]

For non-capital offences the usual form of chastisement was wearing of papers, standing in the pillory, fine and other measures which were not elucidated.[106] Public punishment was humiliating and left the guilty open to ridicule. In June 1604 a Co. Cork jury found guilty in the court of Castle Chamber, besides being fined and imprisoned, were to wear papers on their heads declaring their offence

> in the face of the four courts holden this Trinity term at Drogheda, and at the next general sessions at Cork.[107]

Branding was a punishment permitted in the common law courts,[108] while the Court of Castle Chamber appeared to specialise in gruesome mutilation. In 1608 James Sherlock of Co. Tipperary, found guilty of forgery, was sentenced to have his ears nailed to the pillory in Waterford, to be forced to tear them free, to have his nose slit and seared.[109] The Munster presidency was not above such displays. In January 1616/7 John Brenagh, bailiff to the sheriff of Co. Cork (either Samuel Norton or Sir Thomas Browne), was nailed to the pillory and imprisoned for corruption.[110] The council in the North also indulged in this type of disfigurement.[111]

Imprisonment 'during pleasure' was frequently prescribed in conjunction with monetary and disfigurement sentences. The seventeenth-century prisoner, unlike his counterpart in the twenty-first century, did not have free board and lodging. On the contrary imprisonment was an expensive as well as an uncomfortable experience. The Council of Munster had its own official – the porter or gentleman porter – to deal

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[103] On 29 March 1604 there is an oblique reference to the execution of Diermod Offleyne for stealing 4 cows: BL, Harleian Ms. 697, fol 160r. For a brief discussion of capital offences see Kennedy, 'Munster', pp. 314-5.
[104] *CSPI, 1603-06*, p. 551.
[105] Bod. Lib., Carte Ms. 62, ff. 446-9. A man called Dowdarra was executed in Mallow in October 1620, Grosart, *Lismore Papers*, 1, i, p. 260.
[106] BL, Harleian Ms. 697, ff. 147r, item 17; 90r; 166r, item 25; 121v, item 38; 85v.
[107] The foreman was fined 1,000 marks and the rest were fined £500 each, HMC, *Earl of Egmont*, vol. I, part I, pp. 28-9.
[108] E.g.: Huntington Library, San Marino, Hastings Irish Papers, 2/HA 16093, 2/HA 16198.
[109] TCD, Ms 852, 87v; Herbert Wood, 'The Court of Castle Chamber or Star Chamber of Ireland', *PRIA*, C. 32, 1914-16, p. 165; *Egmont*, vol. I, part I, pp. 32-3; Edmund Downey, *The Story of Waterford* (Waterford, 1914), p. 101.
[110] Bod. Lib., Carte Ms. 62, fol. 446.
[111] Reid, *Council*, p. 436.

with the influx of 'guests' of the council and its own house where the prisoners were lodged.[112] (See Chapter 2 for a discussion of this officer.)

The shire gaol was the responsibility of the sheriff[113] but many were either ruinous or non-existent at the beginning of the seventeenth century and the council was expected to ensure their re-edification.[114] By the end of the second decade the lord president was still being exhorted to give some attention to the gaols.[115] There are no records of the condition of these prisons and how they were financed. In England less affluent prisoners were dependent on the charity of the parish.[116] Gaol delivery sessions were intended to clear the backlog of prisoners and in unsettled times prisoners could languish for a long time. Alternatively commissions of martial law could be attached to commissions of gaol delivery to empty the prisons by means of summary execution.[117] Many of the recognizances, which occupy several folios of the Council Book, must be considered gaol deliveries and this branch of the council's remit became a regular occupation of the provincial court.[118]

Boundary disputes formed a considerable proportion of the cases in the provincial court. This was a reflection of the times when the absence of hedges meant that land boundaries were fluid. Possession was nine-tenths of the law, so straying onto neighbouring land, either deliberately or accidentally, could be advantageous.[119] New arrivals, in Munster or elsewhere, endeavoured to extend their holdings at the expense of their neighbours.[120] Disputes about land were approached in different ways. One device was a warrant for perambulation for which merchants Nicholas Creagh of Kilmallock and William Creagh of Milton, Co. Limerick, applied to the court. On 19 August 1601 the court ordered David Creagh and Gerrott Fox – gentlemen chosen by the merchants – to 'tread, declare, settle and make knowen, the trew and p*er*fecte meares and boundes' of the lands in question. The certificate declaring their decision

[112] BL, Harleian Ms. 697, fol. 15r.
[113] Undated instructions of Sir Oliver St. John, (ibid., fol. 200v). John and Patrick Raggett of Kilkenny were awarded the office of marshal and keeper of the shire gaols of Co. Waterford by fiant of 4 February 1610/11. The post had formerly been held by Richard Walsh fitz James by letters patent of 2 June 1585, (Huntington Library, San Marino, Hastings Irish Papers, Box. No. 3, Folder HA 16162).
[114] BL, Harleian Ms. 697, fol. 147r, item 27.
[115] Ibid., ff. 200r, item 15; 116r, item 3.
[116] HMC, *Various Collections,* (London 1901), i, p. 68.
[117] David Edwards, 'Ideology and experience: Spenser's *View* and martial law in Ireland' in Hiram Morgan, (ed.), *Political Ideology in Ireland, 1541-1641* (Dublin, 1999), pp. 153-54.
[118] BL, Harleian 697, ff. 53r-67r.
[119] John Cosgrove, 'The Position of the Recusant Gentry in the social setting of Lancashire, 1570-1642' (MA thesis, University of Manchester, 1964), p. 89.
[120] Forster, 'Faction', p. 72.

was dated 22 September 1601.[121] Another device used by the presidency court was the sequestration of land in dispute into the hands of a third party pending the outcome of a case in a common law court. On 4 March 1603/4 the castle and six ploughlands of Dromine, Co. Cork, the ownership of which was in dispute between two members of the O'Callaghan family, was sequestered into the hands of Walter Coppinger. There was an interesting twist to the Dromine case when, on foot of a document procured from the lord deputy, the sequestration was dissolved and Brian McOwen O'Callaghan was put in possession in July 1604. On 12 December of the same year the property was again sequestered to Coppinger as the document on which the July case had been based was a forgery.[122] This use of sequestration was also a feature of the council in the North.[123]

Another simple and informal procedure available to the provincial council in civil cases was arbitration which was first introduced in the instructions of 18 January 1604. The procedure had two variations. The parties could either (1) agree to accept the ruling of an impartial commission nominated by the court or (2) they could reach a settlement which would then be approved by the court.[124] Arbitration had been used widely in the vacuum before the advent of the provincial court and was used concurrently prior to the regular visits of the assizes judges. It was a convenient method of problem-solving in the absence of the common law courts and was the first device used before recourse to the local or national courts.[125] It is not possible to estimate the failure rate of arbitration but salved documentation shows that arbitration was not a perfect solution to land disputes.[126] The procedure, by bill and answer whereby the causes were examined in the presence of the parties, could be at the express order of the presidency court or by a commission of 'some friends' with the consent of the parties.[127] A Roche family land dispute, detailed in the Council Book, shows that the success of the scheme depended on the good will of the parties.[128] Arbitration was also used in England and a feature of arbitration in the North was the

[121] BL, Harleian Ms. 697, ff. 7v-8r. In September 1604 Robert and John Coppinger, aldermen of Cork city, were nominated to survey the premises of Gillabbey (in dispute between Henry Davelles and Thomas Smithe). The case was mentioned at 5 different sittings of the court – on 6 and 16 September, 17 and 18 October and in January 1604/5, ibid., ff. 15r-16r, 24v.
[122] BL, Harleian Ms. 697, ff. 20r, 23v.
[123] Reid, *Council*, p. 303.
[124] Irwin, 'Presidency Courts', p. 108.
[125] There are several examples of arbitration in the Sarsfield Papers in the NLI: D. 25,971 (27 March 1613), D. 25,383 (4 August 1620) and D. 26,002 (1 June 1623).
[126] NAI, Calendar of Chancery Bills, I, p. 32, no. 37 (n.d.), AA, p. 57, no. 141 (21 November 1625).
[127] BL, Harleian Ms. 697, f. 90r. Kennedy, 'Munster', pp. 8, 41, 309, discusses arbitration.
[128] BL, Harleian Ms. 697, f. 26v. Another failed arbitration case is at ibid. ff. 27v-28r.

president arbitrating alone.[129] In Munster the president often dealt with cases sitting alone (see Chapter 2) but there is no extant documentation showing that he arbitrated alone.

R. R. Reid has noted that the provincial court in the North was popular with merchants as they could recover debts quicker than if they resorted to the common law courts. Defendants also benefitted as the provincial court awarded the principal debt only and not the penalty.[130] While there are several cases of merchants having recourse to the presidency court in Munster at least one case did not prove to be advantageous to the defendants. The court was particularly conscious in June 1604 that plaintiff John De Ballante was a foreigner while the defendants were Limerickmen. Good trading relations were very important for the economy of Munster and the defendants were penalised for failing to fulfil their agreement with de Ballante.[131] Other factors could affect trade. The arrival of the Spaniards in Kinsale in September 1601 meant that a Rosscarbery merchant was unable to repay a debt within the time limited.[132] Roger Kelly, a Bristol merchant, unable to pursue a debt in Waterford because there was no mayor or sheriffs as they had refused to take the oath of supremacy, petitioned the council of Munster for redress.[133]

Litigants did not necessarily take their case to the nearest sitting of the provincial court. This was, in some cases, an intimidatory device to force parties to travel to a different area but why did John de Ballante, mentioned earlier, bring Limerick merchants to the court in Cork? Was he afraid of intimidation in Limerick? A dispute concerning the possession of the castle of Ardea, Beara, west Co. Cork, was heard in the north Cork town of Mallow,[134] and an order was given in the same town for the raising of head money in Co. Waterford.[135]

It appears that the New English preference was for the provincial court. One complained that 'the quarter sessions is but a foly it is better to bring [Irish

[129] Reid, *Council*, pp. 307-8.
[130] Ibid., p. 305.
[131] BL, Harleian Ms. 697, fol. 20v.
[132] Ibid., ff. 21v-22r.
[133] This document is undated but endorsed in a later hand as 'c. 1611'. 1611 was the date of the original agreement between Kelly and three Waterford merchants, but the case before the council of Munster probably dates to about 1615 when there were no magistrates in the city, Huntington Library, San Marino, Hastings Legal Papers, Box 1 (13); Byrne, 'Jacobean Waterford', p. 56.
[134] BL, Harleian Ms. 697, fol. 26v.
[135] Ibid., ff. 27r-27v. See other examples at ff. 26v, 16v.

trespassers] to the council table'.[136] Comments on the common law courts (where the juries would have been predominately Catholics) elsewhere in this work support this view.

Participation of Dublin: In theory the lord deputy had considerable influence over the presidency. The instructions were those of the chief executive of Ireland and the president was authorised to report to Dublin every month or two.[137] While there was written correspondence between Dublin and Munster, there is no extant written monthly report. It is possible that regular reports were made whenever somebody associated with the provincial council had occasion to visit the capital. The clerk of the council was nominated by the lord deputy so the clerk, or his nominee, could have performed this duty. John Walley took documents to Dublin in May 1604,[138] and Randall Clayton waited on the lord deputy in July 1606 on the instructions of Richard Boyle then clerk of the Munster council.[139] In February 1617 Lord President Thomond sent the attorney of Munster, Laurence Parsons, to Dublin with a report and orders to 'fully relate' the most recent efforts against recusants.[140] The tone of the instructions from the lord deputy changed over the years. Those to Carew, Brouncker and Thomond were very detailed and covered the conduct of the court itself.[141] Other instructions were brief and tended to concentrate on specific policies, religion,[142] security, providing suitable courthouses,[143] and bringing the city of Waterford into line.[144] Cases were referred to the presidency court by the lord deputy,[145] and the Council Book conveniently collects letters from the privy councils in London and Dublin.[146]

There is no need to recap on the role of Lord Mountjoy (see Introduction). His successor, Sir George Cary, served as a stop-gap (yet his instructions to the lord president are very detailed[147]) pending the appointment of Sir Arthur Chichester who did not set foot in Munster during his long tenure. John McCavitt, Chichester's

[136] Chatsworth, Lismore Mss, vol. 14, no. 296.
[137] BL, Harleian Ms. 697, ff. 146r, item 5; 167r, item 41; 120r, item 27.
[138] Ibid., fol. 162v. Walley had been an unsuccessful candidate for the post of clerk of the council, Curtis, 'The Claytons', pp. 28-9.
[139] Grosart, *Lismore Papers*, 2, i, p. 102.
[140] Bod. Lib., Carte Ms. 62, fol. 446.
[141] BL, Harleian Ms. 697, ff. 145v-147v; 88r-91r (incomplete); 146r-168v; 117r-122r.
[142] Ibid., ff. 100r-100v; 100v-101r; 101r-101v; 199v-200r; 200r-200v.
[143] Ibid., ff. 116r-116v.
[144] Ibid., fol. 116v.
[145] Ibid., fol. 20r.
[146] Ibid., ff. 132r-145r.
[147] Ibid., ff. 88r-91r.

biographer,[148] points out that partly due to his obsession with Ulster, and his burning ambition to be lord president of that province, he rarely concerned himself with Munster and Connacht resulting in both provinces being more or less autonomous.[149] Chichester, who had been proposed as lord president of Munster, regarded the province as the model for the presidency of Ulster.[150] Nevertheless he had his own connections in Munster who were his eyes and ears in the province. George Courtenay, a major landowner in Limerick was a relative; Sir Hugh Pollard, who was granted a licence to make charcoal in Munster in 1608, was his brother-in-law; Sir Francis Annesley, joint clerk of the council with Sir Richard Boyle from 1607-1611, was his protégé; Arthur Bassett, appointed provost Marshal of Munster in March 1607, and George Trevillian, appointed to the same post on 6 October 1610, were his nephews; finally Sir Arthur was a family friend of Sir Richard Boyle, one of whose daughters was named Letitia for her godmother Lady Chichester.[151] The assizes judges also kept a weather eye on conditions in the southern province. Aside from this discreet observation Chichester and his successors were assiduous in recommending councillors to the province. This will be discussed in Chapter 2.

Law and Order

An active presidency court: Effective management of the province meant encouraging the native Irish to accept and use the common law system. As already mentioned, Lord President Carew initiated the process of making the populace familiar with the English-style legal system by making a circuit of Munster in November 1600 holding sessions at Limerick, Cashel and Clonmel.[152] Recognizances, or bonds, ensuring that former rebels kept the peace, were taken at Cork on 4 September 1601 before Gerald Comerford,[153] second justice of the province, while Carew himself presided over a court at Cashel on 21 November 1601.[154] The arrival of the Spaniards at Kinsale at the end of September 1601 interrupted the routine business of the provincial court and military considerations came to the fore. Before the last remnants of open rebellion in west Cork faded with

[148] McCavitt, *Sir Arthur Chichester*.
[149] Ibid., p. 105.
[150] 'Original documents illustrative of Irish History, No. 1', *UJA*, i, (1853), p. 182.
[151] McCavitt, *Sir Arthur Chichester*, pp. 64-5; Nicholas Canny, *The Upstart Earl* (Cambridge 1982), pp. 89, 190.
[152] *Pacata Hibernia*, i, p. 156. The records of these sessions are not extant.
[153] His patent was dated 15 October 1600. He succeeded James Gold, *Lib.Mun.*, vol. i, pt. II, p. 186.
[154] BL, Harleian Ms. 697, f. 53r.

the final submission of O'Sullivan Beare's castle of Dunboy on 20 June 1602,[155] the court system was up and running again. Recognizances were taken at Cork by Gerald Comerford on 16, 17, 19, and 21 April, 21 August, 9 September, and 17 October 1602.[156] William Saxey was likewise occupied at Shandon on 4 and 11 August, 9 and 22 September, 1, 3 and 5 October, 5, 16 and 26 December, 1602.[157] On 23 October and again on 1 December, Cormock Mc Dermody McCarthy of Blarney was important enough to have his recognizance taken before the lord president and council.[158] In January, February and March of 1602/3 Saxey was still busy taking recognizances[159] while Gerald Comerford and Dominick Sarsfield conducted an assize and gaol delivery at Cork on 4 February.[160] Several of the subjects of the recognizances had to travel long distances to appear at the court held in Cork. Dermot Mc Teage O Donnoghe came from Lismore, Co. Waterford, Jacob Butler from Knockloft, Co. Tipperary, and Owen Donnell Mc Phillipp O Swillevan from Ardea in Co. Kerry and Desmond.[161]

The recognizances show the presidency concerning itself with all sections of the populace – from the important lords to the humble tradesman, and embraced widows and merchants. The judgements ranged from pardons, to promises to be of good behaviour, to the return of livestock, to temporary release from prison, to licences to leave the country. In the last category not only Old English merchants, but also New English planters, were expected to give bonds. Several documents have endorsements which show the subsequent movements of some of those bound over.[162] Those putting up bond money were a mix of Gaelic and Old English with one New English planter, Hugh Cuffe. The provincial council kept a close watch and a tight rein on possible rebels and those, particularly merchants, who could be security risks. The money pledged was often more than the annual salary of the chief justice of the province - £100 per annum. For the period 4 September 1601 to 18 April 1604 the

[155] Kennedy, 'Munster' p. 195.
[156] BL, Harleian Ms 697, ff. 53v-54v, 58r.
[157] Ibid., ff. 55r, 55v, 56r, 57r, 57v, 58r, 59r, 59v. Sometimes the location of taking these recognizances is Shandon, and at other times Cork. Presumably 'Cork' also meant Shandon Castle as this was Carew's headquarters.
[158] Ibid., fol. 58v.
[159] Ibid., ff. 59v-60v.
[160] Just one recognizance of this session is recorded (ibid., fol. 61). This assize was not the first held in Munster in the seventeenth century. One of the first appears to have been held in Ennis, Co. Clare, in February 1601, P. White, *History of Clare and the Dalcassian Clans* (Dublin, 1893), p. 221.
[161] BL, Harleian Ms. 697, ff. 59v, 60r.
[162] For example: ibid., ff. 55v, 57r, 58v, 59r, 63v, 64v, 65r.

total number of bond orders was 54, the number of sureties was 142, and the total figure recorded in the Council Book amounted to more than £31,600.[163] The clerk of the fines, Hercules Turville, noted 63 'oulde' and as 'yet vnlevied' recognizances dating to 'her Late mates tyme' amounting to £7,837. 6s. 8d. Without Turville's ledger books, in which he recorded the amount 'in the m*ar*gent vpon ech mans name', it is not possible to make any correlation between the details in the Council Book and the clerk's accounts.[164]

The uncancelled bonds remained a source of threat to those bound over to keep within the law and were a source of corruption. In 1604 John Walley, unsuccessful candidate for the provincial clerkship, claimed that forfeited recognizances to the value of £5,000 were unexecuted and treated as 'waste papers'.[165] Chief Justice Saxey took £100,000 in bonds and insinuated that his fellow-officials concealed bonds or compounded with those bound over.[166] Walley's opinion that recognizances 'are converted to the particular vse of inferior officers' tallies with Saxey's and one gets the impression that the administration was simply overwhelmed with the 'infinit store' of unexecuted recognizances, fines and amerciaments.[167] An alternative explanation is that it was more profitable not to collect – that officials could use the uncollected bonds as sources of intimidation and corruption, collecting bribes 'to forget'.

The first recorded civil case – concerning land intrusion – was heard at Shandon on the 20 August 1601.[168] Following the Kinsale interlude civil cases were again being heard – the earliest recorded was on 1 September 1602. This case concerned the wrongful distraining of sheep from John Taylor of Mallow by members of the Captain Francis Kingsmill's company.[169] Legal government continued under Sir Henry Brouncker. Kennedy asserts that the earliest record of Brouncker's presence in Munster is in a proclamation dated 13 July 1604,[170] but he was busy in the provincial court as early as 28 June.[171] He presided at several sittings between 30

[163] The recognizances in question are at ibid., ff. 53r-67r, 116r, 174v. Figures that are unclear have been excluded.
[164] Kent Archives, Cranfield, U269/1, Hi 15.
[165] SP 63/216/66.
[166] BL, Harleian Ms. 697, fol. 17r; SP 63/226/57; SP 63/232(1612)/34.
[167] SP 63/216/66.
[168] BL, Harleian Ms. 697, fol. 7r.
[169] Ibid., ff. 9v-10r.
[170] Ibid., fol. 88r.
[171] Ibid., fol. 11v.

June and 6 September.[172] All these sittings were at Cork except of that of 26 July which was held at Limerick. The court was in Limerick again on 22 September,[173] in Mallow on 17 and 18 October,[174] and at Mallow again on 10, 12 and 31 December 1604.[175]

The council book records demonstrate that not only was the provincial council undertaking the type of case heard by a justice of the peace – i.e. binding people over to appear at future general sessions when summoned – but it was also conducting courts of assize and gaol delivery between 1603 and 1604 prior to the advent of the Dublin assize judges.[176] Second Justice Comerford and Attorney General Sarsfield conducted an assize and gaol delivery at Cork on 4 February 1602/3.[177] Another session took place at Cork on 28 January 1603/4 when the son of Donnell O Donnovane of Castle Donovan, who was in prison as a pledge for his father's good behaviour, was freed but ordered remain within the walls and liberties of the city.[178] George Thornton, William Saxey and Dominick Sarsfield held an assize and gaol delivery at Cork on Tuesday 27 March 1604 when the evidence of John Verdon, relating to the 'rebellion' of the city in April 1603 on the accession of James I, was again examined.[179] Friday's session (30 March) was presided over by Thornton and Sarsfield, and the final recorded sitting for this period, on Saturday 31 March, was conducted by Thornton, Gerald Comerford and Sarsfield.[180]

Meantime Second Justice Marshall held a series of gaol deliveries over several days beginning with Youghal on 12 December 1603 (6 days), at Kilmallock on 13 January 1603/4 (4 days) and again on 22 May 1604 (5 days), at Limerick on 19 July 1604 (5 days) and finally at Cork on 9 August 1604 (5 days). He held a summer circuit in 1605 lasting from 25 June (beginning in Waterford) to 8 October (finishing in Limerick), in all a total of 28 days and this included 3 days' travel from Cork to Limerick. Marshall's sittings were at Youghal, Kilmallock, Limerick, Cork,

[172] Ibid., ff. 11v, 12r, 12v, 20v, 21r, 21v, 22r, 22v, 15r.
[173] Ibid., fol. 23r.
[174] Ibid., fol. 16r.
[175] Ibid., ff. 23v, 25r.
[176] See below for a discussion of the Dublin assizes judges. See reports of assizes and gaol deliveries at ibid. ff. 61r, 64v, 65v-66v.
[177] Ibid., fol. 61r.
[178] Ibid., f. 64v. This recognizance was cancelled on 23 August, 1604.
[179] Sheehan, 'Provincial Grievance', p. 268.
[180] BL, Harleian Ms. 697, ff. 65r-66v.

Waterford, Fethard (County Cross of Tipperary) and Liberty of Tipperary.[181] Thus it can be seen that the provincial court was extremely active in the years prior to the advent of the Dublin justices.

Advent of the Assize Judges: The re-establishment of the assize courts was a key element in the centralising, civilising and anglicising policy of the government. As already mentioned these courts were conducted by the presidency officials in the first years of the James I's reign. Lord Deputy Chichester was the major promoter of the re-establishment in 1606 of the circuits by the Dublin judiciary,[182] and this was in line with the king's instructions.[183] Sir John Davies, a significant figure in the judiciary,[184] claimed that it had been 200 years since there had been a circuit in the province but this claim is somewhat exaggerated as in 1588 circuits had visited Munster, 'a thing not done before within the memory of man'.[185] Indeed Davies's own report of the 1606 winter circuit contradicts his 200-year theory when he asserted that the area had been shired 'above 300 years since' so that 'our law hath as long been current there' albeit interrupted by strife. He acknowledged the valuable contribution of the Munster presidency which 'hath made our civil government and justice familiar' to the people.[186] Davies' claim that the circuit judges 'carry the light and influence of Justice round about the kingdom' was resented by some contemporaries partly because the role of the military was ignored and also because it was suspected that the natives were presenting cases that would 'oppose one magistrate against another' and not because they respected the law.[187]

The 1606 winter (or Lenten) circuit[188] began at Waterford. Davies was accompanied by Sir Nicholas Walsh (lord chief justice of the common pleas) 'where we found the Lord president, with the Chief Justice of that province, and some others of the Council there'.[189] Sir Dominick Sarsfield and Sir Richard Boyle were among

[181] Ibid., fol. 70r.
[182] John McCavitt, '"Good Planets in Their Several Spheares" – The Establishment of the Assize Circuits in Early Seventeenth Century Ireland', *The Irish Jurist*, XXIV (1989), p. 248.
[183] BL, Add. Ms. 4819, f. 186v; *Des. Cur. Hib.*, i, p. 455; *CSPI, 1603-06*, p. 417.
[184] McCavitt asserts that the body of Davies' extant writings has given him an unwarranted reputation as the driving force of setting the circuits on a firm footing ('Good Planets', pp. 248-9).
[185] *CSPI, 1588-92*, p. 82; Kennedy, 'Munster' p. 319, n. 86.
[186] *CSPI, 1603-06*, p. 464; *CSPI, 1606-08*, p. 14.
[187] McCavitt, 'Good Planets', p. 259.
[188] See Kennedy, 'Munster', pp. 319-23 for a full report of this circuit.
[189] *CSPI, 1603-06*, p. 464.

those who accompanied Sir Henry Brouncker.[190] The advent of the assize judges was not welcomed by Brouncker as they encroached upon his jurisdiction, reduced the profits of the presidential court and

> [they] take excessive fees, (treble as much as the Clerk of the Councell), referr all to the examination of the Sheriff without endinge any, & so for gayne abuse the people, discredit the Table & fill the province full of soutes wch returne to me or stay to the nexte Sessions to the great grievance & many tymes the vndoinge of the sentences.[191]

Brouncker was particularly incensed by the usurpation by the assize judges of the 'English Bill', a court proceeding written in English unique to the presidential courts, which brought speedy redress for minor complaints between party and party.[192] It appears that the assize court charge of 2s. 9d., for 'proceeding and sentence', undercut the provincial court which lost suitors to the assizes.[193] Brouncker also believed that the visiting justices diminished 'the authority of his place', and he endeavoured to deprive them of 'their harvest', while complaining of their 'ill conduct'.[194] His attitude conflicted with the founding spirit of the presidency which was expected not to

> hinder nor impeach the good court and usage of the common laws of the realm, but shall to their power further the execution thereof.[195]

The circuit of the judges on this first visit was Waterford, Dungarvan, Youghal, Cork, Co. Clare, Limerick, Cashel, and finally Clonmel where the judges dealt with matters outside the jurisdiction of the earl of Ormond's Palatinate of the Liberties of Tipperary.[196] The tension caused by the arrival of the assize judges erupted into a full-scale row in Limerick when, in the absence of Lord President Brouncker (he had a cold and stayed in Cork a few days to recover, so was not with the judges in Co. Clare[197]), John Downing, a provost martial appointed by Brouncker,

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[190] Thomond's expression 'all the rest that sat at the Bench' gives the impression of a large number, SP 63/218/42.
[191] SP 63/219/99.
[192] Ibid. This English Bill metamorphosed into the modern civil bill. There was a similar procedure in Wales and the North, D. S. Greer, 'The development of civil bill procedure in Ireland' in J. F. McEldowney & Paul O'Higgins (ed.s) *The Common Law Tradition: Essays in Irish legal history* (Dublin, 1990), p. 32; Williams, *Council*, pp. 64-5, 77; Reid, *Council*, p. 304.
[193] SP 63/223/33.
[194] SP 63/219/99; SP 63/219/103A; Kennedy, 'Munster' p. 324.
[195] Collins (ed.), *Letters*, p. 51 item 11; Curtis & McDowell, p. 112.
[196] SP 63/218/53; *CSPI, 1603-06*, pp. 470-71.
[197] '…because it is taken to be out of my Lord President's jurisdiction…' according to Sir John Davies, SP 63/218/53.

was sent forward (to a higher court in Dublin) for trial for the execution of one of the earl of Thomond's retainers. See Chapter 2 for a discussion of this case and the provosts marshal in general. The lord president's 'cold' was probably a diplomatic illness as he was miffed that his jurisdiction did not extend to Co. Clare.

The summer circuit of 1606 followed a similar, but not identical, circuit and was conducted jointly by Sir Nicholas Walshe, Baron Elliot (of the exchequer) and the lord president. From Cork the judges travelled to Kerry for the first sessions to be held in that county for seven years and, by special commission, Kerry and Desmond were united.[198] Brouncker did not go to Kerry but rejoined the Dublin judges at Limerick – Kennedy puts forward the unlikely theory that he wanted to save himself the embarrassment of having to stay alone at Limerick while the assize judges were in Co. Clare.[199] The review of Co. Kerry below provides a more plausible reason for Brouncker's absence from the county.

Sir John Davies, in his report on the 1606 summer circuit to Waterford (which was occasionally included in the south Leinster circuit), grumbled that there was little work to be done because 'the Council table there was possessed of the most and best causes.'[200] Davies' complaints would not necessarily have received a sympathetic hearing from Sir Arthur Chichester who, as already noted, had an eye on the senior post in the proposed presidency of Ulster.[201]

By 1607, on the appointment of Lord President Danvers (a soldier[202]), the situation between the two bodies had become a major problem with Danvers setting down markers for the conduct of contacts between them:

> That the president may be authorised to stop appeales to the Judges at Dublin, or any review of theirs in the Province of Munster, For that it often causeth Division Betwixt the President and forraine Judges … while the Judge proceeding according to the precise letter of the Lawe shall many times faile of doing that w*hi*ch were most convenient.

He further averred that the judges of the presidency court were perfectly adequate and that admitting the Dublin judges was an insult to the Munster judiciary.[203] Danvers's

[198] The commission to unite Co. Kerry and Desmond was addressed to Sir Henry Brouncker, Sir Nicholas Walsh, John Elliott and Sir Dominick Sarsfield. The inquisition was held at Tralee on 14 August 1606, NAI, Lodge's Mss. 17, p. 105.
[199] SP 63/219/110; Kennedy, 'Munster', p. 323.
[200] *CSPI, 1606-08*, p. 14.
[201] McCavitt, 'Good Planets', p. 257.
[202] He anticipated that he would be employed militarily, McCavitt, *Sir Arthur Chichester*, p. 106.
[203] SP 63/222/175A.

attitude (like Brouncker's) was in direct contravention of his instructions (word for word as issued to Sir John Perrott[204]) not to hinder but promote the common law.[205] The privy council in London bowed to Danvers's demands by suggesting 'that no justices of assize should be sent into that presidency', though Sir Arthur Chichester, lord deputy, was accorded the courtesy of making the final decision – 'it is left altogether to his discretion to send or to stay them'.[206] Kennedy, writing in 1973, asserts that Danvers had his way and that no Dublin judges entered the province until July 1609,[207] but this is not entirely correct. More recent research by John McCavitt shows that Waterford (on the Kilkenny/Wexford/Wicklow circuit) was visited in the Lent assizes of 1608 and 1609, and that in summer 1608 the whole Munster province was circuited by Sir John Elliot and Sir Nicholas Walsh.[208] In 1609 the city of Waterford received a new charter which expressly forbade the operation of the assizes judges within its liberties[209] and the city is not mentioned again on the judges' circuit until the Lent assizes of 1614 (see Table 1 (a) below).

In 1609 the provincial council was still heavily involved in the common law business of the province. It was the provincial justices who conducted the Lenten circuit of assize and gaol delivery in that year. In April the council ordered the clerk of the fines of Munster, Thomas Houldshipp, to pay Edward Harris and Henry Gosnold, the chief and second justices of the province, for their most recent circuit which began on 21 March. They visited Limerick, Cashel, Clonmel and Cork, the circuit ending on 15 April, a total of 26 days days, as testified by Robert Tyrry, deputy clerk of the crown.[210] Generally circuits in England took, on average, 28 days for the longest and 7 for the shortest, while an Irish circuit could last for as long as 40 or 50 days.[211] The chief justice was allowed £1/day and the second justice 13s. 4d./day, and were to be paid for such 'like services' on which they would be

[204] Collins (ed.), *Letters*, p. 51 item 11; Curtis & McDowell, p. 112.
[205] BL, Harleian Ms. 697, fol. 167r, item 42.
[206] *CSPI, 1606-08*, p. 344-45.
[207] Kennedy, 'Munster', p. 326.
[208] McCavitt, 'Good Planets', pp. 262-78. McCavitt quotes from the *concordatum* section of the Irish Treasurer-at-War's accounts at NAE, E 351/267-72 with copies for the years 1603-13 at NAE, AP 1/289/1087-90.
[209] Byrne, 'Jacobean Waterford', p. 75.
[210] BL, Harleian Ms. 697, fol. 66r. See ibid., fol. 35r for a list of the fees of the judges and their clerks on circuit. Tyrry was deputy for Lawrence Parsons whose patent dated from 19 March 1603/4, *Lib.Mun.*, vol. i, pt. II, p. 1717.
[211] McCavitt, 'Good Planets', p. 254.

employed 'from time to time' – thus hinting that this was, and would be, part of a regular custom.[212]

With the departure of Danvers, and under the vice-presidency of Sir Richard Moryson, relations between the presidency and the Dublin judges settled down – at least there is no indication that there were any problems. It should be noted that the friction between the assize judges and the presidency in Munster was not unique. Sir Oliver St. John, vice president of Connacht, was critical of the assize judges who relegated the provincial court to second place.[213] The situation in Munster and Connacht reflected similar tensions between the arms of the common and prerogative law in England at this time.[214] In the North the tensions were entirely opposite to those in Munster. There the apparently amicable relationship between the assize judges and the council of the late sixteenth-century gradually deteriorated as the London judges began to resent their inferior position while in council territory.[215] Relations between the council in Wales and London became difficult, particularly in the early years of the seventeenth century, when the London judges considered that the provincials were getting a bit above themselves and this coincided with the restiveness of the Marcher gentry who were growing resentful of their ties to Wales.[216] In Munster it is clear that the visiting judges and their provincial counterparts developed good working relationships. Judge Sibthorpe and vice president Moryson collaborated in investigating the feasibility of the division of Cork during the winter assizes of 1614.[217] The lord president, or his representative, always sat with the assize judges and followed up on decisions. At the summer assize of 1620 it was agreed that a new courthouse should be built in Cashel. Thus, in March 1620/21 Lord President Thomond ordered the portreeve of the town and the county sheriff to collect £50 each from Cashel and the county.[218]

The basic summer circuit (which usually began in July while the winter circuit began in March) was counties Waterford, Cork, Kerry, Clare, Limerick, Cross and Liberty of Tipperary. The order of the circuit was not written in stone and it changed

[212] BL, Harleian Ms. 697, ff. 68v-69r.
[213] McCavitt, *Sir Arthur Chichester*, p. 108.
[214] Kennedy, 'Munster', p. 327.
[215] J. S. Cockburn, 'The Northern Assize Circuit', *Northern History*, vol. iii, 1968, pp. 123-5; Reid, *Council*, pp. 351-4.
[216] Williams, *Council*, pp. 203, 224-5.
[217] BL, Harleian Ms. 697, fol. 99v.
[218] Ibid., fol. 110v.

occasionally. The summer assizes of 1610 and 1611 were prolonged with the addition of Wicklow and Wexford, while Wicklow, Wexford and Kilkenny were added to the winter 1612 circuit. Table 1 (a) below shows that Co. Waterford was often included on the south Leinster circuit, remembering that the 1609 charter removed the city temporarily from the attentions of the central courts. The table finishes at 1614 as this is the year when Waterford city was again included on the circuit.

With the objections of the presidency overcome (they appear to have ended with Brouncker and Danvers), Youghal was included as an assize centre in 1612, Bandon in 1616 and Tallow for the county of Waterford in 1618.[219] These towns were under the strong influence of Sir Richard Boyle. Co. Kerry's late inclusion in the winter circuit from 1616 should not be regarded as unique. Three of the north of England counties (Northumberland, Cumberland and Westmorland) were visited by the assize judges just once a year until the early nineteenth-century.[220]

Table 1 (a): Assize Circuits of Munster

Year/Assize	Judges	Circuit
1603-1605	Conducted by justices of Council of Munster	
1606 WA	Sir Nicholas Walsh & Sir John Davies	Waterford city & county, Dungarvan, Youghal, Cork, Clare, Limerick, Cross Tipperary, Liberty of Tipperary
1606 SA	Sir Nicholas Walsh & John Elliott	Cork, Kerry, Limerick, Clare, Cross Tipperary, Tipperary
1607 WA	Sir Humphrey Winch & Domk Sarsfield	[locations not specified]
1607 SA	Sir Humphrey Winch & John Elliott	Cork, Kerry, Clare, Limerick, Cross Tipperary, Tipperary
1608 WA	Sir H. Winch, earl of Thomond, & Hen. Gosnold	Limerick [other locations not specified]
1608 SA	Sir John Elliot & Sir Nicholas Walsh	Cork, Kerry, Clare, Limerick, Cross Tipperary, Tipperary
1609 WA	Edward Harris & Henry Gosnold	Limerick, Cross Tipperary, Liberty Tipperary, Co. Cork
1609 SA	Peter Palmer & Sir Nicholas Walsh	Cork, Kerry, Limerick, Clare, Cross Tipperary, Tipperary
1610 WA	Sir John Denham & Sir John Elliott	Cork, Limerick, Clare, Cross Tipperary, Tipperary
1610 SA	Sir Humphrey Winch & Sir John Denham	Waterford, Cork, Kerry, Limerick, Clare, Cross Tipperary, Tipperary [+ Wicklow, Wexford]
1611 WA	Sir John Davies & Sir Nicholas Walsh	Limerick, Clare, Cross Tipperary, Tipperary [Cork served by Harris and Gosnold]
1611 SA	Sir John Denham & Sir John Elliott	Waterford, Tipperary, Cross Tipperary, Cork, Clare, Limerick [+ Wicklow, Wexford]
1612 WA	Sir John Denham & Sir John Elliott	Waterford, Cork, Limerick, Cross Tipperary, Clare [+ Wicklow, Wexford, Kilkenny]
1612 SA	John Beare & Sir Nicholas Walsh	Tipperary, Cross Tipperary, Limerick, Kerry, Clare, Cork, Cork city
1613 WA	Sir John Methwold & Gerald Lowther	Tipperary, Cross Tipperary, Clare, Limerick, Cork, Cork & Limk cities
1613 SA	Sir Francis Aungier & John Beare	Waterford, Tipperary, Cross Tipperary, Limerick, Clare, Kerry, Cork, cities of Cork & Limerick [+ Kilkenny]
1614 WA	Sir Francis Aungier & Christopher Sibthorpe	Tipperary, Cross Tipperary, Limerick, Clare, Cork, cities of Waterford, Cork & Limerick
1614 SA	John Beare & Sir Nicholas Walsh	Tipperary, Cross Tipperary, Limerick, Clare, Kerry, Cork
Sources: BL, Harleian Ms. 697; McCavitt, 'Good Planets'; SP 63/217/47, 63/218/23, 63/218/53, 63/219/99, 63/219/110; NLI Ms. 16,085; NAI, Ferguson xi, p. 111 (1608 WA); Grosart (ed.), *Lismore Papers*, 1, i. Note: Waterford often on south Leinster circuit.		

From the advent of the Dublin justices in 1606 there were two separate systems of justice in Munster with common characteristics. Both courts established

[219] Kennedy, 'Munster', p. 327. In the autumn of 1611 Captain Newce, the founder of Bandon, lobbied the presidency for Bandon, Co. Cork, to be made a centre for assize and sessions and also got the support of the Dublin council for his scheme, BL, Harleian Ms. 697, ff. 98r-99r.
[220] Cockburn, 'Northern Assize', p. 122.

possession and dealt with cases of assault, murder and robbery while the assizes had an added jurisdiction in land titles and trials at *nisi prius*.[221] The parameters of their jurisdiction frequently overlapped and were at variance with each other,[222] yet, as already stated, the president of Munster sat on the bench with the assize justices and followed up on their decisions.[223] This conflict of interest between the courts was also a feature in England and especially in the North[224] where the following complaint did not have an echo: the Irish used the common courts to discriminate against the colonists – they 'make it the Catholique cause, and give help both by purse and oaths to ouerthrow' any New English.[225] But the reverse was also true. Nicholas Barham, unhappy with the result of a land case, held it over for the next assize sitting when Sir Richard Boyle (landlord of some of the jurymen?) would be present.[226]

The recommendations of the 1622 Commissioners went some way to alleviate the competition between the various courts. The provincial courts were diminished somewhat in that they were forbidden to reverse the decisions of the assize judges;[227] to interfere in any title of lands between party and party;[228] to reprieve prisoners condemned at the assizes (the assize judges were counselled to treat any recommendation of the lord president with 'due respect and regard');[229] and both courts were limited in the procedure called the 'English Commission' (or English Bill) in that the presidency court's upper limit was £5 stg. and the assizes £10 stg. 'for the benefit of the poor, to spare them going to Dublin'.[230]

The overall effect of the regular visit of the Dublin judges was, as intended, centralisation and anglicisation. The only extant orders to the judges going on circuit date from June 1607 and show their wide range of responsibilities, much as was expected of their counterparts in England.[231] They related to the conduct of the inferior courts, to the duties of the justices of peace and constables, to the hiring and

[221] Kennedy, 'Munster', p. 328.
[222] Pawlisch, *Sir John Davies*, pp. 38-39.
[223] BL, Harleian Ms. 697, fol. 115v.
[224] Cockburn, 'Northern Assize', p. 123; Roger Lockyer, *The early Stuarts: a political history of England 1603-1642* (Longman, UK, 1989), p. 53.
[225] Huntington Library, San Marino, Ellesmere Ms., EL 1746, f. 13v, no. 11.
[226] NLI, Ms. 13,236 (9).
[227] Direction XVII, G. J. Hand, & V. W. Treadwell, 'His majesty's Directions for ordering and settling the Courts within his Kingdom of Ireland, 1622', *Anal. Hib.*, 26, (1970), p. 199.
[228] Direction XIV, ibid., p. 198.
[229] Direction XV, ibid., pp. 198-9.
[230] Direction XIII, ibid., p. 197.
[231] BL, Add. Ms. 4819, ff. 241v-243v; Herrup, *Common Peace*, pp. 52-3; Lockyer, 'Early Stuarts', p. 53.

conduct of servants, recusancy, vagabonds, and identifying suitable locations for new villages and towns. The wearing of English attire was regularly encouraged[232] and while the claim of Sir John Davies that the courts were the reason why the Gaelic Irish removed their glibs and mantles, and 'conform[ed] themselves to the manner of England in all their behaviour and outward forms'[233] might be exaggeration, it certainly had some substance.[234] The provincials became familiar with, and used, the local and Dublin courts more frequently, even though from 1607 citizens living 160 miles or more from the capital were to have any process under the value of £5 dealt with by the local assizes.[235] This increased familiarity with the Dublin courts was noted in Connacht from the 1620s[236] but occurred earlier in Munster. In a long struggle straddling the sixteenth and seventeenth centuries David Condon of Cloghleigh, Co. Cork, used every avenue of redress all the way from the provincial court, to the Dublin courts, and to the privy council in London in an effort to recover his estate from the planter Arthur Hyde.[237] All counties of Munster are well represented in the Ferguson exchequer abstracts[238] and the salved Chancery pleas[239] as Gaelic landlords increasingly followed Condon's example and, as one historian has said, made 'intelligent use' of the English legal system in the conduct of land disputes with neighbours or in an effort to upset unfavourable inquisitions.[240]

The policy of centralising and anglicising was bearing fruit.

Co. Kerry & Desmond: As noted above, in the summer circuit of the assizes judges in 1606, Lord President Brouncker refused to travel to Co. Kerry. The following review will shed more light on the lord president's action.

In 1570 the 'pretended Liberties of the said Countie of Kerry' (palatine jurisdiction claimed by the imprisoned earl of Desmond) were included in the instructions to Sir John Perrott, the first effective lord president of Munster:

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[232] BL Harleian Ms. 697, ff. 166v, item 32; 199v, item 21.
[233] Davies in Morley, *Ireland under Elizabeth*, p. 335.
[234] BL, Add. Ms. 4819, fol. 243r, no. 19.
[235] Ibid., no. 22.
[236] Mary O'Dowd, *Power, Politics and Land: Early Modern Sligo 1568-1668* (Belfast, 1991), p. 55.
[237] The controversy between Condon and Hyde makes its first appearance in the Council Book of Munster on 26 July 1604 (fol. 21v) and can be followed at ff. 3r-5v, 123r-124r, 178r. The case was in the exchequer court in Spring 1605, NAI, Ferguson ix, p. 11/21; Sept. 1606, ibid., p. 48; Nov. 1608, ibid., xi, pp. 136, 137; May 1609, ibid., pp. 161, 177; ibid., xx, p. 10 (n.d.).
[238] Ibid., Ferguson ix, xi, xii, xx.
[239] Ibid., Calendar of Chancery Bills A-Q, AA-BB.
[240] Mary O'Dowd, 'Gaelic Economy and Society' in Ciaran Brady, & Raymond Gillespie (eds.) *Natives & Newcomers* (Dublin, 1986), p. 142.

> the said Lord President and Counsell shall heare, order, and determine all Manner of Causes within the said Countie…[241]

At this time Counties Kerry and Desmond were separate entities and would not be shired until September 1606.[242] Sir George Carew, who oversaw the re-establishment of the presidency from 1600-1603, had authority to hear and determine all manner of misdemeanours of local government officials

> w*i*thin all the Counties and contries w*i*thin the province of Mounster as w*i*thin the Supposed liberties of Typperary and Kerry and in all Citties and other townes corporate…[243]

In May 1605, much to the vexation of Lord President Brouncker, Sir Charles Wilmot received a commission for the governorship of Co. Kerry with full county authority.[244] His commission, 'during pleasure', gave him authority to proceed against rebels, with power of martial law,[245] to be justice of the assize and *custos rotulorum*, to hold courts of oyer and terminer, and to appoint a vice-governor in his absence.[246] The appointment of Wilmot meant that Co. Kerry was a proto-palatinate which contradicts crown policy of excising independent authorities like the earl of Ormond's palatinate in Co. Tipperary. Crown policy was not consistent in this area as the earl of Clanrickard also had wide-ranging powers in Connacht.

The decision to detach Co. Kerry from Munster was not well received by Lord President Brouncker as his instructions regarding the county were the same as for Sir George Carew. The new governor, Wilmot, had been a soldier in Ireland since early in the 1590s. His advancement up the martial ladder had been rapid. He was constable of Carrigafoyle Castle, Co. Kerry, from July 1600, constable of the castle of Castlemaine from 8 December 1600,[247] governor of Kerry in July 1600,[248] governor of Cork from July 1601, and (again) governor of Co. Kerry in September 1602.[249] He served as a joint commissioner of Munster, in the absence of Sir George Carew, in the

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[241] Collins (ed.), *Letters*, p. 502.
[242] NAI, Lodge's Mss. 17, p. 106; *C.P.R.I.Jas.I.*, p. 98.
[243] BL, Harleian Ms. 697, f. 146v, item, 11.
[244] *C.P.R.I.Jas.I.*, p. 419; Kennedy, 'Munster', p. 229.
[245] A general proclamation of 20 February 1604/5 recalling powers of martial law excluded the governor of Co. Kerry, *C.P.R.I.Jas.I.*, p. 419.
[246] SP 63/217/27.
[247] On 8 August 1604 Wilmot appointed Sir Thomas Roper his attorney to surrender his patent in favour of Roper who received the constableship of Castlemain at the same fees, Bod. Lib., Carte Ms. 61, fol. 209.
[248] Appointed by the current Lord President Carew, (Kennedy, 'Munster', p. 230).
[249] *Oxford DNB*, vol. 59, pp. 453-55.

spring of 1603.[250] It is possible that the appointment of Wilmot might have been an effort to keep him in Munster where he had already shown his ability.

Brouncker's attempts to undermine London's confidence in Sir Charles Wilmot, as he would do with the earl of Thomond in Co. Clare, bore fruit as Wilmot did not have the political support or wealth to sustain the 'much unkind and undeserved ill-usage' of the lord president.[251] Wilmot's tenure in Co. Kerry was short – about 8 months. By mid-January 1605/6 he had 'retired himself' to Dublin to attend the lord deputy.[252] The former governor's brief assessment of the lord president is damning. When he had been reduced to the position of a captain of 50 soldiers he said:

> I haue most cause to complayne my self of the oppression and the disgracefull vsadge of my lo. president, [yet] I maye be thought either partiall or passionate in myne owne smartes to speake.

By removing himself from the province he hoped

> to avoyde contestation against a superior [whom] I know to be as vnfitt for publick example, as it is vnfitt in him with aucthoritye to doe open iniuries…[253]

The Co. Kerry interlude is a demonstration of the fluctuating policy of the government which was based on the whims of the moment and the patronage culture of the time. Appointments to key positions, such as the presidency, over which the Dublin government had no control, did not necessarily go to the most able candidate but to the one with the most clout.

There is a paucity of information about Co. Kerry in this period. One historian has said that Kerry was rarely visited by the assizes judges between 1603-15.[254] This is incorrect as, apart from 1611, it was visited annually between 1606 and 1615 though it would not get bi-annual assizes until 1695, and then by proclamation.[255] Justice Walsh's report on his summer assizes visit in September 1606 claimed that no sessions had been held there for seven years 'and although that

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[250] BL, Harleian Ms. 697, fol. 144r.
[251] *CSPI 1603-06*, p. 399; Kennedy, 'Munster', p. 229; J. King, *King's History of County Kerry*, Part IV, (Tralee, n.d.), p. 324.
[252] One source claims that Wilmot was governor of Co. Kerry for most of Chichester's lord deputyship, McCavitt, *Sir Arthur Chichester*, p. 78.
[253] SP 63/218/4.
[254] McCavitt, *Sir Arthur Chichester*, p. 99; McCavitt, 'Good Planets', p. 251.
[255] McCavitt, *Sir Arthur Chichester*, p. 249, n. 66; idem., 'Good Planets', p. 251, n. 24

countie be yet vnpeopled & poor' the inhabitants were happy to see the justices. Lord President Brouncker failed to accompany the justices (though Wilmot was no longer in the county) as 'he feared there would not be sufficient victuals to be found ther', but he would have sent other members of the Munster executive in his place. Justice Walsh further reported:

> We hath ther by special commission vnited Desmond a wylde Irish countrey vnto the Countie of Kearie… All the churches in that cowntie ar ruined & vncovered. And therefore a great p*ar*t of o*ur* care was to procure the reedifying of them. And I feare it will not be effected verie suddenly bycause ther are but few hands that can give help therevnto.[256]

Meantime the eclipse of Wilmot's career was temporary. In November 1607 (Brouncker had died in June) he was appointed a privy councillor and received a pension of £200. He spent some years in England before returning again to Ireland when in May 1615 he was appointed a councillor of Munster,[257] and was lord president of Connacht from 1616 until his death in 1644.[258]

Co. Clare or Thomond:[259] The status of Co. Clare was ambivalent, even for the authorities, in the early years of the seventeenth century. It had been joined with the province of Connacht in 1579 in order to artificially boost that province's income. This did not please Conor O'Brien, earl of Thomond, who refused to co-operate with the president of Connacht.[260] Conor's son, Donogh the fourth earl of Thomond, kept a tight hold over Co. Clare where he acted independently of, but parallel to, central authority.[261] Educated in England from 1580 and returning home in 1582 on succeeding his father, earl Donogh remained a Protestant and maintained his London contacts. From the political backwater of Co. Clare he carved out a vital role in the politics of Munster and emulated the earl of Clanricard in Connacht.[262] He brooked no disloyalty of any kind, encouraged anglicisation, and ensured that the county supported the government during the turbulent years which marked the close of the

[256] SP 63/219/110.
[257] BL, Harleian 697, f. 117r.
[258] *C.P.R.I.Jas.I.,* p. 304; *C.P.R.I.Ch.I.*, p. 70; MacLean, *Letters*, p. 15.
[259] Thomond was named Co. Clare when it was shired under the presidency of Connacht in the sixteenth century. It was transferred to Munster in 1602. For these changes see Bernadette Cunningham, 'Political and Social Change in the Lordships of Clanricard and Thomond, 1569-1641 (MA thesis, UCG, 1979); J. J. N. McGurk, 'Donough O'Brien', *OxfordDNB*, vol. 41, pp. 360-62, and David Edwards, 'Two Fools'.
[260] Ó Dálaigh, (ed.), *The Strangers Gaze*, p. 5.
[261] Cunningham, 'Political and Social Change', pp. 215-6.
[262] Ibid., p. 210.

sixteenth and the commencement of the seventeenth centuries. By the end of the first decade of the new century he had achieved a high profile in Dublin but at the expense of familial and local popularity so much so that he needed military protection.[263]

Earl Donogh campaigned to have the county realigned with Munster his reasons including: Munster was the original name of Thomond (which means 'North Munster') and had been thus for 1,300 years; the Gaelic dialect was the same on both sides of the Shannon (and was different from Connacht); until it was shired the inhabitants of Thomond had attended the assizes and sessions in Limerick, but now gaol deliveries were held at Ennis and Quin which, though part of Thomond, was within the franchise and liberty of the city of Limerick; Sir Edward Fitton joined Clare with Connacht, but Sir William Drury (president of Munster) had it detatched, and it was reattached with Connacht 'upon the earnest and importunable suit' of Sir Nicholas Malby.[264] On 24 November 1602 the Dublin council informed the privy council:

> And nowe as there appeareth vnto vs no matter, either of Rewardes or Antiquitie, wch might Discover any important reasone, whie that Countie of Clare was at first wthdrawne from Mounster and annexed to Connaght. So we see not any greate inconvenience … that maie Lett the revniou thereof to Mounster againe, since we fynde at this Debating of the Cause that the former inconvenience … maie be well helpen and mett wthall from tyme to tyme by Direcons from this bord.

The earl was immediately appointed governor of Co. Clare, subject to the confirmation of the queen, the council believing that he would 'govern it well', and he undertook to assist any risings out in Connacht and Munster. Sessions would be held both at Limerick and in Co. Clare.[265] At the beginning of a new reign it was normal practice for all officers to be temporarily confirmed in their positions. Thus it was 4 September 1603 before the earl of Thomond's commission as military and civil commander of Co. Clare was renewed.[266] The chief justice, second justice and attorney of Munster, together with the second baron of the exchequer, were joined in commission with the earl 'for the keeping of the assizes and sessions.' As for the rising out of Co. Clare the commission stated:

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[263] P. White, *History of Clare and the Dalcassian Clans* (Dublin, 1893), p. 197; Cunningham, 'Political and Social Change', p. 214; 'Donough O'Brien', *OxfordDNB,* vol. 41, pp. 360-2; 'Daniel O'Brien', ibid., pp. 358-9.
[264] Lambeth Palace, Carew Ms. 614, pp. 122-129; *Cal. Carew, 1601-03*, pp. 171-76.
[265] SP 63/212/76; *CSPI, 1601-03*, p. 526; Cox, *Hibernia Anglicana*, part I, p. 455. To chart the see-saw movement of the county see *Ir. Fiants* 1525, 2758, 1424, 2885, 3667-8.
[266] *C.P.R.I.Jas.I.,* pp. 5, 12.

> the same to be at the direccion of the President of Munster with whom the sayd Earl shabe readie to joyne at all tymes as formerlye he hath done.[267]

This commission was to be a source of grievance to Lord President Brouncker as he believed that the lord president should have authority over Co. Clare. Brouncker's attitude was not unique but was a continuation of a pattern followed by previous lords president.[268] Brouncker tried to discredit the earl by alleging misconduct:

> Many complanytes hath bene brought vnto me for the misgouerm*en*t of Thomonde wch I dare not reforme before a resolution from yr lps whether it be wthin the compass of my Authoritye … I can not doubt but the Gou*er*ment of that countye was left to the president of Mounster.[269]

The tension between Brouncker and earl Donogh boiled over in the case of John Downing, acting provost marshal (see Chapter 2). For Brouncker, the earl's 'misgovernment' also included the discreet protection given to the Catholic clergy and the preservation of the Franciscan friary of Ennis where the O'Briens were buried.[270] An extension of his authority would bring the lord president an increase in his revenue, particularly from the court system.

Sir John Davies, circuit judge of the winter assizes in 1606 remarked on the Gaelic manners and customs of the inhabitants of Co. Clare although they spoke and understood English.[271] Justice Nicholas Walshe's report of his summer assizes visit the same year noted that

> we fownd that countrey farr better enhabited and we can not but attribute the chief cause thereof to therl of Thomond who hath well defended the inhabitants of that contie from the rage of rebels in the war tyme and from forreyn theves since the rebellion ended … there is not much stealing among themselves.[272]

A traveller observed in or around 1610:

> The county of Clare is soe gouerned by the noble Earle of Thomond that none Darest in one word offend the State, yea the Countyes bordering of Limerick … are well curbed by his tenure, admonishmt

[267] NAI, RC 2/1-2, vol. I, no. 15.
[268] Kennedy, 'Munster', pp. 92-3.
[269] SP 63/219/99.
[270] Ibid.; Ó Dálaigh, (ed.), *The Strangers Gaze*, pp. 15-17.
[271] *CSPI, 1603-06*, p. 470; Ó Dálaigh, (ed.), *The Strangers Gaze*, p. 14.
[272] SP 63/219/110.

> as having none among them of any great power or wealth to Controle his will in the execucon of the lawes of this yr Mates Realme.[273]

It would appear from the Council Book of Munster that the lord president did not secure any further influence in Co. Clare. Though the chief justice, second justice and attorney were to be active in the court system there is no evidence that they did so, and it was not until the earl himself became lord president of Munster on 6 May 1615 that the county makes its appearance in the Council Book. Even then the entries are sparse and concern a complaint at the slow rate of subsidy payment, a letter of August 1620 urging monetary support of Lord Delvin in England, and an alehouse proclamation being distributed in 1621.[274] This absence from the record does not necessarily indicate lack of activity but that the region was safe under the stewardship of the earl. Although the county remained joined with Connacht for the purpose of computing the composition in lieu of cess, it was included with Munster for the 1613 parliament.[275] The county was very much involved with the assizes circuits so it is assumed that the provincial circuits included Co. Clare at Limerick as they had formerly done. Note that there is just one mention of Co. Clare in the various instructions to the earl as lord president.[276]

When the earl became lord president in 1615 his eldest son Henry, baron of Ibrackan, began to climb the political ladder. On 22 June 1615 he was appointed a councillor of Munster to help his father 'in all things from tyme to tyme';[277] on 8 June 1618 he was appointed a joint commissioner of the province during the absence of his father;[278] on 26 February 1617/8 he was appointed governor of Co. Clare.[279]

Co. Clare was included in the circuit of the provincial court in May-June 1620, which must be considered as part of a pattern.[280] The earl, having moved the headquarters of the presidency to Limerick where he came into frequent conflict with Edmond Sexton,[281] still kept an eye on his patrimony and increased his holdings by acquiring land in counties Limerick, Tipperary and Carlow.[282] He preserved his own sphere of influence by exclusion: in 1619 he forbade the townsmen of Limerick, many

[273] The date of this is uncertain but is around 1610, TCD, Ms. 567, fol. 54v.
[274] BL, Harleian Ms. 697, ff. 39r, 87v, 115v.
[275] *Cal. Carew, 1603-24*, p. 134.
[276] This particular instruction concerns the re-edifying of churches, BL, Harleian Ms. 697, fol. 199v.
[277] Ibid., fol. 162r.
[278] Ibid., ff. 126r, 190r; *C.P.R.I.Jas.I.*, p. 402.
[279] Bodleian Library, Carte Ms. vol. 61, fol. 483.
[280] Grosart (ed.), *Lismore Papers*, 1, ii, p. 249.
[281] NLI, Ms. 16,085, p. 73.
[282] Cunningham, 'Political and Social Change', pp. 214-5.

of whom had land in Co. Clare, to wear arms when they travelled into Co. Clare; and he supported a local landowner, John FitzThomas, against the attempts of Sir William Parsons, surveyor general of the court of wards, to acquire land in Co. Limerick.[283]

After the death of Earl Donogh in Clonmel on 5 September 1624 his heir Sir Henry was one of the commissioners of the province until the arrival of the new lord president – Sir Edward Villiers.[284] Villiers made an unsuccessful attempt to acquire the governorship of Co. Clare wishing to add it to that of Waterford city which he already held.[285] Henry, now earl of Thomond, continued to hold the governorship of the county and there was a substitute in his absence.[286] When Henry died he was succeeded by his brother Barnaby[287] who was also governor of Co. Clare. Barnaby died in 1657 and in December 1660 Charles II joined the county to the province of Munster, Lord President Orrery receiving an extra allowance of 10s. stg. per day.[288]

Liberty of Tipperary: The Liberty of Tipperary was the third area over which the influence of the lord president of Munster was limited. The Liberty of Tipperary was the last surviving Irish palatine – the most recent to bite the dust being that of Desmond – and was somewhat larger than the present Co. Tipperary.[289] The Liberty was controlled by the earls of Ormond and it had a court system similar to the regular common law court. Its officers included a chancellor, treasurer, master of the rolls, chief and second justice,[290] seneschal, sheriff, coroner, escheator, clerk of the market and attorney general – all appointed by the earl of Ormond.[291] The chief town of the Liberty was Clonmel. The Cross of the County of Tipperary,[292] of which Cashel was the chief town, was also a remnant of another age when, in the absence of courts of common law, church lands were subject to ecclesiastical courts. The Cross was the

[283] Letters of Sir William Parsons to the earl of Thomond of 20 November 1620, 21 April 1621, and Parsons to Sir Richard Boyle of 17 March 1620/21, (Petworth House Archives, C 6/4).
[284] BL, Harleian Ms. 697, ff. 91v, 93r; *Lib. Mun.*, Vol. I, pt. II, p. 185; *C.P.R.I.Jas.I.*, p. 583; *C.P.R.I.Ch.I.*, p. 3.
[285] *CSPI, 1625-32*, pp. 51, 64, 69.
[286] On 10 June 1626 Sir Richard Southwell, of Limerick city, and Captain Samuel Norton (he had been sheriff of Co. Clare in 1613-14, see Chapter 3) were appointed deputy commanders of the king's forces in Co. Clare during the absence of the earl, *C.P.R.I.Ch.I.*, p. 109.
[287] 'O'Brien, Barnabas', *OxfordDNB*, vol. 41, p. 352.
[288] *Lib. Mun.* vol. I, pt. II, p. 185.
[289] Edwards & Empey, 'Tipperary liberty ordinances', p. 127.
[290] When Sir John Everard was forced from his post of Chief Justice of the King's Bench because of his Catholic religion he took up office as a justice of the palatine court, Byrne, 'Jacobean Waterford', p. 66; *CSPI, 1606-08*, p. 118.
[291] T. Blake Butler, 'Seneschals of the Liberty of Tipperary', *Irish Genealogist*, vol. 2, no. 10, July 1593, p. 294; Edwards & Empey, 'Tipperary liberty ordinances', pp. 130-31.
[292] During the suspension of the liberty, the Cross was united with Co. Tipperary by letters patent in 1637, Aidan Clarke, *The Old English in Ireland, 1625-42* (London, 1966), p. 261, fn. 27.

only part of Co. Tipperary where the king's writ ran for the whole gamut of crime. In the Liberty just the four pleas of arson, rape, forestalling and treasure trove were reserved for the crown. Only by a writ of error could litigation be transferred out of the palatinate to the king's bench.[293] Unlike the city of Waterford, whose 1609 charter excluded the assizes judges from the city (see above), the Liberty was obliged to allow the Dublin circuit judges sit in judgement, usually at Clonmel, although the number of cases and their value was small.[294]

The presidency of Munster viewed the Liberty with a jaundiced eye but its instructions, from the inception of the presidency, were clear:

> Forasmuche as … a speciall Graunt made by the Queene Marie, in the furthe Yere of her Reigne, by her Majesties Lettres Patents vnder the Great Seale of England, to the said Erle of Ormond, … of the Regalities, Knyghtes Fees, and other Liberties, in the said Countie of Tipperary, excepting fower Plees, that is to say, of burninge, Raveshynge, and Threasure founde, and the Profitt termed in the said Charter De Croccis, in the said Countie, all which are specially reserved to the Crown … The said Lord President and Counsell shall not otherwise intermeddle to impeache the said Jurisdiction and Libertie of the Countie of Tipperary.[295]

The seventeenth-century lords president had a little more leeway but their involvement, judging from the Council Book, appears to have been rather intermittent. They ensured that the liberty provided beeves for the feeding of the army in October 1601,[296] the proclamation announcing the accession of James I was sent to the sheriff of Tipperary,[297] the Liberty was included in a gaol delivery circuit in June 1605 and again in April 1609,[298] but then there is a long silence until the 1620s.[299] There is no evidence that the presidency followed up its entitlment to 'heare and Determyne and trye' all misdemanors of local government officials in the province including those in the Liberty of Tipperary.[300] Although the earl of Ormond was a Protestant the Liberty had, according to lord president Thomond, a reputation of

[293] V. T. H. Delany, 'The Palatinate Court of the Liberty of Tipperary', *Am.J.L.H.*, 5, 1961, p. 103; Edwards & Empey, 'Tipperary liberty ordinances', p. 129; Pawlisch, *Sir John Davies*, p. 39.
[294] Edwards & Empey, 'Tipperary liberty ordinances', p. 129.
[295] Collins (ed.), *Letters*, p. 502; Kennedy, 'Munster', pp. 71-5, 88-92.
[296] BL, Harleian Ms. 697, fol. 135v.
[297] Ibid., fol. 149v.
[298] Ibid., ff. 70r, 69r.
[299] Ibid., ff. 110v, 87v.
[300] Ibid., ff. 146v, item 11, 90r, 165v, item 22.

being 'the usual rendezvous of priests', and a refuge for rebels.[301] A contemporary commentator observed that

> In the County of Tipp and Crosse and Liberty now none inclined to Rebellion, neyther Did I thincke that euer they will enter their Liberty wealth and ease to fitt the ambicon of any forraine invasion.[302]

In 1606 Dough-Arra (most of the present barony of Owny and Arra) was joined to the Cross of Co. Tipperary. An inquisition was held at Cashel on 3 September but its legality was questioned by the earl and the inquisition was overturned.[303] The instructions to Lord President Danvers of 13 January 1608/9 included an additional item entitled 'To fynde the anncient Limitts of Tipperary'. This instruction contained an attack on the neglect of the provincial officials who allowed the Liberty to gradually encroach on the lands of the Cross. All lawful means, including examination of documents and holding of inquests, were to be brought to bear to find the ancient meares of the Cross and to bring back to the fold of the presidency those lands illegally acquired by the Liberty.[304] It appears that this task was resisted as the instruction was repeated (when there was a new earl of Ormond) for incoming Lord President Thomond on 20 May 1615 but with the added corollary that 'they first acquaynting the Lo*rd* of the said supposed Liberties therw*i*th'.[305]

The 10th earl of Ormond died in November 1614 and was succeeded by his Catholic nephew Sir Walter Butler of Kilcash, Co. Tipperary. Earl Walter requested confirmation of the palatinate and on 14 May 1617 he entered into a bond of £100,000 to abide by the king's decision. For refusing to hand over his lands to the 10th earl's only daughter earl Walter was committed to the fleet prison in London where he remained for 8 years. Meantime a writ of *quo warranto* was instituted to look into the legality of the palatinate which was seized by the crown in Easter term of 1621 and remained vested in the crown until 22 April 1662 when Charles II regranted it to the duke of Ormond. It continued in existence until the attainder of the second duke in 1715.[306]

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[301] *CSPI, 1615-25*, p. 216; *CSPI, 1600-01*, p. 67.
[302] TCD, Ms. 567, fol. 54v.
[303] NAI, Lodge's Mss. 17, p. 106; *C.P.R.I.Jas.I.*, p. 98; *CSPI, 1611-14*, pp. 549-50; Blake Butler, 'Liberty', p. 295; *The Fifth Report of the Deputy Keeper of the Public Records in Ireland* (Dublin, 1873), pp. 33-4.
[304] BL, Harleian Ms. 697, fol. 168v.
[305] Ibid., fol. 121r, item 37.
[306] Edwards, *Ormond Lordship*, pp. 114-23; Edwards & Empey, 'Tipperary liberty ordinances', pp. 126-7; Blake Butler, 'Liberty', p. 295. For details of the deeds produced by Sir Walter to prove his title

The attitude to these three Munster counties was at odds with the approach in England to the palatinates of Chester, Lancaster, Durham and the Isle of Man – territories that did not conform to so-called Stuart centralisation.[307] The palatinate of Chester had its own parliament and enjoyed considerable autonomy in its judicial, legislative, fiscal, and administrative affairs. It had close links with Munster – its port being the connection between Ireland and England, and many of the Munster settlers came from the area. The palatine was not under the jurisdiction of the Council of Wales. Nevertheless, there was close co-operation between the neighbours, the Chester jurisdiction providing opportunity for office-holding for Welshmen and, in the absence of the lord president, the chief justice of Chester was the senior judicial authority (see Chapter 2), and *de facto* vice president.[308] Durham's chequered career in the mid sixteenth-century saw its jurisdiction eroded in favour of the Council in the North but in the early years of James I it had some limited type of jurisdiction independent of the Council.[309] These two examples show that different standards were used in England and Ireland – in spite of the much-vaunted policy of making Ireland like England. In Ireland self-aggrandisement was paramount, whether it be the lord president or the monarch – the crushing of the Liberty of Tipperary having monetary as well as political objectives.[310]

Taxation

It was the responsibility of the lord president to ensure that the province of Munster footed its own establishment bill. Thus it was essential that the local taxation, called composition, be gathered in. Lords president, from the time of Danvers (appointed January 1608/9) were specifically instructed to see to its collection.[311] As for Danvers' predecessor, Brouncker, his instructions in the Council Book are incomplete but, given the energy he put into renewing agreements, it is obvious that he was following urgent directives. The other levy that the lord president was concerned with was the parliamentary subsidy though his involvement was by default when the money was slow to materialize in 1615-1616.

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see E. Curtis (ed.), *Calendar of Ormond Deeds*, vol. 6, p. 154; opinion of Lords Justice of 25 April 1616: SP 63/234(1616)/16/I; letters patent of 11 March 1557: SP 63/234(1616)/16/II.

[307] Tim Thornton, *Cheshire and the Tudor State, 1480-1560*, (The Boydell Press, Suffolk, 2000), p. 243.

[308] Williams, *Council*, pp. xiv, 5, 200; Thornton, *Cheshire*, pp. 1-4, 143, 158, 161, 242.

[309] Reid, *Council*, pp. 320, 322; Thornton, *Cheshire*, p. 244-5.

[310] From 1 August 1641 all prerogative courts, including those in the North, Wales and Chester, were abolished by the English parliament, Reid, *Council,* p. 445; Thornton, *Cheshire*, p. 7.

[311] BL, Harleian Ms. 697, ff. 166v, items 37, 38r; ibid., 120r, items 25, 26.

Composition in lieu of cess was an agreement devised by Edmund Tremayne and put in place by Sir Henry Sydney in 1575 during his second period as Lord Deputy of Ireland.[312] The idea was that the various exactions on the population, such as coign and livery, and cessing of soldiers (kern or government), be converted into permanent contributions for the upkeep of the presidencies of Munster and Connacht. The thinking behind the exercise was to bring Ireland's revenues into line with those of England and was resented by the Old English as an abrogation of their rights. The tax was imposed by proclamation and despite protests a contract for an initial 7 years was agreed.[313] The potential advantages for the government included (1) a fixed income from the province, (2) continuity in the leading landowners, (3) more contentment in the lower orders, all leading to a more peaceful, stable population more akin to that in England. The compensation to the chief lords for the loss of the 'Irish exactions' included (1) fixed tenure of all lands then in a chief's possession, (2) fixed chief rent – in Munster there was no fixed figure as there was in Connacht where it was ½d. per acre. This chief rent (paid by the sept or clan) was usually paid in cattle, at 3 to the £, during the reign of Queen Elizabeth. The transference to a money contribution would have varied depending on the remoteness and circumstances of each area. For the general population the composition agreement meant freedom from the constant presence of kern and the entertainment of the chief lord whenever he chose to visit.[314] The agreement was often referred to the 'Composition in lieu of Cess', but the problem was that cess – arbitrary military taxation by the government – remained.

The composition had been one of the causes of the Munster rebellion of 1598[315] and in the aftermath of the revolt the scheme was in disarray, as a prerequisite for successful collection of the tax was peace.[316] Yet, by November 1603 the levy for the whole province had been collected but not without the help of soldiers who were cessed on the people.[317]

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[312] Ciaran Brady, *The Chief Governors: The rise and fall of reform government in TudorIreland 1536-1588*, (Cambridge U. P., 1994), pp. 140-54; Steven G. Ellis, *Ireland in the Age of the Tudors, 1447-1603* (London & New York, 1998), pp. 304-07; Bernadette Cunningham, 'The Composition of Connacht in the lordships of Clanricard and Thomond, 1577-1641', *IHS*, p. 1.
[313] Leland, *History of Ireland*, ii, pp. 269-74; O'Dowd, *Early Modern Sligo*, p. 32.
[314] William F. T. Butler, *Gleanings from Irish History* (London, 1925), pp. 177-8, 181 fn. 60.
[315] Testimony of James FitzThomas Gerald, *Cal. Carew, 1601-03*, p. 78.
[316] Anthony J. Sheehan, 'Official Reaction to native land claims in the plantation of Munster', *IHS*, vol. xxiii, No. 92, Nov. 1983, p. 315.
[317] SP 63/216/4; *CSPI, 1603-06*, p. 108. Thomas Young had collected for the barony of Costlea, Co. Limerick, by April 1601, NLI, Ms. 13,236 (3).

Soon after his arrival in Munster in summer 1604 Sir Henry Brouncker was deeply involved in renegotiating the contracts that had been in place since Sir Thomas Norris's time in 1593. On 12 August 1604 the county court in Cork was the scene of the public reading, explaining, and signing of an indenture between the lords, freeholders and occupiers of the lands of 'Barry's country' (the Barry lordship[318]) comprising the baronies of Barrymore, Orrery and Ibane (or Ibawne) all in Co. Cork, on the one hand, and on the other, Brouncker, Patrick Walshe and James Fullerton,[319] commissioners appointed to act for the monarch.[320] Only the chief lords – Lord Barry and Viscount Buttevant – were individually named but all

> the gent*lemen* freeholders & possessioners haue willinglie submitted themselves to a Composicon & doe by theas p*rese*ntes most humblie & willinglie offer vnto his Matie a yearlie Composicon of foure score and seaven poundes sterling lawfull English money.[321]

This £87 was to be paid (Barrymore £42, Orrery £20, Ibane £25) in equal portions on the feasts of All Saints (1 November) and John the Baptist (24 June) for 5 years and thereafter to continue 'during his Maties pleasure'. In return for this contribution the king promised that all the inhabitants of the baronies

> shalbe clerely & absolutely freed & exonerated of all Cesses, and all victualing of his Maties Armie & Garrizon, and of all p*ro*vision of the howshold and table of the lorde Deputie or other Chiefe Gou*er*nors of this land, & likewise of the lord President, vidz Presidentes howeshold & table, and of all p*ro*vision of horsemen, soldiers Galloglasses, horses horsboyes & all other imposicons whatsoever.[322]

This was a major guarantee that held out the prospect of peace and prosperity should its terms be implemented.

On this same day Brouncker and his fellow-commissioners also signed an agreement with the inhabitants of Kerrycurrihy, who were charged by ploughland and acre.[323] A settlement was made with Owneybeg, Co. Limerick, in September 1604.[324]

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[318] Butler, *Gleanings*, p. 183.
[319] Scottish councillor of Munster, see Chapter 3.
[320] The commission was dated 7 July 1604, NLI, Sarsfield Papers, D. 25,963. It was based on the king's letter of 16 September 1603 that composition be revived at the former rate, NAI, RC 2/1-2, pp. 136-8.
[321] NLI, Sarsfield Papers, D. 25,963.
[322] Ibid.
[323] NLI, Sarsfield Papers, D.25,964 (damaged); copy at RIA, 12/K/20, Sarsfield Papers, pp. 134-142.
[324] There was a dispute as to which lands were part of Owneybeg and the case was aired in the exchequer court in 1617 which referred it to the next assize, NAI, Ferguson ix, p. 28, ibid. xii, pp. 51-2.

As mentioned above Danvers was the first lord president for whom specific instructions about the collection of the composition are extant. He was authorised to

> restreine the multitude of men to attend Sherriffes the Balliffe errants Sessors and Collectors of the composicion and to lett them haue no more than a competent nomber for thexcess that was in former Gouerm*en*ts Did greatly alter the hartes of the people. And that the Sherriff take no Diett money of the Country vpon acertain fyne by yow the lord Presid*en*t and any two of the Councell to be imposed on them.

The lord president was further advised to have a copy of the composition book delivered to him so that he could ensure that the conditions agreed to were observed and that, conversely, he could ensure that the soldiers were 'well disciplined'.[325] Vice-President Moryson collected the composition in two installments in 1609, see Table 1 (b) below.[326]

The re-establishment of the composition did not necessarily mean that collection was easy as soldiers were frequently used to force payment.[327] This subject was raised by the recusant lords in their petition to the lord deputy in August 1613, with Chichester claiming that no officer would 'permit his men to oppress the meanest subject', that soldiers, in parties of 6-8, were only sent to collect the composition when it was not paid[328] – cess in lieu of composition! This was a problem that was never resolved. The earl of Thomond, the new lord president of Munster in 1615, was instructed to ensure that the 'covenants and conditions' attached to the composition be observed and that they be 'p*er*formed by the Contrey' and that the soldiers be disciplined and forbidden to extort from the populace.[329] In June 1615 the lord deputy received a commission for ordering both 'composition money and cessing soldiers',[330] and in 1616 the collection was handed over to more powerful figures like the earl of Thomond and Sir Richard Moryson (see section on Collectors in Chapter 3).

[325] BL, Harleian Ms. 697, f. 166v, items 37, 38, 39.
[326] SP 63/230.
[327] *CSPI, 1611-14*, p. 6.
[328] Ibid., pp. 414-15.
[329] BL, Harleian 697, fol. 120r.
[330] *CSPI, 1615-25*, p. 69: the 'Grant Book' is the surviving text but I have been unable to access it.

Table 1 (b): 1609 Composition (£sterling)

Barony/lordship	**Easter 1609**	**M'mas 1609**
Co. Cork		
Condons	4. 0. 0.	4. 0. 0.
Muskerry	23. 6. 8.	23. 6. 8
Roches	16. 13. 4.	16. 13. 4.
Orrery	13. 6. 8.	13. 6. 8.
Clancarty	6. 13. 4.	6. 13. 4.
O'Callaghan	6. 13. 4.	6. 13. 4.
McAwliffe, O'Keiffe & Quirke	6. 13. 4.	6. 13. 4
Barretts	15. 6. 8.	15. 6. 8
Bere & Bantry	8. 17. 9 qz ob	--
Ibane	16. 13. 4	16. 13. 4
Courcies	3. 6. 8.	3. 6. 8.
Carbery	54. 6. 4.	53. 6. 8
Kinalea	10. 0. 0	10. 0. 0.
Imokilly	40. 0. 0.	40. 0. 0.
Barrymore	28. 0. 0.	28. 0. 0.
Kerrycurrihy	36. 9. 1 qz	40. 13. 4.
Total	**£290. 6. 7.**	**£284. 11. 4.**
Co. Kerry		
Clanmorris	33. 6. 8.	33. 6. 8.
Iraghticonnnor	8. 8. 11.	--
Desmond	6. 8. 0.	10. 0. 0.
Co. Kerry	--	21. 6. 8.
Total	**£48. 3. 7.**	**£64. 13. 4.**
Co. Limerick		
Keniry	10. 6. 8	10. 6. 8.
Co. of city?	10. 6. 8.	--
Pubblebrien	12. 0. 0.	12. 0. 20.
Coshlea	5. 6. 8.	5. 6. 8.
Coshma	11. 10. 0.	11. 10. 0.
Clonlie & Lisnakill	3. 6. 8.	3. 6. 8.
Owney	5. 0. 0.	--
Clanwilliam	18. 12. 0.	20. 6. 8.
Connello	45. 11. 8.	--
Conagh	--	18. 13. 4.
Total	**£122. 0. 4.**	**£81. 11. 8.**
Lib. & Cross Tipperary	--	126. 0. 0.
Total	--	**£126. 0. 0.**
Co. Waterford		
Powers	37. 15. 10	37. 15. 10
Decies	29. 11. 4.	29. 11. 4.
Coshmore & Coshbride	4. 19. 8.	4. 19. 8.
Glenahiry	--	1. 19. 8d.
Total	**£72. 6. 10.**	**£74. 6. 6.**
[Total for Munster, stg.]	**[£532. 17 .4]**	**[£631. 2. 10]**
[Grand total, stg.: £1,154. 2. 2. = £1,538. 16. 3. harpes]		
Total for Munster: £1,954. 17. 1d. qz harpes.		
Source: SP 63/230, pp. 163-68 (Easter), 359-90 (Michaelmas), *CSPI, 1608-10*, pp. 578-9. Figures in [ ] are my own calculations; fractions have been rounded up & incorrect calculations adjusted.		

The extant documentation is so fragmentary that it can be extremely difficult to compare figures of the amounts of composition that is known to have been collected. The many currency changes – varying between Irish pounds in 1597-9, to sterling in 1601, to debased Irish coinage, to harps introduced in 1603 – make comparison of the figures virtually impossible.[331] Despite this it is possible to track the payment of composition for Munster for several years thanks to the advent of the 1622 commissioners:

Table 1 (c): Composition payments 1577-1621[332]

1577-8	£3,109. 8. 11.	**1616**	£1,417. 15. 6.
1578-9	£584. 19. 8.	**1617**	£1,417. 15. 6.
1595-6	£6,402. 13. 10.	**1618**	£1,461. 8. 6.
1604-5	£1,580. 15. 3.	**1619**	£1,461. 8. 6.
1605-6	£1,050. 16. 2.	**1620**	£1,461. 8. 6.
1615	£3,417. 15. 6.	**1621**	£1,461. 8. 6.
Source: 1577-96: Sheehan, 'Irish Revenues', p. 45; 1604-16: ibid., p. 58; 1615-21: Treadwell, *Commission*, p. 366.			

Sir Nathaniel Rich believed that the lords president had amply fulfilled this aspect of their remit when he noted that

> The composicon of Mounster is certaine and fullye paid; but it may genrallie be improued by a new commission and particulerlie increased by repealeing of Diuers pretended freedoms, and by draweing the lands omitted from the vndertakers vnder composicon alsoe.

He put this in the context that the composition of Connacht was 'uncertain' as

> it is payeable onelie out of Lands manured and though it be certaine that all the landes in Connaght are now manured and beare horne or Corne yet the king doth now loose 1500^{li} a yeare vnder pretence of wast lands.[333]

But Rich's assessment, which was a reprise of a 1611 suggestion for increasing the monarch's revenue,[334] was not entirely true. The lords president had failed to collect the full amount as the arrears in the tables 1 (d) and 1 (e) below show.

[331] Sheehan, 'Irish Revenues', pp. 44-6.
[332] For some of these years there is a different set of figures in Rich's notes which are in 'Irish money': **1615**: £4827. 8s.; **1616**: £4916. 1s. 6d.; **1617**: £5068. 8. 3¼; **1618**: £5139. 18. 9¼; **1619**: £5160. 19. 3.; **1620**: £10050. 12. 10; **1621**: £5295. 2. 4½, NLI, Ms. 8014, folder 2.
[333] NLI, Ms. 8013, folder iii.
[334] *Cal. Carew, 1603-22*, pp. 101-2.

Table 1 (d): Composition by county

County	Due per annum	Due 1615-1621	Paid 1615-1621	Arrear
Cork	588. 16. 0	4,123. 6. 8.	3,930. 6. 11.	192. 19. 9.
Kerry	273. 15. 10½	1,916. 11. 1½	1,266.13. 1½	649. 18. 0.
Limerick	462. 19. 5.	3,240. 15. 11.	1,862. 19. 6½	1,377. 16. 4½
Tipperary	252. 0. 0.	1,764. 0. 0.	1,689. 10. 6.	74. 9. 6.
Waterford	144. 8. 10½	1,011. 2. 1½	985. 4. 2	25. 17. 11½

Source: NLI, Ms. 8013, folder ii.

Some of the arrears were identified by the commissioners:

Table 1 (e): Composition arrears by barony

Barony	1593	1621	Arrear
Co. Kerry: Desmonds	40. 00. 0	14. 2. 8.	25. 17 4.
Co. Kerry: O'Sullivan More	19. 11. 1	10. 00. 0.	9. 11. 1.
Co. Limerick: Poble bryen	27. 3. 4.	20. 0. 0.[335]	7. 4. 4.
Co. Limerick: Coshlea	26. 13. 4.	10. 13. 4	16. 0. 0.
Co. Limerick: Kenrye	21. 0. 0.	20. 13. 4.	00. 6. 8.
Co. Limerick: Coshma	24. 6. 8.	23. 00. 0.	1. 6. 8.
Co. Limerick: Conello	244. 1. 1.	107. 2. 8½	136. 18. 4½
Co. Limerick: Feadamore	17. 2. 2½	0.	17. 2. 2½

Source: NLI, Ms. 8013, folder iii; BL, Add. Ms. 4756, f. 40r; Treadwell, *Commission*, pp. 317-8.

The composition was an effort to introduce a uniform system of taxation and remove arbitrary military exactions but, as in the attempt to make the legal system uniform, there were so many opt-outs – such as the towns and the privileged landowners – that the burden ultimately fell on the less well off. The agreement failed to live up to its expectations for, as shown in Chapter 2, victuals for the lord president's table continued to be exacted – at least in the early years of the Stuart presidency – and government soldiers were continually used to force payment. Conditions were no different under Charles I. A heightening of political tension refocussed attention on security in Ireland with a consequent increase in the size of the army, and future plans to augment it further. As early as 1625, cash being in short supply, individual captains were assigned an area from which the composition was collected, in cash or in kind, to supply the needs of his own soldiers.[336] This was a direct contravention of the composition agreement. The situation was ripe for abuse and soldiers were billeted on the population. Several of the 'Graces' (see Conclusion for the background to these negotiations) covered the problem of the misuse of soldiers who were to 'be called in and limited to the most serviceable garrisons' (see

[335] The figure in Rich's notes is £24. 0. 0., NLI, Ms. 8013, folder iii.
[336] Aidan Clarke, 'The army and politics in Ireland 1625-30', *Studia Hibernica*, 4, 1964, pp. 29-30.

section on Collectors in Chapter 3) but, as the promise to ratify the graces in parliament was not fulfilled, the problem was never resolved.[337]

Subsidy was a cash donation, approved by parliament, and its purpose was to plug a shortfall in the monarch's hereditary revenues.[338] The subvention was not part of the lord president's jurisdiction but he ultimately became responsible for its collection.

Briefly, the subsidy bill was passed by the lower house of the Irish parliament on 28 April 1615 and by the upper house on the following day when the clergy, unlike their counterparts in England, permitted themselves to be drawn into the subsidy net.[339] Each parliamentary representative decided how much his own area would pay,[340] who would collect the money and, it was claimed, 'poor husbandmen were rated higher … than some freeholders of good estates'.[341] As in England, the collection was done by parish.

The collection of the subsidy in Munster did not go smoothly and at least two letters were sent to Lord President Thomond to encourage better co-operation, the province being 'more backeward' than anywhere else in Ireland. By August 1616 the chief collector for the province was 'behind' in the sum of £142. 12s. 10d. stg. of the first instalment for Co. Cork. Also

> the Counties w*i*thin yo*u*r Lor*dshi*pps goverment Clare, Corke, Lymericke, Kerry and Waterforde haue nott yett sent in one penny of the second payment, neither hath the Citty of Lymerick sent in any of theirs, and a good p*ar*te of what is Due w*i*thin the Citties of Corke and Wat*e*rford is vnpaid likewise.[342]

The lord president was advised to bind over all the collectors to appear in Dublin to answer their negligence. The money was ultimately collected but extant documentation does not give the figure donated by Munster.[343]

Security Policy

Security was a major concern of the Munster presidency it being one of the reasons for the establishment of the council. Security meant not just internal security

[337] 'Graces' 1-4 inclusive referred to the soldiers, Clarke, *Old English*, pp. 238-9.
[338] T. W. Moody, 'The Irish Parliament under Elizabeth and James I: a general survey', *PRIA*, vol. xlv, C, 1940, p. 42.
[339] *C.J., Ir.*, pp. 40-1; Bagwell, *Ireland under the Stuarts*, i, p. 135.
[340] Quinn, 'Irish Parliamentary Subsidy', p. 219.
[341] O'Brien (ed.), *Advertisements*, p. 44.
[342] BL, Harleian Ms. 697, fol. 39r.
[343] Treadwell, *Commission*, pp. 370, 423.

– obedience of the populace to the king and the extirpation of rebels[344] – but external security which comprised threats from abroad on the kingdom of England and intimidation of pirates which will be discussed separately below. When Lord President Carew was leaving Munster towards the end of January 1602/3 he warned Commissioners Sir Charles Wilmot and Sir George Thornton to, *inter alia*, (a) be watchful and learn of all intelligences from abroad and to examine merchants whose traditional trade was with Spain and south-western France and (b) 'haue a spetiall eye and care that the fortificac*i*ons goe forward in such sorte as is pr*e*tended and Directed'.[345]

Although Spain's armada of 1588 and its intervention at Kinsale in 1601 had failed the fear was always present, stoked by constant rumour, that the old enemy would try again. The trading community bore the brunt of stringent coastal security measures. Richard FitzPhilip Roche, Nicholas Arthur (both from Kinsale) and Thomas Comerford of Waterford were typical of the beleaguered merchants who were obliged to seek permission to leave port, put in security, indicate their projected journey, and forbidden to visit 'any other kingdom, countrie or Dominion not being in League and amitie with her Maiestie.' On their return to the province they had to report to the council within ten days.[346]

Another problem was the number of unemployed native soldiers, retainers of defeated Irish rebels, and those displaced by the Nine Years war and its aftermath of whom there were at least 4,000 in Co. Cork alone.[347] The prevalence of 'ydle Kearne and other Loosse and Disorderly p*er*sons', i.e. unemployed fighting men, was the subject of a proclamation signed by, *inter alia*, the lord deputy and Lord President Bouncker on 30 May 1604. These uncontrolled people

> benge armed w*i*th sowrdes and targettes peick shotte horsemens staues and other warr licke wepons w*hi*ch Doth not onely breed great terror to his Ma*ies*tes well Disposed Subiectes, but doth inhable those Dissolute p*er*sons to Committe many extortions, Roberyes, Murdres and other outrages.[348]

The lord president tackled the problem with a proclamation issued in July 1604 ordering all the indigenous leaders of the province

[344] Instructions of May 1615 (the last extant detailed instructions) required the lord president to prosecute rebels 'with fire and sword', BL, Harleian Ms. 697, fol. 188v, items 11 and 12.
[345] Ibid., fol. 148r, item 5; Lambeth Palace, Carew Ms. 620, pp. 105, 34.
[346] BL, Harlein Ms. 697, ff. 55v, 62r.
[347] SP 63/216/59.
[348] Ibid., fol. 179v; reinforced in February 1604/5, ibid., fol. 181r.

> to make vpp and returne into the Clearck of the Councelles Office of this p*ro*vince p*ar*ticuler bookes Conteigning the names of all such p*er*sons for whome they were vndertaken, as are Dwellinge vnder them, or w*i*thin the lim*i*tes of their seuerall Contries and to give them pasportes at or before the Last Daie of the same moneth of Aprill, and also be the said Day or at once w*i*th the said Bookes that they should deliu*er* into the said Office bookes of the p*ar*ticuler names of such p*er*sons w*i*thin the said Contries as they vndertake not for that adifference being made betwen them.[349]

West Cork was particularly lawless and was the subject of a special proclamation by the Munster council on 13 July 1604 when prices were put on the heads of several named traitors. There was the added threat that if those traitors were not surrendered within 14 days at least 100 soldiers would be cessed on the region.[350] The presence of rootless armed men was a constant problem for the presidency and was still a major concern in 1615.[351] One of the methods used to reduce the numbers of unemployed soldiers was to continue the practice initiated by Lord President Carew of encouraging them to enlist with armies on mainland Europe. There was a new push in 1609 when 1,000 were earmarked for Sweden.[352] This scheme had its disadvantages as the presidency was forced to issue proclamations to prevent the soldiers' clandestine return.[353]

There was a determined effort by the administration not to be caught napping as had happened in 1598 when the colonists abandoned Munster at the eruption of rebellion. The lord president was constantly exhorted to hold regular musters and to ensure that the colonists kept their tenants in readiness so that 'the Province may be strengthened and Defended'. From 1615 musters of all males between the ages of 16-60 were held annually in each county or barony.[354]

The lord president, finance permitting, ensured the maintenance of the visible sign of a military presence – forts and garrisons. An example had been set by Carew when he erected an 'earth works' on the south side of Cork city

> the Chardge thereof is defrayed (thoughe vnwillingely yelde*d* vnto) by the Towne & Contrye, eche of them affordinge me 200 laborers

[349] BL, Harleian Ms. 697, fol. 179r.
[350] Ibid., fol. 180r.
[351] Ibid., ff. 166v, item 31, 199v (undated).
[352] *CSPI, 1608-10*, pp. 263, 271. See TCD, Ms. 567, ff. 41-41v for soldiers who left for Europe. For the wider importance of these measure see David Edwards, 'Legacy of Defeat: the reduction of Gaelic Ireland after Kinsale' in Hiram Morgan (ed.) *The Battle of Kinsale*, (Bray, 2004).
[353] Proclamations of 26 March 1608 and 22 July 1609, BL, Harleian Ms. 697, ff. 187r, 189v.
[354] Ibid. ff. 166v, item 35, 168r, item 56, 119v, item 23.

> towards yt: hereof I thought meete to acquaint yor llps leaste it might be conceaued that I were to prodygall in the expenditure of her Mates Threasure; the Queene being at no other chardge than the vse of her Shovells [and] Spades.[355]

This 'earth works' had been destroyed by the citizens during the 'recusancy revolt' (see Introduction) and was earmarked for replacement, under the name of the new fort,[356] in the early years of the reign of James I. In April 1602 it had been decided to build a fort at Haulbowling and at Kinsale, both in Co. Cork.[357] The castles of Castlemaine, Co. Kerry, Dungarvan, Co. Waterford, Duncannon, Co. Wexford (though in the province of Leinster and 'not in his l*ordshi*ps gouerment' it guarded Waterford estuary and the lord president was expected 'to haue a contynuall eye vnto it'[358] – therefore it has been included in this study), and the castle of Limerick were all garrisoned to provide an established network of strongholds around the province. They were constantly under review under the guidance of Sir Josias Bodley,[359] but it appears that Bodley's inability to oversee all adequately and shortage of funds were constant problems. Sir Richard Moryson (joint commissioner on the death of Lord President Brouncker) suggested that the £7,000 unlevied Brouncker recusancy fines[360] should be expended on the forts. Before a decision on this was arrived at it was decided to upgrade Cork and Limerick initially.[361] The flight of the earls in early September 1607 had put a new urgency on the work in case there should be another Spanish invasion. Lord President Danvers reported to London in February 1607/8, pinpointing the most important locations, and estimating the charges.[362] Captain Henry Skipwith[363] (later a councillor of Munster, see Chapter 2) was despatched to London and in April the privy council there confirmed that the forts at Cork, Limerick and Castle Park (at Kinsale, Co. Cork) should be the first to be strengthened – confirming Lord President Brouncker's opinion of February 1606/7.[364]

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[355] Lambeth Palace, Carew Ms. 620, f. 75; Caulfield, *Cork*, p. xviii; Sheehan, 'Recusancy Revolt', p. 3.
[356] Curtis, 'The Claytons', p. 67; Colin Rynne, 'An Archaeological Survey of Elizabeth Fort, a Seventeenth-Century Artillery Fortification in Cork City', *JCHAS*, vol. 109, 2004, pp. 199-216.
[357] Caulfield, *Cork,* p. xviii.
[358] BL, Harleian Ms. 697, fol. 116v.
[359] *CSPI, 1603-06*, p. 341; *CSPI, 1606-08*, p. 408.
[360] See section on religion below.
[361] SP 63/221/87; *CSPI, 1606-08*, pp. 198, 430.
[362] SP 63/223/16.
[363] Appointed constable of Castle Park, Kinsale, on 23 April 1610, Caulfield, *Kinsale*, p. 421.
[364] *CSPI, 1606-08*, pp. 472, 475; SP 63/221/15.

The £5,000 allocated for the work was slow in arriving so in the interim the presidency ensured that the locals filled the gap. The citizens of Cork repaired the fort destroyed by them in 1603, while local residents provided materials and man hours for the forts at Duncannon, Halbowling, Castle Park, and Limerick.[365]

The following table, 2 (f), shows the personnel in each fort in 1607. The table also shows that there was a hierarchy among the forts – in that some commanded better fees than others making Castlemaine the least desirable.

Table 1 (f): Constables of Forts in 1607

Name	Fort	Fee etc. per day/Total per day [in bold]
Sir Francis Barkley	King Johns' Castle, Limerick	3s; porter @ 9d; canonier @ 16d; 28 warders @ 8d each/ **£1. 3s. 9d.**
Sir George Cary	Dungarvan, Co. Waterford	4s; porter @ 12d; 20 warders @ 8d each/ **18s. 4d.**
Sir Lawrence Esmond	Duncannon, Co. Wexford	3s 4d.; lieutenant @ 18d; canonier @ 13d; 30 warders @ 6d each/ **£1. 0. 11d.**
Sir Thomas Roper	Castlemaine, Co. Kerry	2s 3d; 4 horsemen @ 6¾d each; 13 footmen @ 6d each/ **11s.**
Sir Henry Skipwith	Castle Park, Kinsale, Co. Cork	5s; lieutenant @ 18d; gunner @ 12d; 20 soldiers @ 8d each / **£1. 0. 10d.**
Sir Francis Slingsby	Halbowling, Co. Cork	5s; lieutenant @ 18d; gunner @ 12d; 20 soldiers @ 8d each/ **£1. 0. 10d.**

Source: SP 63/221/7/1

In an effort to cut costs it was envisaged that the warders in King John's Castle be reduced to 20; that in Dungarvan a constable, porter and housekeeper 'will suffice'; that Duncannon 'be abated'; Castle Park and Halbowling were not discussed at this time.[366] Constables Barkley, Esmond, Roper, Skipwith and Slingsby were subsequently raised to the high profile of members of the Munster council (see Chapter 2).

Shortage of cash remained a perennial problem. In July 1609 the mayor of Limerick claimed that the city had voluntarily given land for the enlargement of King John's fort and had recently furnished 1,000 men's labour to finish the work.[367] In 1610 two shillings was extorted from every ploughland in Co. Cork for the completion of Castle Park, and the same was extracted in Co. Limerick for the completion of King John's fort.[368]

During the presidency of the earl of Thomond the forts were still a very live topic. In 1616 he was advised to put 'six footemen … into Halbowling and six into the fort of Castlepark for the strengthening of those places' and to ensure that they be

[365] *CSPI, 1606-08*, p. 475. In February 1607/8 Lord Deputy Chichester reported that 'the workmen here [in Ireland] are lazy and deceitful, many eyes and much care must be watchful over them', SP 63/223/37; ibid., 224/106.
[366] SP 63/221/7/1.
[367] SP 63/227/109.
[368] *CSPI, 1608-10*, p. 409.

sufficiently armed.[369] In 1619 the commanders of the forts were ordered to 'keepe their soldiers in their garrisons together, to be ready to March vpon the first warning'

> And that such Captens and officers as haue their souldiers Dispersed in the seuerall garrisons, Doe forthwith Drawe their whole Companys into their Main Garrisons that they may be readye togither vpon all Directions to marche where there shalbe occasion.[370]

Tales of renewed confidence in the Catholic population (in 1621) that help was at hand gave a fresh urgency to repair the forts, Castlepark in particular. It was estimated that £1,507 would provide housing for 200 soldiers and other ancillary improvements; 1,850 soldiers were sourced for transportation to Ireland in case of a crisis; and a document was produced showing the readiness of the Munster forts.[371]

At the end of November 1625 it was rumoured that a regiment of 3,000 Irishmen in Spain, augmented with Spanish troops to create an invasion force of 16-17,000, would arrive in Munster around Michaelmas 1626. News soon followed that 22 ships had already put to sea. It was time to check the ammunition and Sir Richard Boyle purchased 3 barrels of powder for his castle at Lismore.[372] But the invasion did not materialize.

The lord president dealt with tensions between the fort soldiers and the nearby populations and by proclamation attempted to keep the peace between them.[373] He was also faced with tensions within the forts due to shortage of money to pay the soldiers. It was not good for the prestige of the presidency when the council had to be bailed out by the wealthiest man in Munster, Sir Richard Boyle, earl of Cork.[374] Friction in the whole province was heightened when the failed Cadiz armada (sent by the new king Charles I in 1625[375]) was blown onto the south Munster coast in December 1625, arriving first at Youghal[376] – and the province found itself unwilling host to thousands of sailors and soldiers (called the 'fleet soldiers'). Having to deal with so many unexpected poverty-stricken visitors, many ill, put a further strain on the facilities of the province. Tensions boiled over into disturbances in the city of Cork in April 1626, the circumstances of

[369] BL, Harleian Ms. 697, ff. 199v-200r.
[370] Ibid., fol. 116v.
[371] SP 63/236(1621)/26/B; SP 63/236(1621)/27; SP 63/236(1621)/30.
[372] Grosart, *Lismore Papers*, I, vol. II, pp. 169-70, 173.
[373] BL, Harleian Ms. 697, ff. 171v, 179r.
[374] Grosart (ed.), *Lismore Papers*, 1, ii, pp. 99, 162.
[375] A fleet of 100 ships, 10,000 land soldiers and 6,000 sailors put to sea from Plymouth on 8 October 1625, ibid., p. 167.
[376] Ibid., pp. 171-2.

which were examined by the Bishop of Cork and Sir Randall Clayton, joint clerk of the Council (see Chapter 2).[377] The cities of Cork and Limerick, fed up with providing free accommodation for the fleet soldiers, threatened to abandon their cities rather than accept any more.[378] Completion of the forts again became a priority and it was the earl of Cork who once again provided the finance to complete those at Cork and Waterford.[379] Mutiny in autumn 1626 pointed to the desperate state of the soldiers and forced the provost marshal to threaten the imposition of martial law.[380]

Pirates: The tense atmosphere in Munster was exacerbated by the constant threatening presence of pirates on the south-west coast as efforts were made to deal with the problem.

Piracy was a constant concern for the lord president during the reign of James I.[381] It was a major security, political, economic, and social issue and is only recently the subject of scholarly research.[382] There was an ambivalent attitude towards pirates with a very fine line existing between legal and illegal actions. An air of intrigue and romance surrounded them. In the unsettled conditions in Munster they provided an escape for 'desperate and dishonest men' and attracted 'shameles and adulterous women'.[383] The spoils could be seen on the remote byways of west Cork and Kerry: barrels of 'Scyperilla [sarsaparilla], chochenile [cochineal], chokernuts' [North American fruit];[384] bolts of rich cloth with silver and gold lace;[385] luxury commodities such as wine, sugar, pepper, tobacco; and hides from Muscovy and Barbary.[386] Many coastal inhabitants were part-time pirates and there was a whole network of small unofficial English settlements along the Munster shoreline with close familial and

[377] SP 63/242/235.
[378] *CSPI, 1625-32*, p. 170.
[379] Grosart, *Lismore Papers*, 1, ii, pp. 184, 188; Curtis, 'The Claytons', p. 67.
[380] Ibid., pp. 162-3, 169.
[381] For the growth of the problem see Kris E. Lane, *Pillaging the Empire: piracy in the Americas 1500-1750* (M. E. Sharpe, Inc., New York, 1998), Chapter 2.
[382] See: John C. Appleby, (ed.), *A Calendar of Material relating to Ireland from the High Court of Admiralty Examinations 1536-1641*, (IMC, Dublin 1992); idem. & Mary O'Dowd, 'The Irish admiralty: its organisation and development, c. 1570-1640, *IHS*, May 1985, pp. 299-326; John C. Appleby, 'A Nursery of Pirates: The English Pirate Community in Ireland in the early seventeenth century', *International Journal of Maritime History*, II, No. 1 (June 1990), pp. 1-27; Treadwell, *Buckingham*, pp. 97-102; MacCarthy-Morrogh, *English Migration*, pp. 215-22.
[383] BL, Harleian Ms. 697, fol. 36r. Redmond and Gerald FitzGerald of Ballycrenan, Co. Cork, were pirates, 'Replies', *The Irish Sword*, vol. 2, 1954-56, p. 302; *C.P.R.I.Jas.I.,* p. 517; Grosart (ed.), *Lismore Papers*, 1, i, p. 178; ibid. ii, p. 215.
[384] BL, Harleian Ms. 697, fol. 115r.
[385] Appleby, 'Nursery of Pirates', p. 21.
[386] SP 63/239/12/A.

business ties to the pirate community.[387] The long jagged coast-line of south Munster at the best of times would be difficult to police but, without resources, it was impossible. And the lord president was expected to do the impossible.

In January 1608 Lord President Danvers reported that Robinson the pirate was at Baltimore and that the king's ship was 'very defective in all their provisions' forcing Danvers to provide soldiers and victuals.[388] In June Danvers reported that a pirate ship had been captured, but not the pirates themselves. Danvers' proclamation of 12 September condemning the pirates[389] did not win him any kudos as his conduct was severely criticised by the London privy council who accused him of negotiating with the pirates in return for pardon.[390] The reality of the situation – that the province could be powerless against the pirates – was revealed in January 1608/9 when Danvers himself was unable to leave Cork harbour

> threw this miserable weather wch suffers no good ship to come that might free my passadge from the mercye of theas pirates.[391]

The powerlessness of the Munster Council led them to conceive the drastic solution, in August 1610, of depopulating Sherkin Island in west Cork – subsequently not carried out as the consequences 'would haue ben grevious'. Instead it was proposed that the castles of Dunnelong and Lymecon 'shold be seized into the kinges Ma*iesti*es handes' and be fortified by local residents at the rate of 6d. each per day.[392]

Policing the Munster coastline was the prerogative of the admiralty in London. English legislation to curb piracy was not extended to Ireland until the 1613-15 parliament.[393] Henceforth criminal offences committed within the jurisdiction of the admiralty would be tried – as if they had been committed on land – by common law procedure, i.e. before a judge and jury, under a special commission of *oyer and terminer*.[394] Because of its key position the admiralty apparatus in Munster was more elaborate than elsewhere in Ireland. Munster had a deputy judge of admiralty who

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[387] Appleby, 'Settlers and Pirates', p. 12; idem., 'Nursery of Pirates', pp. 2-3.
[388] *CSPI, 1606-08*, p. 395.
[389] BL, Harleian Ms. 697, ff. 188r-188v. This is the first of several extant proclamations about pirates issued by the council of Munster: 22 August 1609 (fol. 190v, probably in response to Chichester's proclamation of 17 August, ff. 190r-v), 20 May 1610 (fol. 192r), 6 August 1610 (ff. 36r-36v), 1 September 1611 (fol. 37r), October 1612 (ff. 194r-v), 9 December 1612 (fol. 195r), 26 March 1617 (ff. 103r-v).
[390] Danvers received chests of sugar, coral, furniture and 24 pieces of ordnance, *CSPI, 1608-10*, pp. 42-3.
[391] SP 63/226/6.
[392] BL, Harleian Ms. 697, ff. 36r-36v, 37r; MacCarthy-Morrogh, *English Migration*, p. 219.
[393] MacCarthy-Morrogh, *English Migration*, p. 218.
[394] Appleby, *Calendar*, p. xvii.

held court with the assistance of a marshal,[395] registrar and jury. There was no fixed location but it sat, usually in coastal towns, as the need arose but the Munster Council had some input. Henry Gosnold was deputy judge of admiralty for Munster from 1608, a post he held concurrently with his office of second justice of Munster. From 1619 Attorney General Lawrence Parsons was deputy judge, a post which he retained when he moved to Dublin (see Chapter 2).

The lord president had no control over the admiralty's officials called deputy vice-admirals who were noted for their ambivalent attitude towards the pirates. These officials received their orders from London and operated in Munster independently of the lord presdent.[396] Vice-President Moryson condemned the contradictory instructions emanating from London which expected the Munster executive to be responsible for the actions of officers over whom the presidency had no jurisdiction.[397] The temptation to profit from the luxurious goods available resulted in corruption at all levels. A list of receivers of pirates' goods of the mid-1620s is illustrative of the complexity of the problem. Among the recipients were Joshua Boyle (relative of Sir Richard), Sir Lawrence Parsons, and the lord deputy. The economy of the region was much enchanced by the pirates' goods, the lives of the wealthy was much improved – they would miss the luxuries if the trade was destroyed.[398]

The arrival of Sir Thomas Button[399] as admiral of the navy in Ireland was a step forward but the transformation of the navy into a proper policing instrument was slow and it was not until the late 1620s that the more remote harbours were patrolled by officers who did not consort with the pirates.[400]

The provincial authorities were blamed for the pirate problem but they were powerless to act decisively against the corrupt vested interests of those involved – from the lowest-ranking official in Munster right through the chain of command to the top echelons of power in London.

Religion: a tool of oppression and aggrandisement

The drive to force the conformity of Catholics took shape in the decade 1603-13, between the end of the Nine Years War and the 1613-15 parliament. Initially, the

[395] In March 1627/8 Alexander Bates was marshal in Munster, *CSPI, 1625-32*, p. 219.
[396] *CSPI, 1606-08*, p. 223.
[397] SP 63/235(1620)/34.
[398] List of receivers at SP 63/240/12A; *CSPI, 1615-25*, pp. 584-5; Caulfield, *Cork*, p. xxiii.
[399] *Oxford DNB*, 9, pp. 272-74.
[400] Appleby, 'Nursery of Pirates', p. 25.

established church was very weak on the ground while the success of the Counter-Reformation was not assured.[401] The campaign to force conformity began in Munster and was founded on the premise that the people were not inextricably tied to Catholicism and could, therefore, be persuaded to attend church.[402] It is remarkable that a handful of people should initiate such a drastic policy on the majority population – and get away with it without precipitating a major backlash.

As stated earlier Sir Henry Brouncker's lord presidency was marked by his relentless pursuit of religious conformity. The prevailing Protestant view was that Irish Catholics were actual or suspected traitors.[403] From his appointment on 4 June 1604 he pursued an overtly anti-Catholic policy, the first signs in Munster of the persecution that was to dog Irish Catholics for many centuries. Prior to his arrival in the province Brouncker would have been well aware of the situation in Ireland generally and of reports reaching the privy council in England from the highest authority in Ireland:

> This Country of late swarmes with preestes, Jesuites, seminary fryers and … that I assure your Lp theat yf there be not spedy meanes vsed to free this kingdome of this wicked Rabell wch labour to drawe the subiectes hartes from there dew obeydence to theire prynce … the Myscheif will burste fourthe in very shorte tyme. For there are here so many of this wicked Crewe that are abell to Disquyett some of the greates kingdoms in Christendome. It is highe tyme thaey weare banished from hence and none to Receave or ayde or releeve them.[404]

In London a policy was being formulated to banish priests and to punish those aiding them. This new approach of persuasion coupled with coercion was a seventeenth-century version of the sixteenth-century 'sword and word' strategy,[405] and Munster was to be the testing ground for new draconian measures.

Brouncker claimed that, on his appointment as lord president, he had received directions from the king 'under his own signature', backed up with instructions from the lord deputy to proceed against recusants.[406] The instructions to Brouncker are not

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[401] When the famine appeared in 1648 pre-Tridentine Catholicism was still the norm, Pádraig Lenihan, *Confederate Catholics at War, 1641-49*, (Cork U.P., 2001), p. 1.
[402] Ford, *Protestant Reformation,* 1985, p. 47.
[403] Robert Daborne, bishop of Waterford & Lismore, believed that 'every man is supposed honest in the Law till he be proved dishonest [but recusants] from their own mouths' are dishonest, Daborne, *Sermon,* pp. 33-34.
[404] SP 63/215/90.
[405] McCavitt, 'Mandates', p. 321. See: Brendan Bradshaw, 'Sword, Word and Strategy in the Reformation in Ireland', *The Historical Journal*, vol. 21, 3 (1978), pp. 475-502.
[406] B.L. Harleian Ms. 697, ff. 88r-91r; McCavitt, *Sir Arthur Chichester*, p. 20.

complete in the Council Book but as a soldier trained to anticipate social unrest in all its guises, the new lord president could well have been strictly interpreting the following order by equating 'conspiracies' with recusancy:

> And whereas heretofore there haue byne Diuers and sondry tymes practizes and Conspiracies w*i*thin that Province by sondry evill Disposed p*er*sons who haue opposed themselues in actuall hostilytie … the Lo*rd* Deputy and Councell Do in his Ma*ies*tes name Chardge & Comande the said Lo*rd* President, and Councell, that they be vigilant … to prevent and meete … the begyninge of all suche practizes, Conspiracies, and Rebellions …[407]

Brouncker's first step was to banish all priests who threatened the 'new peace and quiet estate' of the province by his proclamations of 14 August 1604[408] and 18 August 1604[409] (while George Carey was still lord deputy). His proclamations, anticipating the Westminster proclamation of 4 July 1605,[410] targeted urban areas and reflected the English policy of purging the towns of Catholic officials, and the bench of Catholic lawyers.[411] The 'revolt' of the towns of March 1603 (see Introduction) had left them subject to deep suspicion and, as Brouncker admitted, he could not communicate with the Irish-speaking country areas.[412] With England and Spain finally at peace from August 1604 Brouncker desptatched his proclamation to Cork, Waterford, Limerick, Kilmallock, Cashel, Clonmel, Dungarvan Youghal, and Kinsale (but not to Counties Kerry or Clare). Priests were banished from the province for seven years. From the end of September anyone who would receive, lodge, or relieve a priest would be imprisoned and fined £40 stg. for each offence. Half the fine was destined for the king's coffers and the remainder for the informer. Furthermore informers would receive £10 for the 'shopping' of every Jesuit, £6. 13s. 4d. for every seminary priest, and £5 for every massing priest.[413] There is no documentary evidence to show what, if any, fines resulted from this proclamation.

The next phase of the anti-recusancy campaign was spearheaded by Lord Deputy Sir Arthur Chichester. Chichester's authority was bolstered by the Westminster proclamation of 4 July 1605 (already mentioned) which commanded all

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[407] BL, Harleian Ms. 697, ff. 89r, 146v, item 12. The first extant reference to recusants in the instructions to the lords president is contained in those to the earl of Thomond, 20 May 1615, ibid., fol. 117r, items 29, 30, 38.
[408] Bod. Lib., Carte Ms. 61, fol. 179v; *CSPI, 1603-06*, pp. 190-191.
[409] BL, Harleian Ms. 697, fol. 180v.
[410] BL, Add. Mss. 4819, ff. 290v-210v; SP 63/217/49.
[411] Pawlisch, *Sir John Davies*, p. 106.
[412] Ford, *Protestant Reformation,* 1985, p. 48.
[413] BL, Harleian Ms. 697, f. 180v; Bod. Lib., Carte Ms. 61, fol. 137.

Jesuits and seminary priests to leave Ireland on or before 10 December. This proclamation was initially suggested by Lord Deputy Carey and the Dublin council on 2 July 1603,[414] advice repeated in May 1604.[415] The proclamation was the precursor to Chichester's 'mandates' policy, which commenced in November 1605 – a policy given increased urgency by the failed Gunpowder Plot of November 1605.[416] The mandates, or letters, were written invitations to prominent individuals to accompany the writer to the established church on a specified day. Several leading Dublin citizens were incarcerated and fined in the court of castle chamber in November 1605.[417]

Three months later the mandates movement was activated in Munster when Brouncker summoned the leading citizens of Cork (on pain of being declared traitors), exhorted them to conform and, on their refusal, issued mandates to selected citizens. The mandates, dated 11 February, were given under the seal of the council and addressed to individual named citizens in the following words:

> By advice and assent of Henry Brunkerd, president of Munster, the King commands *N.N.* to be present at protestant service every Sunday and holiday, to attend the president and his council whenever called upon to accompany him to church, and to remain there during service and sermon, under pain of penalties to be inflicted according to law.[418]

When the magistrates refused the oath they were fined in the presidency court on 26 February 1605/6. The fines, ranging from £40 to £100 stg. accompanied by a letter dated 15 June, were noted in the exchequer court in Trinity term 1606.[419] These were not the first Munster magistrates to be targeted by Brouncker. Before the institution of the mandates he had deposed Edmund Fox, the mayor of Limerick (around August/September 1605) and Andrew Creagh, the first Protestant mayor, was elected in his place.[420]

Mandates were also issued by the presidency of Connacht. In Galway five people were fined on 23 March 1606, the fines ranging from £20-£40 each –

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[414] SP 63/215/77; Ford, *Protestant Reformation,* 1985, p. 45; Pawlisch, *Sir John Davies*, p. 108.
[415] SP 63/216/20.
[416] Edwards, 'Two Fools', p. 251; McCavitt, 'Mandates', p. 323.
[417] *CSPI, 1603-06*, pp. 348-9. See McCavitt, *Sir Arthur Chichester*, chapter 7; John McCavitt, 'Lord Deputy Chichester and the English government's "Mandates Policy" in Ireland, 1605-1607', *Recusant History*, xx, 1991, pp. 320-35. The text of the mandate is at SP 63/217/81.
[418] J. Hagan, 'Miscellanea Vaticano-Hibernica, 1580-1631', *Arch. Hib.,* vol. iii (1914), pp. 255-6.
[419] Fitzsimon, *Words of Comfort,* pp. 137-9; *CSPI, 1606-08*, p. xciii; Caulfield, *Kinsale*, pp. xxxi-ii.
[420] John Canon Begley, *The Diocese of Limerick in the sixteenth and seventeenth centuries* (Dublin, 1927), p. 295.

considerably less than the fines levied in Munster.[421] The fines in castle chamber of prominent Dublin citizens in November 1605 had ranged, as in Munster, between £50-£100.[422]

Munster had little time to draw breath before the first documented visit of the Dublin assizes judges Sir Nicholas Walsh and Sir John Davies in the spring of 1606. Besides the ordinary business of the courts, which has been discussed above, the statute of 2 Elizabeth was put into effect. The wealthy were served with mandates, under the seal of the council of Munster, to accompany the lord president and assizes judges to church. The more modestly endowed citizens were fined the going rate – 12d. for each offence of 2 Elizabeth, i.e. refusing to go to church.

Twelve pence might seem a paltry fine but one must take account of the fact that the daily rate of pay was in the region of 6d.-8d. By the time the officials had their fee the 12d. would have swollen to 10s.[423] Sir John Davies estimated that if the populace was forced to pay for every Sunday and Holyday of the year it would amount to £3 stg., the basic amount before the fees of the officials are added.[424]

The 1606 spring assizes circuit began in Dungarvan where the townspeople bowed to pressure and accompanied the lord president to church but such was the wrath of their landlords that, in danger of losing their livelihoods, they were reconciled to the church of Rome and made a pilgrimage in atonement.[425] In Waterford only the mayor, Sir Richard Aylward, and the county sheriff, Richard Power, followed the instructions, while the rest, at their request, had their punishment delayed until after Easter. The Waterford aldermen were fined either £40 or £50 each. There is no figure, as in other towns, for the number of those fined the 12d.

The towns of Co. Tipperary were targeted for extreme treatment. Fifteen of Cashel's principal inhabitants were summoned to Cork where they were fined and imprisoned for two months. Failing to force their conformity, they were released on payment of £120 to the officials, but were again fined and imprisoned. Again they were freed except for the chief magistrate against whom Brouncker had a particular grudge. He resolved that 'he would destroy the whole town unless he went to church.' Unable to break his resolve Brouncker eventually released the magistrate but sent soldiers to

[421] *CSPI, 1606-08*, pp. xcvi-c.
[422] *Egmont*, vol. I, part I, pp. 30-31; *CSPI, 1603-06*, pp. 348-9, 353, 467.
[423] *CSPI, 1606-08*, p. lxxviii.
[424] SP 63/218/53; *CSPI, 1603-06*, p. 467.
[425] Fitzsimon, *Words of Comfort*, p. 156.

confiscate the goods from the shops of the chief citizens. Within a few months the soldiers returned to confiscate more causing consternation in the town. In order to avoid being targeted again the citizens remained constantly on the move resulting in the desertion of the town and disruption to trade.[426]

In Clonmel the chief citizens and magistrates also failed to obey the proclamation, refused to go to Cork, but were compelled to do so by Samuel Newce the sergeant-at-arms, an officer of the presidency.[427] They were fined and cast into prison, their property was confiscated and so great was the fear that, as in Cashel, trade ceased.[428] The fines for this year can be compared with other fines at Table 1 (g) below.

Brouncker's next step, on the basis of a royal commission dated 4 June 1606, was to repeat the Limerick tactic of 1605 – he attempted to administer the oath of supremacy to the municipal officers of the province.[429] On 13 July 1606 the mayor of Cork, William Sarsfield (he had already been fined earlier), refused the oath, was fined £500 and imprisoned. [430] In Waterford four mayors in succession were deposed, before the Protestant Richard Ailward assumed the mayoral mantle for another (though short) session.[431]

It appeared that Brouncker's repression was bearing fruit. With complaints to Chichester receiving 'a deaf ear' some of the population were beginning to break under the pressure. The figures cited vary wildly. According to the lord president about 10 people in the whole of Munster went to church in 1605. In the autumn of 1606 Youghal produced 600 for church services, yet in 1607 the figure for the whole of Munster was 500. Clonmel, though still 'wilful' was inclining towards conformity. Many of the villages followed the example of the conforming towns, though 'they understand little or nothing when they come to church'. It appears that, in general, the province was beginning to conform, although the 'obstinacy' of Waterford was a black spot in the apparently optimistic picture. [432]

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[426] Fitzsimon, *Words of Comfort*, p. 155; Edmundo Hogan, *Ibernia Ignatiana seu Ibernorum Societatis Iesu Patrum Monumenta*, (Dublin, 1880), pp. 206-7.
[427] See Chapter 2 for a discussion of the officers of the Munster presidency.
[428] Fitzsimon, *Words of Comfort*, p. 156. See also W. McD, 'Irish Ecclesiastical Colleges since the Reformation', *Ir. Eccl. Rec.*, x, 1874, p. 181 which recounts the fear of people being accosted in the streets with questions about their religion.
[429] NAI, R.C. 17/4, no. 1094; SP 63/219/103a; McCavitt, 'Mandates', p. 326.
[430] *CSPI, 1606-08*, p. cvi.
[431] The deposed mayors were Paul Sherlock, Stephan Leonard, Nicholas Wyse, and Thomas White, Byrne, *Liber*, ff. 168v, 169r, pp. 294-7; McCavitt, 'Mandates', p. 326.
[432] Fitzsimon, *Words of Comfort*, p. 160; SP/219/147.

There is no doubt that Brouncker felt that he needed to justify his policy. He defended his actions to Secretary Cecil pointing out that his concentration on the towns would bring the 'ignorant country people to conformity'.[433] He produced a document 'Concerning Reformation of Religion in Ireland' giving his reasons why religion should be enforced 'especially in the cities of Munster'.[434] Cecil warned Brouncker twice, first in 1604 and again in 1606 about his severity, but the lord president countered 'that leniency and patience brought no better results than hardness of heart', and declared that he was forced to put aside 'his own nature of gentleness and use severity, though still with moderation.' Yet he was grieved that he should be noted only for his severity as, of all the fines imposed, only about £200 had been collected.[435] Brouncker was hinting that the fines had been diminished. However, as Welsh historians have shown, mitigation of fines was a device to give the appearance of compassion but its purpose was to line the pockets of the officials. When a fine was reduced the accused had to pay at least one official for the privilege. It had the ultimate effect of defrauding the exchequer and enriching the officials.[436]

The Cork recusants finally gained access to London[437] and the privy council, at the behest of King James (who believed that 'shedding of blood and too much severity did [little] good in matters of religon'[438]) ordered both Brouncker and Chichester to draw back and for Chichester himself to visit Munster. The king expected Chichester to travel south as

> your presence there for a time maie yield good fruite, as for many other respects, soe cheifelie to repaire some errors committed by him [Brouncker] in being ouer quicke and harsh in matter of Religion, with a people that yet are soe farr possessed and have beene soe long misled in a contrarie superstition.[439]

But before the lord deputy could make the journey Brouncker died on 3 June 1607 and Chichester remained in Dublin, careful not to reveal the instructions of the privy council in case it should be seen as indicating a more lenient attitude of the king. The

[433] SP 63/216/37.
[434] SP/219/102A.
[435] SP 63/216/37; SP 63/218/21; Ford, *Protestant Reformation,* 1985, p. 50; *CSPI, 1606-08*, pp. 24-5, xciv, 102.
[436] Williams, 'Activity', pp. 148, 154.
[437] Byrne, 'Jacobean Waterford', p. 70; McCavitt, *Sir Arthur Chichester*, p. 125. Letter of appeal from David Kearney, titular archbishop of Cashel, dated 28 March 1605, to the people of Limerick for donations to support the catholic agents at court, TCD, Ms. f. 43v.
[438] Fitzsimon, *Words of Comfort*, p. 109.
[439] BL, Add. Mss. 4819, f. 204.

lord deputy contended that Brouncker's bark was worse than his bite ('words and not deeds'), that of the £7,000 levied in fines not more than 4 score (£80) was collected.[440] It would be worthwhile to compare the level of fines of Brouncker's period with those exacted in the following years. The first set of figures in Table 1 (g) below is for one session only, the second covers fifteen months, the third twenty-four months:

Table 1 (g): Recusancy Fines Demanded

County	**1606 Assizes**			**25/6/05-30/9/06**			**1/10/06-30/9/08**		
	£	s.	d.	£	s.	d.	£	s.	d.
Waterford	400	00	00	621	09	04	29	16	01
Limerick	133	13	4	531	08	10	50	08	04
Cork	60	00	00	729	13	04	105	01	07
Lib. Tipp./Clonmel	120	00	00	46	10	00	--	--	--
Cross Tipp./Cashel	5	00	00	31	01	08	17	18	10
Total	**718**	**13**	**04**	**1960**	**03**	**02**	**203**	**04**	**10**

Source: SP 63/218/53 (Waterford, 1606 assizes: Fitzsimon, *Words of Comfort*, p. 147); Kent County Council, Cranfield Papers U269/1, Hi.15.

The lord deputy did not travel to Munster but appointed the earl of Thomond and Sir Richard Moryson as commissioners until a new lord president should be appointed.[441] They were instructed to examine the complaints, and to release, on bond, the recusant prisoners who included all the principal men of the province.[442] The conditions under which they were released were (1) not to leave the province without license, (2) to appear before the commissioners within 10 days of being summoned, and (3) not to converse with, or relieve, any seminary priest or Jesuit.[443] The prisoners were freed except for 14 who refused to enter into bonds of whom 8 were from Clonmel, 4 from Cork, and 2 from Kinsale.[444]

The upshot of Brouncker's presidency was severe disruption in the province where the inhabitants lived under an alien regime based on intimidation and the fear of reprisal. Rumours abounded that the lord president died raving and 'eating his flesh from his arms lamenting his rigour against recusants', tales that Sir Parr Lane was quick to deny.[445] He left behind him a legacy of deep resentment.[446] It was reported that in

[440] *CSPI, 1606-08*, p. 246.
[441] BL, Add. Mss. 4819, f. 240.
[442] SP 63/221/87.
[443] SP 63/222/112/I.
[444] *CSPI, 1606-08*, pp. 244-5.
[445] Fitzsimon, *Words of Comfort*, p. 175; SP 63/221/68; SP 63/221/69.
[446] McCavitt, *Sir Arthur Chichester*, p. 131.

three counties of Munster 15,000 were outlawed for recusancy.[447] Brouncker was apparently offered £1,500 per annum by the Catholic population as a type of up-front payment 'to favour' them. He refused but the London authorities insisted that he accept.[448] Numerous hitherto wealthy families were reported to be on the edge of poverty. The constant assault on their consciences and purses forced many to abandon their homes to seek refuge elsewhere. The economy suffered as those merchants who were not incarcerated refused to carry on trade particularly in wine, as Brouncker, holding the license for the impost of wines, was the beneficiary.[449] A useful byproduct of this license was that Brouncker maintained an active intelligence network which focused on the movement of the recusant clergy.

To put the Munster experience into context it is necessary to compare the situation of Catholics in England. Lancashire in the north would be a useful comparison for several reasons. It was the largest county, the most stubbornly Catholic, and was the last English county to be exposed to the reformed religion. Its topography of bogs and marshes meant that, especially in the winter, it was frequently inaccessible. As late as 1617, on his progress back to Scotland, James I refused to pass through the county because of the poor roads.[450] The conditions were like those in Munster – priests moved about openly, many of the justices of the peace were either Catholic, or had Catholic wives and children, there was difficulty in presenting recusants at quarter sessions because of the loyalty of the people, gentry and otherwise, for people of their own social class. Where Munster and Lancashire differed was in the area of the fines: in Lancashire those fined had advance knowledge of the arrival of the collectors and could avoid them;[451] in Munster they were imposed by outsiders, who had no social ties with the offenders, and the collectors were carpetbaggers on the make.

The laws against Catholics were more severe in England than in Ireland and many Catholics moved to Munster.[452] There was no mystery about those who were

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[447] Kent Archives, Cranfield Papers, U269/1, Hi 230; NLI, Ms. 8014, folder 4. The 1622 Commissioners believed that the figure referred to one county, Treadwell, *Commission*, p. 173. A further figure of 1,000-2,000 'poor people' being outlawed is at NLI, Ms. 8014, folder 3; Treadwell, *Commission*, p. 146.
[448] NLI, Ms. 8014, folder 4; Treadwell, *Commission*, p. 173.
[449] SP 63/222/112; Fitzsimon, *Words of Comfort*, p. 159; HMC, *Salisbury*, xv, p. 355; SP 63/240^{A}/[10]; Bod. Lib., Carte Ms. 61, fol. 46.
[450] Cosgrove, 'Recusant Gentry', p. 36-8.
[451] Ibid., pp. 45, 60-1, 77, 82.
[452] Ibid., pp. 5, 93; Edwards, 'Haven'; Brian Magee, *The English Recusants*: *A study of the post-Reformation catholic survival and the operation of the recusancy laws,* (London, 1938), pp. 61, 66; MacCarthy-Morrogh, *English Migration*, pp. 191-96.

recusants, it was well documented. In 1603 only 16 people in the whole of England paid the full amount of their fines. In 1615 the amount due (again from the whole of England) was £20,000 of which £6,529 reached the exchequer.[453]

Comparing figures is not an easy matter as the literature depends on the amount of money received into the exchequer and there is no equivalent set of figures for Ireland where inefficiency and disorganization stymied the keeping of accounts.[454] The figures quoted here refer to the whole of England and, as in Munster, they fluctuated according to the political atmosphere, from a low of £1,414 (1603-4) to a high of £9,787 (1608-9). Thereafter the fines, where available, varied roughly between £3,000-£7,629. The purpose of quoting them here is to demonstrate the contrast between the fines for the whole of England, and Brouncker's £7,000 levied in Munster alone.[455]

In Munster a combination of King James' vacillation, the flight of the earls in September 1607, and Cahir O'Doherty's revolt of 1608 changed the picture. The pressure on the recusants was eased temporarily and the towns targeted economically instead – in their customs. Yet the legacy lived on as not all the fines were cancelled. Some of those already collected were returned and bonds taken instead in the amount of £713. 6. 8d. stg.; other fines, in the amount of £406. 13s. 4d. Irish, were remitted because of conformity; while still more were remitted (but no reason given) amounting to £678. 11. 10.[456] Many fines remained on the books and continued to be pursued for several years. On 19 January 1608/9 the king remitted the fines imposed on the inhabitants of Kinsale (in consideration of the town's suffering during the Spanish occupation) 'in hopes of further conformity'.[457] In February 1610 Clonmel town agreed to build a bridge in lieu of a reduction of its fines.[458]

The commissioners (the earl of Thomond and Sir Richard Moryson) who replaced Lord President Brouncker in the interval between his death and the appointment of Henry Lord Danvers as the new lord president in January 1608/9 are reported to have pursued Brouncker's policy but one must wonder about this because of the orders from London.[459] What is certain is that a new period of pressure began

[453] Cosgrove, 'Recusant Gentry ', p. 94.
[454] Clarke, 'Pacification, plantation', *NHI,* iii, p. 231.
[455] For a modern review of the English recusancy fines see M. C. Questier, 'Sir Henry Spiller, Recusancy and the Efficiency of the Jacobean Exchequer', *Bulletin of the Institute of Historical Research*, 66, 1993, pp. 251-266.
[456] Kent Archives, Cranfield Papers U269/1, Hi 15.
[457] *CSPI, 1608-10*, p. 131.
[458] BL, Harleian Ms. 697, fol. 81v.
[459] Fitzsimon, *Words of Comfort*, p. 174.

in July 1611 when the Dublin government reissued the 1604 proclamation banning priests and re-enforcing the oath of supremacy for magistrates.[460] On 25 August Sir Richard Moryson, vice-president of Munster in the absence of Danvers, ordered the bishop of Cork to proceed to excommunicate[461] the recusants, and to deal with those who had conformed in the time of Brouncker and had since relapsed.[462] Three days later, on foot of a special warrant to enforce the statute of 2 Elizabeth, a reminder was sent to the cities to make sure that the incoming mayors (due to take up duty at the end of September) should be conformable.[463] Within four months it was obvious that this was no idle threat for another letter, this time from Waterford, informed Cork, Youghal, Kinsale, Dungarvan, Cashel, Fethard, 'etc.' that their chief magistrate was deposed and imprisoned for refusing to take the oath of supremacy and a replacement should be elected.[464] Around December 1611 James Coppinger, the mayor of Youghal, and Edward Gough, one of the bailiffs, were deposed for refusing to take the oath, but there is no mention of any further punishment. The second Youghal bailiff, William Greenbank, appears to have conformed.[465] Pressure on the magistrates continued with another Youghal bailiff being summoned to Cork, probably in December 1612, refusing to take the oath and earning deprivation of his post.[466]

Hand-in-hand with this pressure on the magistrates it appears that the general population was suffering fines at assizes, quarters sessions, and gaol deliveries – sometimes being illegally fined at all in succession – with 5,000 being presented at one undated assize session in Co. Cork. Catholic ceremonies, like weddings and christenings, were carried out in secret – the penalty for discovery (often several years afterwards) was a fine varying from 1 mark-£2, plus fees, and the public penance of 'standing 3 Daies in a white sheet att the market Crosse'.[467] But then coercion eased (it did not stop) as there were more important things on the horizon – the parliament

[460] Pawlisch, *Sir John Davies*, p. 138.
[461] Excommunication was a potentially serious threat but it is difficult to assess how widely it was used in Munster, *C.P.R.I.Jas.I.*, pp. 399, 561; Hagan, 'Miscellanea', p. 325; Ford, *Protestant Reformation,* 1985, p. 153; Treadwell, *Commission*, pp. 292, 714; Hand & Treadwell, 'Directions', p. 210; SP 63/231/27A; Walsh, Reginald, 'A memorial presented to the king of Spain on behalf of the Irish Catholics, A.D. 1619', *Arch. Hib.*, vi (1917), p. 51, no. 28.
[462] BL, Harleian Ms. 697, fol. 37v.
[463] Ibid.
[464] Ibid., fol. 38r.
[465] Caulfield, *Kinsale*, pp. 13, 15-16.
[466] Ibid, p. 21.
[467] Bod. Lib., Carte Ms. 62, fol. 262; O'Brien (ed.), *Advertisements*, pp. 15-16. See also Walsh, 'Memorial', p. 50, nos. 20, 21; ibid., p. 52, nos. 35, 36.

of 1613-15 was about to begin. It would prove to be a time of great hope and great frustration, with Protestants and Catholics divided into distinct camps and the gauntlet was thrown down. For the Protestants the prize was consolidation of what they had gained and, for the Catholics, toleration and preservation of what was left.

The 1613 parliament was the first in Ireland for 27 years.[468] Its purpose was to guarantee that King James' policy would be carried out in Ireland or, as one commentator said, that

> his Matie and all his posterity shall forever have sufficient power by lawe to bridle this stiffnecked peop[le] and to keep them in subiection, and to purge the kingdome of Jesuites and Spanish priests, and to be Maister of this Nation to the Worlds end.[469]

To ensure that this occurred, it was essential that the government have a Protestant majority and the Catholics were well aware of the administration's objectives – to outvote them or, as was initially feared, to exclude them by forcing them to take the oath of supremacy.[470] Should the members be elected on current boroughs, a Catholic majority was ensured but the government set out – to use a modern term – to gerrymander a Protestant majority.[471] The Munster presidency was an essential tool in the government strategy. Vice-President Moryson expected the 'ancient' cities of Waterford, Limerick and Cork to return Protestants and that, in all, there would be a Protestant majority of 6 from the province.[472] Lord deputy Chichester was confident that, countrywide, 'we shall exceed them by 28 voices', and although he did get his majority it was too slender to be wholly effective.[473] The Munster presidency provided several members but Moryson had greatly misread the overall situation,[474] the province being guided by Dublin recusants.[475] Although the parliament was an abortive government offensive against the Old English,[476] the

[468] Richard Bagwell, *Ireland under the Stuarts and during the Interregnum* (Longmans, Green & Co. London 1909), vol. I, chapter vii.
[469] Bod. Lib., Carte Ms. 62, fol. 242v.
[470] Davies to Salisbury, 14 October, 1611, *CSPI, 1611-14*, p. 153.
[471] *Des. Cur Hib.*, vol. I, pp. 419-20. A list of the government's calculations, prior to the election, is at Bod. Lib., Carte Ms. 61, ff. 90v-94.
[472] *Cal. Carew, 1603-24*, pp. 135, 137.
[473] Ibid., p. 136.
[474] Brid McGrath, 'The Membership of the Irish House of Commons, 1613-1615', (M.Litt, TCD, 1985), p. 28.
[475] Bod. Lib., Carte Ms. 62, fol. 245.
[476] Aidan Clarke, *The Old English in Ireland, 1625-42* (London, 1966), p. 28.

acquiescent conduct of the Catholics was succinctly described by one commentator as a 'suicidal' act of compromise.[477]

While parliament was in session life on the ground for recusants was continuing the same with the towns still bearing the brunt of the pressure to conform. As part of on-going measures to bring all society into line with England, town affairs were being streamlined with several Jacobean charters requiring the addition of such officers as recorders and/or town clerks.[478] A recorder, Edmund Coppinger, was appointed in Youghal at the end of March 1612 and arrangements were made to pay his stipend. When one of its bailiffs was deprived of office for refusal of the oath of supremacy, a new election took place.[479] The screw was turned a little tighter with the obligation on pensioners to take the oath of supremacy,[480] and with the proclamation of 31 May 1614 ordering priests to leave by 30 September:

> We do therefore hereby declare publish and proclame That wee are constantlie resolued never to yeild to any tolerac*i*on or exercise of any other Religion then that w*hi*ch is agreeable to godes woorde and is established by the lawes of that our Realme of which wee do expressly will and commannde for the honnor and service of almightie god to be put in due execucion.[481]

In August, and again in December of the same year, Vice-President Moryson was reminded to enforce the statute of 2 Elizabeth, but with the corollary that in those places which lacked a church or a minister without a knowledge of Irish 'there be a moderac*i*on in leaving the pennaltie of the said statue vntill such churches be built vp again' and could be staffed accordingly. Churchwardens, to be elected in each parish, would be responsible for administering the fruits of recusancy fines. These were destined for poor Protestants only.[482] The implication here was that poor Catholics could starve.

From about 1615 the magistrates of the Munster towns changed their behaviour of semi-obedience to downright refusal to acquiescence. Limerick can be regarded as a mirror of the other towns. Each year a Catholic was elected mayor,

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[477] Fitzsimon, *Words of Comfort*, p. 190.
[478] The charter of Youghal of 22 December 1609 stipulated the appointment of 'a recorder and other usual officers', BL, Egerton 76, fol. 11r; a recorder for Clonakilty, *ibid.* fol. 12v; Limerick, *ibid.*, fol. 42r; Clonmel, *ibid.*, fol. 62r; Fethard, *ibid.*, fol. 63r; Cashel was not upgraded until 1637, *ibid.*, fol. 64r; Dungarvan, *ibid.*, fol. 70r; Tallagh (Tallow), *ibid.*, fol. 71r; Lismore, *ibid.*, fol. 71v.
[479] Caulfield, *Youghal*, pp. 17, 19, 21.
[480] Letter to lord deputy, 7 October, 1613, *A.P.C.,1613-14*, p. 224.
[481] *APC, 1613-14*, p. 431; BL, Harleian Ms. 697, fol. 198r.
[482] Ibid., ff. 100v-101r.

deposed and replaced by a Protestant, but in 1615 each deposed officer was replaced by a Catholic, the final man, Christopher Creagh (who had taken the oath in 1611) now refused, was taken to the star chamber, fined £40 and imprisoned. Simon Fanning, who also served part of the year, was similarly treated, fined £30 and imprisoned. George Verdon, sovereign of Kilmallock, was fined 30 marks.[483] With the legality of this device confirmed, the fining of the Munster magistrates in the court of castle chamber was declared an exercise 'too long neglected' but if pursued in a 'moderate facion will worke some good effect'.[484] On 8 May 1616 the mayors of Cork, Limerick, Waterford, Clonmel and one of the sheriffs of the city of Cork were fined in Dublin and imprisoned for exercising their offices without taking the oath of supremacy.[485] In November of the same year five more magistrates were imprisoned and fined.[486]

By this time management of the cities and towns had reached crisis point with the administration in at least one Munster urban centre (Waterford) having ground to a halt. The report of Lord President Thomond[487] of the circuit undertaken in January 1616/7 showed the decay of the municipalities.[488] The city of Cork's mayor was a 'simple and poor man' who, because he was conformable, had already served several times but

> we fynd, that there hath Long wanted Sheriffs in that Citty … wee chardged them wth that Defect, and showed them the hazard and Damadg that his Mats service received thereby, in not having his Mats writes and process Duly served and returned, and in not admynistring to his subiectes a Loyall and speedy courses of tryall of their causes, because (through want of officers) neither the Sheriffs Courtes, Gaole Deliveries nor quarter cessions were Duly kept wthin the County of the Citty…[489]

Forced to elect new sheriffs the city selected in turn John Butler, Captain Thomas Nugent and Thomas Ring, 'a poor chandler', who were rejected by the presidency as being unsuitable. The city did not present a united front as there was an ongoing

[483] Begley, *Limerick*, p. 300.
[484] SP 63/234(1616)/16. Legal opinion: Bod. Lib., Carte Ms. 61, ff. 64-64v.
[485] John Coppinger (Cork), Simon Fanning (Limerick) (fined £30 English each); John Skiddy (Waterford), Bennet White (Clonmel) (fined £20 each); Patrick Cronyne, sheriff of city of Cork (fined £10); *Egmont*, vol. I, part I, p. 46. Their fines were reduced, TCD, Ms. 852, f. 90v.
[486] Alexander Cuffe, mayor of Waterford, Christopher Creagh, mayor of Limerick, Patrick White, sheriff of the city of Waterford (fined £40 each), Piers Bray bailiff of Clonmell, Patrick Everard, sovereign of Fethard (fined £10 Engl. each), *Egmont*, vol. I, part I, p. 47.
[487] Fiants of appointment dated 25 May 1615, NAI, RC. 17/4, nos. 117, 119.
[488] Bod. Lib., Carte Ms. 62, ff. 446-449.
[489] Ibid., fol. 447.

dispute between the recorder, Thomas Gold, and the aldermen which 'wee Doubt the same will hardly be reconciled wth his continuance' in office.[490] In essence the city was not fulfilling the terms of its charter.[491] Waterford was in a similar state of confusion. There had been

> no Maior for theis foure monthes past, and but one Sheriff and hee a man very uncapeable of such an office, aswell for his weaknes in Judgmt, experience and estate (being a poore mariner) as also because he was Lately made free of purpose…[492]

Waterford, like Cork, was scraping the bottom of the barrel in a vain attempt to have officers acceptable to the authorities and was to be made an example that would jolt the other municipal authorities into some type of compromise.

The punishment that was about to be inflicted on Waterford had been suggested by Brouncker[493] and outlined by the king in a letter of September 1612 in which he recalled his forgiveness for the unseemly behaviour of the towns on the death of queen Elizabeth, this clemency being marked by new favourable charters but

> wee haue founde by experience that the easie and gentle hand which wee haue hitherto borne towardes them hath wrought no other effect but the abuseing of our Royall aucthoritie emongest them.

Many towns were virtually lawless because of their obstinacy in refusing the oath of supremacy and in devising schemes to circumvent their obligations of which the 'tumultous sedicion of Waterford' was an example. The king resolved that

> whensoeu*er* hereafter wee shall vnderstand that any of our Citties or Corp*or*at townes there are left Destitut of such maiestratts for the well ordering of o*u*r people as they are enioyned by their Charters … wee will make seisure of their liberties into our handes and appoint other gou*er*nors ou*er* such Citties and townes as shall so offend.[494]

In September 1617 the lord president and council presided at a special court where a compliant jury returned a verdict that Waterford's charter should be seized.[495] Six months later the lord president and the Dublin assize judges seized the charter and Sir George Flower, several times sheriff of the county (see Chapter 3), was appointed

[490] Caulfield, *Cork*, p. 64.
[491] Bod. Lib., Carte Ms. 62, ff. 447-447v.
[492] Ibid., fol. 448.
[493] Byrne, 'Jacobean Waterford', p. 65.
[494] BL, Harleian Ms. 697, ff. 128v-129r; *CSPI, 1612-14*, p. 288.
[495] Byrne, 'Jacobean Waterford', pp. 161-2.

governor to administer its affairs.[496] The charters were not returned, and the corporation was not revived until the accession of Charles I in 1625. In fact the city records stop in 1615 when the campaign against the municipal officers reached its height in Munster and Waterford had 5 different mayors elected and deposed in this year 1615-16.[497] Towns in the North of England, jealously guarding their liberties, also had disputes with the local presidency, but religion did not enter the equation. Problems, for example with the city of York in 1613, centred on the council trying to encroach on the city's jurisdiction. The privy council in London upheld the complaint of the city and reminded the council to respect its liberties.[498] Legal difficulties between the crown and corporate bodies in England was a feature of James I's reign, but these cases (initiated by writ of *quo warranto*) were instigated by disgruntled citizens and the crown interefered solely to maintain corporate order and stability. Two cities were condemned to lose their liberties but the sentences were not carried out, and religion was never a reason for legal proceedings. Thus Waterford's treatment was unique in the frame of English law.[499]

Some towns had already begun to show pragmatism in co-operating with the presidency and, as shown in Chapter 2, appointing council personalities to town posts. They also began to defer disagreements to the council for settlement. In 1618 the butchers of Clonmel took their town (in the person of the bailiff) to the presidency court for seizing several carcasses which were purchased without adhering to the customs laws of the town.[500] The fishermen of Kinsale were emboldened to appeal to the council to intervene in its dispute with the town council in July 1619, the case being heard at Bishopscourt,[501] while members of the presidency council were sought to arbitrate in disputes.[502] Meantime the presidency council kept its eye firmly on the conduct of the people. Religious objects were seized in 1617[503] and devotional

[496] BL, Add. Ms. 19,865, fol. 137; Clarke, 'Pacification, plantation', p. 224; Byrne, *Liber*, pp. v-vi; Byrne, 'Jacobean Waterford', pp. 164-7. The campaign to force the surrender of the charter had begun in 1615, SP 63/233(1615)/54, 63/234(1616)/30A, SP 63/234(1617)/9.
[497] Byrne, *Liber*, pp. v-vi, 308 fn., 309 fn. (return of charter). The effect of the economy of Waterford was dramatic: its revenue in 1619 was £546. 2. 10½, in 1620: £388. 5. 8½, in 1621: £272. 14. 1½, Treadwell, '*Commission*', p. 369.
[498] Reid, *Council*, pp. 328, 332.
[499] Catherine Patterson, '*Quo Warranto* and Borough Corporations in Early Stuart England: Royal Prerogative and Local Privileges in the Central Courts'*, EHR,* cxx, no. 488, Sept. 2005, pp. 884-93.
[500] The bailiff, Piers FitzMichael Bray, provided a recognizance for £1,000. He was subsequently fined £50, reduced to £32, Brid McGrath, *Clonmel Town Book* (Dublin, 2006), fol. 51.
[501] Caulfield, *Kinsale*, pp. 5-6.
[502] Caulfield, *Youghal*, p. 36.
[503] Grosart, *Lismore Papers,* 2, ii, p. 116.

practices, such as the month's mind, were outlawed. Other customs condemned were devotions at holy wells, at holy crosses, meetings in woods and other open areas for the purpose of attending mass[504] where it was claimed that 'seditious' sermons were preached.[505] An example was made of Lord Inchiquin who was fined £500 (reduced to £100 Irish) and imprisoned for having mass said in his house by Fr. Nicholas Nugent.[506] A proclamation on 4 March 1619/20 ordered the closure of 'tabernacles' erected by Franciscans and Dominicans in Limerick city and a general clean up (in the religious sense) of the area.[507] If this should be the state of affairs in the city where lord president Thomond had his residence one must wonder at the other towns in Munster. Catholics lived in a state of constant fear which was heightened at times of the sessions (quarter and assize) as it was here that they were presented by the minister or bishop who received the information under oath, and in writing, from parishioners. While most juries at the beginning of the seventeenth century would have been composed of Catholics the increase in the numbers of New English settlers enabled the packing of juries with Protestants in order to obtain convictions.[508]

Autumnal reports in 1621 that priests were bolstering the spirits of their flocks with the words:

> the tyme will not be Long before they be eased of their p*er*secution for Religion, and the oppression they endure by the Losse of their landes

heightened tension and caused a rush to tighten security.[509] The resentment bubbling beneath the surface would not erupt into revolt for another twenty years.

Conclusion

The purpose of the lord presidency, through the twin goals of establishing and maintaining law and order, was to bring Munster into line with England. Its focus on anglicisation and Protestantisation dramatically changed the lives of the war-weary population of Munster during the reign of James I. The council was modelled on that of Wales and reference to it, and to the council in the North of England, has helped to understand the organisation of the Munster administration. Besides its administrative

[504] BL, Harleian Ms. 697, fol. 198v.
[505] *Des. Cur Hib.*, I, p. 418.
[506] SP 234(1616)/16 gives fine of £500; *Egmont*, vol. I, part I, p. 45. Walter Cregg of Limerick was found guilty of having landed Fr. Nugent at Inch in the Shannon basin. Another (unnamed) priest was brought in at the same time. Cregg implicated Anthony Archer, merchant of Limerick, ibid., p. 46.
[507] BL, Harleian Ms. 697, ff. 106r-106v.
[508] Hagan, 'Miscellanea', pp. 325-6.
[509] SP 63/236(1621)/26.

role the Munster council was also a prerogative court of law. In the early years of the seventeenth century the court was re-established following its discontinuance during the 1598 rebellion. The Munster justices also held regular assizes courts and gaol deliveries prior to the advent of the Dublin circuit judges in the spring of 1606. The advent of the assizes judges initially caused friction with some of the lords president but this tension was soon overcome. In the early years of the seventeenth century the Munster judges filled the gaps whenever the Dublin judges were unable to travel due to the shortage of personnel in the capital. The successful establishment of the assizes courts helped in the overall objective of centralization and anglicisation of the province.

Counties Kerry, Clare and the Liberty of Tipperary did not fit into the general administrative picture. It has been shown why they were different and that their treatment was at odds with similar independent jurisdictions in England. The policy of making Munster a mirror-image of England was uneven and determined by current government concerns.

A major concern of the lord president was the re-establishment and collection of the composition in lieu of cess. This was a major departure in terms of co-operation between the crown and the major Gaelic and Old English landlords. The basis of the agreement was that the Munstermen would provide an agreed fixed tax to the government in return for freedom from cessing of soldiers, from supporting the 'table' of the lord president, and from the ancient customary burdens of the indigenous chiefs – such as cuddies and other customary demands. Far from providing stability the collection of the composition engendered unrest and resentment occasioned by the continual use (and cessing) of soldiers in the process of the tax collection. Another, but infrequent tax, was subsidy, which was an occasional subvention approved by parliament.

Security was a vital function of the presidency. The process of ensuring peace meant controlling disbanded and displaced soldiers; holding regular musters so that the province would be ready for any future incursion; monitoring the defeated masses by the erection of garrisons and forts in strategic areas. Tensions between the populace and the soldiers was exacerbated by the pirate threat which was a growing problem for the province. The lord president was expected to deal with the difficulty without being allocated sufficient funding or shipping.

Underpinning the unrest in the province was the attempts of the president to persuade or compel Catholics to conform to the established church. This campaign initiated by Lord President Brouncker took several forms: issuing of mandates to influential citizens, insisting that municipal officers take the oath of supremacy, and enforcing the statute of 2 Elizabeth on the general population. This penal code terrorised the population with fines, imprisonment, and unemployment as only Protestants were eligible for local government posts. The Old English, the traditional leaders of society and local government, were excluded from participation by the new regime. Following the death of Lord President Brouncker the pressure eased but continued at intervals – depending on the political climate – the seizure of Waterford city's charter serving as a sharp lesson to the other urban centres, several of whom began to seek ways to work with the council without denying their religion.

Chapter 2 will examine the officials of the presidential council who had a stake in consolidating Munster as a Protestant entity where they, as members of a special crony circle, could reap the rewards offered by their positions as privileged administrators of the provincial council itself.

Chapter 2

Lord President's conciliar helpmeets: Councillors and Council Officials

Introduction

The lord president, on whom the 'multitude and might of affairs' rested,[1] was dependent on the support of his councillors and of his executive for the smooth running of his administration. To be effective it was necessary for the councillors to work together despite the tensions and constant infighting. As already mentioned in Chapter 1 this friction, in the early years of James I, began at the top with the lord president and, while there is evidence that it spilled over into relations between the president and members of the council (e.g. Brouncker and Thomond) and the president with other officials (Brouncker and Wilmot), there was also strain between the judicial and administrative officers. The reality was that there was a shortage of suitable (i.e. Protestant) candidates to fill the Munster council posts and the subsequent control of the council executive by an English clique sent forth a message of domination by the colonial minority. This led to low standards in high places as epitomised by Chief Justice Saxey who was appointed in March 1594 because he was 'of good religion [and] well seen in the laws of Ireland' but was subsequently described by Lord Deputy Chichester as 'very corrupt and unfit' and was edged out of his Dublin post in 1602. Saxey's appeals to be appointed to the council of Wales fell on deaf ears and, 'weakly furnished', he was still sending begging letters as late as 1612.[2]

The colonials were inter-dependent for the acquisition and retention of posts, wealth, and honours. The council was a powerhouse of expertise and the behaviour of Sir Richard Boyle, earl of Cork, in using the professional capabilities of the provincial officials for his own advantage must reflect the conduct of the other councillors. By the time Richard Fisher joined the executive as attorney general in 1623 the pattern had been well established. In November 1624 Fisher drew up conveyances of all the earl of Cork's lands and, for his trouble, received a young gelding from the earl's stables. This is the first recorded service of many done by Fisher for the powerful

[1] BL, Harleian Ms. 697, fol. 157v.
[2] *Lib. Mun.*, vol. I, pt. II, p. 186; SP 63/218/57; SP 63/226/57; SP 63/227/112 (July 1609) and 232/34 (n.d. calendared at April 1612).

earl.[3] For the officials it was a boon to be associated with the most powerful people in the province and, through them, have access to other sources of advancement. Their acquisitiveness was condemned by an unlikely model of fiscal rectitude – the chancellor of Waterford, Robert Daborne (former chaplain to the lord president, see below) who had sought refuge in Munster from his English debtors.[4]

Councillors

The composition of the members of the council of Munster (and Connacht), who swore to keep their eyes and ears open for anything untoward in the province,[5] was the responsibility of the lord deputy, while the councillors in Wales and the North were nominated by the monarch.[6] Through his nominees the lord deputy had control over the presidency and, as Sir Henry Brouncker discovered in March 1607, the current lord president had to bow to pressure when he disapproved of a nominee.[7] The lord president's control over the councillors lay in his prerogative to summon them 'when he shall thinck meete for the service' of the crown.[8] It was not necessary to invite them all – one or two would suffice.[9] Each councillor summoned by the lord president, and therefore staying in his household, was allowed to have one servant in attendance.[10] It is possible that, as in Wales, attending uninvited councillors were not entitled to 'diet', although in the North it was customary for unsolicited councillors to receive this privilege.[11] Also councillors in Wales were paid 6s. 8d./day but this does not appear to have been the case in Munster.[12] The Welsh custom arose as many of the councillors were practising lawyers but, as will be shown below, the background of the Munster councillors was entirely different.

The benefits accruing to Munster by the 'continuall residence' of the councillors were that

> the reformed and Civill sorte of Subiectes may be cherished and Defended, the ignorant and Disobeident instructed, and brought to imbrase knowledg and Civilitie, and all alyke to receive Justice at their

[3] Grosart (ed.), *Lismore Papers*, 1, vol. II, pp. 145, 170, 213, 214, 220.
[4] Daborne, *Sermon,* p. 35; *DNB*, vol. xiii, p. 373; *Oxford DNB*, 14, pp. 874-5. One of the 1628 'graces' forbade Englishmen to move to Ireland to avoid creditors, Clarke, *Old English*, p. 251, no. 42.
[5] Councillor's oath, BL, Harleian Ms. 697, ff. 147v, 88v; Reid, *Council*, p. 506.
[6] BL, Egerton 2882, fol. 11v.
[7] The nominee in question was Sir Richard Boyle, then joint clerk of the council, BL, Add. Mss. 19832, fol. 28r.
[8] BL, Harleian Ms. 697, fol. 145v; Williams, *Council*, p. 137.
[9] BL, Harleian Ms. 697, ff. 146v, 165r.
[10] Ibid., fol. 147v.
[11] HMC, 13th Rep., p. 266; Reid, *Council*, p. 156.
[12] HMC, 13th Rep., p. 265; Williams, *Council*, p. 140.

> handes by good gouerment, and right administrac*i*on of the lawes of this Realme.[13]

The new society implicit in these words was still a pipe dream for councillor and Chief Justice Saxey in early Jacobean Munster. Saxey's wide-ranging report, 'A Discovery of the decayed state of the Kingdom of Ireland, and of means to repower the same', painted a gloomy picture of the province from the point of view of a Protestant Englishman. He castigated the establishment episcopacy, the undertakers who failed to fulfil their agreements, the Catholic clergy 'who swarm as locusts' throughout the province, and the gentry of the cities and town who supported them. The servants of the state did not escape his ire or the judges and justices who 'ought to be religious and faithful to that State from whom they derive their place'. Many were 'open recusants or dissembling hypocrites' who 'maintain the recusancy of their wives, sons, daughters and servants'.[14] Here Saxey was alluding to, *inter alia*, Sir Nicholas Walsh,[15] to Gerald Comerford,[16] and to Dominick Sarsfield[17] a justice in Munster whose wife and children were openly Catholic. Unworthy state servants, they betrayed their trust in failing to advise juries at general sessions to 'esteem' the Book of Common Prayer and neglected to urge them to 'repair to the church'.

> And therefore it is to be wished that no Irish were allowed to be a councillor of State, general and provincial, or to exercise any authority within that kingdom, for, by colour of that authority, they have opportunity to betray the Council of that State.[18]

Sir Parr Lane, right-hand man to Lord President Brouncker and councillor from 2 June 1606[19] penned 'Character of the Irish'[20] and "Newes from the Holy Ile".[21] He alerted his readers to some of the perfidious qualities of the conquered Munstermen:

> [they are] more wily than wise; quicker in conceit than sincere in heart; base Flatterers to serve their turns, being else by nature as proud as the proudest. They are circular in Discourse, & seldom speak

[13] BL, Harleian Ms. 697, fol. 164r.
[14] SP 63/216/59; *CSPI, 1603-06*, pp. 217-28.
[15] Conforming Chief Justice of the Court of Common Pleas from 1604. He died a Catholic in April 1615, his funeral causing a scandal, BL, Harleian Ms. 697, fol. 101r.
[16] Chief Justice of Munster from 1599, he died a Catholic. See below.
[17] Chief Justice of Munster in 1604. See below.
[18] *CSPI, 1603-06*, pp. 220-1.
[19] BL, Harleian Ms. 697, ff. 157v, 158r.
[20] Bod. Lib., Ms. Tanner 458 (undated).
[21] Written c. 1621, Alan Ford, 'Parr Lane, "News from the Holy Ile"', *PRIA*, vol. 99, C, 1999, pp. 115-56.

> directly to any matter … They are clamorous but use no truth in their Complaints … The Priest & ye Lawyer are whelps … [and] the Priest … sow[s] the Cockell of Rebellion in the hearts of the people …[22]

This anti-Catholic and anti-Irish rhetoric helped to mould the mindset of the founders of the new provincial society. A councillor needed to possess the qualities of 'discretion, experience, and power'.[23] His duty was to support the dignity of the lord president with 'honour, reverence and obedience' and to assist him in his task of administration of the province in both the judicial and executive spheres when called upon to do so by the lord president.[24]

A councillor's most important visible function was his judicial role and his commission gave him

> sufficient authoritie to heare and Determyne by [his] Discrec*i*ons all manner of complaintes w*i*thin any parte of the Province of Mounster

without impeding the course of common law but, on the contrary, promoting it.[25] With a commission of 'oyer, determiner and gaol delivery' equal to any given in England or Ireland the councillor was enjoined to

> Dilligently and often severelie and Justelie sett heare and determyne by vertue of the same such causes as shalbe brought before them in such seuerall places as beste may agree w*i*th the necessitie of the cause and the Comoditie of the people.[26]

A councillor was expected to be active in local government and to fulfil the role of a justice of the peace in ensuring obedience to

> all Lawes and Statutes or ordinances made for the benefitt of the Comonwealth and punishem*en*t of Malefactors. .. the Statute for hew and Cry for nighte Watches, and for Weightes and measures to be Dilligently considered and seveurelie put in execucion.[27]

Councillors were also invited to serve on central government commissions emanating constantly from Dublin. In 1615 two councillors were leaders of an 8-man commission which, on behalf of the king, accepted the surrender and regrant of

[22] Bod. Lib., Ms. Tanner 458; Ford, 'News', pp. 115-16.
[23] Ibid., fol. 88r.
[24] Ibid., fol. 145v, item 1; Kennedy, 'Munster', p. 29; Williams, *Council*, p. 137.
[25] Instructions to Carew, BL, Harleian Ms. 697, fol. 146r, item 6.
[26] Ibid., fol. 146v, item 7.
[27] Ibid., fol. 147r, item 20.

Melaughlin McAuliffe's land in Co. Cork.[28] In April 1619 Sir Francis Slingsby was appointed to the commission to enquire into the alleged abuses of Edmund Hunt the collector at the port of Cork.[29]

By the end of the second decade councillors were courted by pragmatic corporations and several were admitted as freemen to various cities and towns. Chief Justice Harris and Sir Parr Lane were appointed councillors of the city of Cork in October 1617. In 1618 Bishop John Boyle of Cork (brother of Sir Richard) was admitted as a freeman; in 1619 Sir Thomas Southwell, a Munster councillor, was admitted a freeman and councillor; in 1620 Provost Marshal Aldworth was likewise honoured; in 1621 the new bishop (Richard Boyle, cousin of Sir Richard) joined the ranks of freemen but Sir Richard Boyle, earl of Cork, was excluded until 12 January 1624/5.[30] Clonmel appeared to be more stoic and did not court any councillors apart from Sir George Flower, sheriff of several counties (see Chapter 3). Pressurised by the lord president to replace the unacceptable incumbent, Flower was elected mayor in December 1620 but the former soldier declined the honour.[31] Waterford would not be in a position to extend the honours of their city until 1629 when the lord president and all his attendants were made freemen.[32]

In an administrative capacity a councillor could be called upon to examine and countersign the ledger books of the clerk of the fines and those of the steward of the household, a task which was done annually.[33] Finally there was an ecclesiastical requirement which expected a councillor to lead by persuasive example in encouraging the people to follow the dictates of the established church

> in observing all orders for Divine service and other thinges apperteyning to Christian religion and to embrace followe and Devoutelie to obserue the order and service of the Churche established in the Realme by Parliament.[34]

All this projected activity shows that the councillors were to be the leaders of a new active local gentry who, in supporting the presidency, supported the monarch.

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[28] The members of the commission were: Sir Francis Kingsmill (councillor), Sir Francis Slingsby Kt. (councillor), Arthur Hyde, John Walley, Richard Waddinge, Richard Butler Esq., Thomas Betsworth, William Gilbornes gent., NAI, Lodge's Mss. 17, p. 118.
[29] *CSPI, 1615-25*, p. 289.
[30] Caulfield, *Cork*, pp. 72, 79, 88, 94, 114.
[31] McGrath, *Clonmel*, fol. 78.
[32] Byrne, *Liber*, p. 317.
[33] BL, Harleian Ms. 697, ff. 166r, item 26 (clk of fines), 168r, item 52 (steward of household).
[34] Ibid., fol. 147r, item 18.

Composition of the members

The surviving lists of councillors[35] are top-heavy with the members of the Dublin privy council while the local community, as shown below, was under-represented. The inclusion of the privy council was normal practice. It gave them the right, but the not the duty, of attendance. They were encouraged to sit with the council whenever they were in the province but there is no evidence in the Council Book that any of them did so once 'peace' had been established. In the early years of the seventeenth century, when Lord Deputy Mountjoy was in Munster, decisions were made by the privy council and not by the council of Munster which, as pointed out in Chapter 1, was in suspension. Sir Nicholas Walshe, privy councillor and chief justice of the common pleas, does appear frequently in the Council Book but, as shown already in Chapter 1, this was because of the absence of Chief Justice Saxey and, following his return, to expedite the volume of judicial business after the Battle of Kinsale. The justices of the assize were also advised to act as members of the council while they were on circuit but, unlike their counterparts in Wales, there is little evidence that they did so – despite the struggle, discussed in Chapter 1, to have them accepted.[36] Apart from the input of Walshe[37] the only assize justices to sit with the council were Sir John Elliott in September 1606, Sir Humphrey Winch in July 1607, and Sir Francis Aungier with Sir Christopher Sibthorpe (who served together) in April 1614.[38] Following his departure Walshe made occasional appearances: in March 1605/6, in September 1606, in June and July 1609.[39] Sir Dominick Sarsfield, after he left his post of chief justice of Munster to concentrate his energies in the king's bench in November 1608, signed with the Munster council in January 1608/9, April 1610, August 1610, and October 1613.[40] On the other occasions when he was a signatory he was a commissioner acting in the absence of the vice-president: October, November and December 1612, and October 1613.[41]

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[35] Ibid., ff. 147v (1599/00), 88r (1604), 164r (1608/9), 117r (1615).
[36] Williams, *Council*, p. 144.
[37] He resigned from his post of chief justice of the king's bench in April 1612, BL, Add. Mss. 4819, fol. 267v; *APC, 1613-14*, p. 265. After his death on 12 April 1615 his funeral service in Waterford was a 'scandalous' show of catholicity, BL, Harleian 697, fol. 101r; James Buckley, 'Walsh of Pilltown, Co. Waterford', *Journal of the Waterford and South East of Ireland Archeological Society*, vol. xvi, 1913, p. 101.
[38] BL, Harleian Ms. 697, ff. 184v, 50v, 99v. For assize circuits see Chapter 1, and McCavitt, 'Good Planets', pp. 262-78.
[39] BL, Harleian Ms. 697, ff. 157v, 184v, 191v, 190v.
[40] Ibid., ff. 45r, 71v, 72v, 36r, 197v.
[41] Ibid., ff. 124r, 163v, 194v, 195r, 99r, 169r, 197v.

From the Council Book we can identify the councillors and their input into the administration. It was intended that the council be representative of the three estates of the province: clergy, nobles and people.[42] The clerical strand came from the minority Church of Ireland episcopacy and not from the majority Catholic religion. The New English Bishop Lyon of Cork and Bishop Adams of Limerick were regularly appointed, the Bishop of Waterford (John Lancaster, former chaplain to King James) made the council in 1615 several years after his assumption of the see, but the controversial Irish-born Archbishop Miler Magrath of Cashel never figured, nor did Irish-born Bishop John Crosbie of Co. Kerry. The nobility strand came from the New English minor nobility of the province and gave a heavy military tone to the council. Sir Francis Barkley, Sir John Dowdall, (both of Co. Limerick), George, Lord Audley, Sir John Jephson, Sir Parr Lane (all Co. Cork), and Sir Thomas Roper (Co. Kerry) served frequently from the beginning of the reign of James I. They were all New English serving or former army officers. Another New English group was appointed from the beginning of the second decade: Sir Thomas Standish, Sir Francis Kingsmill, Sir Francis Slingsby, Sir William Danvers, Sir Thomas Button, Sir George Flower, Sir Thomas Southwell, and Sir William Fenton. Several were soldiers (Slingsby, Danvers, Flower, Southwell), but others were planters.[43] Old English Catholics David, Lord Barry of Buttevant, and Sir John Everard, were also consistently nominated. Sir George Carey initially appointed Everard in February 1603/4 pointing out that as he was a frequent visitor to the province

> and beinge one whome I hold very iust and Discreete and through his experience well abell to geive greate furthranc to his Ma*ies*tes service … beinge fully p*er*swaded that he is a man of such sufficcency and Judgm*en*t, as yow will haue much Comfort of him, and by his good advise receave great assistance, aswell in Matters generally for the service as thinges w*hi*ch p*ar*ticularly Conserneth the bisnes of that p*ro*vince.[44]

On 26 March 1604 Sir John was 'sworne accordingly one of the Counsell for the p*ro*vince of Mounster', but he was obviously not asked to take the oath of Supremacy (made mandatory for councillors in 1604[45] though not compulsory in the North of

[42] Kennedy, 'Munster', p. 29.
[43] BL, Harleian Ms. 697, ff. 88r, 164r, 117r, 171v, 169r, 170r, 117r, 190r, 81v.
[44] Ibid. fol. 156v.
[45] Ibid., fol. 88v.

England until 1628[46]) but the simple oath of a councillor.[47] While Lord Barry served several times with Carew, a few times with the commissioners after Carew, just once with Lord President Brouncker, and four times with Vice-President Moryson, Everard (despite the respect in which he was held by the authorities) was never invited to attend. Conforming Old Englishman Laurence Lord Esmond was appointed to the council by the lord deputy on 2 September 1617 and he served as a commissioner on the death of Lord President Thomond in September 1624 but his input into the council otherwise is not clear.[48] Sir Pierce Crosby, a native conformist whose family settled in Co. Kerry at the beginning of the reign, and Old Englishman Lord Bourke from Co. Limerick were appointed in 1619 and 1621.[49] Sir Bernard Grenville was recommended on 20 March 1605/6 and appointed in June 1606 but he did not remain too long in the province.[50] What is noticeable is the absence of an old planter presence, particularly those who had ridden out the rebellion like Cuffe and Hyde, despite the appeal that 'the king's farmers … be advanced and cherished'.[51] In this category were the Brownes of Co. Kerry and the Courtneys of Co. Limerick, the religious conformity of both having become suspect.[52] The only commoner was another New English soldier, Capt. Henry Skipwith, constable of the fort of Castlepark, Kinsale, from 1610.[53] Another noticeable lacuna is the absence of Scottish nominees at a time when King James's countrymen were receiving an ever-higher profile both in Ireland and in England.[54] The Council Book records two Scottish appointments. Sir James Fullerton, selected in June 1604, was an energetic participant between June and September 1604 until he left the province.[55] In September 1624 Richard Preston, earl of Desmond, was appointed one of the commissioners on the death of Lord President Thomond, but his participation is unknown.[56]

[46] Reid, *Council*, p. 153, n. 12.
[47] BL, Harleian Ms. 697, fol. 156v.
[48] Ibid., ff. 145r, 91v-93r.
[49] Ibid., ff. 122v, 79v.
[50] Ibid., fol. 157v; MacCarthy-Morrogh, 'Munster Plantation', pp. 379-80.
[51] BL, Harleian Ms. 697, ff. 168r, item 54, 120v, item 33.
[52] MacCarthy-Morrogh, 'Munster Plantation', pp. 398-9; Begley, *Limerick*, pp. 192-3.
[53] *C.P.R.I.Jas.I.,* p. 188.
[54] See David Edwards, 'Scottish officials and secular government in early Stewart Ireland' [forthcoming]. I wish to thank Dr. Edwards for allowing me access to this article.
[55] BL, Harleian Ms. 697, ff. 88r,15r, 22v, 24r, 26v, 29v, 34v, 180v; Edwards, 'Scottish officials', p. 24.
[56] BL, Harleian Ms. 697, ff. 92r, 93r; Edwards, 'Scottish officials', p. 24.

The composition of the council in Munster was illustrative of its martial, anglicising and colonising role which contrasted with the situation in Wales and the North where locals had a role to play. In Wales the Welsh gentry and substantial citizens (including several Welsh speakers) were nominated in significant numbers in the reign of James I when membership of the council was being increasingly regarded as royal favour rather than work to be done.[57]

The numbers appointed at the accession of each new president increased from a total of 21 under Carew, to 33 under Brouncker, 49 under Danvers, and 53 under Thomond. In the first instructions of the seventeenth century there was no difference made between privy councillors and others but from January 1608/9 this distinction was introduced. Then the privy nominees outnumbered the provincial councillors: 26:23 in January 1608/9 and 34:19 in May 1615. In contrast the number in Wales, where privy councillors were not appointed, was around 35 showing the greater input of the local community.[58]

An examination of the Council Book shows the preferences of the lords president for working with certain councillors, that is those who were not judicial officials. Sir Henry Brouncker performed well with Sir Francis Barkeley who signed the council book on 23 occasions, 21 times between June 1604 and September 1605. Sir Richard Moryon appeared to have a preference for Boyle, Sir Parr Lane and Sir John Jephson: the first 19 times, Lane 34, and Jephson 17, Jephson's contribution taking place over a period of ten separate days between June 1609 and April 1611. The earl of Thomond's most frequent counciliar partners were Co. Limerick-based Sir Thomas Browne and Bishop Bernard Adams, Browne serving in all 21 times and the bishop 17. Given the secular profile of the judiciary in modern times it is rather startling to see the input of, in particular, William Lyon, Bishop of Cork and Cloyne. Prelates who exercised a secular role were not unusual – indeed their participation in civil government increased in all James I's territories[59] – but there could be a conflict of interest between their ecclesiastical and secular roles. They could not, for

[57] Reid, *Council*, pp. 154-5; Williams, *Council*, p. 145; HMC, 13th Rep., p. 249; Peter Roberts, 'The English Crown, the Principality of Wales and the Council in the Marches, 1534-1641, in Bradshaw & Morrill, *British Problem*, pp. 138, 140.
[58] Williams, *Council*, p. 138; HMC, 13th Rep., pp. 249-50.
[59] John McCafferty, 'Protestant prelates or godly pastors? The dilemma of the early Stuart episcopate', in Alan Ford and John McCafferty, *The Origins of Sectarianism in Early Modern Ireland* (Cambridge U. P., 2005), p. 58.

instance, impose the death penalty which would be regarded as an 'irregularity'.[60] Between September 1602 and March 1613/14 Bishop Lyon served with the council at least 48 times. The cases ranged from taking recognizances, settling merchant claims and property disputes, to a variety of proclamations including one against priests. The only doubtful matter recorded in the Council Book is a proclamation requiring named rebels of Carbery, Co. Cork, to be brought in dead or alive. This was an encouragement to kill citizens without extending to them the benefit of due process.[61]

In spite of the number of councillors at the lord president's beck and call it appears that Sir Richard Moryson and the earl of Thomond often sat in judgement alone – whether by necessity or preference it is not possible to gauge.[62] This also happened in Wales and the North.[63]

Conflict between councillors

Tensions between the councillors was a recurring fact of life in a society where the aggressive personality prospered. In Wales the centuries-old quarrels of the local gentry were played out in the provincial court,[64] but in Munster it was more complex with local animosity directed at the *arriviste* New English.

Sir Richard Aylward[65] joined the councillors on 1 December 1607 but he was deprived of his seat in 1612, while he was mayor of Waterford, for slandering Sir Richard Moryson. Aylward was fined £200 (which was later remitted) and ordered to personally admit his error on his knees to the council and to Moryson at several court sittings in Dublin and Munster, including Waterford.[66] Sir Richard Boyle's acquisitive personality meant that he came into conflict with many of the Old English who, one would have expected, should have been courted and not alienated by the Munster presidency. One such person was Sir William Power with whom Boyle was involved in a long-standing boundary dispute. At the spring assize of 1624 Power recklessly alleged in open court that 'whomsoeuer his Lop [Boyle] favored must rise,

[60] Bishop Rowland Lee, Henry VIII's conforming lord president of Wales is believed to have received a dispensation to impose the death penalty, Williams, *Council*, pp. 15-16. William Walsh Catholic Bishop of Meath, a privy councillor under Mary, was involved in the whole gamut of military business including signing proclamations imposing martial law, *Oxford OED*, 57, pp. 119-21; Robert C. Broderick (ed.), *The Catholic Encyclopaedia* (U.S., 1987), p. 301.
[61] BL, Harleian Ms. 697, ff. 180v, 180r and *passim.*
[62] NLI, Sarsfield Papers, D. 25,969; BL, Harleian Ms. 697, ff. 4v-5v, 97r, 127r, 162r, 170v (Moryson); ibid., 87v, 104r, 104v, 105r, 105v, 106r, 107v, 108r, 108v, 109r, 109v, 110v, 116r, 126r (Thomond).
[63] Williams, *Council*, pp. 32, 139-40; Reid, *Council*, pp. 307-8.
[64] Williams, *Council*, p. 314.
[65] An Old Englishman he was despised by his fellow citizens of Waterford for his abjuration of the Catholic faith, Byrne, 'Jacobean Waterford', p. 27.
[66] BL, Harleian Ms. 697, ff. 127v-128r.

and on whomsoever his Lop frowned, they must be quashed'. He further claimed that a hundred men had reason to protest about the conduct of Boyle 'but durst not'. Power's indiscretion saw him summoned to appear before the lord deputy and council in Dublin and resulted in him kneeling in humiliation before the council and before Boyle.[67] This tenseness spilled over into the private sphere. Sir Thomas Standish abused his position in a disagreement with a New English neighbour. He 'disgracefully committed [Walter Browne] to the stockes in the open streete, he [Browne] being a gent of good estate & reputacon'.[68]

The council in Wales showed what could happen if the president was weak or took his eye off the ball. By the end of the sixteenth century the lord president had lost the power to summon his own councillors. A quaternity (4 people) was in control of the council and they were in permanent attendance at £100 per annum each. Lord Zouche, who assumed the post just before the death of Queen Elizabeth, managed to claw back some power but was unable to dislodge the quaternity.[69]

One major difference between Munster and the other councils was that it did not have an official residence though the lord president had an allowance of £10 per week for the maintenance of his household.[70] The official residence of the council of the North was the Manor House at York,[71] for Wales it was Ludlow castle, for Connacht it was Athlone castle, but there was none for Munster despite the fact that in December 1602 sufficient funds were set aside out of the fines, forfeitures and casualties of the province 'for the erecting and building of a stronge and convenient house'.[72] The headquarters of the Munster presidency was the home of the lord president. For Carew it was Shandon Castle, on a hill to the north of Cork city; for Moryson: Mogeely castle (owned by Sir Richard Boyle); for Thomond it was a rented house in Limerick city[73] – though he was instructed to live in Cork 'beinge a place most commodious for the repaire of suitors for Justice';[74] for Villiers: the College house at Youghal (owned by Sir Richard Boyle). Apart from the lord president and

[67] SP 63/238 (pt. 1)/27; Curtis, 'The Claytons', p. 33.
[68] Grosart (ed.), *Lismore Papers*, 2, iii, pp. 132-4.
[69] Williams, *Council*, p. 300.
[70] BL, Harleian Ms. 697, fol. 147v. In 1569, and again in 1596, Gillabbey in Cork city, to the west of the cathedral, was proposed as a suitable residence for the lord president, Caulfield, *Cork*, p. xv; Bolster, *Diocese of Cork*, p. 155.
[71] Reid, *Council*, p. 189.
[72] Lambeth Palace, Carew Mss, 620, p. 91.
[73] On 31 March 1618 the earl of Thomond was paid £100 Engl. for 1½ years' rent on a house in Limerick city, SP 63/235(1619)/19.
[74] BL, Harleian Ms. 697, fol. 199v.

his family the household maintained a minimum of 20 people – officials and their servants. Also supported by the household were the councillors (and one servant each) when summoned to attend the lord president. It is clear that the allowance of £10 was insufficient. Lord President Brouncker

> was inforced to supply by extorting provision from the Countrey, to the Dishonor of the State, and the Countrey's discontentment [who] would never demand the money for those provisions.[75]

This was the much-despised Irish custom of compulsory 'hospitality' in a different guise and was in direct contravention of the composition treaty whereby the people would be free of 'all provision … of the Presidentes howeshold & table'.[76] It has been estimated that the number supported at Ludlow was 40 served by 25 servants, with the local populace expected to provide certain services *gratis*.[77] The absence of an official residence in Munster must have been inconvenient and was a source of concern for the New English. In 1611 Captain William Newce, then owner of Bandonbridge, offered

> to build a howse fitt for the Lo*rd* Presid*en*t to Dwell in w*hi*ch howse shall for eu*er* remaine to the vse of the Lord Presid*en*t or vicepr*e*sid*en*t for the tyme being…[78]

Meantime, where were all the records kept – carted around from household to household? Where were they housed when the province was ruled by commissioners? In default, did the home of the clerk of the council, Sir Randall Clayton, at St. Dominick's abbey, Cork city, serve as a substitute? During his absence from Cork in October 1614, and again in January 1614/5, Vice President Moryson left matters in the care of the bishop, Sir Parr Lane, Sir Francis Slingsby, Henry Gosnold 'or any three or two of them resid*en*t at Corck in the absence of the rest of the Councell' and the clerk was instructed 'to attend yow w*i*th the Recordes, and the office there in my absence Contynually to be kept'.[79]

Officers of the Council

The hierarchy among the lord president's official helpmeets was chief justice, second justice, attorney general, clerk of the council, sergeant at armes, gentleman

[75] SP 63/222/175/A.
[76] NLI, Sarsfield Papers, D. 25,963; RIA, 12/K/20.
[77] Williams, *Council*, pp. 127-8.
[78] BL, Harleian Ms. 697, fol. 98r.
[79] Ibid., fol. 127r.

porter, clerk of the fines, and various minor officials.[80] The opportunities for advancement provided by the council of Munster cannot be over-stressed. An office in the seventeenth century was, for the landless, a source of income to be milked for all it was worth. Offices were rewards for services done, or favours to be bestowed, rather than jobs to be done.[81] Post-holders jostled constantly for position – trying to expand the remit of their post and to slice off a piece of their colleagues' action. Hierarchies of officials were created so that the work was done by underpaid deputies who, in turn, employed poorly paid clerks (like so many Bob Cratchitts) who did the donkey work. These were the 'sharks … of obscure fortunes, birth and quality' who kept their own advancement forever in their sights and not the benefit of the public or the monarch.[82] Patronage and the fear of poverty – it was regarded as a crime, the victims being responsible for their own condition[83] – created a mindset which contributed to the acquisitive nature of society.

Before examining in detail some Munster posts it is worth noting that the four provincial presidencies of Munster, Connacht, Wales and the North of England had similar, but not identical, organisations. All four had a lord president, Munster and Connacht had a chief justice, but this post was not necessary in Wales and the North where the common law was well established. Munster had a second justice, but Connacht did not,[84] and this post was also not necessary in Wales and the North. Indeed one of the arguments against the admission of the assizes judges to Munster was precisely this point: that Munster already had a chief and second justice so the Dublin judges were 'superfluous'.[85] All four presidencies had a chief executive called the clerk of the council but in the North this post was called 'secretary'. The duties of this officer in each presidency were comparable, but not identical. In Munster and Connacht the incumbent was usually *in situ*. In Wales and the North deputies were acceptable. Sir Fulke Greville, clerk in Wales for almost 30 years from 1590, was permitted to work through a deputy.[86] The clerk in Connacht, Edward White, and the incumbent in Munster for most of James I's reign, Clayton, appear to have filled the

[80] Ibid., ff. 145v, 146r.
[81] Williams, *Council*, p. 148.
[82] O'Brien (ed.), *Advertisements*, p. 15.
[83] Christopher Hill, *Society and Puritanism in Pre-Revolutionary England*, (Penguin, 1964), p. 261; Paul Slack, *Poverty & Policy in Tudor & Stuart England,* (London 1988), p. 28.
[84] The post was unfilled until 1662, *Lib. Mun.*, vol. I, pt. II, p. 191.
[85] SP 63/222/175/A.
[86] BL, Egerton 2882, ff. 18r, 26r; Williams, *Council*, p. 161.

post themselves most of the time. Thus when comparing the stipends of the main officials it must be remembered that, as the posts were not exactly the same, the fees attaching to each post were analogous but not identical.[87]

Table 2 (a): Comparison of council officers' stipends (stg./annum)

Official	Munster	Connacht	Wales	North of Engl.
Lord President	£133. 6s. 8d.	£100	£1,040	£1,000
Chief Justice	£100	£100	n/a	n/a
Second Justice	£66. 13s. 4d.	n/a	n/a	n/a
Clerk	£20	£20	£13. 6s. 8d.	£33. 6s. 8d.
Attorney General	£13. 6s. 8d.	£20	£13. 6s. 8d.	?

Source: BL, Harleian Ms. 697 (Munster); Cunningham, 'Political and Social Change' & BL, Lansdowne Mss. 159 (Connacht); Williams, *Council* & HMC, 13th Rep. (Wales); Reid, *Council* (North). Note: fees for Munster date to 1600 and 16th century for the other councils.

Table 2 (a) shows the prescribed fees for the postholders but at Michaelmas 1607 the Munster officials received special allowances for unspecified services: Chief Justice Sarsfield received £500; Second Justice Robert Marshall: £66. 13s. 4d.; Attorney General John Birkett: £13. 6s. 8d.; Sir Richard Boyle, clerk: £20.[88] The fees of the officials were always a source of grievance and were discussed at the 1613 parliament.[89] The clerk was the only officeholder whose stipend was subsequently affected. It was halved by October 1629, and was further reduced to £7. 10s. at some date before 1637.[90]

Chief & Second Justice

In Munster the council's senior legal members were the chief justice, second justice and attorney general. There being no equivalent posts of chief and second justice in Wales and the North of England, the king's attorney general and king's solicitor were the chief officials of the court in Wales, and the attorney for the crown in the North.[91] This, as already mentioned, was because the local government machinery of the county courts and sessions of the peace were already in place in those areas but, as pointed out in Chapter 1, these local government institutions were (for the most part) new to Munster. In the period under review the Munster conciliar posts were much sought after as they provided a career path for attorneys of every hue. English-born lawyers could achieve higher office in Ireland than they could aspire to in England and the provincial presidencies were a convenient launch pad for

[87] Williams, *Council*, Appendix III, pp. 335-40. See also list of Welsh fees in BL, Egerton 2882, ff. 74v-75v and HMC, 13th Rep., pp. 174-5.
[88] In the same list the attorney general of Connacht received £26. 13s. 4d., SP 63/222/148A.
[89] *C.J.Ir.*, 29 Nov. 1614.
[90] TCD, Ms. 808, ff. 92, 94; Curtis, 'The Claytons', p. 26.
[91] Williams, *Council*, p. 149; Reid, *Council*, p. 185.

a judicial career. Henry Gosnold embarked on the legal path in Munster as a humble attorney of the provincial court and moved through the ranks to become chief justice of the council in September 1624. Going on extant records, he appears to have been the only person to have accomplished this feat. Others, like Dominick Sarsfield and Lawrence Parsons advanced within the provincial legal hierarchy and, from there, to the more prestigious posts in Dublin. Irish-born Gerald Comerford, formerly attorney general for Connacht, became second justice for Munster in October 1600, before moving on to Dublin. The sequence of the personnel is shown at Tables 2 (b) and (c) below. In this present section they will be evaluated in a general way.

The chief and second justice in Munster were expected to be in continual attendance in the province or, as the instructions stated, they should be

> contynewally abidinge w*i*th the said Lo*rd* President … w*i*th whome he may consulte in hearing such matters as may be exhibited vnto him for the better expedition of the same.[92]

Absence without special licence of the lord president was forbidden and, should they stay away without his permission, he 'shall deducte and Defalke' daily out of their wages, money which would be put to other use at his discretion.[93] The profile of both justices was enhanced by being councillors and, from 1604, both were given the added status of joining with the privy council whenever the lord deputy should be in the province.[94] The emphasis on the continual presence of, in particular, the chief justice was a requisite from the earliest days of the presidency[95] and the importance of this requirement was demonstrated by the absence of Chief Justice Saxey at a crucial period when Lord President Carew was endeavouring to re-establish presidential government in the province in the early years of the century.[96] During his absence Carew persuaded Sir Nicholas Walshe to remain in the province as without the presence of a chief justice 'many speciall Seruyces must be Deferred'.[97] This was not a satisfactory arrangement because Walshe, though a Protestant, was Irish-born, and it was accepted practice that one of the two provincial justices should be of English birth in deference to the English living in the region and for fear of the partiality of

[92] BL, Harleian Ms. 697, fol. 145v, item 2; ibid., fol. 89r.
[93] Ibid., fol. 146r.
[94] Ibid., fol. 88v.
[95] Collins (ed.), *Letters*, p. 50; Kennedy, 'Munster', p. 30.
[96] When the 1598 rebellion reached Munster Saxey, accompanied by his family, fled to England, *CSPI, 1598-1599*, p. 326. Another source claims that he left for England in 1596 after a dispute with lord President Norris, Sheehan, 'Provincial Grievance', p. 18.
[97] Lambeth Palace, Carew Mss. 620, pp. 3-4.

Irish judges.[98] There is no date for Saxey's return but he was back at his post again by 19 January 1600/1.[99] Gerald Comerford, another Irish Protestant, was currently second justice. Walshe and Comerford, along with Sir John Everard, and Dominick Sarsfield, were among the handful of native judges in Ireland. Everard remained a Catholic but the conformity of the others, as shown in Chapter 1, was only skin deep. As they died off or were forced out of office, they were replaced by New English Protestants. Thereafter the same courtesy (of having an Irish-born justice) was not extended to the native population who did not receive equal treatment in any court as Irish speakers, be they litigants or witnesses, were not understood by English-speaking judges.[100] New English Catholic justices were also not acceptable and Robert Marshall, appointed second justice in July 1603, was replaced by Henry Gosnold some years before his servant was involved in illegal importation of Catholic religious items into Munster.[101] The post holders were as follows:

Table 2 (b): Chief Justice:

Name	Appointed
William Saxey[102]	29 March 1594
Dominick Sarsfield[104]	15 November 1604
Edward Harris[106]	23 November 1608
Henry Gosnold[108]	27 September 1624

Table 2 (c) Second Justice:

Name	Appointed
Gerald Comerford[103]	15 October 1600
Robert Marshall[105]	1 July 1603
Henry Gosnold[107]	28 February 1605/6
Luke Gernon[109]	21 September 1619

The chief and second justices were regarded as members of the lord president's household – the chief justice being allowed to keep three servants and the second justice

[98] John S. Nolan, *Sir John Norreys and the Elizabethan Military World*, (Univ. of Exeter Press, 1997), p. 79.
[99] Lambeth Palace, Carew Ms. vol. 620, p. 50.
[100] SP 63/232(1613)/15.
[101] Edwards, 'Haven', p. 113.
[102] *Lib. Mun.*, vol. I, pt. II, p. 186. Concurrent with Munster post Saxey was 2nd justice of king's bench by patent of 16 July 1599. Sources claim erroneously that he was dead in May 1602 when he was replaced by John Everard, Constantine J. Smyth, *Chronicle of the Law Officers of Ireland*, (London, 1839), p. 103; *Lib. Mun.*, vol. I, pt. II, p. 33; Ball, *Judges*, vol. I, p. 226.
[103] *Lib. Mun.* vol. I, pt II, p. 186; fiant 6444, *Irish Fiants*, iii, p. 372. Recorded as being chief justice but this appears to be an error, *Lib. Mun.*, vol. I, pt. II, pp. 186, 51; *C.P.R.I.Jas.I.*, p. 4.
[104] Huntington Library, San Marino, Hastings Irish Papers, 1/HA 16054; *Lib. Mun.*, vol. I, pt. II, p. 186; *C.P.R.I.Jas.I.*, p. 56; he surrendered the Munster post on 22 November 1608, *C.P.R.I.Jas.I.*, p. 134.
[105] *Lib. Mun.*, vol. I, pt II, p. 186; *C.P.R.I.Jas.I.*, p. 4; NAI, R.C. 17/4, 1442b. He was sworn into office, and also as a councillor, on 14 December and sat with the council on that same day, BL, Harleian 697, fol. 155v. In October 1609 he applied to the presidential council, and received, fees due to him for attendance at sessions at various places in Munster, ibid., ff. 69v-70.
[106] *C.P.R.I.Jas.I.*, p. 134; NAI, R.C. 17/4,1422d.
[107] *Lib. Mun.*, vol. I, pt. II, p. 186; *C.P.R.I.Jas.I.*, p. 84; NLI, R.C. 17/4, 1518. On 5 March and 19 April 1619 he gave power of attorney to George Gernon to make the surrender for him in favour of Luke Gernon, *C.P.R.Jas.I.*, pp. 433, 445. He became chief justice of Munster on 27 September 1624.
[108] *Lib. Mun*., vol. I, pt. I, p. 186; *C.P.R.I.Jas.I.*, pp. 578-9.
[109] *Lib.Mun.*, vol. I, pt. II, p. 186; *C.P.R.I.Jas.I.*, pp. 433, 445.

two servants.[110] While on circuit the chief justice was allowed 20s. Irish per day and the second justice's allowance was 13s. 4d. Irish per day – to be paid out of the fines and casualties by the clerk of the fines.[111] They were also allocated fees which are set out in the Council Book.[112]

As already pointed out in Chapter 1 circuits were established very early in the century, in November 1600, and after the Kinsale interlude the justices had a very packed schedule. Besides the provincial court they also held assizes and gaol deliveries which, with the quarter sessions, were to become a regular feature of the provincial legal calendar. The chief and second justices also had opportunities for serving on commissions, conducting inquisitions, and handling private legal practices for which there were many opportunities especially among the settler community. During several absences of Vice-President Moryson the justices were numbered among the commissioners who ruled the province.[113] This was unique as in the absences of previous and future presidents Munster was ruled by soldiers.

In order to demonstrate the opportunities for aggrandizement two individuals are briefly examined. Dominick Sarsfield and Lawrence Parsons (see attorney general section below) made an art out of accumulating posts and wealth in a society which rewarded pugnacity and admired affluence.

Dominick Sarsfield was the son of a Catholic 'mean Cork merchant'[114] who was educated at the Middle Temple law school, London, from 11 January 1594.[115] Returning to Ireland a Protestant he was appointed attorney general of Munster in September 1600 by Lord President Carew[116] and was fast-tracked to chief justice in November 1604. Within a few months of his appointment nine members of the indigenous nobility praised his 'integritie and equall distributing of Justice … to the inestimable contentm*en*t' of his fellow countrymen. They further asserted that

[110] BL, Harleian Ms. 697, fol. 167v.
[111] Ibid., fol. 68v-69r.
[112] Ibid., fol. 35r.
[113] Ibid., fol. 159r; SP 63/232/1; BL, Harleian Ms. 697, ff. 160r, 127r.
[114] This was lord Coursey's description in 1626, *CSPI, 1625-32*, p. 140. The word 'mean' in the seventeenth century had the connotation of mediocre.
[115] Donal F. Cregan, 'Irish Catholic Admissions to the English Inns of Court, 1558-1625', *The Irish Jurist*, vol. v, new series, 1970, p. 106.
[116] *CSPI, 1611-14*, p. 159.

> wee nev*er* saw enny in his place more intirely affected to Justice, and more cleane, without toutche of corrupcion or other defecte in the vse of that office.[117]

It was the refusal of the oath of supremacy by Sir John Everard, a judge of the common pleas, that provided another rapid promotion for the young Corkman. When Everard was forced to resign Sarsfield was appointed 3rd justice of the king's bench.[118] He retained his post in Munster as 'both offices are compatible and might be well exercised by one and the same person'. Sarsfield's knowledge of Irish was also an advantage and the lord deputy recommended that there should be at least one person on each bench who could understand the native language.[119] His dual mandate ended on 22 November 1608 when he surrendered the post of chief justice of Munster.[120]

Although gone from Munster Sarsfield was still a potent presence. Besides his landed interests, he served on innumerable commissions including those which united Co. Kerry and Desmond in August 1606; joined Dough Arra with the Cross of Co. Tipperary in September of the same year; perambulated the city of Cork on 5 July 1609; and conducted the inquisition post mortem of Sir John FitzGerald of Dromany, Co. Waterford in October 1620 – probably defending the interests of Sir Richard Boyle.[121] He was a member of the council from March 1600[122] and was one of the commissioners for the province in the absence of Sir Richard Moryson in July 1612.[123]

Despite his close association with Boyle, Sarsfied refused an offer of marriage between two of their children.[124] This apparent rebuff did not damage the relationship between the two men as Boyle continued to use Sarsfield as a compliant source when,

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[117] The signatories of the letter, dated 16 July 1605, included John de Courcy, Cormack MacCarthy, David Roche of Fermoy, Thomas Cahir, Florence O'Driscoll, SP 63/217/76/I.
[118] *C.P.R.I.Jas.I.*, p. 92.
[119] *CSPI, 1606-08*, p. 117. This ambition was not followed through in Munster where, even more than in Dublin, a native speaker would have been crucial to make the legal system comfortable for the indigenous population.
[120] *C.P.R.I.Jas.I.*, p. 134.
[121] MacCarthy-Morrogh, 'Munster Plantation', p. 333; NAI, Lodge's Mss. 17, p. 106; *C.P.R.I.Jas.I.*, p. 98; RIA, 12/I/4, pp. 95-103; *C.P.R.I.Jas.I.*, p. 150; Caulfield, *Cork,* pp. 1-4; Grosart (ed.), *Lismore Papers*, 1, i, p. 263.
[122] BL, Harleian Ms. 697, fol. 147v.
[123] Ibid., fol. 160r.
[124] Sarsfield declared his son to be 'unworthy' of Lettice and the two resolved to remain friends, Grosart (ed.), *Lismore Papers*, 1, i, p. 180; ibid. ii, p. 24.

for instance, tightening his hold on Bandon in 1619,[125] or securing felons' goods in August 1621. The latter was engineered when Sarsfield (who served mainly on the western assize circuit[126]) presided at a Co. Waterford assize held at Tallow.[127]

Sarsfield's career illustrates the endemic cronyism in Munster which enabled a small group of people to keep a tight rein on avenues to influence and wealth.

Attorney General

The attorney general was nominated by the lord deputy. He was a relatively new official in English law and, as his importance rose, that of the serjeant-at-law (some of whose duties he absorbed) diminished, though in Dublin the serjeant-at-law remained the senior official for a further two centuries.[128] The attorney general was the chief legal adviser to the council. In line with some common law jurisdictions he might also have had executive responsibility for law enforcement or responsibility for public prosecutions. The post in Munster is not covered in the instructions but, probably, as in the North, his personal attendance was expected and his duties were in session as well as out of session.[129] He attended the regular sessions of the provincial court, and (after their re-establishment) the two circuits of the assizes judges which involved journeys of up to 300 miles 'at his owne chardge not hauinge soemuche as horse Ponie'.[130] He initiated some cases based on the information of an informer (or relator). Lawrence Parsons initiated such a case in January 1619/20 grounded on the information of John Stretch 'relator for his majesty'.[131] In Wales the attorney general's duties and rights were outlined thus: to attend the council continually; to prosecute all suits not already begun by the solicitor (who was junior to the attorney general); no order to be made contrary to the interest of the monarch without his knowledge; and to be allowed to search the records freely.[132] As the greater part of his work was the handling of misdemeanours the attorney general was open to bribery

[125] Ibid., pp. 219, 228.
[126] McCavitt, 'Good Planets', p. 253.
[127] Grosart (ed.), *Lismore Papers*, 1, ii, p. 22. In June 1621 it was suggested that 'Noe goodes of felons, Traytors or outlawed persons to bee given awaie or remitted but at the Counsell Table, & by sixe of the Counsaile whereof the Lo Deputie to bee one.', SP 63/236(1621)/9. The 1622 Commissioners recommended that felons' goods should be taken by the sheriff or escheator who should account for them, Treadwell, *Commission*, p. 358.
[128] Williams, *Council*, p. 149; A. R. Hart, *A History of the King's Serjeants at Law in Ireland: Honour rather than Advantage?* (Dublin, 2000), p. 23, chapters 2 and 3; J. H. Baker, *An Introduction to English Legal History*, (London, 1979), p. 142.
[129] Reid, *Council*, p. 189; Williams, *Council*, pp. 147-48, 155-56.
[130] BL, Lansdowne Mss. 159, fol. 123r. There were 4 terms in Wales and in the North, Williams, *Council*, pp. 142, 148-49; Reid, *Council*, p. 154.
[131] BL, Harleian Ms. 697, fol. 85v; Reid, *Council*, p. 276.
[132] The attorney's duties were outlined in 1586, Williams, *Council*, p. 154.

and illegal profits (e.g. compounding with a defendant to withdraw a case). In Wales this was dealt with this by the proviso that, as a member of the council, he could not sit in judgment on cases in which he himself was the prosecutor.[133] As already stated elsewhere it is not possible to compare the various posts exactly with those in Wales and the North. While the success of the post was dependent on the honesty and integrity of the incumbent,[134] its importance was summed up by Lord Deputy Wentworth who described the attorney general in the North as 'the eye of the court' whose vigilance should identify and punish offences in the community at large.[135] The attorneys general for the period under review were:

Table 2 (d): Attorney General

Name	Appointed
Dominick Sarsfield[136]	14 September 1600
John Birkett[137]	28 December 1604
John Farewell[138]	21 July 1609
Lawrence Parsons[139]	2 June 1612
Gerard Lowther[140]	26 November 1621
Richard Fisher[141]	9 June 1623

In Munster the attorney general was a member of the council from the beginning of Sir George Carew's presidency.[142] He was included in the instructions to President Brouncker in June 1604[143] but not in subsequent instructions, those to the earl of Thomond being the last extant detailed instructions. When Laurence Parsons was appointed to the council in May 1618 the lord deputy's letter made it clear that some of his predecessors had not been councillors.[144] Possibly, as happened in Wales,

[133] Ibid., pp. 167-8.
[134] Ibid., p. 176.
[135] Reid, *Council*, p. 410.
[136] *Lib. Mun.*, vol. I, pt. II, p. 186; fiant 6436, *Ir. Fiants*, iii, p. 368.
[137] *Lib. Mun.*, vol. I, pt. II, p. 186. He appeared in the exchequer court in Michaelmas 1606 to explain an arrear in crown rents, NAI, Ferguson ix, p. 50.
[138] *Lib. Mun.*, vol. I, pt. II, p. 186; Huntington Library, San Marino, Hastings Irish Papers, 2/HA 16135; *C.P.R.I.Jas.I.*, pp. 157, 226. On 22 April 1608 he acted for Richard Gill (agent of the Co. Limerick undertaker Francis Trenchard) in the exchequer court and was again in the court in 1610, NAI, Ferguson xi, pp. 111, 84. Farewell's subsequent career is unknown. He was last mentioned in the earl of Cork's diary in May 1614, Grosart (ed.), *Lismore Papers*, 1, i, p. 44.
[139] *Lib. Mun.*, vol. I, pt. II, p. 186; *C.P.R.I.Jas.I.*, p. 226. On 16 November 1618 it was recommended that he be paid £100 stg. for his services in Munster, B.L., Harleian 697, fol. 103v.
[140] His career between June 1623 when he resigned the Munster post and 1628 is obscure. In this year he succeeded his father-in-law as 2nd Baron of the Exchequer, NAI, Ferguson xii, p. 9.
[141] He occupied the post until his death in 1660, *Lib. Mun.*, vol. I, pt. II, p. 186; *C.P.R.I.Jas.I.*, p. 564. On 25 September 1623 he wrote, from Farmon, Co. Cork, to Sir Henry Martin confessing that he had bought the post for £300 (Lowther paid £800) but, because of debts in England, he needed an interest-free loan of £30 to complete the agreement, Donovan & Edwards, *British Sources*, p. 290.
[142] BL, Harleian Ms. 697, fol. 147v.
[143] Ibid., fol. 88r.
[144] BL, Harleian Ms. 697, fol. 135v.

there was a conflict of interest between his role as judge and prosecutor. In the early years of the reign of James I the council was rather vague about the post as in 1610 William Greatrakes, retired acting clerk of the crown, was summoned to identify former attorneys general and to enumerate the fees paid to them. Former Attorney General Gosnold was also called to give evidence and the fees of the current incumbent, John Farewell, were settled – the seven fee headings outnumbering the three for the attorney general of Wales.[145]

Though the council might have been a bit unclear about former attorneys general what is not vague is the potential for aggrandisement that the position offered to an ambitious young man such as Lawrence Parsons, a pluralist, whose career offers an insight into the benefits of a position, however lowly, in the Munster presidency. Parsons was a nephew of the secretary of state Sir Geoffrey Fenton,[146] brother of Sir William (surveyor general of the wards from March 1611), and first cousin of Lady Katherine, wife of Sir Richard Boyle. The younger Parsons's earliest foray into Munster came via the post of the clerk of the crown for the province which he held from March 1603/4 and from this small beginning he was an assiduous collector of posts, local as well as national:

Table 2 (e): Lawrence Parsons's posts

Post	Dates held	Post	Dates held
Clerk of Crown of M.	19/3/1603/4-3/10/ 1616[147]	Steward, Kerrycurrihy	Oct. 1618[148]
Joint Surv. Gen. (Wards)	26/3/1611-24/12/ 1624[149]	Seneschal, Barry's country	prior to 1620[150]
Attny Gen., M.	2/6/1612-25/11/ 1621[151]	Admiralty Judge	1619- c. 1628[152]
Recorder, Kinsale	10/9/1619-?/10/1623[153]	2nd baron exchequer	19/5/1624[154]
Recorder, Youghal	1615-1628[155]		

[145] Ibid., ff. 40r-41v; Williams, *Council,* p. 337.
[146] In his will of 18 October 1608 (he died in December 1608) his uncle bequeathed to him £10 stg., NAI, 999/525; Bod. Lib., Carte Ms. 62, fol. 588.
[147] The post was forfeited by Michael Apsley, Erck, vol. I, pt. I, p. 97; *C.P.R.I.Jas.I.*, pp. 43, 308; NAI, R.C. 17/4, fiant no. 1412c; *Lib. Mun.*, vol. I, pt. II, p. 170. The stipend in 1607 was £26. 13s. 4d., SP 63/222/148A.
[148] Kerrycurrihy belonged to Sir Richard Boyle. The first manor court was held on 5 October 1618 when most of the freeholders turned up to serve on the jury, Grosart (ed.), *Lismore Papers*, I, i, p. 201.
[149] The post, formerly held by his uncle Sir Geoffrey Fenton, was held jointly with his brother William, *CSPI, 1603-06*, p. 49; *C.P.R.I.Jas.I.*, p. 221. The commission of wards was upgraded to the court of wards in 1620, *C.P.R.I.Jas.I.*, p. 472. The office was surrendered in favour of Sir William Parsons, Sir Adam Loftus (Rathfarnham) and Richard Parsons, son and heir of Sir William, *C.P.R.I.Jas.I.*, p. 591.
[150] On 3 October 1620 he recommended an unnamed person as his deputy, Devonshire (Chatsworth) Papers, Lismore Mss., vol. xi, No. 151.
[151] *Lib. Mun.*, vol. I, pt. II, p. 186; *C.P.R.I.Jas.I.*, pp. 226, 506.
[152] Treadwell, *Buckingham*, p. 98; Appleby & O'Dowd, pp. 308-9.
[153] Caulfield, *Kinsale*, p. 434.
[154] In succession to Oglethorpe, confirmed 16 April 1625, *C.P.R.I.Jas.I.*, p. 576; *Lib. Mun.*, vol. I, pt. II, p. 51; Ball, *Judges*, vol. I, p. 332. He was succeeded by his son-in-law Gerard Lowther on 14 September 1628. He held the reversion of the post of lord chief justice of the common pleas 'whose successor he is', BL, Harleian Ms. 697, fol. 135v.

As attorney general he was *in situ* from at least July 1612,[156] and thereafter he was a constant presence in the province maintaining a house in Youghal.[157] He was regarded as a

> faithfull and Diligent officer … aswell for aduancing his highnes Casualties in that p*ro*vince as for ymproving and searching out his Ma*ies*ties tenures And for that wee vnderstand that by his informac*ci*on and p*ro*sequc*ci*on one John Groues hath bynn latelie Deservedlie ffined in that p*ro*vince in the som of one hundred poundes sterling…[158]

His assiduousness attracted condemnation and one defendant, against whom Parsons 'preferred some informac*i*on' had the case against him transferred to the Dublin council.[159]

He served on many government commissions in the province but it was his close association with his kinsman Boyle that is most striking. He was an essential cog in Boyle's golden crony circle. Apart from being his legal adviser, Parsons carried out such tasks as buying a 'Russett riding cloak' in London, paying Boyle's bills, receiving his rents, and acting as his Dublin banker. He provided a birth-place for baby Dorothy Boyle at his house in Youghal, was messenger for important items, bestower of gifts, and bearer of unpalatable news.[160] There was also the obverse: Boyle was surety for Lawrence, lent him money, passed on a ward to him, provided a setting for the marriage of Parsons's daughter to 31-year-old Gerard Lowther and the transfer of the post of attorney general to his new son-in-law – thus giving the new incumbent the powerful support of Boyle.[161]

The transference of the attorney generalship to his son-in-law for £800 shows how officials laboured to get the best return from their offices. The disposal of Parsons's first Munster office – clerk of the crown – is an illustration of the necessity to ensure that the receiver remained forever in one's debt. In August 1616 Parsons

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[155] Henry Gosnold, then 2nd justice, resigned in Parsons' favour and was reappointed in 1628, Caulfield, *Youghal*, pp. xxiii, 39, 624. Parsons put the town's accounts in order for which he was paid the sums of £3 and £5. 10s. 'for my pains for balancing that account', ibid., pp. 57, 95.
[156] BL, Harleian 697, fol. 41v.
[157] The rent was an almanac on New Year's Day, Huntington Library, San Marino, Hastings Irish Papers, HA 14001. He acquired the adjacent hospital to his house and gave £10 towards the building of a new hospital elsewhere, Caulfield, *Youghal*, p. 78.
[158] Parsons received the whole fine, BL, Harleian 697, fol. 103v.
[159] Ibid., fol. 159r.
[160] Ball, *Judges*, vol. I, p. 247; Grosart (ed.), *Lismore Papers*, 1, i, pp. 12, 33, 94, 137, 142, 179; ibid., ii, pp. 28, 29, 31, 61, 72, 96, 97, 118 [brought offer of marriage between son of lord deputy Falkland, Lucius Cary, and Lettice, daughter of Boyle], 199, 203, 204, 263, 269 [delivered letter patent creating Boyle Lord Viscount Dungarvan]; ibid., 2, i, p. 83.
[161] Ibid., 1, i, pp. 30; ibid. ii, p. 22, 36, 42; ibid., i, p. 219 [unnamed ward came to Boyle in right of the manor of Carrigaline].

decided to surrender the office of clerk of the crown in Munster but retaining Kerry. The office was to be divided between Richard Osborne on the one hand and between the partnership of Evan Owens and William Wiseman on the other. Osborne coveted the more profitable counties of Cork and Waterford but Wiseman wanted them for himself and Owens so Wiseman successfully lobbied Sir Richard Boyle

> to consente therevnto, the devision to be the Counties of the Libertie and Cross Tipperary and Limerick for one share, and the counties of Cork and Waterford for the other.[162]

Attorneys of the court

The lowest rank of the legal hierarchy were the attorneys of the court. The lord president was advised

> to appointe two sufficiente men to be Clearcks or Attornies to that Councell for the makeing of Billes answeres and processes for allmanner of suitors.[163]

The number of these attorneys varied from '3 to 4' in 1570,[164] to two in 1600,[165] to six in 1604.[166] The lord president was constantly exhorted 'not to multiply such officers' who were to take an oath and have their fees curtailed.[167] One of them was to act as the king's solicitor.[168] As with the fees of other officers they are not directly comparable with the Welsh fees.[169] In Wales, where their appointment was likewise in the gift of the lord president for £100, these attorneys were called counsellors at the bar,[170] and in the North they were called attorneys of the court.[171] Of the 29 whose names we know, extending from the 1590s to 1649, just 5 were Irish of whom Oliver Tyrry, James Goulde, and Thoby Walshe served during the period under review.[172] The thirteen or so other names dating to the reign of James I demonstrate the importance of the provincial court in providing career opportunities for English-born legal graduates. Each of the attorneys had the service of one clerk of his choice who should

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[162] NLI, Ms. 13,236, folder 7 (William Wiseman to Sir Richard Boyle, 30 August 1616).
[163] BL, Harleian Ms. 697, fol. 146v.
[164] Collins (ed.), *Letters*, p. 56.
[165] BL, Harlein Ms. 697, fol. 147r, item 24.
[166] Ibid., fol. 90r, item 8.
[167] Ibid., ff. 131v (oath), 33r (fees).
[168] Ibid., fol. 90r, item 8.
[169] BL, Egerton 2882, ff. 75r-75v; HMC, 13th Rep., p. 174.
[170] Williams, *Council*, pp. 149, 371.
[171] Reid, *Council*, p. 384.
[172] BL, Harleian Ms. 697, fol. 131v. This folio contains the attorney's oath and is extremely crowded with the names squeezed into any available space.

> write faire and be suche as this counsel shall haue no juste cause to mislike of, and shall present his and their names to the said Clerk of the Counsell to be registered...[173]

By 1631 the attorneys had two clerks who were forbidden to have clerks of their own. Among the requirements of their posts after they had been sworn were: all bills, pleadings and orders to be signed by their master (unless he be out of town); not to deliver any court record to any but a member of the council, attorney, or sworn clerk; to be careful of records and return them to the clerk of the council's office.[174]

Clerk of the Council

The office of clerk of the council, and keeper of the signet, was in the gift of the lord deputy. The clerk was the equivalent to a modern company secretary. On him depended the smooth running of the presidency. As constant companion of the lord president he was privy to the council's most intimate secrets and was the conduit of communication between the lord president and the councillors.[175] It was one of the most influential posts in the council for which there was much competition.[176] Like all other positions it had a price. Richard Boyle bought it from Lodovick Briskett for £200. Boyle sold it to Randall Clayton for the same price but within 30 years the value was £1,500.[177] The successful candidates for the period under review were:

Table 2 (f): Clerks of the Council

Name	Appointed
Richard Boyle	8 May 1600
Richard Boyle & Francis Annesley	22 May 1607
Randall Clayton & Lawrence Clayton	7 June 1611
Source: *Lib. Mun.*, vol. I, pt. II, p. 187; *C.P.R.I.Jas.I.*, pp. 101, 204.	

It will be noted that the office changed hands infrequently – an indication of its prestige, financial return, and the longevity of the holders. The Clayton brothers held the post until their deaths, Lawrence in 1635 and Randall in 1639, when the whole post reverted to their brother John who did not long survive them. This present review of the office will not be extensive as it has already been fully covered

[173] Collins (ed.), *Letters*, p. 172.
[174] HMC, 13th Rep., p. 278.
[175] *Cal.Car. 1601-1603,* p. 444; *Pacata Hibernia*, I, p. 131.
[176] Curtis, 'The Claytons', pp. 28-30. Francis White was appointed to the post on 12 January 1617/8, *C.P.R.I.Jas.I.,* p. 366. This Francis could have been a son of Edward White who was clerk of the council in Connacht (until his death in 1611) and who also held the reversion of the Munster post until 1604, Curtis, 'The Claytons', pp. 31-2.
[177] Curtis, 'The Claytons', pp. 26, 28, 70; Grosart (ed.), *Lismore Papers*, 2, i, pp. 19-22.

elsewhere.[178] What must be emphasised is the opportunity it presented for aggrandisement. For Richard Boyle it provided a second, and successful, bite at the colonial cherry. For Francis Annesley (who, as mentioned in Chapter 1, was a protégé of Lord Deputy Chichester) the post provided a solid foundation for his accumulation of offices, affluence and influence.[179] The clerk, with one servant, had his diet in the lord president's household. At the beginning of the century the stipend was £20 stg. per annum,[180] Boyle received £26. 13s. 4d.,[181] by 1624 the fee was £10[182] and, as mentioned above, the fee in 1637 was £7. 10s. Besides the stipend the clerk also received an allowance of £10 Irish per annum 'for pap*er*, wax, and Inke by him in his Ma*ies*tes s*e*rvice expended'.[183] But this was small fry compared to the fees, known and unknown, that the post commanded.[184]

The posts of secretary, clerk, and clerk of the signet were separate posts in Wales,[185] but, as in Munster, were one post in the North.[186] John Walley, during his tenure as deputy clerk in Munster and as an unsuccessful suitor for the post,[187] proposed that an office called 'Secretary of State to the Council as in the provincial governments in England' be instituted. He would, of course, be senior to the clerk of the council. He outlined some tasks, currently 'scattered to many councellor handes', which could be undertaken by the new secretary, including keeping

> a Register of the Names of all p*er*sons of what quallytie or Condicton soeuer, that shall passe beyonde seas, forth of any port or harbor in Mounster

and also track those who should arrive in any port in the province. He also suggested that advantage be taken of the 'great store' of forfeited recognizances, 'amounting to at the least £5,000' which are looked upon

> as wast papers … for want of a competent officer to have theis thinges specially in chardge…

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[178] Curtis, 'The Claytons'. When researching my MA thesis I was unsure whether John had succeeded to the post but perusal of the Council Book of Munster confirmed that he did, BL, Harleian 697, fol. 131v.
[179] He was, *inter alia*, acting secretary of state, *CSPI, 1615-25*, p. 263. See *The Complete Peerage*, Vol. XII, Pt. 2, pp. 203-07; *Oxford DNB*, 2, pp. 232-4.
[180] BL, Harleian Ms. 697, fol. 146r, item 3.
[181] *Lib. Mun.*, vol. I, pt. II, p. 187.
[182] *CSPI, Sept. 1669-Dec. 1670, with addenda 1625-70*, p. 349.
[183] BL, Harleian Ms. 697, ff. 71v, 76v.
[184] The fees are at ibid., ff. 32v-33 and Curtis, 'The Claytons', p. 27.
[185] Williams, *Council*, p. 149. The fees are not strictly comparable with those in Munster, BL, Egerton 2882, fol. 74v; HMC, 13th Rep., p. 174.
[186] Reid, *Council*, p. 254.
[187] Curtis, 'The Claytons', pp. 28-9.

The value of the bonds were either ignored or 'converted to the particular vse of inferiors officers'.[188]

The signet, 'graven' with the monarch's arms 'under a crown imperial', gave legitimacy and authority to 'all processes which shall be sent from the said Lord President and Council.'[189] The phrase used was usually: 'vnder his Ma*ies*tyes privy Signett of this Province.'[190] Each affixation brought the clerk 2s., the clerk in the North received 6d., and the clerk in Wales received either 8d., 2s., or 3s. 4d. – depending on the document.[191] In the North, as in Munster, there was a lot of competition for the post but by 1611, unlike Munster, the profits had declined.[192] The clerk of Munster, a 'trustie wise person',[193] was also examiner (or examinator) of all witnesses at the following 'meane and reasonable' fees:

Table 2 (g): Fees of Examinator

	s.	d.
for making the bill		12
the Atturneys fees	3	4
for Coppies for euery 14 lynes		6
Entrees for app*er*annce		4
Entrees for orders		6
Entrees of Assize		4
ffees of Processes vnder the Signett and such other lyke	2	

Source: BL, Harleian Ms. 697, fol. 165v

The post of examiner was a separate office in Wales, with fees of 12d. and 6d.,[194] and had also been a separate office in Munster – John Stoughton being the most recent appointment in February 1604/5.[195] By the second decade the post had been amalgamated with that of the clerk of the council. In 1617 Randall Clayton unsuccessfully sought to have it detached and bestowed on one of his brothers but the

[188] SP 63/216/66. This loophole was closed in 1608 when both the clerk of the council and the clerk of the fines were ordered to supply an account to the exchequer of forfeited bonds, BL, Harleian Ms. 697, fol. 168v, item 57.
[189] Lodge (ed.), *Desiderata*, Vol. II, pp. 11, 19; *CSPI, 1606-08,* p. xxvii. A description of the signet of the North of England is at Reid, *Council*, p. 254.
[190] BL, Harleian Ms. 697, *passim*.
[191] Ibid., fol. 165v; Reid, *Council*, p. 255; BL, Egerton 2882, fol. 75r; HMC, 13th Rep., p. 174.
[192] Reid, *Council*, p. 255.
[193] BL, Harleian Ms. 697, fol. 147r, item 24.
[194] Williams, *Council*, p. 165; BL, Egerton 2882, f. 75r; HMC, 13th Rep., p. 174 (fees). [In 1603 Richard Cartwright of London held the post but handed it over to a deputy, BL, Egerton 2882, ff. 53r-v, 55r.]
[195] *Lib. Mun.*, vol. I, pt. II, p. 188.

lord deputy refused, citing precedent in Connacht.[196] Though he would have lost fees he could have expanded his own little circle of influence with another official beholden to himself.

The clerk of the council's staff numbered at least 6 clerks[197] (there were 12 in Wales), who could not operate in the courtroom or act as attorney. They were sworn

> safelie to keepe, and well to vse the Records and Books of the Courte, during the time they shall haue anie of them in their keeping and chardge, and shall do their indevour to write and make their bookes and copies faire and legible.[198]

Presumably, as in Wales, he had the hiring and the firing of his workforce and should any be fined for misdemeanours it was up to the chief clerk to see that the fines were paid.[199] Gaps in our knowledge of his duties can be plugged by referring to the councils of Wales and the North. He had to keep a daily register of 'all the Doenges Orders and proceedinges w*hi*ch from tyme to tyme shall passe by the said Lo*rd* President and Counsell';[200] and also keep a record of all the decisions, decrees and orders of the court.[201] The clerk was also, under the direction of the lord president, to keep a register of all clansmen and their followers in order to discourage them from exacting coign and livery 'on his majesty's subjects'. The Munster lords were also obliged to send in a note of those within their 'bailiwick' for whom they were not answerable.[202] Possibly, as in the North of England, one of his assistants had responsibility for affixing the seal of the signet to all documentation.[203] Other tasks to be undertaken included keeping a record of the names of all against whom any attachment had been awarded and the reason why, this information to be delivered to the lord president three days before each sitting; maintaining a book of all matters at issue in the court with the names and addresses of the parties; keeping a book of matters answered and not at issue; maintaining a book of bills to be answered at each sitting; delivering to the appropriate judge (3 days before a sitting) the names of

[196] Curtis, 'The Claytons', p. 32. Clayton believed that the lord deputy's secretary had his eye on the Munster post, Grosart (ed.), *Lismore Papers*, 2, ii, pp. 111-12.
[197] BL, Harleian Ms. 697, fol. 165v.
[198] Collins (ed.), *Letters*, p. 172.
[199] Ibid.
[200] BL, Harleian Ms. 697, fol. 147r, item 26. Harleian 697 is one such register but cannot be regarded as a full record of the court's proceedings during the years covered by the register (1601-1622), Kennedy, 'Munster', p. 310. There is internal evidence that another register was being kept concurrently, BL, Harleian 697, fol. 111r.
[201] Irwin, 'Presidency Courts', p. 106.
[202] BL, Harleian Ms. 697, fol. 174r; Lodge (ed.), *Desiderata*, Vol. II, pp. 11, 19.
[203] There were 2 such clerks in the North who were paid £100 per annum, Reid, *Council,* p. 255.

persons bound by recognizance,[204] with the sureties and the amounts of the bonds.[205] Other tasks necessary for the smooth running of the court service included copying evidence and answers taken under commission;[206] recording attachments and duties to be carried out by the sheriff (for which the sheriff paid).[207] A vital source of income was the fee paid each time the records were consulted or, as the instructions state, 'reasonable allowance for the same of the p*ar*ties having an interst thereby'. This fee is not recorded in the list of the clerk's fees but in Wales it was 4d.[208] No doubt it was the under-clerks who prepared the clerk of the council's book of fines which was submitted initially once a year at Michaelmas, but later every six months.[209] Again it was the under-clerks who maintained the filing system of which the Council Book gives a glimpse: 'The lre and Certificate aforesaid are entered on the file of Papers of October 1603'.[210]

While the post of clerk of the Council in Munster, as in Wales and in the North, had been regularly filled by deputies in the sixteenth century, it was a practice that had been condemned by secretary of state Sir Geoffrey Fenton.[211] The Munster post, from the advent of the Claytons during the reign of James I, did not rely heavily on deputies but the practice continued in Wales to the detriment of that institution. The situation in the North appeared to be a bit like Munster with some secretaries filling the post in person.[212] Randall Clayton himself had been deputy from at least 1602;[213] John Walley was acting clerk up to at least January 1604/5;[214] but Randall Clayton 'well honestly and sufficently exercised' the office from at least April 1607.[215] Thereafter when he was on leave of absence, for 6 months from February 1614/15 and again in May 1616, he had 'a sufficient man to execut the office in his absence' (probably his brother).[216]

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[204] The procedure to be adopted when a recognizance was forfeited is at BL, Harleian Ms. 697, fol. 35r.
[205] In the North this official, with an income of £300, was called the clerk of the court, Reid, *Council*, p. 258.
[206] In the North this clerk was called the clerk of the attachments, ibid.
[207] In the North the sheriff paid one of the clerks £10/annum for this service, Reid, *Council*, p. 259; BL, Harleian Ms. 697, fol. 147r.
[208] Ibid., ff. 147r, item 26, 32v; BL, Egerton 2882, fol. 74v; HMC, 13th Rep., p. 174.
[209] BL, Harleian Ms. 697, fol. 168v; Bod. Lib., Carte Ms. 61, fol. 78.
[210] BL, Harleian Ms. 697, fol. 64r.
[211] Curtis, 'The Claytons', p. 30.
[212] Williams, 'Activity', p. 150. Sir Fulke Greville, clerk of the council of Wales, appointed several deputies, HMC, 13th Rep., ff. 20, 18b, 67. Reid, *Council*, pp. 254-56.
[213] Curtis, 'The Claytons', p. 18.
[214] BL, Harleian Ms. 697, fol. 25v.
[215] Ibid, ff. 71v, 76v.
[216] *C.P.R.I.Jas.I.*, pp. 276, 302; Bod. Lib., Carte Ms. 62, fol. 274.

We do not know how Randall and Lawrence divided the duties of the office but it is clear that both were *in situ*. Lawrence, in attendance at Clonmel when Lord President Thomond died, summoned Randall from Cork;[217] Lawrence was among the lord president's party admitted as freemen of the town of Youghal in February 1627/8;[218] and he accompanied Lord President St. Leger to Waterford in 1629.[219] The extant register of the council, transcribed in the appendix, could have been the property of Randall as his name is on the front cover, but, as already pointed out, there was another register currently in use.[220] The profile of the clerk in Munster was not as high as that in Wales as the clerk was not a member of the council (although Richard Boyle was a councillor in 1607).[221] This did not appear to blight the importance of the Claytons. In July 1619 Randall investigated the complaints of the fishermen of Kinsale,[222] and in 1626 he was on a commission of enquiry into a fracas between soldiers and the citizens of the city of Cork.[223] In February 1632/3 Lawrence was commissioned to enquire into a disagreement between three Gaelic Irishmen.[224] All three Clayton brothers, but especially Randall, had close connections with Sir Richard Boyle. Randall's relationship with Boyle was one of business agent, client and informer,[225] and went far beyond friendship in that Randall and his wife were entrusted with the fostering of three of the Boyle girls.[226] Like other officials Randall had access to wardships[227] and to profits of intrusions.[228] This, coupled with his freehold tenure of 500 acres in Mallow seigniory plus a lease of 140 acres,[229] made him by 1628 one of the five richest Englishmen in Munster.[230] His lifestyle at his home in St. Dominick's abbey, Cork city, was such that he could support a large

[217] Curtis, 'The Claytons', pp. 68-9.
[218] Caulfield, *Youghal*, p. 142.
[219] Byrne, *Liber*, p. 318.
[220] Marginal note, 'the newest booke': BL, Harleian Ms. 697, fol. 111r.
[221] Williams, *Council*, p. 349; HMC, 13th Rep., p. 249; Grosart, *Lismore Papers*, 2, vol. I, p. 116.
[222] Caulfield, *Kinsale*, p. 5.
[223] SP 63/242/235r-241v.
[224] NAI, Ferguson xii, p. 208.
[225] In November 1616 he alerted Boyle to the presence of priests at the home of Mr. Goggan of Barnahely, Co. Cork, Chatsworth, Lismore Mss, vol. 9, no. 148.
[226] Curtis, 'The Claytons', pp. 55-6, 62, and Chapter 3.
[227] On 7 May 1609 he was appointed guardian to Ulick Roche of Co. Cork, *C.P.R.I.Jas.I.*, p. 143; in May 1615 he was guardian of John Barry, Co. Cork, ibid., p. 279; *C.P.R.I.Ch.I.*, p. 40; in 1630 he was joint guardian of Andrew Barrett of Ballincollig, Co. Cork, BL, Add. Ms. 46920A, ff. 16r-16v.
[228] In January 1611/12 he was granted '¾ of the profits of all intrusions, fines for alienation without licence, and wardships due to the crown' from the heirs of several Gaelic Irish in Counties Galway, Mayo, Westmeath and Wexford, *C.P.R.I.Jas.I.*, p. 221.
[229] Treadwell, *Commission*, p. 499. See Curtis, 'The Claytons', Chapter 2 for Clayton's other property.
[230] *CSPI, 1625-32*, p. 211.

domestic staff which included a cook, butler, musician, and porter.[231] While one of the 1628 Graces recommended that holders of office live in Ireland,[232] dereliction of duty is not a charge that could be laid against the clerk of the Munster council. Apart from two approved periods of absence Randall's frequent citation in the earl of Cork's diary shows that he was an ever-present member of the presidency. What is rather surprising is that the Clayton brothers did not appear to hanker after more prestigious posts elsewhere, or even to accumulate offices within Munster. They appear to have been content to be big fishes in a small pool rather than the reverse and though the next generation went through a rocky period in the tumult of the 1641 rebellion, the family bounced back to carve out a place as influential gentry in the province.[233]

Provosts Marshal

In Munster the provost marshal was a pivotal official in underpinning the authority of the council with his wide powers. By definition a provost marshal was an officer of the royal forces whose duty was to arrest, detain and carry out punishments – including execution – that were ordered by courts-martial on soldiers.[234] In times of emergency provosts marshal were used to police the civilian population with arbitrary punishment – execution without trial possibly preceded by torture to extract information.[235] There was a major difference between the status of the provost marshal in Ireland and in England. In Munster he had a much higher profile whereas in England summary execution did not feature during the reign James I. Moreover, by common law, only the privy council could authorize torture and execution.[236] The provost marshal kept a lid on potential dissent with threat of, and actual, cruelty; and he was not answerable for his actions. During the 'peace' of James I he was the hangman of the province meting out instant judgement as he pleased with authority to pocket one-third of each victim's possessions. His high profile is evident in his appointments as commissioner, and even vice-president, in the absence of the lord

[231] Grosart (ed.), *Lismore Papers*, 2, ii, p. 98. See also Curtis, 'The Claytons', Chapter 3.
[232] Clarke, *Old English*, pp. 52, 250.
[233] Curtis, 'The Claytons', pp. 75-7.
[234] Burke, *Jowlets*, vol. II, p. 1456. For an examination of the provost marshal in England see: Lindsay Boynton, 'The Tudor provost-marshal', *EHR*, 77, 1962, pp. 437-455. The post in Ireland is only recently being examined. See: David Edwards, 'Beyond Reform: Martial Law & the Tudor reconquest of Ireland', *History Ireland*, 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*, (Four Courts Press, Dublin, 1999); idem., 'Two fools and a martial law commissioner: trouble at the Limerick assize of 1606' in idem., (ed.), *Regions and Rulers in Ireland, 1100-1650* (Four Courts Press Dublin, 2004), pp. 237-65.
[235] Grosart (ed.), *Lismore Papers*, 2, iii, p. 135.
[236] Adam Nicolson, *Power and Glory* (HarperCollins London, 2003), pp. 14-5; McCavitt, 'Good Planets', p. 255.

president.[237] It was customary for these officers to receive a pardon periodically because they

> commanded the execution of seuerall persons by Marshall Lawe for the furtherance of his Mat's service, for wch they feare by strictures of lawe they may come in question.[238]

The commission of martial law gave the named officer

> power to search out, after the order of martial law, all disorders committed in the county, and on finding any persons to be felons, rebels, enemies, or notorious evil-doers, to punish them by death or otherwise.

Any person having freehold of less than £2 a year, or £10 in chattels, was subject to this officer.[239] The salary of the provost marshal, who was appointed for life, was 2s. per day (i.e. £36 per year), a troupe of twelve horsemen at 12d. each per day, his diet in the lord president's household, and other unspecified fees.[240]

Holders of the post for the period under review were:

Table 2 (h): Provosts Marshal

George Thornton	1 April 1583-1 March 1605/6
Capt. Ellis Jones	2 March-31 December 1606
Capt. Arthur Basset	1 Jan 1607-9 Dec. 1609
Sir Richard Aldworth	10 Dec 1609-21 June 1629
Sir Thomas Wenman	7 July 1629-1637
Source: NAI, M.7008; TCD, Ms. 808; BL, Add. Mss. 4819; BL, Harleian Ms. 697; Huntington Library, San Marino, Hastings Irish Papers; *Ir. Fiants*, iii; *C.P.R.Jas.I.*; *C.P.R.I.Ch.I*; *Lib. Mun.*, vol. I, Pt. II; *CSPI, 1603-06*; Hughes, *Patentee Officers*; McCavitt, *Chichester*; McLaughlin, 'Leviathan'.	

Sir George Thornton's term as provost marshal straddled the mid-sixteenth to early-seventeenth centuries. He was advised

> to exact and Rayse a Companye of forty foottmen for your owne followers well and suficent p*ro*vided and with them for and During the space of one mounth next make to make vigilint search

for rebels, their relievers and maintainers who were to be arrested and their goods converted to Her Majesty's use.[241] To him was addressed the chilling proclamation of 27 January 1602/3 to eliminate from the province all 'Idle men sturdie beggers

[237] In February 1602 Sir George Thornton was appointed a commissioner in the absence of the lord president, BL, Harleian Ms. 697, ff. 144r, 149v. A year later he was appointed vice-president, ibid., ff. 144v, 162v.
[238] Bod. Lib., Carte Ms. 61, fol. 523.
[239] *Ir. Fiants*, ii, no. 218, pp. 22-23; BL, Harleian 697, ff. 141r-141v.
[240] *Ir. Fiants*, iii, no. 5379, p. 92; Erck, Vol. I, Part I, pp. 87, 165; *Lib. Mun,* vol. I, Pt. II, p. 187.
[241] This document is undated. The previous letter on the same folio is dated 27 Jan 1602/3, BL, Harleian Ms. 697, fol. 141v.

vagabon*d*s harpers Rymers barder*s*'.[242] The brutal nature of his role is well illustrated by the massacre at Dursey Island, Co. Cork, in June 1602.[243]

The reign of James I was less than a year old when the council of Munster, acknowledging that 'Ma*r*shall Lawe hath bin vntill of Late Liberally bestowd',[244] and now

> fyndinge that the present estate of this province is now established in a good and peacable Condicc*i*on wherby the vse of m*ar*shall Lawe is not so Much needfull as in the said troble some tymes[245]

issued a proclamation revoking all grants of martial law except those issued under the Dublin privy seal. Henceforth only the provost marshal of Munster would have authority to issue commissions.[246] Despite this, the 1604 Memorials for the better Reformation of the Kingdom of Ireland advised that there be a provost marshal in every county to clear the country 'of all vagrant and loose people'.[247] Lord Deputy Chichester pointed out the advantages in that discharged soldiers could be employed 'in service of that kind than let them be idle'. Thus their menacing presence contributed to the peace of an area in which they resided.[248] There was another policy change in February 1604/5 when Sir Arthur Chichester and the Dublin council ordered that

> for the better administrac*i*on of Justice, and ease of the Subiectes (now that the Country is setled and in good quiet, and the Lawes Currant in all p*ar*tes thereof, for w*hi*ch God be praised, and of his mercy increase the same) We have thought good to set foorth this proclamation in his Ma*ies*tes name, and by tenor thereof Doe revoke all Comissions of m*ar*shall Lawe.

But Munster was not to be included in this revocation with the lord president, Waterford city, Kinsale and Co. Kerry being singled out for retention of their provosts marshal, as well as those who held their commission by letters patent.[249] The

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[242] Ibid., ff. 141r-141v.
[243] Edwards, 'Two fools', p. 239; Penelope Durell, *Discover Dursey* (Allihies, Beara, Co. Cork, 1996), pp. 31-4.
[244] BL, Harleian Ms. 697, fol. 178v.
[245] Date of proclamation: 9 January 1603/4, ibid., fol. 177r.
[246] Ibid.
[247] *CSPI, 1603-06*, pp. 134, 137. This suggestion mirrors that of Edmund Spenser in 1596: 'I would wish that there were a provost marshal appointed in every shire which should continually walk through the country with half dozen or half a score horsemen', Edmund Spenser, (ed. W. L. Renwick), *A View of the Present State of Ireland* (Oxford, 1970), p. 159.
[248] *CSPI, 1603-06*, pp. 493, 511; David Edwards, 'Legacy of Defeat: the reduction of Gaelic Ireland after Kinsale', Hiram Morgan, (ed.), *The Battle of Kinsale*, (Wordwell, Co. Wicklow, 2004), p. 291.
[249] BL, Harleian 697, fol. 181v; *CSPI, 1603-06*, p. 259; Edwards, 'Legacy', p. 290.

irresolute policy was another facet of the constant shifts in strategy that was symptomatic of the early Stuart period. The following are some of the county provost marshals.

Table 2 (i): County Provosts Marshal

Name	County	Date mentioned
Francis Ackland	Tipperary	1617-1619
Sir Richard Ailward	Waterford?	27 Sept. 1603
John Davies	Clare?	30 Aug. 1603
John Downing	Limerick	1606
Sir James Gough	Waterford?	12 Feb. 1604/5
Sir Rich. Power/Curraghmore	Waterford?	12 July 1604
Edward Southworth[250]	Cork, Kerry, Limerick?	11 Oct. 1605
Edmund Sexton	Limerick	14 April 1606
Earl of Thomond	Clare?	29 May 1605
Sir Charles Wilmot	Kerry	23 May 1605
Roger Worth	Cork	1610
Sources: NAI, R/C 17/4, nos. 1000, 1022, 1008, 1006, 1054, 1066, 1072, 1081 [location not given hence queries]; McLaughlin, 'Leviathan', p. 348; Edwards, 'Two Fools', p. 240; NLI, Ms. 16,085, p. 58; SP 63/217/27; *CSPI 1608-10*; *Carew Mss 1603-24*.		

Provosts marshal were also appointed to Cork city, and probably to other cities in the province. Those for Cork city were Richard Goold, appointed prior to 1614, John Fitz Francis Tyrry appointed on 1 July 1614, and Donogho Murfie appointed on 12 October 1621.[251]

The lord president of Munster had the authority to appoint deputy provost marshals and the conduct of one of his appointees highlights the excesses of the officers. In Co. Clare in April 1606 John Downing, who had been a lieutenant to Sir Francis Barckley, and was described as 'a very bloody murderer and unrespective man' received a commission from Lord President Brouncker to 'execute by martial law vagabonds and masterless men and such as had borne arms in the late war'. This order conflicted with the lord president's proclamation of 10 July 1604 which instructed that those found without a pass 'should be Comitted to his Ma*ies*tes next shire Goale'.[252] Downing, on the foot of his warrant executed two men (he ignored the passes they carried), one of whom was fool to the earl of Thomond and the other an employee of Sir John McNamara. Thomond had Downing indicted for high

[250] Southworth is included in the counties were he had estates. He held Cloghda castle, Co. Cork, from 1610 and in Counties Cork, Kerry and Limerick in February 1613/4, Huntington Library, San Marino, Hastings Collection 'Irish Concealed Lands', Box 2, items 26 & 27; *C.P.R.I.Jas.I.*, pp. 242, 248, 266. On 18 February 1612/3 he received land in Co. Limerick, NAI, M. 7008**,** 2nd series, no. 68.
[251] Caulfield, *Cork*, pp. 48, 98, 99.
[252] This proclamation reinforced an earlier one dated 2 April 1604, BL, Harleian Ms. 697, fol. 179r.

treason of which he was found guilty at the Limerick assizes, sentenced to death, but later reprieved and pardoned by the lord deputy.[253] Sir John Davis acknowledged that

> our provost marshals are oftentimes too nimble and too rash in executing their commissions, so that it were not amiss that one or other of them did smart for it, and were made an example to all the rest'.[254]

The provost marshal was an important linchpin in the fight against piracy on the south-west coast. His role in this vital security area is covered in Chapter 1. In all manner of deviant behaviour he was the person who, with his deputies and horsemen, roamed the province ensuring that any person 'under the degree of a gentleman' should have a pass.[255] He also kept an eye out for 'clipping' of coins.[256] These were not idle threats as the fate of the two fools of Co. Limerick, mentioned above, shows. Prominent New English citizens, like Sir Richard Boyle, acted as informers for the provost martial and benefited from the spoils. In July 1613 Boyle had William McBrian McShehy executed under martial law for robbing his tenants,[257] and he received the goods of an unnamed felon in March 1622.[258] Recusant schoolmasters guilty of 'teaching and seducing many of his highness subjects in Learning and Religion' contrary to law were another target of the provost marshal or any deputies he cared to appoint.[259]

The manner of selection of members of the parliament in 1613 resulted in much unrest in the country and forced the lord deputy to appeal to the king in June 1614 for permission to 'employ such and so many provost marshals as I shall find expedient'.[260] One of the complaints of the recusant lords to the king in August 1613 was that private men, appointed provosts marshal, abused their position. This was denied, but it was acknowledged that provosts marshal accompanied by groups of

[253] Downing's pardon was dated 2 June 1606, Huntington Library, San Marino, Hastings Irish Papers, 1/HA 16077.
[254] SP 63/218/42; SP 63/218/42/1; Edwards, 'Two Fools', *passim*.
[255] Proclamation of the Munster council, 2 November 1612, BL, Harleian 697, fol. 190v.
[256] Proclamation of the Dublin council of 27 July 1613, repeated by the Munster council on 6 August 1613, Ibid., ff. 196r, 196v.
[257] Sir John McEdmond FitzGerald's nephew was also implicated in this deed but he was not executed, Grosart (ed.), *Lismore Papers*, 1, i, p. 29.
[258] Ibid., 1, ii, p. 39.
[259] Order of Council of Munster dated 28 October 1620, BL, Harleian Ms. 697, fol. 116r; Edwards, 'Legacy', p. 291.
[260] McCavitt, 'Good Planets', p. 256.

men had been sent around Munster in the previous 6 years to eradicate pirates from the coasts.[261]

Far from reducing their role during the so-called Stuart peace Sir Richard Aldworth, as already mentioned in Chapter 1, was appointed a member of the Munster council in December 1611:

> His place and experience makes mee conceuie it behoofull for the kinges service that he be p*ar*ticipat of that honnor for his better inablem*en*t and as a pledge and acknowledgment of his good Deserts and the respect I beare towards him.[262]

In June 1616 Aldworth was appointed a collector of the court fines in Munster,[263] including, apparently, the provincial court fines.[264] He also collected the composition 'with much oppression … and excessive fees'.[265] The constant oppression of the marshal's servants on the populace was deplored locally, in Dublin and in London but they were too powerful and independent to be curbed.[266]

The 1622 Commissioners were very critical of the provosts marshal and the unrestrained authority of the lord president. These officers were 'needless in these times of eminent peace and justice'. Their involvement in policing the population was a task that should only be given to 'very honest men' – by implication their characters were suspect. As they were a drain on the exchequer they should be removed and their duties carried out by the sheriff.[267] The advice of the commissioners was ignored. Sir Richard Aldworth was still torturing and executing suspects in 1624,[268] and he was about to be given a higher profile. He was one of the six commissioners appointed for the government of Munster on the death of Lord President Thomond in September 1624, the commission being confirmed on the accession of Charles I in March 1625.[269] The new lord president, Sir Edward Villiers,[270] given authority to appoint a vice president, chose the provost marshal who was permitted

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[261] *CSPI, 1611-14*, p. 415; *CSPI, 1615-25*, p. 301.
[262] BL, Harleian Ms. 697, fol. 170r.
[263] SP 63/234/18E; NLI, Ms. 8013 (iii).
[264] BL, Harleian Ms. 697, fol. 85r.
[265] Treadwell, *Commission*, p. 7.
[266] Complaint of Redmond Barry of Lisgriffin, Co. Cork, to Privy Council, SP 63/235/33; reply of Dublin council, November 1620, SP 63/253/33/A.
[267] Treadwell, *Commission*, pp. 96 no. 7, 29 no. 9, 193.
[268] Grosart (ed.), *Lismore Papers*, 2, iii, p. 135.
[269] BL, Harleian Ms. 697, fol. 93r; *Lib. Mun.*, Vol. I, pt. II, p. 185; *C.P.R.I.Ch.I.*, p. 3.
[270] His commission is at Marsh, Ms. Z3.2.6, fol. 66.

> to gouerine & rule the same & his Mates Subiects ther resident, and to order all the Civill causes & affaires of the State, & all other matters & business wch concerne the Marshall & publique Government of that Province, wth the adviuse and consent of the Councell there…[271]

When Villiers died eighteen months later Sir Richard Alworth was appointed commissioner for martial affairs and leader of the army in Munster.[272] This high profile ended with the appointment of Sir William St. Leger as lord president of Munster in April 1627,[273] to the relief of Aldworth who had found his prestigious post burdensome, having to deal with mutinies of the army and maintaining the king's table without adequate financial resources.[274] In August of this year Aldworth, with several others, was given a commission 'to execute martial Law upon all Malefactors & offenders among the Old Fleete Soldiers & the new Levies' which must have been a welcome development for the populace – namely, that the provost marshal was being employed in his original role.[275]

Sir Richard Aldworth benefited handsomely from his involvement with the Munster presidency earning the description of 'a person of good action & abilitye of body & purse'. His domain at Aghtrasny, Co. Cork (which he renamed Newmarket) contained 14 ploughlands. Part of Clanawley country it was leased from the crown for 80 years from 1614 at a rent of £200 per annum which was offset against his 'entertainment' as provost marshal and enshrined in an Act of State.[276] He unsuccessfully endeavoured to have the boundary of Co. Kerry altered to embrace his estate and to have one annual quarter session at his new town of Newmarket.[277]

In 1628 there was an apparent attempt to curtail the numbers and authority of the provosts marshal,[278] but they were surely only winged and were able to re-emerge in the troubled times of the 1641 rebellion.

Clerk and Collector of the Fines

The work of the clerk of the fines has already been alluded to in Chapter 1. His official title of 'Clerk and Collector of Fines, issues, penalties, forfeitures and amerciaments due to the crown before the President or Governor of Justice or

[271] Ibid. fol. 71; *NHI*, vol. ix, p. 535, 536 n. 6; *C.P.R.I.Ch.I.*, p. 9; *Lib. Mun.*, Vol. I, pt. II, p. 185.
[272] *Lib. Mun.*, Vol. I, pt. II, p. 185.
[273] His commission is at Marsh, Ms. Z3.2.6, ff. 72, 74, 75.
[274] *CSPI, 1625-32*, p. 169.
[275] The other commissioners were Sir Francis Slingsby and Sir George Flower, NAI, Lodge's Mss. 17, p. 123; *C.P.R.I.Ch.I.*, p. 243.
[276] SP 63/238 pt. 1/20/1.
[277] SP 63/236(1621)/8; Treadwell, *Commission*, pp. 90-91.
[278] Clarke, *Old English*, p. 249.

Commissioners of the province of Munster'[279] covers some of his duties. He was also required to collect the fines imposed by the assizes and quarter sessions.[280] Appointed by the lord president he was expected to be 'honest and sufficient'; to submit his account every Michaelmas term to the exchequer; to receive the payment of a horseman (9d./day) and his diet in the lord president's household.[281] Because the clerk had been deficient in rendering an account to the exchequer the assizes and quarter sessions fines, from February 1607/8, were earmarked for collection by the sheriff – a decision that 'discontented' Hercules Turville.[282] In the North there were ten collectors of fines, each receiving £40 per annum, the attorney general was the receiver, and the fines supported the fees of some officials and the expenses of the lord president's household.[283] Wales in the early years of the seventeenth century was experiencing a power struggle between the lord president and the four people who had gained control of the council. The appointment of the clerk of the fines had reverted to the monarch but the most recent incumbent, Lord Zouche, succeeded in regaining control of this office.[284] The following are the known Munster officers for the period under review.

Table 2 (j): Clerk and Collector of the Fines

Name	Appointed or mentioned
Martin Turner	21 April 1602
Hercules Turville	9 December 1606
John Greatrakes	1610-May 1616
Thomas Holdshipp	April 1609
Sir Richard Aldworth	January 1619/20
Sources: *Lib. Mun.*, vol. I, pt. II, p. 188; BL, Harleian Ms. 697	

All the incumbents appear to be New English. Holdshipp was town clerk of Youghal for a few months in 1616 and he served as its mayor in 1621;[285] in 1615 Greatrakes received a lease for 21 years of parcels of land in the city and suburbs of Cork – the grant included 85 acres, 21 gardens, several houses and 3 score horse loads of turf yearly.[286] Offficial sources mention only the appointments of Martin Turner

[279] *Lib. Mun.*, vol. I, pt. II, p. 188.
[280] SP 63/223/33.
[281] BL, Harleian Ms. 697, ff. 147r, items 27, 28; 165v, item 26; 158r, item 55.
[282] SP 63/223/33.
[283] Reid, *Council*, pp. 256-7, 260.
[284] Williams, *Council*, pp. 293, 300-01.
[285] Caulfield, *Youghal*, pp. 619, 624.
[286] The family originated in Derbyshire; son of William deputy clerk of the peace under Elizabeth? The rent for all this land was £11. 7s. 11d., *C.P.R.I.Jas.I.,* p. 313; BL, Harleian 697, ff. 40r-41v. He also rented land from Sir Richard Boyle, Grosart (ed.), *Lismore Papers*, 2, i, p. 169.

and Hercules Turville. The only extant account,[287] already mentioned in Chapter 1, is that of Turville who received leave of absence to travel to Bath for health reasons in July 1607 where he remained until 30 April 1608.[288] His deputy is not known nor is the official status of the other persons in the table above apart from Provost Marshal Aldworth who was appointed to collect court fines in 1616. It does not say very much for the efficacy of the presidency if it was forced to appoint the provost marshal to collect its fines.

Minor posts

Gentleman porter

The less prestigious posts were not rejected by New English adventurer officials for whom any post, however menial, promised future prosperity and social advancement. It was a feature of the aggressive jostling for position of the period that each office-holder had to struggle to maintain his own office from the encroachments of others while, conversely, he had no compunction in expanding the parameters of his own post. The position of gaoler is a prime example of this tension as the establishment of the provincial council brought the new post of gentleman porter to Munster. The gentleman porter, the most significant of the minor posts, had responsibility only for the prisoners of the council and had to fit himself into an already-established system – albeit in virtual abeyance. Besides a gaoler for the province there were also gaolers attached to individual towns and counties, though the buildings were sometimes in a poor condition or, even non-existent.[289] In Connacht the gentleman porter and serjeant at armes were one post.[290]

The position of the gentleman porter was covered in the instructions to the lord president:

> And forasmuch as there muste be of necessitie One Officer to whome all Offendors and malefactors are to be Comitted During the tyme of theire imprisonment yt is thoughte meete that the said L*ord* President shall appointe one Porter to haue the Charge of the Gaole.[291]

His stipend was 8d. per day and he was fed in the lord president's household. There was also a detailed list of fees, dating from 18 August 1604, payable by the prisoners

[287] Kent Archives, Cranfield Papers U269/1, Hi.15.
[288] BL, Harleian Ms. 697, fol. 142r.
[289] Ibid., ff. 199v, item 15; 200v; 116r, item 3. See fol. 102r, for warrant for mending the gaol of Waterford in 1617.
[290] *CSPI, 1606-08*, p. 35.
[291] BL, Harleian Ms. 697, fol. 146r, item 4.

according to rank and property.[292] The income for the porter appears to have been more generous than that in Wales.[293] Evidently the porter in Wales did not receive a stipend and subsisted by extorting money from his prisoners,[294] but he had to provide a choice of two menus – the best to cost the prisoner 8d. and the cheaper option to cost 6d. per meal which was to include meat and drink.[295] In Munster, on the other hand, there was a descending scale of rates: an earl paid 5s., a viscount, baron or bishop 3s., a knight 2s., down to a yeoman who paid 2d. per day.[296] People were usually kept in prison until they had paid the fine pronounced by the court whether it be to a plaintiff, to the court, or to the crown.[297] It was undoubtedly to the advantage of the gentleman porter should the length of stay be prolonged.

Offenders were not the only people who were imprisoned. Pledges – that is hostages – for the good behaviour of potential rebels were also incarcerated. The Council heard the impassioned plea of a mother for the release of her son who was still in prison in Castlemaine Castle, Co. Kerry, even though the boy's father was dead. He was conditionally released on bond.[298] In 1604 pledges for Donell O'Donovan of Castle Donovan and O'Sullivan More were freed from close custody but not permitted to move outside the walls of Cork city.[299] Teige McDermody Carty of Iniskene was permitted to leave the prison when he fell ill, his illness being caused by his long incarceration. He was not allowed return home and bonds were taken to ensure that he did not leave the city.[300]

The only name extant for the period under review is Gregory Gunn who sought recompense from the council for detaining a Catholic priest for 24 days in June 1611. Gunn was accordingly paid 2s./day reckoned to be £3 which he was paid by concordatum.[301]

Sergeant at Arms

Another minor post was the sergeant at arms who

[292] Ibid., ff. 33r-33v.
[293] BL, Egerton 2882, fol. 75v; HMC, 13th Rep., p. 174; Collins (ed.), *Letters*, p. 74.
[294] Williams, *Council*, p. 169.
[295] Collins (ed.), *Letters*, p. 176.
[296] BL, Harleian Ms. 697, ff. 33r-33v.
[297] Collins (ed.), *Letters*, p. 176.
[298] BL, Harleian Ms. 697, fol. 63v.
[299] Ibid., ff. 64v, 66v.
[300] Ibid., fol. 54r.
[301] Ibid. fol. 79r.

> shall beare the Mace of the Queenes Ma*ies*tes Armes before [the lord president] in such manner as the Sergeant at Armes Doth beare the mace before the president in Wales.

He was also arresting officer of the council. His stipend was 9d. per day and he received his diet in the lord president's household. He was entitled to be paid by the people he arrested: for those with a livelihood of £10/annum or over the fee was 10s., and for all others it was 6s. 8d. In addition he received 6s. 8d. for every day's travel.[302] The sergeant at arms was a relatively new appointment in the North, dating from the last quarter of the sixteenth century, when it became apparent that the duties were too dangerous for the pursuivant (messenger). His duties were identical with those in Wales.[303] The only extant names for the first few decades of the seventeenth century are Captain Samuel Newce[304] who served from the 23 February 1602/3 until he resigned on 24 May 1609 in favour of Richard Lewis.[305] In 1607 Newce was assigned 50 soldiers during the absence of Sir Charles Wilmot, and by September 1608 this number had doubled.[306] He received £35. 6s. 8d. harps at Michaelmas 1609 for his attendance on Lord President Brouncker and Sir Richard Moryson.[307] He was part of the colonial group mixing with such luminaries as Boyle. His wife was daughter of Sir Henry Sandler of Hertfordshire and his daughter Mary married Sir William Maynard of Curriglass, Co. Cork.[308] Newce had several other children one of whom bore the redolent name of Boyle. Another was called William after his brother – another captain – who was very involved in colonial Bandon and founded the nearby town of Newcestown. Less is known about Richard Lewis who was recompensed, at the rate of 2/6d. per day, for his attendance on Vice-President Moryson for 138 days between l May 1609 and 1 May 1611. The total was £17. 5s. English which was paid by concordatum. He was still in the post with a stipend of £26. 13s. 4d. in 1624.[309]

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[302] BL, Harleian Ms. 697, ff. 146r, item 4; 33r (fees).
[303] Reid, *Council*, p. 260.
[304] While serving as victualler for the army Newce narrowly escaped hanging by vengeful soldiers who had been supplied with 'rotten & stinking corne', BL, Add. Mss. 19832, fol. 6v.
[305] *Lib. Mun.*, vol. I, pt. II, p. 188. Lewis's fiant was dated 7 Dec. 1609, Huntington Library, San Marino, Hastings Irish Papers, 3/HA 16146, the patent rolls entry was dated 2 Jan 1609/10, *C.P.R.I.Jas.I.,* p. 173; his salary in 1618 was £26. 13s. 4d., TCD, Ms. 808, fol. 63.
[306] *CSPI, 1606-08*, p. 252.
[307] *CSPI, 1608-10*, pp. 32-3.
[308] Caulfield, *Kinsale*, pp. 342-3.
[309] *CSPI, Sept. 1669-Dec. 1670, with addenda 1625-70*, p. 349.

Pursuivant, steward and other posts

The pursuivant (messenger) was paid 20 nobles English (i.e. £8. 14s. 5¼d. Irish) per annum and fees. He also had his diet in the lord president's household and as the council processed to court he positioned himself next to the lord president.[310] The pursuivant in the North received 10 marks per annum and in Wales £4 per annum. In Wales, and presumably in Munster, the officer was appointed by the lord president for life and was forbidden to work through deputies.[311] Several names are extant: Martin Cooke who was pursuivant in April 1603, Patrick Howland appears to have held the post from at least February 1607/8 to April 1611, and Thomas Harryson whose dates of 1609 to at least May 1616 conflict somewhat with Howland's tenure.[312]

The steward or clerk of the household was required to be a 'discreete and sufficient man of his servants' and was appointed by the lord president. He was allowed £10 per week for the running of the household and his weekly accounts were examined by the lord president and the council.[313] In February 1612/13 Francis Hardwick, servant of vice-president Moryson, was commended for his 'care and dilligence' especially in the absence of his master.[314]

Other posts were clerk of the munitions and commissary of the victuals. Names associated with the office of clerk of the munitions are Michael Hughes, William Montgomery and Robert Oliver.[315] The commissary of the victuals was Allen Apsley (later knighted) who served in the post under Elizabeth and James I. He was also Clerk of the Crown of Munster, William Greatrakes being his deputy. He was in receipt of a pension of 3s. English per day and must have filled the post of commissary of the victuals with a deputy as he was also lieutenant of the Tower in London. He had land in Munster and corresponded regularly with Sir Richard Boyle.[316]

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[310] BL, Harleian Ms. 697, ff. 45r, 33v (fees).
[311] Reid, *Council*, p. 259; Williams, *Council*, pp. 170-71.
[312] BL, Harleian Ms. 697, ff. 150v (Cooke), 45r, 72r, 77r, 78r (Howland).
[313] Ibid., fol. 174v, item 29.
[314] Ibid., fol. 80r.
[315] Ibid., ff. 48r, 99r. Hughes had land in the Douglas suburb of Cork city from which he received the 4th sheaf, ¼ of the profits of the mill, and 10s., NAI, Ferguson xi, pp. 7, 143.
[316] BL. Add. Ms. 46920A, ff. 6-6v (warrant of appointment of 1598); *Lib. Mun.*, vol. I, pt. II, p. 188; *C.P.R.Jas.I.*, p. 76; BL, Harleian 697, ff. 43r, 48r, 150v; NAI, Lodge's Mss. 17, p. 161; Grosart (ed.), *Lismore Papers*, 1, *passim*.

Chaplain

A 'sufficient and learned' chaplain was an important member of the lord president's team. He was to preach and read the homilies, to be given the respect due to his office which was 'for the service of God', to be paid £40 English per annum out of the fines of the province, and to receive his diet in the lord president's household.[317] The chaplain in Wales had a fee of £50 with diet for himself and one servant.[318] Thomas Wilson served under Lord President Carew, Thomas Lloyd was chaplain to Brouncker, and Robert Snosell served under Vice-President Moryson. These were followed by William Towne, John Steere and Robert Daborne. While the exact succession of some of the chaplains is uncertain, the post was, like secular posts, a stepping-stone to preferment. Thomas Lloyd became a vicar choral of the cathedral in Cork city. Snosell became rector of Kilmaluda in the diocese of Ross, Daborne became a fellow of Youghal College in 1616 and subsequently chancellor of Waterford, prebendary of Lismore and dean of that diocese in 1621. John Steere attained the highest honour in advancing from treasurer of Ardfert, to archdeacon of Emly, and finally bishop of Kilfenora in 1617 from where he translated to Ardfert in December 1621.[319]

Tension between the officers

In the highly-charged atmosphere of self aggrandisement engendered by the opportunities in Munster tensions arose between the various officials. The rush to create new posts led to some overlapping of responsibilities and the undignified squabbling of the 'better sort' in the public arena of the provincial court of Munster. Chief Justice Saxey was particularly noted for his choleric personality and was not necessarily a good example of appropriate behaviour for the new blood that filled the council posts in the reign of James I. From the 1590s Saxey and provost marshal Thornton conducted a dispute about precedency at the council table. Saxey refused to attend meetings until his demands were met and his obstinate stance was not resolved until the arrival of Lord President Carew.[320] There were other frictions between the officers. Allen Apsley, clerk of the crown of Munster, accused Saxey, Second Justice Comerford and Attorney General Sarsfield of cheating him of his rightful fees relative

[317] BL, Harleian Ms. 697, ff. 118v, 147r, 167v.
[318] HMC, 13th Rep., p. 266.
[319] BL, Harleian Ms. 697, ff. 67v, 70r, 72r, 72v, 79r, 80r, 82r, 85r; NAI, RC 17/4; *C.P.R.I.Jas.I.*, pp. 237, 276, 510, 519, 563; Byrne, 'Jacobean Waterford', p. 156; *CSPI, 1615-25*, p. 194; Dwyer, *Killaloe*, p. 91; James B. Leslie, *Ardfert & Aghadoe Clergy and Parishes* (Dublin, 1940), pp. 4, 32.
[320] Sheehan, 'Provincial Grievance', p. 141.

to recognizances taken and detained by the three officers.[321] Early in the reign of James I the presidency was ordered to levy a certain number of beeves for the army and John Archdeacon, principal cessor for Co. Cork[322] was authorised to fill the requirement from Co. Kerry and Desmond. This meant straying into the area controlled by Christopher Walsh, principal cessor for Co. Kerry and Desmond,[323] who was in prison when the order for the levy was received. The court accepted Walsh's plea that he could not be removed from his post unless certain procedures were followed.[324] Archdeacon himself was taken to the court by John Walley, acting clerk of the council, for the non-payment of a debt.[325] Thomas Cantwell, cessor of Co. Tipperary, found himself in the court at Waterford to answer a case concerning a horse that had been distrained from him by John Greatrakes, clerk of the fines, in lieu of a debt of £5. The horse died before Greatrakes could sell it.[326]

The more senior officials and councillors were not immune from attack from within. Indeed, any relaxation could be dangerous. In April 1609 Chief Justice Harris warned Sir Richard Boyle to get his affairs in order as Second Justice Gosnold was endeavouring to 'entrap such lessees as had but estates for yeares'.[327] In 1612 there was 'some litle diffrence' between William Hull, vice-admiral in west Cork, and Provost Marshal Aldworth (who perhaps resented a new officer in his bailiwick). Hull was summoned several times to appear at assizes in Waterford and Cork, attempted murder was implied, and the dispute had to be sorted out by the lord deputy.[328] The touchy subject of precedence raised its head in February 1620/1 following a complaint by the then Second Justice Gernon that Attorney General Parsons – in virtue of his social superiority (Parsons was a knight and Gernon a gentleman) – took precedence before him at the council table. Lord Deputy Grandison's judgement was that a 'Judge's Roabe' had a higher status than the attorney's knighthood at the 'bench' of the council table.[329]

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[321] BL, Harleian Ms. 697, fol. 17r.
[322] His patent is dated 10 June 1603, Erck, Vol. I, part I, no. 22, p. 14.
[323] Ibid., no. 100, p. 36.
[324] BL, Harleian Ms. 697, ff. 153v, 154r. There is no extant fiant for Christopher Walsh, cessor, from the Elizabethan period but a Christopher Walsh, of Tralee, was pardoned on 11 April 1601 and again on 21 April 1601, *Ir. Fiants*, iii, no. 6494, p. 412, no. 6498, p. 419.
[325] The case was heard at Mallow on 10 December 1604, BL, Harleian Ms. 697, fol. 22v.
[326] The case was heard on 9 January 1611/12 and Greatrakes was allowed to adjust his accounts, Ibid., fol. 78.
[327] Grosart (ed.), *Lismore Papers*, 2, i, p. 131.
[328] Ibid., fol. 129v.
[329] Ibid., fol. 122v.

Internecine rivalry was not exclusive to Munster and was a feature of official administration in the North also.[330] In Wales feuds between the officials, or the between the deputies doing the work, had a detrimental effect on the smooth working of the court.[331] In Munster the presidency protected its officials and indicted in its court citizens who 'took them on'. In January 1609/10 Thomas O Magher, 'a decayed gent' of Co. Tipperary was fined £100 for uttering 'som foule abuse' to Sir John Jephson. Jephon was awarded three-quarters of the fine with the balance for the crown.[332] In 1612 John Fitz James Hore of Dungarvan was imprisoned and fined for committing 'Foule misdemeanors' against John Walley, former deputy clerk of the council and currently justice of the peace. Two years later Hore was again in trouble, this time with Attorney General Parsons. This time Hore succeeded in having the case against him removed from the presidency court to the Dublin council.[333]

Conclusion

During the reign of James I the lord president was dependent on his conciliar helpmeets to govern the province of Munster. The councillors, the more prestigious of the lord president's assistants, by accident or design, were not always by his side. Mainly former soldiers, they were often distracted by their own private agendas and were not representative of the provincial population.

The lord president's subordinate officers were not model civil servants in the modern sense. For the seventeenth-century propertyless male a job was the target – a job that was not awarded on merit but was purchased, with the final nod of approval given by a patron. This was not exclusive to Munster. In Ireland as a whole crown servants allied their own economic welfare to the state revenues.[334] The unexpressed policy of the presidency was to fill any vacant posts from the ranks of Protestants – no matter how unsuitable for the task in hand. A few were Irish but most were New English. Even New English Catholics, like Sir Francis Slingsby, were acceptable *pro tem*. Old English, and even on rare occasions, Gaelic Irish were included, not out of

[330] G. C. F. Forster, 'Faction and County Government in early Stuart Yorkshire, *Northern History*, vol. xi, 1976 for 1975, p. 70.
[331] Williams, *Council*, p. 147.
[332] BL, Harleian Ms. 697, ff. 71r, 72r.
[333] BL, Harleian Ms. 697, ff. 124r, 112v. In 1606 Mrs. Walley was 'basely slandered' by James Martell (of Cork?) and Walley was urged to pursue the matter, Grosart (ed.), *Lismore Papers*, 2, i, p. 93.
[334] McLaughlin, 'Leviathan', p. 216.

choice but out of necessity and when another coveted a post the Catholic or indigenous incumbent was squeezed out.[335]

Each individual, no matter how lowly, had his own circle of clients. The ripples in the patronage pool fanned out from the humble clerks ('sharks') at the centre to the more influential personages at the periphery. Each official in this pool struggled to extract the most from the public who needed to use their services. To stay afloat in this maelstrom was a struggle. Tensions between the officials, and between them and the indigenous community, were played out in the public arena of the provincial court. The system encouraged corruption, aggrandisement and cronyism – evils prevalent in Munster.

Uncontrolled corruption rendered the council of Munster a fiefdom at sea, uninhibited by restraint from Dublin or London who were content to abandon the populace – the very people they were bound to protect – to the machinations of the system. From the end of the first decade the lord president himself, lacking an official residence, was no longer independent but was in thrall to the most powerful magnate in the province – Sir Richard Boyle, earl of Cork – whose provision of accommodation sucked the king's representative into the most lucrative of the golden circles. Lord President Villiers endeavoured to ally himself to the Boyle family through marriage alliance (as did Lord Deputy Falkland) while the earl of Thomond was content to keep his headquarters in Limerick secure that his friendship with Boyle would protect presidential interests in the southern parts of the province.

Nevertheless, despite their faults, the council personnel were the emerging ruling class replacing the traditional indigenous county elite. Regarding themselves as 'nobillitie and men of high ranck' they were confident enough in 1605 to issue a proclamation to the 'rude and ill Dysposed' Munster population to refrain from killing game such as deer, hare, partridge and pheasant which should, in future, be reserved for the 'sport' and 'pleasure' of the ascendancy.[336]

The councillors and council officials were not the only supports of the lord president. He was also dependent for the smooth running of his council on the revitalised organs of local government. Chapter 3 will show if he and the people were better served by these 'helpmeets'.

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[335] This happened to Edmund Hunt, customer of the port of Cork. Customs officials were not part of the remit of the presidency.

[336] BL, Harleian 697, fol. 184r. This proclamation was renewed on 20 August 1610, ibid., fol. 192v.

Chapter 3

Local Government Officials – helpmeets of the lord president

Introduction

The Council of Munster was the guardian, defender, supervisor and support of the various strands of the local government administration. Its officials were an essential plank in the implementation of the decrees of the provincial court and, on their establishment, of the assize courts. Local government had its own hierarchy – almost like a pyramid – varying from the lowly petty constable to the sheriff. It was not a direct chain of command but there were levels of dependency. For example the sheriff (the most important official in the early years of the seventeenth century) was expected to carry out the legal requests of the justice of the peace but he was not answerable to the justice. Besides the sheriffs and justices of the peace there were also constables, coroners, escheators, and collectors, who will be examined separately below. There were also many minor posts, such as clerkships, which featured as stepping stones to greater promotion. With the possible exception of the post of constable, all the others enabled the increasing number of ambitious self-serving English and Welsh immigrants to source wealth and social prestige through government service.

The Council of Munster played a crucial role in kick-starting the local government institutions, supporting them, supervising them and, when necessary, reprimanding those who manned them but there is no record of individual officials, such as justice of the peace or sheriff, being reprimanded by the presidency as they were in the council in the North.[1] This chapter will examine the role of the various local government officials beginning with the most lowly.

Constable[2]

In its role as supervisor of local government officials the Council of Munster kept a close eye on the constables – the lowest rank of the law-and-order team in the province. Constables were part of the structure of local government of early modern Ireland from at least the last quarter of the sixteenth century when two high constables were appointed to each barony of every county and two petty constables to each parish.[3] They were members of the many 'volunteers' on whom the administration

[1] Reid, *Council*, p. 336.
[2] Not to be confused with the constable of a castle who was a military officer.
[3] NLI, Ms. 8014, folder 1.

depended for the smooth running of local government.[4] Their reputation was not high:

> for the most part … if one rake hell, he shall scarce find worse [constables], such as have been thieves, rebels, and murderers.[5]

This opinion of the constable was probably a reflection of the disdainful superiority shown by those of a higher rank to their social inferiors, which was a strong feature of early modern society. As the constable was a relatively recent layer of local government in the province it stands to reason that the post was not as developed as its English counterpart.[6]

High constables were chosen by the justice of the peace - the names of suitable persons being presented (by the jury) at the assize or quarter sessions.[7] The qualifications were uncomplicated: a prospective constable should be an '*idoneus homo*', i.e. able to execute his office, and was expected to be diligent in the execution of his duties.[8] The successful candidates were issued with a warrant by the clerk of the crown and peace to take the required oaths, within 6 days, before the justice of the peace. Subsequently, the clerk submitted a signed certificate at the following quarter sessions.[9] The constables in the cities and towns were chosen by the mayor and his council.

The duties of the high constable included: assisting the presidency;[10] providing the sheriff with the names of people to be empanelled for jury service; assisting the justices of the peace at their quarter sessions; presenting 'in writing' any misdemeanours (ranging from petty crime to murder) that had taken place in his barony since the last assize;[11] and presenting 'in writing' at the assizes the names of

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[4] Cynthia B. Herrup, 'The Counties of the Country: Some thoughts on seventeenth-century historiography', *Social History*, 8, (1983), pp. 170-71.
[5] King, *County Kerry*, p. 317.
[6] The reputation of the English officer (the prototype of the Irish constable) as being incompetent, lazy, uneducated and unprofessional is disputed by modern research, Joan Kent, 'The English Village Constable, 1580-1642: the nature and dilemmas of the office', *The Journal of British Studies*, vol. xx, no. 2, Spring 1981, pp. 26-7.
[7] At a general sessions of the peace held in Co. Cork on 8 January 1683, three men were named as fit to serve as high constable in the barony of Orrery and Kilmore of whom one was chosen by the bench, Brady, *Records of Cork,* i, p. liv. See J. S. Morrill, *The Cheshire Grand Jury, 1625-1659* (Leicester Univ. Press, 1976), pp. 59-60: Appendix III.
[8] Matthew Dutton, *The Office and Authority of a Justice of Peace for Ireland: collected from the Books of Common Law*, (Dublin, 1718), pp. 43-4; Herrup, *Common Peace*, p. 4.
[9] In some cases the oath could be taken before the seneschal of the manor at the court leet, Dutton, *Justice*, p. 46-47.
[10] BL, Harleian Ms. 697, *passim.*
[11] BL, Add. Ms. 4819, ff. 242, item 6; 242v, item 15.

all masterless men, suspicious persons and their 'relievers'.[12] A constable did not receive a salary but was given rewards for work well done. Conversely, he could be fined for neglect of his duty[13] or for not attending the quarter sessions.[14] At a general sessions and gaol delivery at Clonmel on 21 February 1619 Walter Bourke and John O'Carroll, constables of the liberty of Tipperary, were fined 6s. 8d. each as they 'failed to appear when summoned'.[15] At a general sessions in Tralee in the 1620s Daniel Bane, constable of the barony of Dunkerran, was fined 3s. 4d. stg.[16]

Petty constables, to aid the high constables, were appointed in every parish and town and the onus was on each community to put forward suitable candidates at their courts leet. The skills of reading and writing being requisite it is probable that, as in Wales, they were modest freeholders.[17] This lowly, annually elected[18] officer had an important role in representing his own locality and his presentments were, in effect, those of the community.[19] This proved a bit of a dilemma for him: how to carry out his duties while remaining loyal to his neighbourhood.[20] He took his oath of office before a justice of the peace,[21] whose precepts he was bound to execute.[22]

The basic duty of the petty constable was to keep the peace and to report any defects or omission of duty of the populace in his area.[23] This included ensuring that night watch was observed from Michaelmas to Easter (the fine on town or barony for non compliance was 3d./night); that hue and cry (a particular concern of the presidency)[24] was observed within the community; that a pair of butts for shooting practice were set up within or near the town (the fine for non compliance was 2s./month); that every man between 16 and 60 muster at the butts and 'shoot up and down 3 times every feast day between 1 March and last day of July' (fine for non

[12] Ibid., fol. 242v, item. 16.
[13] Dutton, *Justice*, p. 4.
[14] *DKRI,* 27-33, 1895-1901, p. 43.
[15] NLI, Ms. D. 3637. My thanks to Dr. David Edwards for pointing out this document to me.
[16] NAI, C.P., Z.33. This document is extremely damaged. I am grateful to Dr. David Edwards for referring me to this document.
[17] BL, Add. Ms. 4819, fol. 242v, items 15, 16; Jones, *Early Modern Wales*, p. 116.
[18] Kent, 'English Village Constable', pp. 34, 38.
[19] H. B. Simpson, 'The Office of Constable', *EHR,* no. 40 (1895), pp. 630, 632.
[20] Kent, 'English Village Constable', pp. 28, 32, 38; Morrill, *Cheshire*, p. 30.
[21] Simpson, 'Constable', p. 639.
[22] Kent, 'English Village Constable', p. 32.
[23] Dutton, *Justice*, p. 43.
[24] BL, Harleian Ms. 697, ff. 167v, 194r. Hue and cry, the English version of local security, was replacing the Irish custom of 'tracks' (often called 'tracts'), Hand & Treadwell, 'His majesty's Directions, 1622', p. 206; W. N. Osborough, 'The Irish customs of Tracts', *The Irish Jurist*, vol. xxii, 1997, pp. 439-458.

compliance was ½d./day);[25] that he keep an eye on the village stocks and arrest violators of the peace either on his own initiative or on the instructions of the justice of the peace.[26] An important responsibility was to eject 'rogues and beggars', to punish persistent frequenters of alehouses or gamblers, and to prevent illicit sale of ale or usquebagh.[27] He does not appear to have had the additional role, as had his English counterpart, of tax collector,[28] but it is very possible that, as in England, the sheriff and his officers were dependent on the local knowledge of the constable in identifying individuals named in writs.[29] The petty constable attended a petty session of the peace which was held before every quarter session and every assize where, under oath, he presented lawbreakers from his parish for crimes ranging from recusants, forestallers, drinking on the Sabbath, vagabonds, and undutiful servants. He also reported on the condition of the roads and bridges. The presentments were verified under oath before two justices before being sent to the high constable for delivery by him at the next quarter session or assize.[30]

It is difficult to identify constables for Munster and to estimate how successful they were. Assuming that there was a minimum of two high constables per barony this suggests that in any one year there were 24 in Co. Clare, 42 in Co. Cork, 18 in Co. Kerry, 28 in Co. Limerick, 24 in Co. Tipperary, and 16 in Co. Waterford.[31] Yet only 6 have been identified for the entire reign of James I, but it is not clear if these were high or petty constables:

Table 3 (a): Constables

Name	Place	Date mentioned
John FitzJames	Co. Cork.	Jan 1616
Walter Bourke	Liberty of Tipperary	21 Feb 1620
John O'Carroll	Liberty of Tipperary	21 Feb 1620
Cornelius(?) McFynen	Co. Kerry	13 Oct 1623
Donnell Bane/Barie	Co. Kerry	5 Jan 1623(?)

Source: NLI, Ms. 13,236 (6) & D. 3637; NAI, C.P., Z.33

It will be observed that the constables in this table are native Irishmen and, though it is a very small figure on which to make a judgement, it probably reflects the status of the indigenous population who undoubtedly filled the least influential roles in society.

[25] Dutton, *Justice*, p. 44.
[26] Ibid., p. 45.
[27] HMC, *Duke of Rutland*, i, p. 390.
[28] Kent, 'English Village Constable', pp. 40-1.
[29] Ibid., p. 44.
[30] Simpson, 'Constable', pp. 627-8.
[31] These figures are based on the baronies at *NHI*, ix, p. 121.

Documentation exists for 1608 for some counties in Ireland (none of them in Munster) and this shows that all the posts were not filled, and the distinguishing adjective of 'high' and 'petty' was not uniformly used.[32]

Any increase in legislation, especially of an infrastructural type, increased the workload of the constable. In 1615 an effort was made to improve the roadways with the passing of an act authorising the constables and churchwardens of each parish (the latter were subject to the bishop) to summon the parishioners annually in Easter week. This group elected 'two honest persons' to act as surveyors of work needing to be done and 6 days were set aside when every householder and cottier was to attend, or be represented, to upgrade the highways.[33]

In the early 1620s there was a dearth of suitable people to fill the role of constable due to the failure of the undertakers to fulfil their agreements.[34] In this era when religion was such a live topic it is probable that most constables were Catholic and would have had considerable difficulty in fulfilling one of their duties: presenting recusants over the age of 16 at each quarter session.[35] If this were the case it would have added to the constables' reputation for unreliability – at least in Protestant eyes.

Justice of Peace

The justice of peace, an unpaid official appointed by the lord chancellor, was the most visible face of local government and a crucial member of the provincial law-and-order team yet his role was not well defined.[36] He worked with his fellow justices of the peace to implement orders emanating from the Munster council, orders which often had their inception in Dublin. Proclamations, which came thick and fast, about coinage, vagabonds, wandering soldiers, alehouses, priests and pirates, put him at the coal-face of local justice.[37] As had already happened in England and Wales his

[32] Edmund Hogan, (ed.), *The Description of Ireland and the State thereof as it is at this present in Anno 1598* (Dublin & London 1878), pp. 252-59. See also NLI, Ms. D.3637 and NAI, C.P., Z.33 re fining of constables, the word 'petty' was not used.
[33] Moody, 'Irish Parliament', p. 61; P. J. Meheghen, 'The Administrative Work of the Grand Jury', *Administration*, volume 6, No. 3, Autumn 1958, p. 252; Gerrard & Battersby, *Grand Jury of Ireland*, p. xxii.
[34] *CSPI, 1615-25*, p. 325.
[35] BL, Add. Mss. 4819, f. 242v, item 17. An act excluding the appointment of Catholic constables was not passed until 1728: 2 G. cap 10.
[36] MacCarthy-Morrogh, *English Migration*, p. 269; Lambarde, *Eirenarcha*, p. 29; J. H. Gleason, *Justices of the Peace in England 1558-1640* (Oxford, 1969), p. 47.
[37] BL, Harleian Ms. 697, ff. 86r (alehouses); 179v, 181r (wearing of arms); 184r, 192v (preservation of game); 196r, 196v, 197v (coinage); 193r (harvest); 150r (accession of James I); 179r (passports); 192r, 195r (pirates); 195v (subscription to support MPs forbidden); 180v, 185r, 195v, 198r (priests); 194r (robberies); 179r, 179v (soldiers); 141v, 143v, 179v, 184v (rebels); 193v (timber and pipestaves); 198v (unlawful assembly).

role was beginning to receive a higher profile while that of the sheriff (particularly in peace time) was diminishing, but the justice of the peace in Ireland (many were Irish recusants) did not attain the level of trust bestowed on his English counterpart.[38] One of their number, usually the most influential landowner in the county, with the title of *custos rotulorum*, presided over all the justices of a county. Usually a Protestant, he was chairman of the sessions, had responsibility for the records and was assisted by the clerk of the crown and peace.[39]

Some, but not all, historians believe that the justice of the peace was unknown outside the Pale where, by the end of the sixteenth-century, the officer had disappeared,[40] but there is evidence to show that they were functioning in Munster, though probably not consistently.[41] Thomas Spring was a justice in Co. Kerry in 1596[42] and Edmund Sexton was appointed in Co. Limerick on 22 May 1595.[43] Several sets of instructions to the lord president of Munster, the first dating from 23 March 1600 give specific authority to the president for the conduct and, if necessary, reprimanding of the justices.[44]

The authority of any justice was limited to the county named in his commission,[45] and was founded on his commission and the statutes which were promulgated to maintain the peace and regulate social and economic life.[46] The arrangements for incorporated towns were laid down in their charters as, in Cork city, where:

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[38] McCavitt, *Sir Arthur Chichester*, p. 104.
[39] Williams, *Reformation Wales*, p. 345; J. H. Gleason, *Justices of the Peace in England 1558-1640* (Oxford, 1969), p. 43. In 1621 the *custodes rotulorum* for Munster were named as Co. Cork & Co. Waterford: Richard, earl of Cork; Co. Limerick: Sir George Courtney; Co. Kerry: Gyles Harbert, Esq., Co. Clare: Henry, Baron Ibrackan; Co. Tipperary: [blank], NAI, Ferguson ix, p. 264.
[40] Nicholas P. Canny, *The Elizabethan Conquest of Ireland: A Pattern Established 1565-76* (England, 1976), p. 18; Steven G. Ellis, *Reform and Revival, English Government in Ireland, 1470-1534* (London 1986), p. 181.
[41] A patent of commission was addressed to, *inter alia*, Gerald, viscount Decies, John, lord of Curraghmore, Edward Fitz Symon, mayor of Waterford, and several others, on 24 November 1569 'to be justices, commissioners, and keepers of the peace' in counties Waterford, Carlow, Kilkenny, Wexford and Queen's Co., *Ir. Fiants*, no. 6788.
[42] King, *County Kerry*, p. 318.
[43] NLI, Ms. 16,085, p. 52. A proclamation of 1595 forbade the sale of gunpowder to all except named people, which included justices of the peace, *Cal. Carew Mss. 1589-1600*, p. 120.
[44] BL, Harleian Ms. 697, ff. 146v, 90r, 165r, 100v, 101v, 119r, 200v. Several Co. Tipperary people were pardoned in May 1601 provided that, within 3 months, 'they submit before the seneschal of the liberty of Tipperary and one other justice of the peace in the said county', *Ir. Fiants*, no. 6531.
[45] Michael Dalton, *The Countrey Justice, containing the practise of the Justices of the Peace out of their Sessions* (London, 1622; reprinted Arno Press Inc., 1972), p. 21.
[46] William Lambarde, *Eirenarcha or the Office of the Justices of the Peace*, (London Professional Books, 1972), pp. 39, 50; Herrup, *Common Peace*, p. 28.

> The Mayor, Recorder & four Senior Aldermen who had served the office of Mayor to be Justices of the Peace and Commissioners of Oyer and Terminer for the trial of all offences.[47]

To ensure the smooth operation of the Munster council the justices of the peace were exhorted 'to help ayde, and assist the said lord Presid*en*t and Councell',[48] and on 5 January 1603/4, the council pointed out that the justice of the peace was the proper person by whom suspects should be initially examined.[49] Sir John Davies reported in Lent 1604 that justices were remiss in holding their quarter sessions and should they do so they might learn 'how to govern' their patch.[50] Thus the instructions of Lord Deputy Chichester to the judges about to go on circuit in June 1607[51] contains basic guidelines on the procedures to be adopted, the first being:

> that every Justice of Peace … that shall examine any p*er*son or p*er*sons for any manner of felonie shall sett down in writinge aswell the examynacon of the parties accused as the deposicons of the accusers, and shall take recog*nisance* of the accusers to make partie against ye p*ar*ties accused which recog*nisance* together with the examynacons and deposicons soe taken they shall returne at the Assizes then next after to be houlden, and alsoe shall send for all others whome they knowe or are informed of wch can give any evidence against such offenders, and shall bynd them to make p*ar*tie in the like sorte at the next Assizes.[52]

Other instructions concerned keeping records of persons sent to gaol, justices of the peace (or sheriffs) being the only persons entitled to commit offenders; likewise, the type of offences which were not entitled to bail; details of fines amerced, as well as forfeited recognizances, which were to be sent to the exchequer twice a year.[53] The justice's social and economic role required him to partake in musters,[54] and identify suitable sites in his locality for the erection of villages.[55] In general, through

[47] Charter of 10 March 1608/9, (BL, Egerton 76, fol. 9). The serving mayor and recorder of Youghal was to be a justice 'throughout the county of Cork', but this privilege was not given to Kinsale, or Bandon ibid., ff. 11r (Youghal), 10r (Kinsale), 12r (Bandon) or other towns. For charters of other Munster towns see ibid ff. 12v (Clonakilty), 30r (Dingle), 44r (Kilmallock), 62r (Clonmel), 62v (Fethard), 68r (Waterford), 70v (Dungarvan), 71v (Lismore).
[48] BL, Harleian Ms. 697, fol. 165r.
[49] Ibid., fol. 17r.
[50] *CSPI, 1603-06*, p. 146.
[51] BL, Add. Mss. 4819, ff. 241v-243v.
[52] Ibid., fol. 241v, item 1.
[53] Ibid., fol. 241v, items 2, 3, 4.
[54] *CSPI, 1615-25*, p. 228.
[55] BL, Add. Mss. 4819, fol. 243, item 25.

arbitration, he was expected to nip in the bud any local disputes before they escalated into court cases.[56]

While a lot of the work of the justice of the peace was performed within the community (or 'out of sessions') he, sitting with his fellow justices, also had his own court supported by a jury (summoned by the sheriff) which was held four times a year in four different locations within the county. It devolved on the Council of Munster to ensure that these quarter sessions were held.[57] The justice summoned clients by means of warrants directed either to the barony bailiff, or to an indifferent (neutral) person, but not to the parties themselves.[58] The sessions were held in the week following the feast of St. Michael (29 September), the Epiphany (6 January), Easter, and the Translation of St. Thomas (7 July).[59] For their attendance the justices (as in Wales[60]) received an allowance of 4s./day with the number of justices at any one session being restricted to eight, and, ideally, each justice was to attend for one day, but a limit of three days was imposed.[61] In England the allowance was paid by the sheriff (for which he was allowed in his accounts)[62] but in Munster it was paid by the clerk of the fines for the province. Between 25 June 1605 and 30 September 1608 Hercules Turville, clerk of the fines for Munster, paid out £40. 19s. 6¾d., at the rate of 4s./day, to justices who had attended sessions.[63]

Surviving records of quarter sessions are rare and in poor condition and one has already been mentioned in relation to the constables. A second document dates to about 1622 when, at a general session in Co. Kerry, 15 people of the barony of Dunkerron were fined 3s. 4d. stg. each; one person from the barony of Magunihy and 17 people (including the bailiff) of the barony of Iraghticonnnor were also fined.[64] Hercules Turville's rare account, already mentioned, shows fines imposed for recusancy at several quarter sessions during the period 25 June 1605-30 September 1606.

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[56] Herrup, *Common Peace*, p. 54.
[57] BL, Harleian Ms. 697, fol. 199v, item 16.
[58] Dalton, *Country Justice*, p. 11.
[59] Ibid.
[60] Jones, *Early Modern Wales*, p. 99.
[61] BL, Add. Mss. 4819, f. 241v, item 4; Sir Richard Bolton, *A Justice of Peace for Ireland*, Book II, p. 72.
[62] Ibid.
[63] The names are not recorded. Earlier in his account Turville mentions Cos. Cork, Waterford, Limerick, Liberty of Tipperary and Cross of Tipperary. Cos. Kerry and Clare are not mentioned, (Kent Archives, Cranfield, U269/1, Hi 15).
[64] A damaged document, NAI, C.P., Z.33. Document Z.34 (ibid.) concerns a general session in Co. Tipperary but it is impossible to decipher any more.

The role of the quarter sessions was to investigate all criminal offences and to pass on the serious cases, such as treason, to the assizes.[65] Thus efficient management of the quarter sessions was the desired aim as it reduced the time spent by assize justices in dispensing justice.[66] Clients aggrieved at their treatment at the sessions could appeal to the council of Munster which was generally sympathetic to their complaints,[67] while, conversely, the council supported the justices in their work.[68]

In its societal role the quarter sessions annually, aided by the constables of the baronies, determined the wages, diet, and service contract of every servant and a list was submitted to the subsequent assize. Penalties for failing to fulfil this contract – be it by the servant or master – were laid down. A servant wandering off without permission could be arrested by the sheriff on foot of a warrant of the justice of the peace.[69] This ordering of society was a major concern in the Stuart era and was calculated to 'alter [the] habitts' of the indigenous population.[70] The court attracted pageantry, social interaction, and opportunities for transacting business. Each session required the attendance of numerous officials, jurymen, criminals, victims, witnesses, sureties, and curious members of the public. There were obvious economic benefits for towns hosting quarter sessions resulting in competition to attract them.[71]

It is possible that, as in Wales, the president of Munster had a major voice in the selection of these officials – but his independence is questionable when faced with powerful local lobbies. The lord president and the councillors of Munster, by virtue of their offices, were themselves commissioners of the peace.[72] On appointment the justices swore their oath before the judges of the assize.[73] Despite being unsalaried, the posts were much sought after by new men wishing to raise their profile within their communities. In Wales a 'douceur' of £20 secured an appointment;[74] was this the same for Munster? In England the justices were drawn from the ranks of the

[65] Dalton, *Country Justice*, p. 46.
[66] Herrup, *Common Peace*, pp. 51-3.
[67] BL, Harleian Ms. 697, ff. 27r, 75r, 75v, 78v.
[68] Ibid., ff. 124r-24v.
[69] BL, Add. Mss. 4819, fol. 242r, items 6-11.
[70] Ibid., fol. 179r.
[71] In 1611 Capt. William Newce extolled the virtues of his town of Bandonbridge (this was before it was acquired by Boyle) one of the carrots being that he would build a 'very convenient' sessions house, BL, Harleian Ms. 697, ff. 98r-90r. See also provost marshal Aldworth in Chapter 2.
[72] NAI, RC 17/4, 1036 (commission of lord president Brouncker). The oath of the councillors of Munster is at BL, Harleian 697, fol. 88v. The oath taken in Wales was more detailed, BL, Egerton Ms. 2882, fol. 29r.
[73] BL, Add. Mss. 4819, fol. 243r, item 20; Dalton, *Country Justice*, pp. 10-11.
[74] Williams, *Council*, p. 120.

lesser nobility and gentry and were the leaders of the county but in Munster in the early years of the seventeenth century the New English colonists and emerging lesser nobility provided the manpower as an effort was made to bypass the traditional incumbents – the Catholic nobility and gentry.[75] The government's propensity to appoint any type of Englishman, no matter how unsuitable, brought the post into disrepute with all sections of the community. These new men had no tradition of service to the community while many did not have the resources. The New English criticized their number while the Catholics decried their social inferiority, which reflected the Welsh experience.[76] Discreet Catholics in England continued to serve on the bench while an effort was made in Munster to anglicise the officials by ensuring that the

> … Justices of peace … in all tymes of Cessions and Sitting tearmes do vse and ware English attire and apparel.[77]

It has been difficult to locate the names of the justices. The Council Book of Munster names just a few, the earliest being Edmund Tyrry in December 1610.[78] Sir Richard Moryson, vice-president of Munster, mentioned a justice of the peace in Co. Tipperary who was 'a great and powerfull man',[79] while there were 'divers' justices of the peace in Co. Kerry in June 1612.[80] Table 3 (b) below gives the names of those for whom there is documentary evidence and the date when they either filled this role or were suggested as suitable candidates.[81] Taking the province of Munster to contain 6 shires (but see Chapter 1 for the uncertain position of Counties Clare and Tipperary) a minimum of at least 48 justices might be expected in the whole province. A big county like Cork probably had more and, given the example of Wales, the numbers could have been greater in each of the counties.[82] Yet there are just 32 names for the whole reign of James I. The New English would have been considerably stretched for many were required (or chose) to undertake other duties simultaneously.

[75] Gleason, *Justices*, p. 67; Canny, *Elizabethan Conquest*, p. 50. This also happened in Co. Kilkenny, Edwards, *Ormond Lordship*, pp. 269-70.
[76] MacCarthy-Morrogh, *English Migration*, p. 271; Jones, *Early Modern Wales*, p. 100.
[77] BL, Harleian Ms. 697, ff. 166v (1608/9), 119v (1615); Gleason, *Justices*, pp. 71-2.
[78] BL, Harleian Ms. 697, fol. 79v.
[79] This remark is made in an undated letter to the Earl of Ormond, ibid., fol. 143r. This is the first of two documents on this folio, the second being dated 17 July 1611.
[80] Ibid., fol. 170v.
[81] TCD, Ms. 672, pp. 368-73.
[82] Jones, *Early Modern Wales*, p. 113; Williams, *Council*, pp. 117-18.

Undoubtedly there were many more Catholics as they were essential to keep the local government show on the road.

In 1613 the Dublin council complained to the Commissioners for Ireland of 'the neglect and undutifulness of the Justice of the Peace and other officers of this Country birth'.[83] They were evidently not fulfilling their duty of identifying and bringing to justice 'straglers and vagabonds'.[84] They were also not very diligent in identifying recusants – in other words passively resisting unpopular statutes.[85] They were not unique in this approach as English justices frequently defended local interests in defiance of the commands of central authority.[86] The problem was handled in the North by requiring the bishops to enforce anti-Catholic legislation.[87] In 1613 the removal of Catholic justices was mooted,[88] and in 1614 the commission was purged of Catholics[89] but identifying those removed has not been possible.

A 1615 commentator observed that any Irishman, with an income of £10 and knowledge of English, endeavoured to be made a justice of the peace. This, he asserted, was akin to rewarding a rebel, and he suggested that

> … tenne Irish Justices, Doe more rapine vpon a Countrey then 500 vnruly souldiors Lett loose emonge them by the way of Cess.[90]

[83] R. Dudley Edwards (ed.) 'Letter-Book of Sir Arthur Chichester', *Anal. Hib.*, no. 8, 1938, p. 144; McCavitt, 'Good Planets', p. 255.
[84] Dudley Edwards (ed.), 'Letter-book', p. 145.
[85] Reid, *Council*, p. 223.
[86] Kent, 'English Village Constable', p. 46.
[87] Reid, *Council*, p. 291.
[88] McCavitt, *Sir Arthur Chichester*, p. 104.
[89] Clarke, 'Pacification, plantation', *NHI,* iii, p. 217.
[90] The commentator's opinion was that the Irish disdained English and learned it in order to complain in England and to be a justice of the peace, 'A Suruey of the present estate of Ireland Anno 1615', (Huntington Library, San Marino, Ellesmere Ms., EL 1746, ff. 21, 21v). My appreciation to Prof. Canny who kindly sent me a copy of this document.

Table 3 (b): Justices of Peace

Name	Date	Name	Date	Name	Date
Clare (23)		Cap Rog Middleton[~]	Sep 1612	Edmond Sexton*^	1595+
Henry Blackwell	c. 1625	Donnell O'Sullivan	c. 1625	Edmond Southwell*	c. 1625
James Bourke	c. 1625	Owen O'Sullivan	Feb 1614/5	Sir Richd Southwell[+]	c. 1625
Winter Bridgeman	1622	Sir William Power*	Jan 1616/7	Sir Thos Standish[+]*	c. 1625
Boetius Clancy*	c. 1625	Lord Roche	c. 1625	**Lib. & Cross Tipp** (29)	
Rowland Delahoyde*^^	c. 1625	Sir Domk Sarsfield[+#]	c. 1625	Sir Francis Ackland*[#]	c. 1625
John Evans	c. 1625	Thomas Sarsfield	Feb 1610/1	Edmund Butler*	c. 1625
Baron Ibrackan[+]	Nov 1621	Sir Wm Sarsfield	c. 1625	Sir Piers Butler*	c. 1625
William Lodge	c. 1627	Capt. Sibthorpe	c. 1625	Piers Butler*^	c. 1625
Donnell McNamara	c. 1625	Sir Francis Slingsby[+]*	c. 1627	Lord Cahir	c. 1625
Sir J. MacNamara*	c. 1625	Sir Robert Travers^[~]	c. 1625	John Cantwell	c. 1625
Hugh Norton	c. 1625	Sir Robert Tynt	c. 1627	Lord Castleconnell	c. 1625
Samuel Norton*	c. 1625	Edmund Tyrry	1610	Lord Dunboyne	c. 1625
Sir Daniel O'Brien	c. 1625	William Wiseman^^	Oct 1618	Nicholas Everard	c. 1625
Daniel O'Brien	c. 1625	**Kerry** (25)		Sir Richard Everard	c. 1625
Donnogh O'Brien*	c. 1625	Baron of Kerry	c. 1627	Sir William Fenton	c. 1627
Teige O'Brien	c. 1625	Rob Blennerhasset*^	c. 1625	Sir George Flower[+#]*	c. 1627
Patrick O'Loghan	c. 1625	James Bre	c. 1625	Sir James Gough[#]	c. 1625
Sir Roger Shagmore	c. 1625	Sir Val. Browne*^[~]	c. 1625	Richard Laffan	c. 1625
Sir Rich. Southwell[+]	c. 1625	Jenkin Conway*[~]	Sep 1620	Thomas Laffan	c. 1625
William Starky*^	c. 1625	Walter Crosby	c. 1627	Redmond Magrath	c. 1625
Earl of Thomond	c. 1625	Sir Edward Denny	c. 1625	George Mathews	c. 1625
John Thornton*	c. 1625	Daniel Ferris	c. 1625	Geoffrey Mockler	c. 1625
Cork (52)		John FitzGerald	c. 1625	Daniel O'Brien	c. 1625
Cap. Thos Adderley*	c. 1625	William FitzGerald^	c. 1627	Donnogh O'Brien	c. 1625
Sir Rich Aldworth[+]*[#]^	c. 1627	Patrick FitzMorris^	c. 1627	Owny O'Dwyer	c. 1625
Peregrine Banaster*	c. 1625	Giles Harbert*	Nov 1621	John O'Magher	c. 1625
Nicholas Barham*^^[~]	pre 1625	Richard Harris	c. 1625	Sir Law Parsons[+]^[~]	c. 1627
Sir James Barrett	c. 1625	Sir Thomas Harris	c. 1625	Tibbott Purcell	c. 1625
David, Lord Barry	c. 1625	John Hussey	c. 1625	Barnaby Rory	c. 1625
John Barry	c. 1625	Thomas Joy^	c. 1625	William Ryan	c. 1627
Henry Becher	c. 1625	Francis Kendall	c. 1627	John Tobin*	c. 1625
Thos Bettesworth	c. 1625	Danl O'Sull. More	c. 1625	Gilbert Waters	c. 1627
Sir Richard Boyle[+]^	Dec 1617	John Rice	c. 1627	Henry White	c. 1625
Sir Thomas Button[+~]	Sep 1619	Dominick Roche^	c. 1625	**Waterford** (29)	
Earl of Castlehaven	c. 1625	Sir Thomas Roper[+]	c. 1627	Sir Peter Aylward	c. 1625
Sir Randall Clayton[#]	c. 1625	John Segerson	Sep 1620	Sir Richard Boyle[+]^	Dec 1617
Sir John Coppinger	c. 1625	Thomas Spring	c. 1625	James Bryvers	c. 1625
Sir Walt. Coppinger^	c. 1625	Walter Spring*	c. 1625	Richard Butler	c. 1625
Lord Coursey	c. 1625	Sir Charles Wilmot[+#]	May 1604	Edward Cary	July 1612
Sir Robert Court	c. 1625	**Limerick** (27)		Hugh Croker	c. 1625
Thomas Crook	Oct 1612	Paul Arundell*	c. 1625	Lord Curraghmore	July 1604
Thomas Damont	c. 1625	Joshua Aylmer	c. 1625	William Dobben	c. 1625
James Daunt	c. 1625	Sir Fane Bourchier	c. 1625	Sir George Flower[+#]*	July 1612
Edward Davenett	c. 1625	James Bourke	c. 1625	Luke Gernon[+#]	c. 1625
Sir William Fenton[+]*	c. 1627	Baron Brittas	c. 1625	William Greatrakes^	c. 1625
Richard Fisher	c. 1625	Sir Thomas Browne[+]*	c. 1625	Sir John Leake	c. 1625
Sir J. Fz.E. F'gerald*	c. 1625	John Burgatt	c. 1625	John Leonard	c. 1625
Thomas FitzGerald*	c. 1625	Baron Castleconnell	c. 1625	Capt. Robt Morgan^	c. 1625
Luke Gernon[+#]	c. 1625	Patrick Coppinger	Aug 1609	Richard Osborn*^	Feb 1618/9
Thomas Gold	c. 1625	George Courtney*	Nov 1621	David Power	c. 1625
Charles Hargill	c. 1625	Thomas FitzGerald	c. 1625	Nicholas Power	c. 1625
Henry Hull	1625	Sir Edw FitzHarris	c. 1625	James Rymes	c. 1627
Sir Wm. Hull[~]	c. 1625	Morris Hurley^	c. 1625	Patrick Sherlock	c. 1627
Sir Arthur Hyde*	c. 1625	Nicholas Lisaght	c. 1625	Thomas Sherlock	c. 1625
Sir Fr. Kingsmill[+]*	Mar 1612	Robert Meade	c. 1627	Cap Hen Skipwith[+~]	July 1612
Sir Parr Lane[+]	Sept 1612	John Morin	c. 1625	Sir Richard Smith*^	c. 1627
Bp. William Lyon	Feb 1610/1	Tirlagh O'Brien	c. 1625	? Strongman	c. 1625
Sir Chas McCarthy	c. 1625	Donnogh O'Brien	c. 1627	Richard Wadding	c. 1625
? McCarthy Reagh^	c. 1625	Donogh O'Dwyer	c. 1625	John Walley	July 1612
? McDonnogh	c. 1625	Mr. O Mulrian	c. 1625	Sir NichWalshe	c. 1627
Sir John Meade	c. 1625	Mr. Pont	c. 1624	Richard White	July 1612
Robert Mead	Mar 1624	Dominick Roche*	c. 1625	Robert Wise	c. 1625
		Mr. Ryan	c. 1625	Sir James Younge	c. 1627

Sources: BL, Add. Mss. 19832; BL, Harleian Ms. 697; SP 63/217/27; NAI, Ferguson ix, xii; NAI, RC 17/4; RIA, Boyle Holdings, 24.Q.4; NLI, Ms. 13,236; NLI, Ms. 16,085; TCD, Ms. 672; Chatsworth, Lismore Mss.; Caulfield, *Kinsale*; Dwyer, *Killaloe*; Grosart (ed.), *Lismore Papers*, 1, i, ii; ibid. 2, ii; *CSPI, 1611-14, 1625-32*

Legend: [+] = councillor of Munster; [#] = council official; * = sheriff; ^ = other local government post; [~] = post outside influence of Munster Council, e.g. admiralty

It would appear that quarter sessions were not being held assiduously in Munster. Maybe Catholic justices had begun to keep a low profile? In 1616 Lord Deputy St. John urged Lord President Thomond to 'ioyne with the Justice of Assize' in holding quarter sessions four times a year.[91] Towards the end of James I's reign it was suggested that, in order to boost the courts and the crown's revenue, Catholics might be offered the oath of allegiance instead of the oath of supremacy to encourage their participation.[92] Absentee undertakers were part of the problem as in failing 'to perform their covenants' they were unavailable 'to supply the place of justices of the peace'. Their presence was considered essential 'for the better civilizing and governing of those barbarous countries', so in 1621 it was mooted that they be compelled to live on their lands and to 'perform their covenants'.[93] It was claimed that justices who were 'ignorant in the law', or a friend of an aggrieved person, imposed heavy fines for 'trifling offences', and that they colluded to extort the people.[94] It was obvious that some were overstepping the mark as the presidency reminded justices of the peace 'not to molest' people living under the council's jurisdiction and protection.[95]

The English House of Commons noted that many justices in Ireland were 'vnworthie of those places', that justice was often not done, that recognizances were taken 'with great penaltie, without due regard of the habilitie of the person, or nature of the cause', and that recusants filled the posts. Drafting in candidates from other counties would improve the 'administracon of publique iustice', though this would have negated a crucial qualification that a justice be local.[96] It is debatable whether the service could be successfully run without Catholics as the justice of the peace was a key figure in the fight against pirates,[97] and in the implementation of the 1621 English alehouse legislation, transposed to Ireland by Act of State.[98] The 1622 commissioners believed, as Lord Deputy Chichester had claimed in 1613, that 'every

[91] BL Harleian Ms. 697, ff. 200r, 200v.
[92] SP 63/236(1621)/9.
[93] *CSPI, 1615-25*, p. 325.
[94] *CSPI, 1625-32*, pp. 335, 337.
[95] BL, Harleian Ms. 697, ff. 104v, 105r, 106r, 108r.
[96] 1621 grievances, Grosart, *Lismore Papers*, 2, iii, pp. 4-5, 11. The suggestion that justices of the peace were recusants was contradicted by the Report to the King by the Commissioners of June 1621which stated that the justices of the peace were Protestants, *CSPI, 1615-1625*, p. 329. In 1625 Sir William Parsons averred that the justices of the peace were chosen from the older established planters, and that the quarter sessions were 'awfully' attended, *CSPI, 1625-1632*, p. 57. Many of the older planters had become Catholics, Edwards, 'Haven of Popery', p. 117.
[97] Bod. Lib., Carte Ms. 62, fol. 449; BL, Harleian 697, fol. 103r.
[98] BL, Harleian Ms. 697, ff. 86r-87r.

popish gentleman of any ability' was already a justice of the peace and the Dublin Council suggested that the principal Gaelic Catholic lords should be appointed.[99] This could well have been the genesis of the undated list of about the mid 1620s preserved at Trinity College Dublin.[100]

The recommendations of the 1622 commissioners included the advice that justices of the peace should use 'moderation' in assessing both fines and recognizances and ensure that the securities were good. They were also urged to see that the clerks of assize and peace 'do their duty',[101] the justices having authority to sack them if they were 'delinquent'.[102] In an effort to keep the justices of the peace *au fait* with the contents of the greenwax books (see below) the commissioners advised that they be read aloud in public session by the clerk in the presence of the justices.[103]

Indeed the justice of the peace was becoming the most important local official by virtue of his presence in the community and, in his most public role, that of justice of the quarter sessions which were beginning to dim the light of the sheriff's tourn and county court. This is a useful place to review the sheriff, traditionally the most powerful local government official.

Sheriff

The reinvigorated Munster plantation provided many opportunities for the more prominent planters, and the most prestigious local government post available to them was that of sheriff. The Council of Munster was dependent on the sheriff to carry out its orders, and they were instructed 'to helpe and aid [and] assiste the said Lord President and Councell'.[104] This exhortation to the sheriff at the beginning of the seventeenth century was, as the century advanced, accompanied with increasing demands on the lord president to control the officer and to punish the 'slackness', extortions and abuses of the sheriff himself and of his sub-sheriffs.[105]

Despite their great power documentary evidence of sheriffs is sparse. In compiling the lists of county sheriffs at Tables 3 (c) i and ii below the work of several

[99] SP 63/232(1613)/15; SP 63/236(1621)/9; *CSPI, 1611-14,* p. 377; Grosart (ed.), *Lismore Papers*, 2, iii, pp. 1-12; NLI, Ms. 8104, folder 4; Treadwell, *Commission*, pp. 160, 170.
[100] TCD, Ms. 672, ff. 368-373. Names in this list are incorporated into Table 3 (b).
[101] NLI, Ms 8013 (iii), document 5, p. 10.
[102] BL, Harleian Ms. 697, fol. 86v.
[103] NLI, Ms 8013 (iii), document 11, p. 9.
[104] BL, Harleian Ms. 697, fol. 146v, item 9.
[105] Ibid., ff. 146v, item 11; 148r, item 11; 89v; 165r, item 24, 166r, item 29; 166v; 32r, 33r; 199r, items 15, 19; 199v, item 21.

earlier compilers was consulted. Some of their lists are misleading as they give the impression that the sheriff was in office for a calendar year. Sheriffs were appointed at Michaelmas (29 September) and served until the following Michaelmas – thus their period of office straddled 2 calendar years. There are some gaps in the tables and some of the names could be misplaced because the documentary evidence is either unclear or contradictory.

The sheriff was the chief officer of the crown in the county.[106] As representative of the monarch his main responsibility was to defend the county in time of war[107] (this role was of critical importance during the Nine Years War[108]) and to collect the monarch's revenues (including the composition[109]) for transmission to the exchequer in Dublin. Besides the arrears of the former sheriff, he collected from everyone within his county except from the towns, whose liberties gave them the right to answer for themselves at the exchequer.

The sheriff collected on the basis of the 'Greenwax Book', issued by the exchequer, which contained writs sealed with green wax. On execution of the writs the sheriff returned the book to the exchequer. The actual collecting was done by bailiffs (appointed by the sheriff) and it was the responsibility of the president of Munster to keep a check on these gentlemen who, by 1615, were to be limited to two in each barony.[110] In an effort to keep a rein on the sheriff his fees were recorded in the Council Book in August 1604.[111] Besides collecting the monarch's revenue the sheriff also enforced writs issuing from the four legal courts in Dublin, from the assize courts, the quarter sessions and from the provincial court.[112] The president of Munster was expected to ensure that the sheriff speedily served writs issuing from the common law courts.[113] If necessary the sheriff could summon a posse to enforce his authority for which he was allowed in his accounts.

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[106] For the background to the office of the sheriff see Henry F. Berry, 'Sheriffs of the County of Cork – Henry III to 1660', *JRSAI*, vol. xxxv [vol. xv, 5th series], 1905, pp. 39-43.
[107] BL, Harleian Ms. 697, ff. 134v-135v.
[108] Feeding the army on campaign was one of the sheriff's duties.
[109] BL, Harleian Ms. 697, fol. 166v.
[110] Ibid., fol. 120r, item 25.
[111] Ibid., ff. 34r-34v.
[112] Fines imposed in the Four Courts in Dublin were regarded as 'His Majesty's revenue' and on 8 May 1621 the exchequer court reiterated the necessity for sheriffs to collect these fines, NAI, Ferguson ix, p. 259. For examples of provincial court orders to the sheriff see BL, Harleian Ms. 697, ff. 8v, 9r, 11v, 12r, 15v, 16v, 19r.
[113] Ibid., fol. 119r, item 15.

The sheriffs were chosen by the lord deputy on the 30 September following the custom in England.[114] In Wales the lord president was consulted in the 'pricking' of sheriffs[115] but in the period under review the lord deputy listened to, but did not necessarily follow, the advice of the lord president when it came to choosing the sheriffs of the Munster counties. In 1602 Carew was disappointed that his recommendation (that all current sheriffs should stay in their posts) was stymied as Sir George Bourchier, a member of the Council of Munster, had got in first with his nominee for Co. Kerry, Walter Hussey.[116] In later years the price of the post was £80 of which the lord deputy's secretary appears to have been the beneficiary.[117]

Table 3 (c) i: Sheriffs of Munster

Year	Clare	Cork	Limerick
1603-04	John Davies^	Sir Francis Kingsmill[+]*/ John Barry	Philip Northcott
1604-05		Sir Francis Kingsmill[+]*	Capt William Taaffe
1605-06	Lawrence Delahoyde	Anthony Kemys	Capt. Robert (Richd) Collum
1606-07	Sir Nicholas Mordant	Charles Coote	Edmund Sexten*^
1607-08	Sir N. Mordaunt /Fr. Barkley[+]	Sir Francis Kingsmill[+]*	Edmund Sexten*^
1608-09	Christopher Banks	Charles Coote/ Sir F. Kingsmill[+]*	Sir Thomas Browne[+]*
1609-10	Turlough McMahon	Edward Powey (Percy)	Capt. William Power*
1610-11	Sir John McNamara*	Richard Aldworth[+]*[#]^	Paul Arundell*
1611-12		Sir Thomas Browne[+]*	Edmond Sexton*^
1612-13	John Thornton*	Pierce Power	Edmond Sexton*^
1613-14	Capt. Samuel Norton*	Sir Thos. Southwell/ Pierce Butler	George Courtenay*
1614-15	Capt. Samuel Norton*	William Bodley^/ Nicholas Barham*^^~	Edmund Sexten*^
1615-16	Boetius Clancy*	Samuel Norton*/ Sir Thos Browne[+]*	Edmund Southwell*
1616-17	Donogh O'Brien*	Sir Robert Carew^	Maurice Crosby
1617-18	Sir Nicholas Mordaunt	Humphrey Jobson[~]/Samuel Norton*	Edmund Southwell*
1618-19		Peregrine Banaster*/Robert Carew^	Edmond Southwell*
1619-20		Arthur Hyde*	Edmond Fitzgerald
1620-21		Callaghan O'Callaghan	Maurice Herbert/ Geo. Butler
1621-22	Edward FitzGerald	Sir John FzEd FitzGerald*/Call. O'Callaghane	George Butler
1622-23	Capt. S. Norton*/Sir J. MacNamara	Thomas FitzGerald*	Sir John Dowdall[+]
1623-24	Sir J. MacNamara/Wm. Starkey*^	Francis Slingsby[+]*	Edm. Southwell*/ Domk Roch*
1624-25	Capt. Daniel Norton	Capt. Thos. Adderley*	John Southwell^
1625-26		Sir Robt Tynte	Sir Thos Standish[+]*/Edm Sexton*^
1626-27		Sir William Fenton[+]*	Maurice Herbert
1627-28		James Daunt	Maurice Herbert
1628-29	Donough O'Brien*	Daniel McCarthy Reagh	

[114] *CSPI, August 1588-September 1592*, p. 505; *CSPI, 1625-32*, p. 31.
[115] In the Ellesmere Collection in the Huntington Library, California, there are lists of proposed sheriffs sent to lord president Bridgewater in the 1630s for his opinion, *Guide to British Historical Mss in the Huntington Library* (Huntington Library, 1982), p. 69.
[116] *Cal. Carew, 1601-03*, pp. 349-50.
[117] Grosart (ed.), *Lismore Papers*, 1, i, p. 65.

Table 3 (c) ii

Year	Kerry	Lib & [Cross] Tipp.[118]	Waterford
1603-04	John Barry	Richard Comerford [Pierce Butler]*	
1604-05		Philip Purcell	
1605-06		Thomas Butler	John/Richard Power
1606-07	Alex. Travers/Chas Coote	Edmond Butler*	Richard Power/Laurence Esmond^{+}
1607-08		Adam Tobin/Richard Power [Pires Butler]*^	
1608-09		Thomas Dwyer	
1609-10	Walter Spring*	Robert Grace	Nicholas Dowdall
1610-11	Andrew Bowder^	Pierce Butler [Arthur Sexton]	Richard Archdeacon^
1611-12		Arthur Sexton/Pierce Butler*^ [Arthur Sexton]	Capt. Dennis Dale?
1612-13	Walter St. Leger	John Tobin*/Pierce Butler* [Walter Hackett]	Henry Rufkyn
1613-14	Alexander Travers	John Tobin* [Pires Butler]*^	Capt. Richard Smith*^
1614-15		Richard Butler	Thomas Cantwell^
1615-16	John Barry	Richard Butler	Sir George Flower^{+}*$^{\#}$
1616-17		William O'Meara [Peter Hone]	
1617-18	John Barry	Gilbert Butler [John Butler]	
1618-19	Giles Harbert*/Thos Joy^	Gilbert Butler	Sir George Flower^{+}*$^{\#}$
1619-20	Thomas Pepys	Gilbert Butler [Robert St. John]	William Caulfield
1620-21	Thomas Pepys	Robert Carew^ [Peter Hone]	Sir George Flower^{+}*$^{\#}$
1621-22	David Fitzgerald	Robert St. John [Pierce Butler]*	Robert Carew^
1622-23	Robert Blennerhassett*^	Capt Francis Ackland [Capt. F. Ackland]*$^{\#}$	Richard Osborne*^
1623-24	Sir Valentine Browne*^$^{\sim}$		Sir George Flower^{+}*$^{\#}$/Henry Rufkyn
1624-25	Jenkin Conway*$^{\sim}$	Peter Hoare/David Walsh	Walter Mansfield
1625-26	Alexander Travers	David Walsh [David Walsh]	
1626-27		Robert Butler	
1627-28			

Sources for both tables: NAI, Ferguson ix, xi, xii, Frazer Mss no. 43-47, R.C. 17/4, M.7008; NLI, Ms. 8013, GO Ms. 287, Ms. 16,085; TCD Mss. 567, 1066; Cambridgeshire Co. R. O., Manchester of Kimbolton Castle Collection, DDM 70/31; BL, Harleian Ms. 697, Add. Ms. 19865; Chatsworth, Lismore Mss.; Lambeth Palace, Carew Mss. 620, 624; San Marino, Hastings Irish Papers, Box 4, HA 15078; Grosart (ed.), *Lismore Papers*, 1, i; Thomas Johnson Westropp, 'Notes on the Sheriffs of County Clare, 1570-1700', *JRSAI,* xxi, 1890-1, pp. 68-80; Berry, 'Cork'; Smith, *Cork*, i; Mary Agnes Hickson, *Selection from Old Kerry Records, Historical and Genealogical*, 2nd series (London, 1874); T. Blake Butler, 'The Sheriffs of the Liberty of the County Tipperary', *The Irish Genealogist*, vol. 3; Edwards & Empey, 'Tipperary liberty ordinances'; P. M. Egan, *History, Guide & Directory of County and City of Waterford* (Kilkenny, 1890)

Legend for both tables: $^{+}$ = councillor of Munster; $^{\#}$ = council official; * = justice of peace; ^ = other local government post; $^{\sim}$ = post outside influence of Munster Council, e.g. admiralty

The selection of a sheriff set in motion a series of steps which the notebook of Edmund Sexton,[119] several times sheriff of Co. Limerick, helps to elucidate. Sexton was one of the new breed of conforming Irishmen who was a vigilant maintainer of his own rights and those of the city of Limerick especially during his several periods as mayor. Unlike many other sheriffs of this time he was not a former soldier or an Englishman, but a lawyer of Old Irish stock.[120] His brother George served as his undersheriff before becoming secretary to Lord Deputy Chichester.

When selected a new sheriff was obliged to pass a patent of appointment;[121] take the required oath of office either before the lord deputy or by *dedimus potestatem*;[122] pay a recognizance into the exchequer and nominate two 'sufficient'

[118] Cross names in [ ].
[119] NLI, Ms. 16,085.
[120] The family had roots in Thomond. Sexton is an anglicised form of Ó Seasnáin, Clodagh Tait, '"A trusty and wellbeloved servant": The career and disinternment of Edmond Sexton of Limerick, d. 1554', *Arch. Hib.*, vol. LVI, 2002, p. 53.
[121] This enabled him to be fined for misdemeanours relating to his office, NAI, Frazer Mss no. 43-47.
[122] Writ empowering named person to administer oath of office to government officials. When Edmund Sexton was first appointed sheriff of Co. Limerick in 1595 he took his oath by *dedimus*

sureties.[123] During Easter term he was also expected to pay proffers, or a provisional estimate, of his final account. In 1623 the exchequer court decided that these proffers were to be examined on the last day of the term and increased if necessary.[124] At the end of the year (29 September) he was issued with a writ of *supersedeas* which discharged him of his office. This writ forbade him to process any writs in hand which must be handed over, by indenture, to the new sheriff. Also, by indenture, he was to list the prisoners in his custody and hand them over to the incoming officer at the first 'county day' (or county court) following his discharge.[125] Finally, when he had settled his accounts with the exchequer he received a writ of *quietus* as proof.[126]

Edmund Sexton kept an account of the expenses incurred. When he received his patent he paid:[127]

Table 3 (d) i: Sheriff's expenses on receipt of patent

To the lord deputy's secretary for his warrant to the Lord Chancellor	£1. 5s. 0d.
To the clerk of the hanaper for the Lord Chancellor's warrant	10s. 0d.
For the patent, the *supersedeas* and the *dedimus potestatem*	£2. 9s. 0d.
To Baron Lowther[128] for his certificate and recognizance	9s. 2d.
To the solicitor	10s. 0d.
Total (sterling)	**£5. 3s. 2d.**

When accompting at the exchequer his expenses were:[129]

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potestatem before Bishop Thornborough, NLI, Ms. 16,085, p. 52. On 28 January 1606/7 Francis Edgeworth, clerk of the first fruits, received a *dedimus* in the exchequer court to take the oath of Charles Coote, the sheriff appointed for Co. Kerry, NAI, Ferguson xi, p. 45.

[123] Erck, vol. I, pt. I, p. 13. In 1595 Edmund Sexton's sureties were his step-brother Nicholas Comyn and John Sarsfield, then sheriff of Thomond, NLI, Ms. 16,085, p. 52. On 7 December 1624 the exchequer court was informed that recently-appointed sheriffs received their patents from the clerk of the hanaper but many 'depart[ed] the towne' without entering recognizance 'to yeeld a just and true accompt to His Majesty'. As only 10 sheriffs entered recognizance it was ordered that in future Francis Edgeworth, clerk of the hanaper, should neither issue a letter patent for any sheriff, nor present any patent already made to the lord chancellor, unless he received a certificate from the exchequer court that the sheriff in question had entered into recognizance. The names and locations of the 10 sheriffs who gave recognizance are noted. The only one from Munster was David Walsh of Co. Tipperary & Cross Tipperary, NAI, Ferguson ix, p. 318.

[124] Ibid., p. 278.

[125] BL, Add. Ms. 4819, fol. 243, item 27.

[126] At the end of his 1595-96 term of office Sexton sent his brother George to Dublin to pass his accounts and in April 1597 he received a *quietus* (in this section of the notebook the dating is unclear), NLI, Ms. 16,085, pp. 52, 53.

[127] This was in 1626, NLI, Ms. 16,085, p. 139.

[128] Son-in-law of Sir Laurence Parsons and former attorney general of Munster. He was obviously working in a temporary capacity as he was not officially appointed until April 1628, NAI, Ferguson xii, p. 9. See Chapter 2.

[129] These figures refer to 1615 but in 1627 he paid 'at least' £50, NLI, Ms. 16,085, p. 139. In 1629 the council in London fixed the payment of the sheriffs of Waterford city at £6. 13s. 4d., Byrne, *Liber*, p. 64.

Table 3 (d) ii: Sheriff's expenses on passing his account

To the Chief Remembrancer for a debet	6s. 8d.
To the steward	6s. 8d
To the foreign apposer	5s. 0d.
To the transcripter	6s. 8d.
To the usher (?)	5s. 0d.
For taking his oath to accompt	5s. 0d.
To the cryer	12d.
To the 2nd remembrancer for entering his account	5s. 0d.
To the auditor	£1. 7s. 6d.
To the box	12d.
For the receipt	6s. 4d.
To the chamberlain	7s. 2d.
To the clerk of the pipe for the *quietus* etc.	£1. 10s. 0d.
To the comptroller of the pipe	6s. 8d.
To the chief remembrancer for entering the accomptes & cancelling the recognizance	6s. 8d.
To his ina (?)	3s. 4d.
For casting out of court	3s. 4d.
Total (sterling)	**£6. 13s. 7d.**

During his year of office the sheriff was expected to repair gaols and the king's castles, provide expenses for the messengers of central government, and transport prisoners from gaol to court. The security of prisoners[130] was complicated by an overlap of responsibility. Sheriffs were responsible for the prisoners and the gaols in which they were confined but gaolers were appointed by the crown. The custody of prisoners either before being brought to trial, or afterwards while they found pledges for the payment of their fines, was the duty of the sheriff and officers who allowed prisoners to escape were fined.[131] On 21 November 1608 it was reported in the exchequer court that Owny McCollo McSwyney, of Co. Cork, was rescued from the sheriff by Edmond McErevan McSwyney.[132] In 1613 it was suggested that priests and high-profile Catholic prisoners in transit be accompanied by the sheriff himself (most likely a Protestant, or conformable Catholic/'church papist') as the sheriffs' men (probably Catholics) were inclined either to let them escape or, alternatively, not to prevent their rescue.[133] In November 1614 six prisoners escaped during the watch of Edmund Sexton, sheriff of Co. Limerick. Four were recaptured but two were not. At the following assize Sexton was fined £200 but this was reduced

[130] In 1607 the undersheriff of Cross Tipperary needed 6 footmen and 2 horsemen to convey Teige O'Connell from the gaol of Cross Tipperary to Cork city. O'Connell was convicted of murder (and thus of treason 'by a particular statute in this kingdom', *CSPI, 1603-06*, p. 475) and his goods were forfeited. The sheriff of Cork was ordered to pay the undersheriff 40s. for his expenses, NAI, Ferguson ix, p. 139.
[131] NAI, Ferguson ix, p. 119.
[132] Ibid., Ferguson xi, p. 141.
[133] *CSPI, 1611-14*, p. 414.

to 20 nobles.[134] The entry book of the court of Castle Chamber[135] gives details of several cases where sheriffs were punished for their independent attitude to prisoners. William O'Meara, sheriff of Co. Tipperary 1616-17, was fined £20 English and imprisoned during pleasure for freeing prisoners after the Lent assize before their fines had been paid.[136] Incidentally, O'Meara was also arraigned for exercising his office without taking the oath of supremacy, but the court accepted that this was the usual practice in Co. Tipperary where the sheriffs were appointed by the earl of Ormond and not by the lord deputy. (This was destined to change at Easter term of 1621 when the palatinate, or liberty of Tipperary, was seized by the crown (see Chapter 1)).[137] In general it was agreed that there was little control over the whole operation of prisoner transport, that prisoners during transportation were supposed to be fed by people who received 'tickets' from the minders, but that the tickets were never honoured.[138]

As well as transporting prisoners to court sittings the sheriff was obliged to support the law courts. As chief organizer of the assize and quarter sessions he had to ensure that the building in which the court would sit was in good condition.[139] He was obliged to proclaim the forthcoming court session in his county court and in areas where people gathered, such as the market place; to ensure that the parties were notified of the place and date in plenty of time;[140] to provide and lodge a jury;[141] and to accommodate the judges and their staff. Afterwards he had to ensure that the decisions of the court were carried out. This meant providing a gallows to execute

[134] NLI, Ms. 16,085, p. 65. Was it merely co-incidence that this reduction happened because the justices, Sir Francis Angier and Sir John Davies had dined with him? In 1626, when Sexton was sheriff of Co. Limerick again, 5 prisoners escaped of whom 4 were captured, though this time there is no record of a fine, ibid., p. 82.
[135] *Egmont*, vol. I, pt. I.
[136] Ibid. p. 47.
[137] Ibid., pp. 53, 58; SP 63/234(1616)/16. Another example concerns Gilbert Butler, sheriff of Co. Tipperary 1618-19, who was ordered to pay £40 Engl. (reduced to £10) and was imprisoned for having reprieved a rebel sentenced to execution at the 1619 summer assize at Clonmel. The political background to this and to the O'Meara case are discussed in David Edwards, 'The Poisoned Chalice: sectarian division and the emergence of James Butler, 1614-1642' in T. C. Barnard & Jane Fenelon (eds.), *The Dukes of Ormonde, 1610-1745*, (The Boydell Press, Suffolk 2000), pp. 56-82.
[138] Grosart (ed.), *Lismore Papers*, 2, iii, p. 6, no. 14.
[139] NAI, Ferguson ix, p. 182, a Co. Meath example.
[140] Several defendants in the provincial court complained that they had not been given sufficient notice, BL, Harleian Ms. 697, fol. 74r.
[141] NAI, Frazer Mss. no. 43-47.

prisoners[142] and collecting any fines imposed by the courts. In default of cash he seized (or distrained) goods.

Ensuring that the sheriffs carried out the decisions of the various courts proved to be an on-going problem. At an unspecified date before January 1602 David Meagh, bailiff of (probably) sheriff William Taaffe (1601-2), illegally distrained 25 sheep from a family in Carbery, Co. Cork. Deprived of their livelihood the father and five children died and it was the destitute widow who, after several unproductive visits to Meagh for the return of the sheep, took the case to the provincial court. Meagh ignored the orders and threats of the court which admitted defeat and concluded that the poor widow, being 'ready to starve haveng nothinge els lefte to mynster relief vnto her', faced the same fate as her family.[143] The case demonstrates the powerlessness of the presidency court to control the sheriffs and their officers and provides a stark picture of the hardship of the period.

One of the conditions necessary for the appointment of a sheriff was that he be resident in the county for which he was 'pricked' and be a major landowner capable of supporting the expenses involved.[144] Many Munster sheriffs did not fill this requirement and could not personally fulfil the duties in an area with which they were not familiar. Thus they were dependent on their officials. Captain William Taaffe, originally from Co. Louth (of which he was sheriff in 1623[145]), was given land in Co. Cork so that he was legally eligible to be sheriff. Furthermore it was not unusual for some sheriffs to hold office simultaneously in different counties. John Barry was sheriff of Co. Cork in 1602-3 while he was substitute sheriff in Kerry and Desmond.[146] Sir Robert Carew served as sheriff of Co. Cork for several terms from 1616 and also of Counties Waterford and Tipperary. Double-jobbing of official posts was forbidden by Irish Statute, therefore the government itself was breaking the law.[147] Edmond Sexton was a justice of the peace while sheriff of Co. Limerick,[148] but in England it was standard procedure for a justice to temporarily vacate the bench during his period as sheriff.[149]

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[142] As sheriff of Co. Limerick 1595-96 Edmund Sexton provided a scaffold for which he was not adequately reimbursed, NLI, Ms. 16,085, p. 52.
[143] BL, Harleian Ms. 697, ff. 11-11v.
[144] Gleason, *Justices*, p. 76.
[145] NAI, Ferguson ix, p. 323.
[146] Ibid., pp. 156, 157.
[147] *Lib.Mun.*, vol. ii, pt. vi, p. 24.
[148] Sexton was appointed a justice of the peace on 22 May and sheriff on 29 September, 1595, NLI, Ms. 16,085, p. 52.
[149] Gleason, *Justices*, p. 61.

Tables 3 (c) i and ii above shows that many sheriffs also served as justices of the peace, but not necessarily concurrently. The tables also show that, as mentioned for the justices of the peace above, the sheriffs were forced, or chose, to undertake other posts.

The sheriff was obliged to hold a tourn and a county court. There are no extant records of these courts in Munster and knowledge of them is rudimentary. It has been claimed that the tourn had fallen into abeyance in the Pale by the mid-sixteenth-century,[150] but one was held in Co. Kilkenny in the mid-1630s.[151] They are said to have been in total disuse in England at this time.[152] The tourn was the place of collection of regular payments due to the monarch, and was the forum where the local constable gave an account of the operation of the watch and of hue and cry in his locality. In 1620 it was reported that tourns were held twice a year in every barony in Munster (and in Connacht) to which were summoned all males, from the meanest labourer to gentlemen, between the ages of 16-60. The purpose of this summons was to levy aid money (colloquially called the 'sheriff's tooth'). Those who failed to attend were fined 3s. 4d. which, in addition to the hours of work lost, was a great burden.[153] The Dublin Council stressed that tourns should be held in convenient places annually 'bycause all causes inquireable at the Turne are inquireable at the quarter Sessions … and at the Assizes'. Those required to attend were (a) 36 freeholders, with an income of £1/annum, (b) the petty constables and (c) those summoned to answer indictments or presentments; that those who served at one court should not be summoned to the next one; 'aid' money for sheriffs must be suppressed; and that children and servants should attend either the tourn or the leet annually to take the oath of allegiance and pay a fee of 1d. each.[154]

The county court, of which the sheriff was president not judge, was expected to be held once a month in the county town.[155] The suitors to the county court were the owners of lands, public officials, and representatives of the towns. When the assize judges were in the province they usually sat in the county court and its members were

[150] Canny, *Elizabethan Conquest*, p. 18.
[151] NLI, Ms. 2509 (information provided by Dr. David Edwards). There are reports of a tourn court being held in Co. Cork on 30 September 1620, Chatsworth, Lismore Mss., vol. xi, 3 Oct. 1620, No. 151.
[152] Higgins, 'Cheshire', p. 47.
[153] SP 63/235(1620)/33.
[154] SP 63/235(1620)/33/A.
[155] BL, Add. Ms. 4819, fol. 243v, no. 31.

assembled to meet them.[156] The growing importance of the assize courts diminished the importance of the both the tourn and the county courts yet the latter retained several important functions. It was here that proclamations, issuing from the presidency court, the lord deputy, or the king, were read out; coroners, who will be examined briefly below, were elected; oaths by *dedimus* were administered to court officials when it was considered inconvenient for them to personally attend the exchequer court;[157] and parliamentary elections were held with the sheriff acting here, as he did in England, as returning officer.[158] The most powerful tool for potential wealth retained by the sheriff's county court was that of outlawry. A suspected criminal was summoned to appear at four successive county courts and if he did not attend he was declared an outlaw at the fifth after which his property fell to the sheriff. During the reign of James I many Catholics were declared outlaws. It was reported in the early 1620s that outlawries 'are of late with much earnestness followed' resulting in 15,000 in three counties of Munster alone. In real terms it would have been about 90,000 family members – excluding servants and tenants. The text of a letter from one of the 1622 commissioners conveys disbelief at the numbers caught in this situation who would be 'utterly undone if some speedy redress be not extended to them':

> It is impossible to peruse this Petition … without perceiuing & Lamenting the cruel oppressions exercised, in various ways, against the Inhabitants of that unfortunate Country… Can it be believed, that in three Counties of one Province only (Munster) fifteen Thousand Persons were outlawed for Recusancy?[159]

This dating produces several references to attainted lands which reveal that attainted land went to a powerful local figure. In 1617 David Lord Roche acquired the attainted lands of Theobald FitzJohn Roche of Ballyhooley, gent, and he assigned them to Sir Thomas Browne (sheriff of Co. Cork 1615-16) and George Courtney for which they paid the crown a rent of £10 Irish.[160] A slightly earlier grant shows that the attainted lands of Galbally, Co. Limerick, went to the earl of Thomond and Sir Richard Boyle who, in July 1610, passed them on to Thomas Cantwell (sheriff of Co. Waterford 1614-15). Cantwell

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[156] John N. Gerrard, & T. S. F. Battersby, *The Grand Jury Laws of Ireland* (Dublin 1884), p. xx.
[157] When Samuel Raymond and Anthony Heyward were appointed commissioners of the ports of Limerick, Kinsale and Dingle they took the oath of office by *dedimus* on 4 December 1618 because of the 'charge of the coming to the Exchequer & hindrance to H.M. service', NAI, Ferguson xii, p. 12.
[158] Berry, 'Sheriffs of Co. Cork', p. 39; *CSPI, 1611-14*, p. 501; Higgins, 'Cheshire', p. 47.
[159] Kent Archives, Cranfield Papers, U269/1, Hi 230; Treadwell, *Commission*, p. 114. A figure of 2000 was also mentioned, NLI, Ms. 8014, folder 2; Treadwell, *Commission*, p. 146.
[160] *C.P.R.I.Jas.I*, p. 324.

received a licence to hold a market there in March 1611/12.[161] Maybe this was the pattern – that the sheriffs' patrons were the declared beneficiaries with the officials later getting their cut.[162]

In order to deal with the 15,000 cited by the 1622 commissioners the lord deputy suggested that a general *certiorari* should issue from the king's bench 'to remove all indictments of recusants etc.' This solution created problems of scale – how to 'bring up' 15,000 and the difficulties justices of the peace would encounter in executing so many writs of *capias ullagatum*. The record would be adjusted but the question of restitution would still remain. It would also be a serious legal intrusion on the jurisdictions of the presidency, the justices of the peace and the assize judges.[163] Thus it would appear that the mechanics of redressing the 'cruel oppressions' proved too complex and so the minority grouping retained the possessions of the majority who had been deprived of their property.

It must be pointed out that the exchequer should have been notified of any seizures of outlaws' possessions as the crown was entitled to one third if the victim had lands of more than £1 per annum. No returns were made prior to 1617 and from that date the sheriffs' estimates were kept artificially low so that just a trickle made its way to the exchequer. Of the 27 seizures for the years 1617-21 there were 13 in Munster (including Co. Clare). The details, as the following Table 3 (e) shows, are sparse:[164]

Table 3 (e): Outlaws 1617-21

County	Outlaw/beneficiary	Lands per annum	Goods
Clare	McMahowne & ors/Patrick Michell	--	£6. 6s. 8d. stg.
Clare	Daniel O'Brien/Edrus Ball	--	£1. 6s. 8d. Ir.
Clare	O'Brien/Ball	1 quarter @ £1. 10s.	1 horse @ £1. 10s.
Clare	O'Nellan/Walshe & ors	--	£2. 10s. Ir.
Clare	O'Brien/Cleer	--	£2 Ir.
Clare	O'Brien & ors/Sexton	½ quarter @ £1. 10s. Ir.	1 horse at £2. Ir.
Kerry	O'Sullivan/Mr. & Mrs. Dongan	£1 Ir.	--
Kerry	McTeige Cartie & ors/Duffe	--	£2. 8s.
Limerick	Fitzgerald/Bishop	--	£3 stg.
Tipperary	Hackett/Archbp Cashel	--	£6 stg.
Tipperary	Hackett/Archbp Cashel	--	£5 stg.
Tipperary	Daniell/Gamlett	Reversion: house @ £2 stg.	
Waterford	Browne & ors/Drap	--	£1. 10s. stg.

Source: Treadwell, *Commission*, pp. 414-5.

[161] Ibid., pp. 182, 196.
[162] See Chapter 2 for felons' goods going to Sir Richard Boyle.
[163] NLI, Ms. 8014, folder 4; Treadwell, *Commission*, p. 173.
[164] Treadwell, *Commission*, pp. 414-5.

Other outlaws included Dominick McCarthie, Pallis, Co. Kerry (his lands were leased to William FitzGeorge Terry), Dermot O'Ryan, Solloghed, Co. Tipperary, and Galfridus Power, Fyddan, Co. Waterford.[165] Several families, including the Condons, O'Keeffes and O'Callaghans, sought to claw back some of their property through the provincial court and elsewhere.[166] The demise of felons was a useful way to acquire property and it was not just the New English who profitted. The Old English benefitted as did the episcopacy (mentioned in Table 3 (e) above). At this time the archbishop of Cashel was the conforming Gaelic Irishman Miler Magrath while Bernard Adams was the New English bishop of Limerick.

Sheriffs had a free rein in the conduct of their affairs as they received a general pardon on the termination of their office. The general pardon itself provided opportunities to include friends and clients seeking 'shelter from the law'.[167] This perk had been abolished in April 1592,[168] yet John White (sheriff for Co. Waterford 1601-02) received a pardon in March 1602/3.[169] Corruption permitted easy access to pardons. Bishop Lyon of Cork claimed that lawyers and 'pettifoggers', travelling to Dublin at the beginning of the law term, sought out people seeking pardons, gathering as many as 20-40 names and charging £1 each.[170]

Sheriffs were unpaid so they used their position for self-enrichment. Many of the Munster office-holders were former soldiers having no familial or territorial ties in the province. It was said that in Wales sheriffs 'pill and poll the country, beggar their poor neighbours' and dress their houses 'with the goods of the poor'.[171] These words were echoed by Bishop Lyon who claimed that sheriffs's assistants in Munster 'poll and pill' to recoup their investment which they had purchased from the sheriffs.[172] The most important advantage of the office of sheriff was 'the power it gave to favour one's friends and damage one's enemies'.[173] A major contributory factor to this corruption was the area to be covered by the sheriff and the diversity of duties to be

[165] Other outlaws are at NAI, Ferguson xx, pp. 81, 89, 97, 120, 123-6, 129, 142. The documentation is undated.
[166] BL, Harleian Ms. 697, ff. 3r, 4v, 21v, 123r, 178r (Condon), 55r, 65r (O'Keeffe), 20r (O'Callaghan).
[167] Renwick, *A View of the Present*, p. 225.
[168] *CSPI, 1588-92,* p. 505.
[169] *Ir. Fiants*, no. 6766.
[170] *CSPI, 1596-97*, p. 20.
[171] Williams, *Reformation Wales*, p. 343.
[172] *CSPI, 1596-97*, p. 20; O'Brien (ed.), *Advertisements*, p. 48.
[173] C. W. Brooks, *Pettyfoggers & Vipers of the Commonwealth: the 'lower branch' of the legal profession in early modern England*, (Cambridge University Press, 1986), p. 92.

undertaken, which compelled him to have a variety of assistants.[174] It was accepted that, as in England,[175] sheriffs committed all, or part, of their duties to sub-sheriffs who did not take an oath prior to undertaking their duties thus leaving them free to engage in all manner of extortion and corruption.[176] In England sub-sheriffs were essential as they were familiar with the people and lands in the area. It is believed that they were members of the lesser gentry and yeomen who were attornies as 'the nature of their work almost certainly necessitated a legal training in the complicated art of execution of process.'[177] Was this true for Munster also? Many of the sub-sheriffs here were New English as the sparse Table 3 (f) below shows. The Newman family were clerks in Dublin and elsewhere, while Evan Owens was a relative of Sir Richard Boyle. The frequency of the complaints about the extortions of the sheriffs is testimony to their pervasiveness.[178] As early as 1603/4 Lord Barry, Viscount Buttevant complained of the impoverishment of the people by, amongst other demands, the sheriff's extortions.[179] It was a situation that did not change throughout the period under review.

Table 3 (f): Sub-sheriffs in Munster

Year	Clare	Cork	Limerick
1603-4		Dominick Tyrry	
1604-5		Cormock mc Dermody Carty	
1606-7		James Grant	
1608-9	Hugh Budgell		
1612-13			Thomas Gerald
1613-14		William Barnes	
1614-15			Raff Capro/Conor McMagury
1615-16		William Ringwell	
1616-17		Michael Newman	
1622-23	Laghlen O Heire		Oliver Doudon
1624-25	Patrick Cloghlison		
	Kerry	**Lib & [Cross] Tipperary**	**Waterford**
1607-8			Peter Davys
1609-10			Nicholas Newman
1611-12			Gregory Suger/Richard Priest
1612-13			Evon Owens
1618-19			Evon Owens
1620-21		Walter Cotterell	Thomas Fisher
1621-22		Patrick Sall	Michael Newman

Sources: BL, Harleian Ms. 697; NAI, Ferguson ix, xi; Bod. Lib., Carte Ms. 62; NLI, Ms. D.3637; Grosart (ed.), *Lismore Papers*, 1, i

[174] The amount of work to be covered was also a problem in England, T. E. Hartley, 'Under-sheriffs and Bailiffs in Some English Shrievalties, c. 1580 to c. 1625', *Bulletin of the Institute of Historical Research*, 1974, 47, p. 170.
[175] Hartley, 'Under-sheriffs', pp. 164-5.
[176] An oath for sub-sheriffs was contained in 10 Car. I. Sess. 2 (1634) when the problem of sub-sheriffs acting in whole, or in part, for sheriffs was cited; the penalty for sub-sheriffs who executing office without taking the oath of supremacy was to be £40 stg., *Lib.Mun.*, vol. ii, pt. vi, p. 14.
[177] Herrup, 'Counties of the Country', p. 171; Hartley, 'Under-sheriffs', pp. 166-67.
[178] In a letter to the king in December 1607 the earl of Tyrone cited the imposition of sheriffs from the years 1603 to 1607 and their extortions as one his grievances, *CSPI, 1606-08*, p. 366.
[179] *CSPI, 1603-06*, p. 153.

The numbers of lesser officials serving the sheriffs was established in 1607 as: (1) one 'sufficient' bailiff errant and one bailiff in each barony who should be a householder and living in the barony; each of these barony bailiffs to have one/two 'of his own people for whom he will answere' to assist him; (2) four 'sufficient' deputies, one to be resident in each quarter of the county 'for the people to resort vnto'.[180] We can be assured that each barony bailiff had two helpers as patronage was as much a feature of the seventeenth-century as it is today. The bailiff errant was a type of administrator: he executed writs, distrained goods, collected fines, and summoned the county, sessions and assizes courts.[181] The word 'sufficient' had the meaning of adequate wealth to meet the pecuniary demands of the office as well as the competence to carry out the duties required. It is difficult to know which of these officers was 'sub-sheriff' – maybe it was a loose term applied to them all. The following table shows the minimum number of officials each sheriff spawned – and that is before adding the clerks necessary to carry out the volume of administrative duties generated.

Table 3 (g): Sheriffs' helpers

County	Bailiff Errant	Barony[182] Bailiffs	Assistants of Barony Bailiffs	Deputies	Total
Clare	1	12	24	4	**41**
Cork	1	20	40	4	**68**
Kerry	1	9	18	4	**32**
Limerick	1	13	26	4	**44**
Tipperary[183]	1	12	24	4	**41**
Waterford	1	8	16	4	**28**

Despite the numbers suggested in the Table 3 (g) above it has been difficult to get documentary evidence of their names as Table 3 (f) above demonstrates. This dearth of data is mainly due to the destruction of the exchequer records in 1922. The only source is the Ferguson notes which are subjective and incomplete.

The exchequer court condemned the conduct of sub-sheriffs who neglected their duty and often held office for 2 or 3 years contrary to law and statute (see Evon

[180] BL, Add. Ms. 4819, fol. 243v, nos. 29, 30.
[181] *OED*.
[182] In counting the numbers of baronies 'Cork' has been excluded from the Co. Cork baronies as the city had its own sheriff. Limerick and Waterford cities also had their own sheriffs. In the case of Co. Limerick 'North Liberties' has not been included. For Co. Waterford all the baronies have been included as the city and its liberties were situated in the north-west section of Gaultiere; Kilculliheen, which is currently in Co. Kilkenny, was in Co. Waterford in the early seventeenth century. Source for the baronies: *NHI*, ix, pp. 95-96.
[183] The sheriff of the Liberty of Tipperary was the appointee of the earl of Ormond until the palatinate was seized by the crown in Easter term 1621.

Owens in Table 3 (f) above).[184] On 5 January 1603/4 the commissioners and Council of Munster added its voice to the chorus of complaints about sub-sheriffs, bailiffs and 'other officers' who

> haue bin employed vnder them [the sheriffs] to seize and take into their handes the goodes of Many poure p*er*sons vpon vayne and faulse pretextes of offences Comytted against his Ma*iesti*es Landes w*i*thout either apparance of Matter or proofe againste them or prosequtinge the same as the Lawes of this Realme haue prescribed.

A warning was issued to the sheriffs to restrain their 'inferior officers' on pain of fine or imprisonment.[185] On 13 May 1609 Hugh Budgell, sub-sheriff to Christopher Banks in Co. Clare, executed a writ, estreated 30s., pocketed the fine, and returned the writ endorsed *mortus est*.[186] Edmund Sexton of Limerick had problems with two of his sub-sheriffs – one was removed from office for murder and another was killed.[187] The 1622 commission counselled sheriffs to choose their undersheriffs carefully: they should be 'sufficient and able both in estate and knowledge', be sworn to fulfil their office and also take the oath of supremacy. Their bailiffs should also swear to fulfil their office (but there is no mention of the oath of supremacy thus allowing Catholics to be bailiffs). It was 1635 before an oath was introduced for bailiffs.[188]

One of the duties of the sheriff was the management of parliamentary elections. This was particularly influential in the early seventeenth century when the struggle between the various sections of the population was intense. The conduct of the sheriffs in this area has been discussed in Chapter 1.

By the 1620s the office of sheriff was no longer sought after as formerly. There was now more regulation. The posse of soldiers, in theory, was a thing of the past[189] and the post was becoming increasingly expensive and time-consuming.[190] So much so that there was a shortage of appropriate candidates as the more suitable were able to appeal to influential figures to secure exemption. Munster's most powerful man, Sir Richard Boyle, often paid £5 to the lord deputy's servant to have a client's

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[184] NAI, Ferguson ix, p. 277. Statutes 28 and 42 Edw III forbade undersheriffs acting for more than a year consecutively, *Ir. Fiants*, no. 4839.
[185] BL, Harleian Ms. 697, fol. 17r. David Shighan [Sheehan] was sub-sheriff to Philip Norton (sheriff of Co. Limerick 1602-03) when he distrained livestock from Morris Siston 'converting them to his own use', ibid., fol. 25r.
[186] Budgell (also called Brickdall) was summoned to the exchequer court, NAI, Ferguson xi, p. 217.
[187] NLI, Ms. 16,085, pp. 66, 82.
[188] Hand & Treadwell, 'His majesty's Directions, 1622', p. 194.
[189] The armed retainers were curtailed in 1608/9, BL, Harleian Ms. 697, fol. 166v; ibid., fol. 120r.
[190] MacCarthy-Morrogh, *English Migration*, p. 269.

name erased from the list (money that was repaid to Boyle by the grateful suppliant).[191] As had happened for justices of the peace it was suggested that Catholics should be considered.[192] There were Catholic sheriffs in Co. Tipperary but this was because of the special position of the county until its liberties were cancelled by *quo warranto* in 1621 when Protestant names show up in Table 3 (c) ii above. The sheriffs for Co. Cork, 1620-22 and 1628-9, were Catholics, and Francis Slingsby (1623-24) was an English Catholic. There were others whose status was suspect – for example George Courtney (Co. Limerick, 1613-14) and Sir Nicholas Mordaunt (Co. Clare, 1606-07, 1617-18).[193] In the early 1620s the inclusion of the lord president in the selection process was urged so that the lord deputy 'shalbe freed from importunitie of suiters, who have often for their owne benefittes procured ill choices to bee made' – a sentiment that was echoed by the 1622 commissioners.[194]

As already mentioned the sheriff was the officer designated to collect all types of rents and fines on behalf of the exchequer. This aspect of his duty increased at the end of the sixteenth century with the addition of the composition and the fines of the presidency court. It received a further burden in the early years of the reign of James I with the collection of fines of the quarter sessions, the assizes and the court of castle chamber (many of these because of recusancy). The post of collector was created to cope with these new demands.

Collector

Pressure on the exchequer to be more accountable gave birth to a new official called simply a collector. The siphoning off of a portion of the sheriff's duties in this area created another group of officials which, for the ordinary citizen, proved 'an intolerable burden'. That was the expression used by the people of Co. Limerick who, in 1603, complained to the lord deputy and council about the imposition of 20 deputies and subdeputies by Captain Richard Smith ('Collector and Cesser of all our Composic*i*on money beeues Corne Subsedies and taxes imposic*i*ons and Charges whatsoever' in Cos. Waterford and Limerick).[195] Their complaint is unusual in that they actually praised the conduct of earlier sheriffs who 'have ever before this tyme to your Sup*pli*a*n*ts great ease and speedy p*er*formance … eased your petitione*r*s'. The

[191] Grosart (ed.), *Lismore Papers*, 1, ii, p. 241; 1, iii, p. 115; 2, iii, pp. 1-12; *Egmont* 1, p. 112.
[192] MacCarthy-Morrogh, *English Migration*, pp. 269-70.
[193] Edwards, 'Haven', pp. 95-6, 116-17, and *passim*.
[194] SP 63/236(1621)/9; Treadwell, *Commission*, pp. 19, 95, 100.
[195] Appointed on 7 September 1603, Erck, vol. I, part I, p. 15; *C.P.R.I.Jas.I*, p. 4. Patent of 7 December 1603 at BL, Harleian Ms. 697, fol. 158r.

lord deputy appeared to be sufficiently moved by their plight to order the cessation of the activities of the officer while the complaint was investigated. Another interesting point emerging from this petition is that the

> Cessors of the said County were tyme out of mynd chosen and appointed by the said Inhabitants as fittest for the equall and speedy leavinge of any Charge to be ymposed vpon the said County and for the pres[*ent*] and readie furtherance of his Ma*iesti*es service w*hi*ch as well for those as for many other good respects was so Concordated from the state grannted vnto them in the tymes of feu*d*all gou*er*nars of this Realme. [196]

In 1605 the Munster councillor Sir Francis Barkley joined the chorus of complaints when he pointed out that collectors were endeavouring to extract more rent from his land in Connello, Co. Limerick, than was authorised in his patent (3d. per acre for arable land and ½d. per acre for waste).[197]

The citizens of Co. Limerick were right to be concerned as, aside from the increased burden on themselves, the eventual destination of the cash was a cause of disquiet. In 1621 the clerks of the fines were implicated in over-levying for the horse and foot that attended the collectors, charging excessive fees, and poor record-keeping which resulted in double-charging.[198] Revealingly, the clerk responsible for collecting fines in Munster had not rendered an account for several years.[199]

Captain Robert Morgan was appointed first collector and receiver general of the composition for the province of Munster on 8 September 1604,[200] a post which he held until 1616 when, on Morgan's surrender, it was bestowed on Sir Richard Moryson.[201] Table 3 (h) below shows that the collectors were a mixture of New English, Old English and a few Gaelic Irish. The prevalence of New English names, several of a high rank, shows that these posts were worth competing for. An interesting name is that of William Regane (or O'Regan) whose family were

[196] Undated petition; order of lord deputy dated 10 February 1603/4, BL, Harleian Ms. 697, fol. 17v.
[197] SP 63/217/103.
[198] Grosart (ed.), *Lismore Papers*, 2, iii, p. 5, no. 9.
[199] SP 63/223/33.
[200] *C.P.R.Jas.I.*, p. 57; Erck, i, pt. i, p. 126, no. 28; Bod. Lib., Carte Ms. 61, fol. 178; *Lib. Mun.*, vol. I, part II, p. 144.
[201] Morgan's surrender of the post was first mooted in February 1615/6. John Ridge, his attorney, surrendered the post on his behalf on 26 April 1616. Moryson received the office on 4 May, *C.P.R.I.Jas.I.*, pp. 302, 305.

collectors for the MacCarthy Reagh of Carbery, Co. Cork, since at least the last decade of the sixteenth century.[202]

Table 3 (h): Collectors

Name	Duty	Name	Duty
Munster			
Sir Richard Aldworth	court fines	Daniel MacFinnan	Tralee walls
Sir Richard Boyle	subsidy	Donnogh McShane	Bandon walls
Matthew Butler	composition	John O'Connor	Tralee walls
Maurice Hurley	crown rents	Daniel O'Sullivan	Bandon walls
John McRobiston	council fines	Edmund Roe	Tralee walls
Edw. Merriweather	composition	Christopher Walsh	composition
Cap Robt Morgan	composition		
Wm. Morgan	composition		
Sir Rich Moryson	composition	**Limerick**	
Morogh O'Brien & son	composition	Nicholas Barham	crown rents
Earl of Thomond	crown rents	Edmond Boggodd	sessions house
Clare		Philip Butler	court fees
John Davies	composition	Piers Butler	court fees
Rowland Delahoyde	court fees	John Oge Fitzgerald	sessions house
Earl of Thomond	composition	Patrick Kearney	Bandon walls
Cork		Samuel Norton	Bandon walls
John Archdeacon	compositon	Dominick Roche	prince's aid
? Barrett	subsidy	Edmund Sexton	prince's aid
Garret Barry	prince's aid	Richard Smith	composition
John Fz.D. Barry	Barrymore rents		
William Bodley	subsidy		
Robert Carew	prince's aid	**Lib & Cross Tipp**	
William Casie	subsidy	John Butler	composition
Walter Coppinger	Carb. beef/compos	Philip Butler	court fees
John Courtaine	subsidy	Piers Butler	court fees
James FitzGerald	prince's aid	Thomas Cantwell	composition
James Foster	Bandon walls	Walter Hacket	courthouse
Danl McCarthy R.	Carb. beef/compos	John Lancaster	church bldgs
Teige McCarthy	Carb. beef/compos	Dominick Lynch	Carrick
Walter Nagle	Bandon walls	Teige McGrath	Carrick
Daniel O'Donovan	Carb. beef/compos	James Prendergast	composition
Sir F. O'Driscoll	Carb. beef/compos		
William O'Regan	Carb. beef/compos		
Robert Travers	subsidy (eccl.)		
Dominick Tyrry	subsidy		
Robert Waters	subsidy (Barrymore)		
Kerry		**Waterford**	
Robert Blennerhasset	Tralee walls	James Butler	Bandon walls
Andrew Bowdler	Tralee walls	Philip FitzDaniel	Bandon walls
Valentine Browne	Tralee walls	Sir John FitzGerald	prince's aid
James Cnoude	Bandon walls	Richard Nugent	Bandon walls
Philip Croneen	Tralee walls	Evan Owens	subsidy
William Fitzgerald	Tralee walls	Richard Power	Bandon walls
Richard Hardinge	Tralee walls	Walter Power	Bandon walls
Baron of Lixnaw	crown rents	William Power	Bandon walls
Morugh McConor	Bandon walls	Nicholas Roe	composition
Owen McConor	Bandon walls	Richard Smith	composition
Gerlught McDermod	Bandon walls	Salamon White	Bandon walls
Sources: BL, Harleian Ms. 697; SP 63/234/18E; NLI, 13,236; NAI, Ferguson ix, xi, xii; Chatsworth, Lismore Mss.; Manchester of Kimbolton Castle Collection, DDM 70/13; *C.P.R.I.Jas.I.*; *CSPI, 1615-25;* Grosart (ed.), *Lismore Papers*, 1, i; *Ir. Fiants*; Anon., 'Kerry History and Antiquities, The Walling of Tralee', *K. Arch. Mag.*, vol. 2; M. F. Cusack, *A History of the Kingdom of Kerry*			

The table shows the range of demands on the continually-stretched pockets of the populace. While some concerns like the walls of Bandon (financed with an

[202] Patrick J. O'Flynn, 'Gaelic Lordships in the early modern era: Twilight of the O'Mahonys of Kinelmeaky and the MacCarthy Reaghs, Lords of Carbery (1579-1641), (MA thesis, NUI Cork, 2004), p. 17.

imposition of 5s./ploughland in Munster[203]), the projected walls for Tralee (to be financed by levy of 5s./ploughland in Cos. Kerry and Desmond[204]), and benevolence money for the town of Carrick (because of 'great losses and spoils, as well by ill-affected persons as by fire'),[205] would be considered local concerns it is probable that the collectors, as professionals, were also involved in other money-raising concerns. Given that Capt. Smith needed 20 deputies to execute his office in Co. Limerick this would imply a figure of 120 who would have done the leg work in the whole province (including Co. Clare) for composition alone. The table does not reflect these numbers.

As seen in Chapter 2, the *ad hoc* system of appointing collectors gave rise to confusion and tension among the various officials. In an effort to bring some order to the process the exchequer court ordered the collectors, on 17 June 1607, to

> make their severall accompts of their Balliwicks in Court before the Barrons as they were anciently accustomed to do; the same to be made upon their oaths.[206]

The council of Munster, having sought the advice of the assizes judges, stepped in on 28 August 1607 with a list of central locations where rents and composition could be paid on predetermined dates:[207]

Table 3 (i): Rent collection locations suggested by the Munster Council

Rent	Due	Counties	Location & date
Exchequer	Easter	Cork, Limerick, Kerry & Desmond	Mallow, 25-31 May
		Waterford, Liberty & Cross of Tipperary	Clonmel, 2-9 June
	Michaelmas	Cork, Limerick, Kerry & Desmond	Mallow, 30 Nov-6 Dec.
		Waterford, Liberty & Cross of Tipperary	Clonmel, 8-14 Dec.
Composition	Midsummer	Cork, Limerick, Kerry & Desmond	Mallow, 4-11 Aug.
		Waterford, Liberty & Cross of Tipperary	Clonmel, 13-19 Aug.
	Michaelmas	Cork, Limerick, Kerry & Desmond	Mallow, 30 Nov-6 Dec.
		Waterford, Liberty & Cross of Tipperary	Clonmel, 8-14 Dec.

What is particularly noticeable in this schedule is that the collection points were fixed and that people from Limerick, Kerry and Waterford were always expected to travel.

[203] Michael MacCarthy-Morrogh, 'The Foundation of Bandon, Co. Cork', *JCHAS*, xci, Jan-Dec. 1986, p. 58.
[204] Anon., 'Kerry History and Antiquities, The Walling of Tralee', *Kerry Archaeological Magazine*, vol. 2, pp. 221-27.
[205] Each city and corporate town was to appoint 2 people as collectors, *CSPI, 1611-14*, pp 407-8.
[206] NAI, Ferguson xi, p. 76.
[207] BL, Harleian Ms. 697, fol. 185v. Co. Clare is not mentioned in this list.

The use of soldiers (as already mentioned in the section on composition in Chapter 1) in the collection of rents and fines was a perennial problem. The locations above were recommended precisely because the collectors were often

> assisted w*i*th Diu*er*s soldiors and kearne for the Leavieng of the same w*hi*ch haue by their greevious extortions and wronges Discontented and endamadged the said p*ar*ties more then by Lawe or equity was Justifiable.[208]

Constantly exhorted to replenish the king's leaky coffers the government instituted a new system in 1616 when high-profile personalities were appointed collectors. As already noted Sir Richard Moryson succeeded Captain Robert Morgan, collector of the composition in Munster, in May of that year. The earl of Thomond was responsible for the collection of the composition in Co. Clare and the king's rents in Munster. Sir Richard Aldworth, provost marshal of Munster, was appointed a 'special collector' in June to collect court fines of Lent assizes, four courts and star chamber in Counties Waterford, Limerick, Tipperary, Liberty of Tipperary, Cork, Kerry and City of Cork.[209] All of these new appointments were to soldiers thus giving legitimacy to what had been the illegal practice of using soldiers in the collection of fines. Their high profile also demonstrated the profitability of the collection exercise. Collectors had been forcing payees to given an additional 11s. on each £1 due. This sum was matched at the exchequer when the accounts were settled. In other words each collector made a profit of £1. 2s. for every £1 collected. It was November 1623 before the exchequer closed this loophole by ordering that

> the Clarke of the Pipe shall give noe allowance of 11s ster. in the pound to any sheriffe or Collector of the said Casualty before such sheriffe and Collector doe first make oath before one of the Barrons of this Courte that he hath not leavied soe much over and above the some written unto them of the parties liable to the same.[210]

The 1616 appointments also gave these members of the establishment an opportunity to 'cook the books'. They

> Deteyne the King's Rents to pay themselves, and are to themselues no less then Threasurers at Warres, whereby it cometh to passe principally that noe parte of the Remaynes have come in spetie to the

[208] Ibid.
[209] SP 63/234/18E; NLI, Ms. 8013 (iii); *CSPI, 1615-25*, pp. 127, 389.
[210] NAI, Ferguson ix, p. 280.

> handes of the Thresaurer at Warrs nor the same equally shared amongst the souldiors or pencioners as of right ought to be.[211]

A proclamation of 3 March 1620/21 brought another charge to be collected – the alehouse licence fee of 3s. 6d.[212] The clerk of the peace, or another appointed by the *custos rotulorum*, was to be the collector. To discourage bribery the collector was to receive £5 per annum from the money collected for which he would be allowed on his accounts.

So great was the burden on the province of all these collectors that it was proposed that the people themselves appoint their own as the citizens of Co. Limerick had suggested in 1603. This would result in the monarch receiving more revenue and the burden of soldiery being removed from the people. This strategy had been followed by the freeholders in Carbery in 1610,[213] and the 1622 commissioners recommended it for the whole province alluding to the custom in some parts of Connacht.[214] The wheel had come a full circle when sheriffs were cited as being the proper authority to collect the composition and all other fines[215] but soldiers were still being used in Co. Kerry by Sir Thomas Roper in 1625 which reportedly caused the 'utter undoing' of one particular landowner.[216] The first of the king's 'Graces' of May 1628 instructing that

> our soldiers there be called in and limited to the most serviceable garrisons, and that they be not called from thence upon any pretence but against the enemy

remained a dead letter. In the 1630s soldiers continued to be used to collect rents and 'meat and money' from the populace.[217]

Coroner

The coroner, next in rank to the sheriff though inferior to him, was one of the officials whose duty it was to keep the peace,[218] and he reported directly to the assize court.[219] Some historians believe that there were two in each county but there were six

[211] NLI, Ms. 8013 (iii); Treadwell, *Commission*, p. 432. The accounts of the earl of Thomond (like those of Sir Charles Coote in Connacht) were defective. He neglected to pay the full composition in Co. Clare. He underpaid £38. 7s. 8½d./annum for 7 years, BL, Add. Ms. 4756, ff. 40v-41; NLI, Ms. 8013 (iii); Treadwell, *Commission*, p. 319.
[212] BL, Harleian Ms. 697, ff. 85v-87r.
[213] Ibid., fol. 96r. See Chapter 1, composition section.
[214] Treadwell, *Commission*, p. 351.
[215] SP 63/223/33; Grosart, *Lismore Papers*, 2, vol. III, p. 5, no. 9.
[216] NAI, Ferguson ix, p. 329.
[217] Clarke, *Old English*, pp. 238, 57.
[218] Molloy, *Justice*, p. 2.
[219] Herrup, *Common Peace*, p. 47.

coroners in Co. Wexford in 1608.[220] In England, as in Ireland, the officer was elected in the county court and in England there were four in each county. He kept a record of deaths and injury, of wreck and treasure trove. After viewing a body (*super visum corporis*) an inquest was required before a jury of not less than 7, or more than 11. This requirement does not appear to have held in Ireland as one of the few extant inquest reports was held before 13 jurymen.[221] An inquisition post mortem held in Clonmel, Co. Tipperary, in November 1624 also had a jury of 13 – the mayor being coroner.[222] If a jury returned a verdict of murder, manslaughter or infanticide against a named person this was equivalent to an indictment. A coroner could also bind over witnesses to appear at a subsequent trial.[223] The decision of the coroner's court could be overturned by the assize as happened in 1607 when Piers Butler of Co. Tipperary was found guilty of the manslaughter of Richard Grace in the coroner's court but guilty of murder in the assize 'by the labouring of som of Grace his kynesmen & allyes'. Sir Richard Moryson, then joint commissioner of the province, was approached by Butler's father, Lord Dunboyne, for a pardon. Sir John Everard, whose opinion was sought by the lord deputy, recommended mercy.[224]

In the event that a sheriff was suspected of a crime the coroner would temporarily assume his duties.[225] Coroners themselves were not above corruption. Refusing to hold an inquest without a fee, refusing to view a body unless induced to do so or, in extreme cases, neglecting to answer a call to an unexplained death were some of their dishonest practices. A notorious, but perhaps typical, case was the suicide of Edward Apsley in January 1595 whose two sisters Mary and Joan were his co-heiresses. Richard Boyle, then deputy-escheator and endeavouring to get a foothold on the ladder of success, was approached and, in return for failing to claim the lands in Co. Limerick and Co. Tipperary for the queen, received the hand of Joan in marriage. This marriage, as he acknowledged, formed the basis of his fortune. The coroner's jury was persuaded to find a verdict of death by misadventure.[226] This type

[220] Steven G. Ellis, *Reform and Revival, English Government in Ireland, 1470-1534* (London 1986), p. 204; *CSPI, 1606-08*, p. 618.
[221] SP 63/163/121; Ellis, *Reform*, p. 204.
[222] McGrath, *Clonmel*, fol. 4r.
[223] Burke (ed.), *Jowletts*, i, p. 472.
[224] Huntington Library, San Marino, Hastings Irish Papers, 2/HA 16100.
[225] On 10 November 1619 the exchequer court ordered an unnamed coroner to attach Edward Povey, sheriff of Co. Roscommon, for contempt, *Ferguson xii*, p. 18; Michael Dalton, *Officium Vicecomitum*: *The Office and Authoritie of Sherifs* (1610, Reprinted 1985), pp. 41v-42.
[226] Ranger, 'Richard Boyle', p. 275.

of manipulation was not unusual. When Robert Newcomen, probably one of the New English family who provided many government officials in Ireland, was indicted for the murder of Patrick FitzWilliams, an Anglo-Irish army officer, the king ordered that he be tried before a jury of Protestants. Found guilty of manslaughter, he received a pardon in 1628.[227] An entirely different case concerned the murder of Adam Tobin, sheriff of Co. Tipperary 1607-8. At an assize held before Lord President Brouncker and Sir Nicholas Walsh, and taking into account the coroner's inquest, the leading local landowner Richard Purcell, baron of Loghmoe, was acquitted of murder but found guilty of manslaughter.[228]

As in England, the dearth of documentation precludes an examination of the coroner at work in Munster.[229] The only coroner whose name has come to light for the period under review is Daniel Oge Hickey who was appointed by Edmund Sexton, sheriff of Co. Limerick, on 9 August 1615.[230] This appointment appears to be contrary to the custom in England where the coroner was chosen by all the freeholders.[231] As with all other posts, having an official in one's pocket was par for the course. In April 1622 the earl of Cork approached the lord deputy's secretary (Francis White) to secure the appointments as coroners of his ward Lord David Barry (of Co. Cork), and Sir John Dowdall (of Co. Limerick).[232] Thomas Fitzgerald was also a coroner in Munster at this time but, given the incidence of this surname, it is not possible to say in which county he served.[233]

The 1622 commission did not focus much on coroners but implied their neglect when it suggested that the clerk of the crown should send a *certiorari* to each coroner to return presentments to the king's bench which, in turn, would estreat them to the exchequer so that sheriffs could be charged with the goods of felons and deodands.[234]

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[227] *CSPI, 1625-32*, p. 324; *C.P.R.I.Ch.I.*, p. 395.
[228] SP 63/219/150; ibid., 221/21; *CSPI, 1606-08*, p. 47.
[229] Ellis, *Reform*, p. 203; J. A. Sharpe, 'Domestic homicide in early modern England', *The Historical Journal*, 24, I (1981), p. 33, n. 20; Lawrence Stone, 'Interpersonal violence in English society 1300-1980', *Past and Present*, 101 (1983), pp. 25, 28.
[230] NLI, Ms. 16,085, p. 65.
[231] Dalton, *Authoritie of Sherifs*, p. 169. The coroner's oath is at p. 169v.
[232] Grosart (ed.), *Lismore Papers*, 1, ii, p. 41.
[233] Ibid., p. 48.
[234] NLI, Ms 8013 (iii), p. 12.

Escheator

The escheator, a crown officer appointed by the lord deputy to care for the escheats[235] due to the monarch, was another official subject to the authority of the presidency.[236] The escheator in England was an annual county appointment but in Ireland, prior to 1605, the office of escheator and feodary of all Ireland was a permanent position invested in one person attached to the court of exchequer. The division of the office in 1605 provided for an escheator in each province but the officer did not have authority in any city or town with a charter.[237] The revamping of this office was part of the Stuart resuscitation of dormant feudal incidents in Ireland (also in England) whose purpose was to raise revenue for the monarch. In Ireland it had the additional aims of anglicising and Protestantising the population. It caused great unrest in Munster as it affected mainly the indigenous population who held their land by knight service (also called *in capite*) which required heirs to pay, *inter alia*, annual homage and to sue out livery before inheriting their estates.[238] Suing livery involved taking the oath of supremacy. Those failing to do so could have their lands confiscated. It was regarded as an anti-Catholic stratagem to which the New English, who held their lands by common socage, were not subject. Early in the reign of James I another layer of official, deputy-escheators, received commissions to enquire of 'wards, marriages, escheats, concealments and forfeitures and the like'. Sir John Davies described the result in Munster

> They retire to an obscure village to execute their commission and there have a simple or suborned jury find one man's land concealed, another man's lease forfeited for non-payment of rent, another man's land holden by the king and no livery sued and the like; this done they never return their commission but send for the parties and compound with them, and so defraud the King, and make a book and spoil upon the country, so that it may be conjectured by what means one that was lately an escheator clerk is now owner of as much land here as few of the Lords of Ireland may compare with him.[239]

[235] Property which reverted to the monarch due to death of an heirless crown tenant, or an outlaw, Burke (ed.), *Jowletts*, I, pp. 719-20.
[236] BL, Harleian Ms. 697, ff. 146v, item 11; 89v; 165v, item 22; 119r, item 19.
[237] Clonmel's charter specified that the mayor be escheator, (Bickley (ed.), *Hastings,* IV, p. 33). In Cork city the mayor and corporation were to elect the officer, (Erck, Vol. I, Part II, p. 624).
[238] Aidan Clarke, *The Old English in Ireland, 1625-42* (London, 1966), p. 32.
[239] SP 63/216/4; *CSPI 1603-06*, p. 145.

This last remark could describe Edward Becher first escheator for Munster. Appointed in January 1605/6,[240] by July 1607 he had accumulated 12 plots of land in Co. Cork and 16 plots in Co. Tipperary. Some were valued at as little as 3s. (the highest was £2. 8s.) and the total crown rent was £22. 12s. 4d.[241]

A further revamp of the office in 1616 detached the office of feodary from that of escheator with one being appointed to each province. Table 3 (j) shows that these posts were not strictly provincial. Some counties were hived off for a particular officer while Co. Clare was usually included with Connacht and even, at one stage, with Leinster.

Table 3 (j): Escheators & Feodaries

Name	County	Date mentioned
Nicholas Barham	**E** Munster (dep)	Jan 1617/8
Edward Becher	**E** Munster	Jan 1605/6
Robert Bert	**E** Munster	22 October 1621
Thomas Cave	**E** Munster	25 November 1617
Edmund Coppinger	**E** Munster	1608/9?
Michael Cormick	**E** Thomond	1606
Walter Cotterell	**F** Limerick	1620
Roland Davenport	**F** Limerick	Jan 1621
Roland Delahoide	**F** Clare [& Conn]	1617
Gilbert Dobbe	**E** Munster	10 December 1612
John Evans	**E** Clare (dep)	1619
Edward Kendall	**E** Limerick & Kerry	1616?
Nicholas Kenney	**E** & **F** Clare [& Leinster]	8 October 1606
John Merrike	**F** Clare [& Conn]	1617
Philip Percivall	**F** Limerick & Cork	1624/1632
Anthony Perse	**F** Clare [& Conn]	pre 1617
George Robinson	**E** Cork	12 October 1603
John Southwell	**F** Munster	2 December 1617
William Starkey	**F** Clare [& Conn]	1617
Walter White	**E** Clare	1623
William Wiseman	**E** Tipp., Kerry, Limk, Waterfd	1 May1622

Sources: Bod. Lib., Carte Ms. 62; NLI, Ms. 13,236, NAI, R.C. 17/4, Ferguson ix, xi, xii, M.7008; *C.P.R.I.Jas.I; Lib.Mun.*, vol. I, part II, p. 57; *Ir. Fiants;* Ainsworth (ed.), *Inchiquin*; Byrne, *Liber*.

Legend: **E** = escheator; **F** = feodary

The escheator worked closely with a surveyor who valued targeted land before holding an inquest of office (or inquisition). An inquisition was an inquiry, made by a jury under oath, of the estate of a person found guilty of treason, declared an outlaw, or suspected of having concealed land. The inquisition which followed death was called an inquisition *post mortem.*[242] The purpose of an inquisition was to prove that

[240] *Lib. Mun.* I, pt. II, p. 57; Victor Treadwell, 'The Irish court of wards under James I', *IHS*, xii, no. 45, March 1960, p. 12.
[241] SP 63/220/ff. 78v-80r, 98v-102v.
[242] Treadwell, 'Court of wards', p. 3.

the land in question emanated from the monarch; to identify antecedents and heirs as the heirs were held responsible for any alienations of land without crown permission.

Management of inquisitions was crucial in finding title for the monarch and necessitated careful selection of juries. The escheator also needed instruction. When the English heir to a Co. Cork estate (of which the Condon family felt unjustly deprived) was a minor William Wiseman was advised how to 'find young Fleetwood a ward':

> You must carry it [the inquisition] warily and with some secrecy. You must find Thomas Fleetwood to die seised of as much as you can … The child is now like to be carried away into the hands of his uncle, a papist, and which we must endeavour to prevent … The Particulars this bearer will inform you of, who, with us, aims at nothing so much as to preserve the boy and his estate. [243]

Should the escheator be unable to control a local jury the inquiry could be moved to the exchequer court as was the inquisition *post mortem* of Lord Bourke of Castleconnell. In default of a satisfactory local inquiry, the exchequer court summoned Limerickmen then in Dublin and held the inquisition with 13 jurymen who attended under pain of a £200 fine. Under such intimidating conditions it is not surprising that the office was found for the monarch. The wardship of the heir, Edmond Bourke, was granted to the Munster councillor Sir Laurence Esmond.[244]

Commissions, to hold an inquisition, issued from chancery and the record of the inquisition was returned there but, since the purpose of an inquiry was to enforce the financial rights of the crown, the record (in theory) should also have been communicated to the exchequer. In England a duplicate of the inquisition was lodged in the exchequer but this was not done in Ireland so that it was a matter of luck where inquisitions were lodged.[245] On 8 May 1607 the exchequer court tried to force the escheators and their deputies to return their inquisitions into court.[246] Six years later offices were still either being retained by escheators or else a judgement, contrary to the findings of the jurors, was returned.[247] Nevertheless, in December 1619 'all manner of offices' were lodged in the court of chancery which meant that the court of exchequer 'is much prejudiced' and the chief baron ordered:

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[243] *Egmont*, Vol. I, Part I, p. 69. The Condon court battle is at BL, Harleian Ms. 697, ff. 3r-5v.
[244] NAI, Ferguson xi, pp. 220, 224, 230, 232, 235, 237.
[245] Margaret C. Griffith, *Calendar of Inquisitions formerly in the office of the Chief Remembrancer of the Exchequer prepared from the mss of the Irish Record Commission*, (IMC 1991), p. vii.
[246] NAI, Ferguson xi, p. 63.
[247] SP 63/232(1613)/15; *CSPI, 1611-14*, p. 378.

> It is thought fitt by the Court & soe ordered that all offices from henceforward of any land not exceeding the quantitie of two qtrs or 2 ploughlands shalbe found *virtute officij*[248] or by Comissions out of the Exchqr as aforesaid and not by the generall Comissions out of the Chancerie.[249]

Escheators were no different from other officials and, in Munster as well as in Connacht, they made the most of the opportunities at hand.[250] Munster, in the person of Sir Richard Boyle, had a potent example of the possibilities for power and wealth in the office.[251] Securing a wardship was an important step on the road to prosperity and any English Protestant, no matter how lowly, was the preferred option when the alternative was an Irish Catholic. It provided wealth (he used the profits of the ward's estate for himself) and, more importantly, he had control over the marriage of the ward – usually to one of his own daughters. In this way he could have his own circle of influence which, properly managed, could be the basis of a fortune. Randall Clayton, clerk of the council, obtained his first wardship in 1609.[252] John Evans, deputy in Co. Clare, acquired several wardships and leased unliveried estates. The greatest exponent of the enriching official was Philip Percivall who had two wards by the age of 19, built up a fortune in various counties in Munster where he acquired over 20,000 acres in Co. Cork, made his home at Burton, Co. Cork, and was grandfather of the first earl of Egmont.[253] In addition, the province in the early years of the seventeenth-century was fertile ground for identifying land concealed either accidentally or intentionally. Astute surveyors described untended land as 'waste' with a value of 10s. per acre. Within a few years peace would make the same land worth £100 per acre, but the escheator still retained it in his 'book' at 10s. The Commission for Remedying Defective Titles of 1606[254] was intended to benefit the owners of land but it provided increased opportunities for escheators to enrich themselves.[255] The negligence, or ignorance (even collusion), of superior officers did not help to redress matters with resulting loss of revenue to the crown,[256] and

[248] By virtue of his office, Black, p. 1571.
[249] NAI, Ferguson xii, p. 25.
[250] Cunningham, 'Political and Social Change', p. 61.
[251] For Boyle's early career see: Ranger, 'Richard Boyle'.
[252] Curtis, 'The Claytons', p. 22.
[253] Treadwell, *Commission*, p. 170; *C.P.R.I.Ch.I*, *passim*; *Oxford DNB*, 43, pp. 661-2.
[254] Clarke & Edwards, 'Pacification, plantation', *NHI*, iii, p. 206, viii, p. 223; Treadwell, *Buckingham*, *passim*; Grosart (ed.), *Lismore Papers*, 2, iii, no. 27.
[255] Ranger, 'Richard Boyle', p. 284.
[256] SP 63/221/1/1.

continued aggravation to the owners.[257] One of the deceptions used by escheators was to compound with tenants holding land *in capite* to have it returned as common socage:[258] the tenants could retain their land by handing over some to the escheator. In 1614 it emerged that Becher, and other officers, were guilty of pocketing fines levied on jurymen who failed to attend when summoned, and the exchequer court ordered

> that the said Escheator of the said province of Mounster … shall dulye hearafter estreate into this Court all such fynes & amercym*en*ts as they and ev*er*y of them shall impos*e* upon any person or persons making default or not appearing before them to enquire for o*u*r said sovraigne Lord the Kings Matie as aforesaid.[259]

Several Munstermen fought the injustices in the exchequer court. The heirs of Henry White of Clonmel succeeded in recovering their possessions in 1609 when Mr. Calthorpe, then attorney general, confessed that 'the traverse did fall out for the subject'.[260] James fitz Michael Hoare[261] of Dungarvan, whose lands had been seized on foot of an inquisition *post mortem*, claimed that the lands were held by socage. His case was examined by attorney-general Sir John Davies.[262]

These challenges to the abuse of the escheator's office could only be undertaken by those with sufficient wealth. For the majority there was no recourse, and the flood of complaints about the officers by both those in authority (as mentioned above) and by the Catholics gathered pace. The recusants' complaints addressed to the Lord Deputy in 1613[263] cite, *inter alia*, the low rates at which some lands were valued resulting in recent immigrants holding larger estates than those who had been in the country for centuries.[264] It was alleged that escheators and their deputies on finding concealed lands

> either compound with the owner of the land and shew him how to avoid the king's advantage and to secure himself, or discover the same

[257] The conduct of escheators figured high on the list of the 1613 recusant grievances, SP 63/232(1613)/15.
[258] Huntington Library, San Marino, Hastings Irish Papers, HA 15059.
[259] NAI, Ferguson ix, p. 167.
[260] NAI, Ferguson ix, pp. 96-7.
[261] There are several references to the Hoares in the Council Book of Munster (BL, Harleian Ms. 697, ff. 54v, 124r, 159r).
[262] NAI, Ferguson xi, p. 275. Other examples of successful challenges were: MacCarthy of Muskerry, Co. Cork, (NAI, Ferguson xi, p. 281); Morrogh Roe O'Kennedy of Ballyhinnikin, Co. Tipperary (ibid., xii, p. 15); the McNamara family of Co. Clare (ibid., xi, p. 199); Nicholas FitzThomas Power of Co. Waterford (ibid., ix, p. 178).
[263] Bod. Lib., Carte Ms. 61, fol. 66; SP 63/232(1613)/15; *CSPI, 1611-14*, pp. 373-81.
[264] Recusant disorder no. 13, SP 63/232(1613)/15.

> to some courtier or powerful man, and they obtain it from the king and sell it to the officers or some other to the officers' use upon cheap terms.[265]

Another abuse was taking inquisitions in a 'foreign country', that is in a county other than the location of the land. This was the complaint of Fitzgerald of Fernan, Co. Waterford, to the exchequer court when the inquisition was the sole record of the king's title.[266]

In 1617 it was noted that many escheators had the office of feodary included in their grant. This was regarded as a conflict of interest but the officers were 'headstrong and unwilling to divide those places, as being their right by letters patent' and it was a struggle to 'reduce them to conformity'.[267]

The 1622 commissioners devoted six of their recommendations to the office of escheator and feodary. In fact they unsuccessfully suggested that the latter office be abolished. The king's 'Directions' ordered, *inter alia*, that the parties to an inquisition be informed in advance, that the officers take the oath of supremacy and be 'men of qualitie', that an incalcitrant jury be dealt with by the courts of justice within a limited time frame, that inquisitions be returned within a month, and that dormant commissions be recalled and no more to be granted.[268]

The ability of the authorities to control the officers must be questioned. In the mid 1620s the Council of Munster warned of the 'dangerous state of the province' as soldiers were roaming around with 'assignments charging people who don't owe money … to [the] escheators'.[269] Several of the 'Graces' of 1628 offered some relief. To enable Catholics to legally inherit their estates the oath of allegiance replaced the oath of supremacy in December 1628 and resulted in a flood of liveries from 1629.[270] Compositions for a range of proceedings, including liveries and intrusions, were 'limited to an eighth part of the true value of the lands' rather than the yearly value.[271]

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[265] O'Brien (ed.), *Advertisements*, p. 46.
[266] The court remarked: 'Mr. Becher can make good this tenure for the Kinge by an ancient record', NAI, Ferguson ix, p. 96. Again in Waterford on 12 February 1607, re intrusions by Prendergasts, the office, having been taken in a foreign county, was deemed insufficient to find tenure for the complainants Jeffrey Prendergast and Hercules Langford, ibid., xi, p. 105.
[267] *CSPI, 1611-14*, pp. 172, 203.
[268] Hand & Treadwell, 'His majesty's Directions, 1622', pp. 202-04, 206.
[269] *CSPI, 1625-32*, p. 123.
[270] Clarke, *Old English*, pp. 57-9, article no. 15 contains the wording of the oath, pp. 242-3.
[271] Ibid., no. 16, p. 243.

This provided some respite for the Catholic gentry but for those who had already lost their lands through the machinations of the escheators and feodaries it was too late.[272]

Other local government posts

Other minor offices like the clerk of the crown and peace (in England called the clerk of the assize) and the clerk of the market (suspected of hindering rather than benefitting the public[273]), though they might seem lowly, were the very bedrock on which the upwardly mobile could make social advances courtesy of the new or revitalised local government posts in Munster. Randall Clayton, for instance, was clerk of the crown in Co. Kilkenny in 1608 before moving on to the powerful post of clerk of the council of Munster (see Chapter 2). The duty of the clerk of the crown (and peace) was to keep a register of all writs, bills, files, records and rolls,[274] to prepare the indictments at the assizes,[275] and at the quarter sessions.[276] The fees were noted in the Council Book on the 18th August 1604 as if these were two separate posts, but they were held by one person.[277] In February 1623/4 the 'negligence' of these clerks in preparing documentation was severely criticized by the exchequer. This laxity meant that the sheriffs could not collect fines estreated in the courts and the clerks would, in the future, be called to the exchequer to answer for their shortcomings.[278] The following table, compiled alphabetically, shows the extant names of the clerks and their deputies for the period under review. The position of William Osborne is not clear – he could have acted as deputy or attorney for other family members. The table is a good example of how posts provided opportunities for families.

[272] Recusant disorder no. 4, SP 63/232(1613)/15.
[273] Grosart (ed.), *Lismore Papers*, 2, iii, p. 10.
[274] *Lib. Mun*., vol. I, pt. II, p. 167.
[275] David M. Nolan, 'The Co. Cork Grand Jury, 1836-1899' (MA Thesis, UCC, 1974), p. 5.
[276] Ibid., p. 6.
[277] BL, Harleian 697, ff. 33v-34r, 35v.
[278] NAI, Ferguson ix, pp. 287, 248.

Table 3 (k): Clerks of the Crown and Peace

Name	Place	Date Mentioned
Sir Allen Apsley	Munster	June 1603
Michael Apsley	Munster	pre June 1603
Richard Archdeacon	Munster	18 Aug 1603
Pires Butler	Co. & X Tipp	April 1621
Henry Clare & Henry Harte	Co. Clare	20 Aug. 1628
Lawrence Clayton	Co. Waterford	1629
Richard Connell	City & Co. Cork	28 May 1617
Henry Cooke	Munster	16/17th c.
William Greatrakes	Munster	16/17th c.
John Hart	Co. Clare	8 Oct. 1629
Thomas & Collowe Joye	Co. Kerry	26 October 1616
Nicholas Newman	Co. Tipperary	January 1616/7
Lawrence Parsons	Munster	10 March 1603/4
Wm. Sysman	Cos. Cork/Waterfd.	26 May 1625
Nicholas & John Osborne	Co. city Limk, Lib & X Tipp	January 1629/30
Sir Richard & Henry Osborne	Co. city Limk, Lib & X Tipp	3 Oct. 1616
Osborne, Wm.	Tipp	23 Feb 1623/4
Evan Owens & Wm. Wiseman	Cos. Cork/Waterford	4 October 1616
George Shee	Liberty of Tipp.	January 1615
Robert Tyrry	Munster	c. 1603
Sources: BL, Harleian Ms. 697; *Ir. Fiants*; *Lib. Mun.*, vol. I, pt. II, p. 170; *C.P.R.I.Jas.I.*; *C.P.R.I.Ch.I.*; Byrne, *Liber*; Caulfield, *Cork*; Ainsworth, *Inchiquin*; NAI, Ferguson ix, xii; Edwards & Empey, 'Tipperary liberty ordinances'; McGrath, *Clonmel*.		

Another useful minor post was clerk of the market who kept an eye on the markets and fairs that were springing up in Munster, the earliest documented being those approved for Kilmacthomasin, Co. Waterford in early December 1605.[279] Markets and fairs had an economic as well as a social purpose and rendered Munster more familiar for new immigrants. They were included in the jurisdiction of the president of Munster from January 1608/9 who was advised to ensure that the markets were supported and 'to haue great regard that the Clearck of the m*ar*kett carefully attend his office w*i*thout oppressing of the Subiectes'.[280] The post was reorganised in 1605 when the single appointment for the whole of Ireland was substituted with one clerk in each province. Henry Hynsman was the first clerk in Munster. Under the name of Harold Kinseman he had been paymaster for Munster in the first years of the seventeenth century,[281] and in his new post was estreating fines into the exchequer by 1609.[282] Hynsman was succeeded by Matthew Butler in February 1609/10, by Nicholas Mouncton in May 1618 and by the joint appointment of John Harward and

[279] *C.P.R.I.Jas.I.*, p. 85; BL, Egerton 76, fol. 160.
[280] BL, Harleian Ms. 697, ff. 166r, item 30; 168v, item 58; 121r, item 35.
[281] BL, Add. Ms. 4756, fol. 26v; BL, Harleian Ms. 697, ff. 44r, 45v, 47v, 49r, 50v, 51r; Treadwell, *Commission,* p. 261.
[282] NAI, Ferguson ix, pp. 75, 77, 95.

Hugh Richardson in October 1623.[283] In March 1617 the president and council issued their own instructions to ensure that the clerks standardised weights and measures within the province.[284] The nuisance factor of the clerks was a concern for the 1622 commissions.[285] Instructions of 1623 limited their courts to two per barony per annum. The jurisdiction of these courts was the 'assize of bread, ale, and beer, the lawfulness of weights and measures, and the reasonable prices of all other victuals', and the fines were also limited.[286] Matthew Butler, Munster clerk of the market from February 1609/10-May 1618 held this and other posts concurrently while also acting as deputy to Sir Richard Moryson who was collector and receiver of the composition in Munster from 1616 (see Chapter 1).[287]

As already shown in Chapter 2, the council spawned a variety of clerks under the control of the clerk of the council. There were other opportunities in the local government and judicial sphere for similar posts. These humble posts, such as clerks of the various courts, had been filled by Irishmen but at some stage before 1615, on the instructions of the king, were destined for Englishmen. The clerks, intending to stay as briefly as possible in 'this beggarly kingdome', charged excessive fees and were willing to 'fordg[e]… a writt or revis[e]… a record'. Thus 'with the profit of two tearmes' they could repair their credit back home and return to 'Westminster hall'.[288]

Conclusion

The reinvigoration of local government structures was a major concern of the lord president. The establishment, or reconstitution, of a wide variety of officials such as constables, collectors, coroners, escheators, justices of the peace, and sheriffs shows that the administration of the province was organized to match that of England. The role of the sheriff, the king's representative, was still more important than his counterpart in England but his influence (though still paramount) was beginning to wane as the profile of the justice of the peace rose. Several types of clerk attending these officials and their courts provided a springboard to the upwardly mobile to raise their social profile. It is clear that the presidency of Munster had little control over

[283] *Lib. Mun.*, Vol. I, Pt. II, p. 145; *C.P.R.I.Jas.I.*, pp. 159, 368, 565,
[284] BL, Harleian Ms. 697, fol. 202v.
[285] BL, Add. Ms. 4756, fol. 27; Treadwell, *Commission*, pp. 10, 101, 262, 277.
[286] *C.P.R.I.Jas.I.*, p. 565.
[287] Butler was searcher for the port of Waterford from at least 1614-1617, Leeds District Archives, TN/PO 7/I/23, 24, 25.
[288] Huntington Library, San Marino, Ellesmere Ms., EL 1746, fol. 14, no. 11.

them. It has been difficult to put names on many of the officials – particularly the lower ranks. The cornering by the New English of posts having financial potential is striking, as is the exclusion of the Catholic indigenous gentry from participation in local government – their acceptance as justices of the peace, and infrequently as sheriffs, being a short-term measure. The absence of a strong controlling hand permitted corruption at all levels of the social strata and provided opportunities for self-aggrandisement for the landless for whom an official post was the equivalent of property. The perceived opportunities for wealth attracted the adventurous English. In the *Eldorado* of Munster any post, however lowly, was the launch pad to wealth and influence. This influx generated a vast array of nameless clerks who were described unflatteringly in the 1620s as

> sharks … of obscure fortunes, birth and quality… [who] do look more to their own ends than either to advance His Majesty's revenue or the public profit.[289]

The term 'sharks' could also be applied to the higher local government post-holders. What more can one say?

[289] O'Brien (ed.), *Advertisements*, p. 15.

Conclusion

At the death of James I in March 1625 an unobservant commentator might have viewed the monarch's governance of the province of Munster as a victory for colonial policy and the Stuart peace. And there were things to applaud – the re-vitalisation of local government structures and the re-establishment of judicial institutions such as the provincial court, the assizes, and quarter sessions. Though their jurisdictions overlapped – and the presidency court had to struggle for its share of court business as the judicial institutions were used by all sections in the province to attain a favourable outcome for their individual concerns – yet they played their part in centralising the administration and in anglicising and civilising the local population. Such a commentator might admire the similarity between Munster and England but one must look beneath the surface to observe the cracks beneath.

England's abiding concern was security – its own security – and that meant security in Munster, its most vulnerable Irish province. Over 20 years of the Stuart 'peace' had apparently put a lid on dissent in the province. In theory it was a province with a civilian administration; in practice it was under military control. The ring of forts and garrisons gave the New English peace of mind but were intimidating to the indigenous population. Soldiers authorised to collect the composition in lieu of cess roamed at will, despite agreements that specifically excluded them from this task. This persistent use of the military might well have had the twin aims of ensuring that the troops were fed in times of financial crisis, and keeping the population quiescent through intimidation. However, the troops' constant menacing presence was deeply resented. Tensions between the citizens and the soldiers occasionally boiled over as irritated residents near a fort were not only involved in physically strengthening the building but also forced to accommodate soldiers in times of stress. Apprehension was heightened by the rumours of invasion in the mid 1620s and the influx of the 'fleet soldiers' in 1625.

Another major security risk was the constant presence of pirates on the Munster coastline. They were a continuous threat to both passenger traffic and mercantile traffic between Ireland and England, continental Europe, and the burgeoning trans-Atlantic trade. The south-west coastline attracted adventurous spirits but also those who were anxious to hide from the law. The volume of illicit shipping in the area created an atmosphere of lawlessness, stoked by constant rumours

of invasion, which the Munster authorities were helpless to control as admiralty authority was based in London and local naval presence was in its unsteady early development.

All through the reign of James I (a pattern that would be repeated during the reign of his son Charles I) the monarch did not have economic independence. Efforts had been made to overhaul the work of the exchequer and this was achieved with the successful composition in lieu of cess agreement. Other areas of the revenue, like customs and alehouse licences, were handed over to private monopolies which effectively weakened the authority of the presidency and left the local merchants prey to private interests. In theory there was more money being collected but in practice the resultant increase in the 'civil service' officials administering the schemes meant that less revenue reached the government. Revamping the economy and the collection of revenue might be more systematic but it was at a high cost of intimidation and resentment of the populace.

By the mid 1620s the Munster colony was on a firmer footing than it had been in 1603. Steady progress in the administration of the province by the council meant, in real terms, an increase in the number of New English officials as well as an increase in the number of colonists. The growth in the numbers of officials and their subordinates meant that there were more pockets to be filled from the same pot, so that access to services, like the courts, meant paying fees to increasing layers of bureaucracy in order to get access to justice. And justice was not seen to be done when the native population saw their lands being acquired by underhand means.

A 1625 report on the state of Munster is revealing. It noted that the Gaelic Irish in Munster were 'not so strong as formerly', that the nobility should be treated 'politely' but carefully watched, and that the merchants should be used as spies.[1]

During the Stuart reign there was a rapid rise in the New English population from an estimated 4,000 prior to the 1598 rebellion, to 5,000 in 1611, to 14,000 in 1622 and to 22,000 by 1641.[2] The systematic sidelining of the natural leaders – the Old English and Irish nobility – gave the New English influence vastly out of proportion to their numbers. The exclusion of the local Catholic gentry from the administration of the Munster council meant that by the mid 1620s the administrators and the leading colonists, in spite of their innate tensions, had coalesced into a tightly-

[1] *CSPI, 1625-32*, p. 72.
[2] MacCarthy-Morrogh, *English Migration*, pp. 260, 117-18; Casey, 'Land Ownership', p. 93-4.

bound clique, inter-dependent and conscious of their position as new leaders of a new society.

The greatest single preoccupation of the era was religion, and the most important aim, hand in hand with maintaining peace in the province, was the drive to attain uniformity in the religious sphere. The constant pressure on the Catholic population had the effect of stiffening their resolve. This was achieved partly by the strong Counter-Reformation presence in the province (despite the efforts of the Munster council to expel them); and partly by the shortcomings of the established church. While the Irish Counter-Reformation set in motion a reinvigoration of the Catholic church with its emphasis on reform and renewal of both priests and people,[3] the Church of Ireland failed to promote Protestantism in a positive light and did not encourage the Irish language so that its episcopacy became increasingly non-Irish.[4] For many Englishmen, such as Bishop John Thornborough of Limerick,[5] the road to preferment in their own country lay through Ireland so their mindset did not embrace missionary zeal. The mining of the Irish benefices to satisfy the monarch's favourites meant that the calibre of the incumbents was suspect. It was a situation that was entirely different from that in the North of England and Wales where appointees usually had local connections.[6] There is a strong suspicion that there was no political or ecclesiastical will to convert the majority population to Protestantism. Certainly in Munster recusancy fines, both for 2 Elizabeth and clandestine sacraments, provided ready cash for unscrupulous laypeople and clerics. A large Irish Protestant body would eliminate this source of cash, would increase competition for both secular and ecclesiastical positions, and would reduce the pool of land available for exploitation.

Far from attempting to accommodate diversity, the insistence on conformity and the regular targeting of the ordinary citizen for non-attendance at church, the constant investigating for clandestine sacraments, and the pressure on corporation officials, hardened feelings and resulted in constant tension and frequent conflict. The increasing number of New English, both officials and colonists, meant that there was

[3] Michael Olden, 'Counter-Reformation problems in Munster', *Ir. Eccl. Rec.*, 104 (1965), pp. 42-3.
[4] John McCafferty, 'Protestant prelates or godly pastors? The dilemma of the early Stuart episcopate', in Ford & McCafferty, *The Origins of Sectarianism*, pp. 56-7.
[5] In 1603 he translated to Bristol, Rev. P. Fitzgerald & J. J. McGregor, *The History, Topography, and Antiquities, of the County and City of Limerick*, vol. i., (Dublin, 1826), p. 428.
[6] McCafferty, 'Protestant prelates', pp. 61-2; John Morrill, 'Concluding reflection: confronting the violence of the Irish reformations', in Alan Ford and John McCafferty, *The Origins of Sectarianism in Early Modern Ireland* (Cambridge U. P., 2005), pp. 229-239.

an increase in the number of Protestants. While there were also more Irish Protestants, by 1625 many of the New English colonists were 'alienated in their affections', i.e. had converted to Catholicism.[7] The colonists in question, or their descendents, included Hugh Cuffe's daughter in Co. Cork who married the Catholic Englishman Sir Francis Slingsby. Other families, whose religious status was either already known or suspected, or who eventually 'came out' in 1641, were the Spensers and Fleetwoods (Co. Cork), Thorntons, Stevensons and Cullums (Co. Limerick), Brownes and Springs (Co. Kerry).[8] Also, religion was beginning to coalesce the Gaelic Irish and the Old English into a united opposition party – albeit still struggling to overcome their differences.

Yet there was still time to fix the various problems affecting the province should the government care to take the grievances of the populace on board. An opportunity arose at the beginning of the reign of Charles I with the 'Matters of Grace and Bounty'[9] which have been mentioned briefly throughout this work. The 'Graces' were founded on Catholic grievances going back through the reign of James I, and the immediate spur was Charles's aggressive Spanish policy which would bring retaliation through Munster. Ireland's defence required strengthening of the army and the establishment of supplementary militias which would need the co-operation of the Old English. Thus political expediency led to the return of Waterford's charter in July 1625 and the appointment of Catholic magistrates – which the other Munster urban centres (except Youghal) emulated in October of the same year.[10] Another proposal was the discontinuance of the 2 Elizabeth fine for failing to attend the established church services. Some historians claim that these fines had not been levied for several years, which might have been true for the Pale but not for Munster (see Chapter 1).[11] A major proposed concession was to replace the oath of supremacy with an oath of allegiance when suing livery. These initial concessions (particularly the replacement of the oath of supremacy) were regarded as attacks on the security of the New English. Discussions took place in London between Old and New English representatives (Richard Osborne, holder of several local government

[7] *CSPI, 1625-32*, p. 72.
[8] MacCarthy-Morrogh, *English Migration*, pp. 195-6; idem., 'Munster Plantation', pp. 317, 352-3, 367, 359-60, 398-9; Edwards, 'Haven', pp. 116-17.
[9] See Aidan Clarke, 'Selling Royal Favours', *NHI,* iii, pp. 233-42; idem., *Old English*, pp. 28-58, 238-53; idem., 'Army', pp. 28-53.
[10] Byrne, *Liber*, p. 309 fn.; *CSPI, 1625-32*, p. 162.
[11] Clarke, *Old English*, p. 34; Aidan Clarke, 'Selling', *NHI*, iii, p. 236; idem, 'Army', p. 41.

posts, was spokesman for Munster's New English group) and agreement was reached with the privy council in May 1628. The Old English landowners were willing to concede some demands in order to protect their property while the New English succeeded in preserving the special status of the Protestant religion.[12] The proposed militias were abandoned in favour of raising the strength of the standing army which was regarded by the Protestants as their protection.[13] The 'Graces' proposed by Charles I included several which limited the use of soldiers especially in rent and tax collection, and attempted to control the abuses of officers including court clerks, escheators, provosts marshal, and sheriffs.[14] The Catholics agreed to supply three subsidies of £40,000 English in return for the legalisation of the 'Graces' by parliament and though the parliamentary writs were issued in the summer of 1628 the parliament did not take place yet the subsidies were paid.[15] This seemingly spiritless stance of the Catholics must be regarded as desperation to have their loyalty accepted in circumstances where they had no room for manoeuvre.

The action of King Charles, in spurning the solid overtures of the Catholics of Ireland, replicated the policies of his father who was swayed by current contingencies rather than long-term gains. The putative 'Graces' had huge opportunities for future peace but their repudiation would widen the cracks in Munster's fragile 'peace' into fissures which would erupt into the 1641 rebellion.

[12] Clarke, 'Selling', *NHI*, iii, pp. 237-8.
[13] Clarke, *Old English*, p. 35.
[14] Nos. 1-4, 13, 33, 44 (soldiers), 15-22 (escheators & wards), 23 (fees of court clerks), 33 (provost marshal), 47, 48 (sheriffs), Clarke, *Old English*, pp. 238-54.
[15] Ibid., pp. 54-5; idem, 'Army', p. 46.

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Provincial government and administration in Jacobean Munster

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Volume 2 of 2

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