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HENRY VIII, REBELLION AND THE RULE OF LAW

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It has been traditional to regard the reaction of Henry VIII in the face of treason and rebellion as savage and extreme. Perhaps for this reason, historians for long considered it superfluous to examine in any detail what fate actually befell those who took up arms against their king. More recently, however, findings that relatively few persons were executed by Henry, despite the savagery of his reign, and that in general his bark was worse than his bite,¹ have suggested that this question could profitably be pursued further. There seems, for instance, to be a significant difference between the 178 executions in the aftermath of the Lincolnshire rebellion and the Pilgrimage of Grace in 1536–7 and the rather larger number for which Elizabeth was responsible following the much less dangerous Northern Rising of 1569.² Yet how these figures were achieved and what considerations shaped and determined the extent of the government's retaliation is much less clear. Perhaps the surviving evidence will not normally admit of answers to such questions, for it was not in the government's interests to disclose that external considerations might influence the enforcement or otherwise of the law. The manifestation of this fact was therefore inconvenient, but exceptionally such disclosures might be unavoidable.

In addition to the light it throws on Henrician reaction to rebellion, a study of the 1534 revolt in Ireland is desirable for its more general implications concerning the problem of the rule of law in the Tudor state. Some years ago, Professor G. R. Elton convincingly argued, in the face of an attempt to revive the notion of Tudor despotism, that Henry VIII and Elizabeth were limited in the use of their executive power by their dependence on a network of

¹ See, for instance, G. R. Elton, *Henry VIII: an essay in revision* (London, 1962), pp. 15–16; M. E. James, 'English politics and the concept of honour, 1485–1642' in *Past & Present* (Supplement 3) (Oxford, 1978), pp. 42–3. I am grateful to Professor Elton and to Dr Christopher Haigh for reading and commenting on an earlier draft of this paper. Abbreviations used in the notes: B. L., British Library; *Cal. pat rolls*, *Calendar of patent rolls*; *Cal. S.P.*, *Calendar of state papers*; *I.H.S.* *Irish Historical Studies*; *L. & P. Hen. VIII*, *Letters and papers, foreign and domestic, Henry VIII*; P.R.O., Public Records Office, London; P.R.O.I., Public Record Office of Ireland; *S.P. Hen VIII*, *State papers, Henry VIII*; *Stat. of realm*, *The statutes of the realm*; *Stat. Ire.*, *The statutes at large passed in the parliaments held in Ireland*.

² G. R. Elton, *Policy and police: the enforcement of the Reformation in the age of Thomas Cromwell* (Cambridge, 1972), p. 389; James, loc. cit. p. 33.

self-reliant men and by the rule of law.³ More recently, he has demonstrated in detail, by reference to the enforcement of the Reformation in the 1530s, that Henry's government could, if it wished, generally enforce the law against detected offenders. This, however, was in 'the normal setting of government action', in England and Wales, and excluded from consideration 'the highly special case of the northern rebellions (1536-1537) and the case, special for different reasons, of the dependencies of Ireland and Calais'.⁴ The aim of this paper is first to consider why Henry VIII's initial threats of wholesale revenge upon traitors tended to be translated into a much less imposing crop of executions; and secondly, to try to clarify the circumstances in which the rule of law obtained by relating this discussion to the more general problem.

The Kildare rebellion might not at first sight appear a very reliable guide to what happened in the realm at large, but it certainly posed a serious challenge to the regime, and the fact that the government was constrained to work through a dependent administration in Dublin meant that more evidence has survived about the circumstances of the king's retribution than would perhaps have done from a similar rebellion in England. Apart from the need to communicate its orders, the government was hamstrung on the one hand by the exclusion from the deputy's commission of power to pardon treason touching the king's person,⁵ and on the other by the terms of Poyning's Law which governed the procedure by which an act of attainder could be passed in the Irish parliament. Other particular factors emerging in a discussion of the general circumstances shaping the government's policy can be readily distinguished. Otherwise, however, it is doubtful whether the problems of governing the English Pale in Ireland were much different from those posed by the north of England or the marcher lordships of Wales. The structure of society and its politics were evidently similar,⁶ and Henry VIII and his father ruled through the local magnates and gentry in much the same way. This comparison with other border areas of the Tudor state cannot, however, be pushed too far, either geographically or temporally. Conditions in many other parts of the lordship were not comparable, and under Henry VIII's successors the Irish problem came to be treated as a colonial one, requiring plantation, military conquest and the replacement of the Pale aristocracy as a ruling elite by Englishmen born in England.⁷

The rebellion engineered by the earl of Kildare in the summer of 1534 and led by his son, Thomas Fitzgerald, Lord Offaly, caught the government unprepared, in spite of earlier portents of trouble brewing since September

³ See Joel Hurstfield, 'Was there a Tudor despotism after all?' in *Transaction of the Royal Historical Society*, 5th ser. xvii (1967), 83-108 and Elton's reply, 'The rule of law in sixteenth-century England' in *Studies in Tudor and Stuart politics and government* (Cambridge, 1972), pp. 260-84.

⁴ *Policy and police*, p. viii.

⁵ S. G. Ellis, 'The administration of the lordship of Ireland under the early Tudors' (unpublished Ph.D. thesis, Belfast, 1979), p. 7.

⁶ For example, T. W. Moody, F. X. Martin & F. J. Byrne (ed.), *A new history of Ireland*, III (Oxford, 1976), 4-6, 20-5, 33-4.

⁷ See especially N. P. Canny, *The formation of the old English elite in Ireland* (Dublin, 1975); *The Elizabethan conquest of Ireland: a pattern established, 1565-76* (Hassocks, 1976), ch. 2.

1533. It was in origin a demonstration by the Fitzgeralds of their power and influence in the Pale, aimed at convincing the king that they alone were able to control the region and thus at securing the confirmation of the earl in his traditional office of lord deputy. In fact the strategy misfired. The king refused to be coerced and the Fitzgeralds, too far committed to draw back, were left to exploit as best they could regional resentment at the changes associated with the Reformation and the royal divorce in the hope of bringing further pressure to bear.⁸

Henry's initial reaction was one of annoyance at this unexpected turn of events. Privately, he was said to be 'very much incensed, and in worse humour than he had been for a long time'. As late as August 1537, long after the revolt had been suppressed, Cromwell passed on the king's orders for the arrest by fair means or foul of two attainted rebels and the earl's son then lurking in Munster, advising of himself that 'the kinges highnes hathe the same moche to hart'.⁹ In public, however, the king had to swallow his pride, and his reaction was similar to that in the Pilgrimage of Grace two years later: he offered Lord Offaly a pardon if he should submit. Probably he hoped by this strategy to sow dissension among the rebels, but on this occasion the offer was rejected. In the event, it is possible to discern three phases in the government's proceedings against the rebels. In the first phase, lasting until early summer 1535, the government's judicial activities were directed primarily towards undermining military support for the rebels by making an example of a few ringleaders and threatening the Pale gentry in general with further proceedings if they failed wholeheartedly to support Lord Deputy Skeffington. There then followed a lull while the two administrations worked out a compromise between the king's desire for revenge and its possible effect on government policy. And finally the king took his revenge. Throughout, however, legal technicalities and the complexities of the common law obliged the government to tread warily and limited to a surprising degree its options in dealing with the rebels. The campaign was in general managed by Cromwell, but as might be expected in a matter which touched the king so closely, all the important decisions were made by Henry himself, who clearly overruled on occasion the advice which was proffered.

During Michaelmas term 1534, the Dublin administration was apparently preoccupied almost exclusively with the military aspects of the revolt. Since Fitzgerald's offences comprised levying war against the king, the deputy and council had him proclaimed a traitor from the High Cross at Drogheda at the end of October, thus allowing the seizure of his possessions.¹⁰ It is possible that the leading rebels or those in custody were indicted, but the Irish act of

⁸ On the causation and course of the rebellion, see S. G. Ellis, 'Tudor policy and the Kildare ascendancy in the lordship of Ireland, 1496-1534' in *I.H.S.* xx (1976-7), 235-71; 'The Kildare rebellion and early Henrician Reformation' in *Historical Journal*, xix (1976), 807-30.

⁹ *S. P. Hen. VIII*, II, 467-8; *Cal. S.P. Spain, 1534-8*, pt. I. nos. 84, 87, 102, 109; Ellis, 'Tudor policy', pp. 264-5, for this and the following point.

¹⁰ *S.P. Hen. VIII*, II, 206. In practice, the rebellion effectively prevented the government from levying the profits of traitors' lands until May 1535: *ibid.* II, 242.

attainder passed in May 1536 included a clause extending its provisions to those attainted by course of the common law only since 1 November 1534 or within three years after the passage of the act, and the first English act of attainder, passed about December 1534, excluded from its provisions any who had or should submit to the deputy by 17 December 1534.¹¹ This suggests that the king had in fact renewed his offer of a pardon more generally, and indeed there is some slight evidence that Skeffington had been given a temporary commission to grant pardons for high treason excluding the ringleaders.¹² Moreover, the first English attainder contains other peculiarities, suggesting that its purpose was primarily political.

In the first place, legislation by the English parliament specifically for Ireland was unusual in this period, though of course quite apart from the disturbed conditions, the provisions of Poyning's Law ruled out the speedy assembly of a parliament in Ireland for this purpose. English legislation could be enforced in Ireland if certified to the chancellor and proclaimed, but the government normally felt it necessary to obtain the assent of a parliament in Ireland. Thus the principal statutes of the Reformation Parliament were enacted by the Irish parliament of 1536–7, and by Elizabeth's reign no attempt was made to enforce in Ireland English legislation which had been rejected by the Irish parliament.¹³ Secondly, in Fitzgerald's case, the government seems to have resorted to the expedient of an act of attainder without trial at law, of which there were better-known English examples dating from Cromwell's ascendancy.¹⁴ Neither in the English nor Irish acts of attainder nor elsewhere is there any evidence that Fitzgerald had been convicted of treason by due process of the law. His treasons were of course manifest: the act recited that he had levied war against the king and unlawfully detained the king's ordnance. Other peculiarities of the act of attainder were that he was the only person actually named as coming within the provisions of the act, and that his treasons were stated to have been committed on and from 1 August 1534 and continually since. Possibly the government was not at this stage fully aware, or chose to ignore the role of the ninth earl of Kildare in the rebellion, or more probably there were legal difficulties in proving that what Kildare had done was treason. The act therefore styled Thomas Fitzgerald as tenth earl of Kildare, to which title he would have succeeded on the death of his father in September, and deemed as treason only those acts committed since the start of the revolt proper, ignoring the demonstration on 11 June. More disturbing was the clause which attainted all Fitzgerald's supporters without naming any of them and again without provision for trial by common law, though of course

¹¹ *Stat. of realm*, 26 Henry VIII c. 25; P.R.O.I., CH 1/1, Statute roll, 28–9 Henry VIII c. 1 (*Stat. Ire.*, I, 66–76); Ellis, 'Tudor policy', note 113.

¹² *S.P. Hen. VIII*, II, 222, 241.

¹³ Cf. R. D. Edwards, 'The Irish Reformation parliament of Henry VIII, 1536–7' in *Historical Studies*, VI (London, 1968), 64, 79–80; H. G. Richardson and G. O. Sayles, *The Irish parliament in the middle ages* (Philadelphia, 1952), pp 244–5, 263, 273–4.

¹⁴ Elton, *Policy and police*, pp. 275, 308, 390–91; *The Tudor constitution* (Cambridge, 1960), p. 81.

the proviso of a pardon noted above would save any who should submit by 17 December. The proviso notwithstanding, however, the attainder of persons unnamed seems to be without precedent. Probably the clause would have been regarded as insufficient in law and indictments upon it thrown out. It was no doubt the only expedient open to a government without detailed information about the rebellion and acutely embarrassed by its possible implications for the king's policy in England. For the fact was that the regime was seemingly powerless against a revolt, ostensibly a protest in arms against royal policy, which had already lasted considerably longer than other similar disturbances in recent memory. Thus, unable to score any decisive military success against the rebels, the government resorted to an act of attainder of doubtful validity as an earnest of what would befall the Fitzgeralds and any with similar ideas nearer the seat of power.

Nevertheless, once the rebellion had been checked militarily, the government's efforts to bring the insurgents to justice took on a pattern which was more familiar in England, and there is no evidence that the validity of the 1534 Act of Attainder was tested in the courts. It is probable that the trial and execution of certain rebels in Hilary term, 1535, was the first significant move to bring Kildare's supporters to justice. By 1534, the Irish court of king's bench was normally sedentary at Dublin,¹⁵ but, conveniently for the government, much of the action during the revolt had taken place in Co. Dublin. The rebels could therefore be tried in king's bench in many cases without the necessity for special commissions of oyer and terminer. By January 1535, the Irish administration had come to feel that a few executions for treason of those in custody in Dublin castle might help in quelling the rising 'for feare and example of like malefactors'.¹⁶ Accordingly, on 26 January, William Purcell 'which stole the ship ought of the Tamyse and was now a gret capitaine under this traditour' was arraigned in king's bench, tried, found guilty and sentenced, and about the same time one Brode, the rebel admiral, was similarly tried and sentenced with his ship's company.¹⁷ Nevertheless, the deputy and council feared that anything more than a token demonstration might strengthen rebel support, and after procuring indictments against 'the gret cobbes' in custody, respited their cases pending orders from the king:¹⁸ even the lesser fry received a stay of execution, but Purcell was hanged, drawn and quartered about a fortnight later and the other 'pirates' followed within two or three days.¹⁹ Part of the problem was that in a marcher society such as the lordship, the government had traditionally been more tolerant of lawlessness, and among the gentry at least many offences for which the death penalty might have been exacted in the more settled parts of England were normally punished by fines for pardon

¹⁵ The process by which the Irish court of king's bench became sedentary is discussed in Ellis, 'Administration of Ireland', pp. 205-6, 216-17.

¹⁶ *S.P. Hen. VIII*, II, 223, 225, 228-9.

¹⁷ *Ibid.* II, 205-6, 228.

¹⁸ *Ibid.* II, 225, 228-9.

¹⁹ *Ibid.*; *L. & P. Hen. VIII*, VIII, no. 193.

in Ireland, if at all.²⁰ Thus any attempt to take revenge against the political community of the Pale, most of whom were in some way implicated in the revolt, would have to wait until the country was more settled.²¹ Moreover, legal technicalities also inhibited the trial of rebels: Edward Rookes, another of Fitzgerald's naval captains who had command of the force detailed to prevent the king's army from landing and who might well have been despatched in Hilary term, had been captured at Wexford within the earl of Shrewsbury's palatinate, and the Dublin administration therefore asked Cromwell to have the earl deliver Rookes to the Irish council. Presumably the rationale behind this request was that Rookes' offences had mostly been committed outside the liberty, even though pleas of treason were justiciable in the liberty.²² In the event Rookes was handed over, languished in Dublin castle for a few months, and seems to have been tried by common law and executed in mid-1535.²³

These executions of the rank and file of Fitzgerald's supporters were followed by the 'pardon of Maynooth' and proceedings against more prominent rebels. The siege of Kildare's principal castle of Maynooth between 14 and 23 March, resulting in its capture, was the one significant military event of the campaign: it made manifest that not even a well-fortified castle with a garrison of more than a hundred could hold out against Skeffington's artillery. After its walls had been breached, the basecourt was taken by assault early on the 23rd and the garrison surrendered the great castle soon after. The thirty-seven survivors were then tried and condemned by court martial and 25 were immediately beheaded and one hanged.²⁴ Some were later pardoned.²⁵ These proceedings were quite legal of course, but what made the 'pardon of Maynooth' infamous was the fact that Christopher Parys, the constable, had surrendered the castle for a bribe which seems to have included a pardon (the garrison had been offered freedom to depart with their goods at the start of the siege in return for the surrender of the castle). Parys received his money but was then executed, and at the cost of Skeffington's reputation the survivors had been dissuaded from selling their lives dearly.²⁶ The deputy and council, moreover, gave as a second reason for the severe handling of the garrison that most of

²⁰ Cf. *S.P. Hen. VIII*, II, 192.

²¹ *Ibid.* II, 225.

²² *Ibid.* II, 223; *L. & P. Hen. VIII*, VIII, n. 892; P.R.O.I., CH 1/1, Statute roll, 28-9 Henry VIII c. 1. Cf. A. J. Otway-Ruthven, *A history of medieval Ireland* (London, 1968), p. 182.

²³ P.R.O.I., CH 1/1, Statute roll 28-9 Henry VIII c. 1; P.R.O., S.P. 65/1/2 (*L. & P. Hen. VIII*, XII (ii), no. 1310 II 9). Rowkes was executed with Dr John Travers on Oxmantown Green, Dublin by order of Lord Deputy Skeffington: Raphael Holinshed, *Chronicles of England, Scotlande and Irelande* (ed. Henry Ellis, 1807-8), VI, 302; Archbishop Marsh's Library, Dublin, Loftus Annals, MS Z4 2 7, f. 409. This and the fact that they had not yet been executed when work began on drafting the Irish attainder point to c. July 1535 as the date of their execution.

²⁴ *S. P. Hen. VIII*, II, 236-7; *L. & P. Hen. VIII*, VIII, no. 487; P.R.O., S.P. 60/2/97 (*L. & P. Hen. VIII*, VIII no. 449).

²⁵ Marsh's Library, Loftus Annals, MS Z4 2 7, f. 410v; Holinshed, *Chronicles*, VI, 300-1.

²⁶ See the references in notes 21-2; Sir James Ware, *The antiquaries and history of Ireland* (ed. R. Ware, Dublin, 1705), p. 90; W. M. Hennessy and B. MacCarthy (ed.), *Annala Uladh, Annals of Ulster* (Dublin, 1887-1901), *sub anno* 1535.

them were gunners and might create further difficulties for the king's army if they were allowed to escape.²⁷

By April, the king's instructions had been received to proceed against the more important rebels in custody,²⁸ and a general commission of oyer and terminer and gaol delivery issued headed by the chief justice. The activities of this commission can only be partially reconstructed from calendars of inquisitions *post mortem* and a few other extracts, but it seems that at sessions at Dublin between 5 and 15 April or later three gentry associates of Kildare, Edward Fitzgerald of Kildrought, Christopher Eustace of Ballycullane and William Bath of Dollardstown were attainted of high treason and executed.²⁹ In addition Dr John Travers, chancellor of St Patrick's, and Edward Rowkes must have been tried and executed about this time,³⁰ and it was probably at other sessions held by the commission about the Pale that the majority of the gentry there were indicted for complicity in the revolt.³¹ Again, however, the government's retaliation seems to have been limited, in this case to a few ringleaders in custody in Dublin castle who had had the misfortune to be captured. And even in these cases, in which the evidence against the defendants was fairly clear, the trials were not all without difficulty for the government. Travers' real offence seems to have been in writing against the royal supremacy, but more clearly, Bath, as a skilled lawyer and with the help of a sympathetic jury, argued his way out of some difficulties and was found not guilty against the evidence on at least one count in his indictment.³²

Thus until the king's army had won military superiority in the Pale, Henry tried to split rebel support by a judicious mixture of threats and inducements – pardons for those who would submit, attainder and execution for continued opposition – and gave colour to this strategy by making an example of ringleaders in custody and by procuring indictments against other supporters. Temporarily, therefore, military considerations had forced the king to temper his desire for revenge.

In June, the Irish council sent over John Alen, master of the rolls, and Chief Baron Aylmer with a recommendation that an example be made only of

²⁷ *S.P. Hen. VIII*, II, 237.

²⁸ Cf. *ibid.* II, 243.

²⁹ P.R.O.I., Record Commissioners' repertory of exchequer inquisitions *post mortem*, RC 9/3, II, 35–7, RC 9/6, I, 217–19, II, 31, RC 9/8, I, 111, II, 5–7, 52; *S.P. Hen. VIII*, II, 245.

³⁰ B.L., Add. MS 4793, f. 124v (undated extracts of Travers' case from a king's bench roll); Holinshed, *Chronicles*, VI, 302; Marsh's Library, Loftus Annals, MS Z4 2 7, f. 409. As in the case of certain other rebels who had already been tried and despatched by the common law, Travers is not explicitly included in the Irish attainder: cf. P.R.O., S.P. 65/1/2 (*L. & P. Hen. VIII*, II (ii), no. 1310 I 45, II 9).

³¹ *S.P. Hen. VIII*, II, 243, 246, 254, 320; *L. & P. Hen. VIII*, XI, no. 521. That indictments were actually procured and not just threatened is quite clear (cf. Edwards, 'Irish Reformation parliament', p. 70; Brendan Bradshaw, 'The opposition to the ecclesiastical legislation in the Irish reformation parliament' in *I.H.S.* XVI (1968–9), 301): though proceedings were then respited, those indicted had later to appear and exhibit their pardons in king's bench and have them allowed. See C. McNeill and A. J. Otway-Ruthven, *Dowdall deeds* (Dublin, 1960), nos. 534–5.

³² Ellis, 'Kildare rebellion and early Henrician Reformation', pp. 812, 819; *S.P. Hen. VIII*, II, 225, 245; Holinshed, *Chronicles*, VI, 298.

Fitzgerald's most notorious supporters, a list of whom was supplied, and that the remainder be forced to make fine for their pardons.³³ Despite the king, this mild strategy eventually came to be followed. With control gradually being restored over the English districts, the government returned during the summer to the preparations for holding a parliament in Ireland early in 1536.³⁴ In accordance with the provisions of Poynings' Law, bills to be laid before the Irish parliament had first of all to be agreed by the governor and council in Ireland and formally transmitted to the king under the great seal of Ireland: the king with the advice of his council in England could then approve, alter or suppress bills, and he returned those altered and approved by transmiss under the great seal of England, together with a licence empowering the deputy to hold a parliament. The bills returned could then only be rejected or accepted by parliament as they stood.³⁵ In June, however, a bill for the attainder of Kildare, which eventually formed chapter one of the statute roll, was not among the legislative proposals submitted by the Dublin administration, which suggests that the deputy and council were uncertain as to the need for and scope of an Irish act of attainder, and possibly considered the English act of 1534 sufficient.³⁶ Cromwell, however, disagreed and Lord Chancellor Audley was charged with the drafting of an act of attainder which seems to have occupied him during the second week of August.³⁷ By 14 August the bill was ready and Audley asked that it be sent back to Ireland along with other bills and formally transmitted under the great seal of Ireland for consideration by the king. Nevertheless, intensive consultations with Irish officials about the form of the bill must have taken place, for Audley could not have composed the preamble with its wealth of circumstantial evidence about the course of the revolt and its background. Of this process there survives a sheet in a cursive hand containing an almost illegible series of purely legal memoranda for the main provisions of the bill, and two draft bills of which only one is complete. Without exception, the memoranda were worked into the bill as placed before the parliament – and also appear in the complete draft of the bill – but those to suffer forfeiture comprised 'the seid Thomas & al other namyd in the bok as lyvyng or dede' which must have been supplied by the Irish council, and the particulars of the revolt were clearly worked round this framework.³⁸ Thus the

³³ *S.P. Hen. VIII*, II, 246; P.R.O., E.101/248/23, fo. 2. For the background to this recommendation, which in all probability represented a compromise between hawks and doves on the council, see Edwards, 'Irish Reformation parliament', pp. 62–3.

³⁴ See, Edwards, loc. cit. pp. 63–5. Professor Edwards' suggestion that Cromwell planned a parliament for January 1535 rests on the pre-dating of a document by a year: *L. & P. Hen. VIII*, VII, no. 1211; Edwards, loc. cit. p. 61. In the event, parliament's meeting was postponed to May 1536 because of the death of Lord Deputy Skeffington.

³⁵ See D. B. Quinn, 'The early interpretation of Poynings' Law, 1494–1534' in *I.H.S.* II (1940–1), 241–54.

³⁶ P.R.O., S.P.60/2/50 (printed in D. B. Quinn, 'The bills and statutes of the Irish parliaments of Henry VII and Henry VIII' in *Analecta Hibernica*, X (1941), 139–42); *S.P. Hen. VIII*, II, 246.

³⁷ *S.P. Hen. VIII*, II, 246; *L. & P. Hen. VIII*, IX, nos. 41, 90.

³⁸ P.R.O., E.101/248/23, fo. 2; B.L., Lansdowne MS 159, fos. 32–9 (*L. & P. Hen. VIII*, VII, no. 1382 (1, 2)); *L. & P. Hen. VIII*, IX, no. 90; P.R.O.I., CH 1/1, Statute roll, 28–9 Henry VIII c. 1. Cf. Elton, *Policy and police*, p. 270.

bill of attainder was drawn up in England before the surrender of Fitzgerald. It did not reflect the changed political circumstances in Ireland following the surrender and since the official transmiss of the bill under the great seal of England was dated 13 September 1535, the Irish administration, in formally returning the bill under the great seal of Ireland, presumably about a fortnight earlier, had clearly had insufficient time to do more than merely approve and return the bill without material alteration.³⁹

The terms of the Irish act of attainder as passed in May 1536 illustrate well the difficulties faced by the government and the reasons why the 1534 act was considered inadequate. In the first place, Thomas Fitzgerald was not the ninth earl's sole heir since Kildare had received sizeable grants of land jointly with his second wife, Elizabeth Grey, daughter of the marquis of Dorset, and their heirs in tail male.⁴⁰ For this reason, a more comprehensive act was desirable, unless the government hoped to enforce against the junior branches of the family that section of the 1534 act which attainted Fitzgerald's unnamed supporters. To overcome this problem, the Irish act declared the ninth earl of Kildare attainted of high treason from 8 July 1528, but discharged the farmers and receivers of his lands of rents paid to the earl up until 1 February 1534, which was probably the date on which he deputed Fitzgerald as governor and departed for England. One effect of this clause was to deprive Thomas Fitzgerald of the title of tenth earl which had been accorded him in the 1534 act and, incidentally, also to alter the mode of his execution. It created additional difficulties, however, in that the government's case against the ninth earl was weak and a lengthy preamble reciting the earl's treasons was felt necessary. The preamble began with two superfluous clauses reciting that in 1524-5 Kildare had had treasonable communication with the earl of Desmond, then in league with the king's enemies, firstly Francis I and later Charles V, and that on 8 July 1528 he had through his daughter stirred up war against the king's deputy and subjects. Both these offences were manifestly treason, if proven, but Kildare had already been pardoned for them. Thus the government's case was that as deputy in 1532-3 he had allowed O'Neill in company with Sir John Fitzgerald to invade Co. Louth and had himself destroyed Co. Kilkenny and robbed the king's subjects there and at Castledermot fair; that contrary to the king's command, formally communicated to him, he had withdrawn the king's artillery and munitions from Dublin castle and delivered part of them to Irishmen; and that on receipt of the king's commission empowering him to appoint as his deputy someone for whose

³⁹ Quinn, 'Bills and statutes', p. 138. Neither of the two drafts differs significantly from the act as passed and they were probably products of Audley's labours. The complete draft (B.L., Lansdowne MS 159, fos. 36-9; *L. & P. Hen. VIII*, vii, no. 1382 (1)) was probably a copy made by the Irish official working with Audley of the draft sent to Ireland for formal consideration by the deputy and council, certainly not a draft of the English attainder of 1534 as Professor Elton has suggested ('Parliamentary drafts, 1529-40', reprinted in *Studies in Tudor and Stuart politics and government* (2 vols., Cambridge, 1974), II, 65), though he is probably right about the actual scribe. The incomplete draft is a more characteristic government effort, though again uncorrected: B.L., Lansdowne MS 159, fos. 32-5v (*L. & P. Hen. VIII*, vii, no. 1382 (2)).

⁴⁰ *L. & P. Hen. VIII*, I (2nd edn), no. 632 (7, 22), III, nos. 2703, 3051, IV, no. 6135 (26).

conduct he would answer, he had appointed his son, Thomas Fitzgerald, ordering him to follow the advice of men who later counselled him to rebel. Quite possibly Kildare's misappropriation of the king's ordnance and Fitzgerald's later activities in seizing and holding royal castles and, probably also, ships influenced the government to retain in the Treason Act of 1534 a clause extending the levying of war against the king, declared to be treason in the act of 1352, to cover such offences as Kildare's. This was one of the few survivals from the original bill of 1531, and it is difficult to see what other particular occurrence the government could have had in mind.⁴¹ But detention of the king's ordnance was not treason in 1533-4. Moreover, Kildare's offences in 1532-3 were more probably felonious than treasonable, even if the government could prove them, and it seems to be stretching a point to hold the earl responsible for his son's treasons on the strength of the wording of a commission, quite apart from the fact that Fitzgerald had resigned office before any overt act of treason had been committed. Nevertheless, the earl was certainly guilty of treason, for he had masterminded the rebellion led by his son, but it is doubtful whether the government could have uncovered sufficient evidence about this to secure a treason conviction by the common law. It is also fairly clear that the real reason for the earl's posthumous attainder was the government's subsequent decision that this was the most convenient method of eliminating the family's power.

The other clauses of the act were more conventional. The attainder included Thomas Fitzgerald and fourteen other persons by name, whose treasons were in nine cases publicized by the act; and also any other who had been or should be attainted of treason by the common law. All but three of them were to be executed, and all of them, plus Christopher Parys and John McGilsenan of Ballymun who were already dead, were to suffer forfeiture of their estates, including lands held in tail or to their use or for terms of years which were not covered by attainder at common law, as from 25 July 1534 – probably the date on which the revolt had begun in earnest. An additional clause extended the forfeiture to any rights or property that any of them would but for the attainder have inherited since 1 April 1534 or in the future, upon the death of their ancestors. Since three of those attainted were described as sons and heirs of Pale gentlemen, it looks as if the government believed that these families had made culpable efforts to hedge their bets, as was certainly true in one case.⁴² Finally, various provisos protected the

⁴¹ Elton, *Policy and police*, ch. 6, esp. pp. 285-7; John Bellamy, *The Tudor law of treason: an introduction* (London, 1979), p. 34.

⁴² An act of the second session of the parliament, chapter 13, vested in the king the lands of Sir Walter Delahide in Carberry, on the marches with the Irish, on the grounds that Delahide and his wife, Janet Eustace, had counselled Fitzgerald and their sons in the rebellion (Delahide was Kildare's receiver-general: *L. & P. Hen. VIII*, iv, no. 4302; *S.P. Hen. VIII*, II, 145). Despite their imprisonment 'in duress', for a year, culminating in Eustace's death, the government could obtain no evidence against them and was forced to release Delahide. The whole Delahide inheritance would in any case have fallen in to the crown on Sir Walter's death by right of the attainder of his sons, James, John and Edward, but the government felt that his defence of the march was

legitimate rights of others and of the crown from fraudulent conveyances past or future aimed at circumventing the provisions of the attainder.

The act as drafted in the summer of 1535 was therefore very moderate in scope, though capable of extension to other supporters of Fitzgerald should circumstances alter. Probably for this reason, and because the procedure laid down by Poynings' Law would have further delayed its enactment had alterations in the bill been made, the government decided against any changes to take advantage of Fitzgerald's surrender on 24 August.⁴³ The surrender of course saved the government both labour and expense, in addition to the king's honour, but politically it was an embarrassment because of its conditional nature. The promise of at least Fitzgerald's life threatened to jeopardise both the military achievements and the bill of attainder: in sending grudging thanks to his ailing deputy for his efforts against Fitzgerald, Henry added that 'if he had beene apprehended after such sorte as was convenable to his deservynges, the same had been moche more thankfull and better to our contentacion', and generously informed Skeffington that he was now 'contented to tollerate your sayde sikenes and debilitie' and not to remove him from office.⁴⁴ For a time, Fitzgerald's fate, and therefore the government's programme, hung in the balance. On the one hand, both individual ministers and the whole council in Ireland were quite explicit that 'if ever the said traytor doo repayre hereunto eny more, the kinges grace haith wasted all this labor and coste'. In this they were supported by Audley who suggested that he be lodged in the Tower pending examination and execution, and Norfolk who advised that his pardon 'wer the worst insample that ever was'.⁴⁵ If, on the other hand, he were immediately executed, Norfolk thought that Lords Butler and Grey, who had given their word to Fitzgerald that his life at least should be spared, would lose their credit and relations with Irish chiefs would be so ruptured by the breach of trust that the king would be forced to proceed to a general conquest. Norfolk therefore advised a stay of execution – 'quod defertur, non aufertur' – and his advice was eventually followed.

Nevertheless Henry's own attitude is less clear: Fitzgerald and his five uncles were eventually executed in February 1537, but in September 1535 the king had briefly entertained Fitzgerald at court,⁴⁶ as late as January 1536 Cromwell

negligent and would tend to defraud the king of his rights: P.R.O.I., CH 1/1, Statute roll, 28–9 Henry VIII c. 13 (*Stat. Ire.*, I, 100–1); Holinshed, *Chronicles*, vi, 302; below, note 70. The same duplicity is apparent among northern families involved in the Pilgrimage of Grace: e.g. Mervyn James, *Family, lineage and civil society: a study of society, politics, and mentality in the Durham region 1500–1640* (Oxford, 1974), pp. 46–7.

⁴³ See *S.P. Hen. VIII*, II, 273–8; *L. & P. Hen. VIII*, IX, nos. 357, 358, 434, 594, 600, 681; Holinshed, *Chronicles*, vi, 302–3; *Ann. Ulster*, s.a. 1535. In the event, Poynings' Law was suspended by statute on 31 May 1536 for the remainder of the parliament, but the government could not be certain in advance that such a bill would pass, and in any case parliament might have refused to accept a more comprehensive attainder. See Edwards, 'Irish Reformation Parliament', pp. 68, 72, 75, 78, 81–4.

⁴⁴ *S.P. Hen. VIII*, II, 280–1.

⁴⁵ *Ibid.* II, 241, 278, 305, 321; *L. & P. Hen. VIII*, IX, no. 358.

⁴⁶ *L. & P. Hen. VIII*, IX, nos. 377, 498; *Cal. S.P. Sp.*, 1534–8, pt. 1, nos. 205, 213, 231.

made a note to know what to do with Fitzgerald,⁴⁷ and the earlier intention to pardon at least two of his uncles was only reversed in the spring of 1536. Sir James and Richard Fitzgerald had been explicitly excluded from the provisions of the 1534 act of attainder nor, unlike Sir John and Oliver Fitzgerald, were they named in the Irish act; they had given good service after coming in to Skeffington soon after his arrival with the king's army, and had received pardons in September 1535.⁴⁸ And in May 1536 an act for the resumption to the crown of the manor of Leixlip, held by Sir James Fitzgerald, was passed by the Irish parliament on the grounds that the manor was 'of the kinges auncient enheritaunce and for that the blood of the Geraldines is corrupted toward the crowne of England': the original bill for this act was drawn up no earlier than October 1535 and would have been superfluous had the attainder of the whole family been contemplated from the first.⁴⁹ Thus when the government decided that they should share the fate of their brothers it became constitutionally necessary to draw up a third attainder against Fitzgerald and his five uncles to pass in the English parliament. The bill was rushed through on 17-18 July 1536 immediately before Parliament's dissolution.⁵⁰

Thus it would appear that Henry had initially inclined towards a certain measure of leniency in the case of the Fitzgeralds themselves, quite possibly because their destruction would commit him to a more vigorous and therefore more costly intervention in the lordship for the defence of the Pale. This partial leniency, it seems, was to be offset by severe measures against Kildare's supporters in general. In practice however the Palesmen were insistent on the attainder and execution of the leading Geraldines in order to insure themselves against Kildare's revenge on them, customarily exacted in the past upon the earl's reinstatement, for deserting his cause.⁵¹ On the other hand, there was understandable opposition there to the king's plans for more general revenge, and Henry had perforce to rest content with the execution of the leading rebels.

These considerations however were not immediately apparent and the collapse of the revolt removed certain restraints on the government's efforts

⁴⁷ *L. & P. Hen. VIII*, x, no. 254.

⁴⁸ *Stat. of realm*, 26 Henry VIII c. 25; P.R.O.I., CH 1/1, Statute roll, 28-9 Henry VIII c. 1; *Cal. pat. rolls, Ire., Hen. VIII-Eli.*, p. 17; P.R.O., S.P. 60/2/97 (*L. & P. Hen. VIII*, viii, no. 449). The terms of the pardons do not now survive: it is possible, though unlikely, that they were for lesser offences.

⁴⁹ P.R.O.I., CH 1/1, Statute roll, 28-9 Henry VIII c. 11; Edwards, 'Irish Reformation parliament', p. 69. Sir James Fitzgerald had inherited Leixlip and extensive lands elsewhere as the eventual heir of the eighth earl of Kildare and his second wife, Elizabeth St. John, cousin of Henry VII, for grants entailed to them and their heirs male: *Cal. pat. rolls, 1494-1509*, pp. 109, 308, 443; *L. & P. Hen. VIII*, iii, no. 2145 (14), v, no. 1207 (18).

⁵⁰ *Stat. of realm*, 28 Henry VIII c. 18; *L. & P. Hen. VIII*, x, nos. 1, 108, 147. The attainder was introduced into the Lords on the 17th and received the royal assent the following day: *Journals of the House of Lords*, 1, 100. Though the Irish parliament was then sitting, it had been established in 1429 that legislation of the Irish parliament might be reviewed in the English parliament: Richardson & Sayles, *Ir. parl. in middle ages*, pp. 254-5. This implied that the Irish parliament stood in an inferior relationship to the English parliament.

⁵¹ Ellis, 'Tudor policy', pp. 269-70.

to bring prominent rebels to justice. About November 1535, Alen returned with another list of ringleaders to be dealt with. Fitzgerald's five uncles and four of the 'basterde Geraldines', with any others the council thought desirable were to be arrested and brought to England; and another group of Anglo-Irish gentry headed by Lord Dunsany 'with soch others as be named in a memoriall delivered to the chief justice and me at our last being here, togeder with thois which can be proved to be principall offenders' were to be attainted.⁵² The council had earlier advised the removal of Fitzgerald's kinsmen on the grounds that they would otherwise cause trouble, and in response his five uncles were rounded up and shipped off to join Fitzgerald in the Tower.⁵³ Nevertheless, the council at least thought that Sir James and Richard Fitzgerald were to be spared and given a living in England, and even after their attainder Brabazon was still unsure about their fate and wrote advising that the attainder would have to be certified into Ireland if their lands were to be forfeit.⁵⁴ Rumours of their impending restoration continued to disturb the Pale gentry until the Fitzgeralds were executed.⁵⁵ And in other respects, there is little sign that the Irish council favoured this more severe policy against the rebels. The mere arrest of Fitzgerald's five uncles early in February 1536 had a profound impact on the gentry of Co. Kildare, who fearing that their turn would follow were reportedly 'the most sorryst afrayyt men in the world'; but perhaps this was partly because a commission of oyer and terminer visiting the county in Michaelmas term, the second since Easter, had executed eighteen 'theves, robbers and malefactours', some of them for treason.⁵⁶ Elsewhere the tale was much the same, the council reporting that the majority of the Palesmen had aided Thomas Fitzgerald and

being indicted of high treason, remayne in souche feare as by occasion thereof we be in doubte to truste to their aides or sucors.⁵⁷

Thus the king's instructions for the attainder of more ringleaders seem to have fallen on deaf ears. The Irish act of attainder passed in the first session of parliament readily enough, but of the twelve marked for execution by the act, few or none seem to have been in custody at that time. This view is supported by the absence of references to the execution of ringleaders in despatches to England immediately after the attainder had received the royal assent towards the end of May, though the unfortunate servant of one of those proscribed, who conveniently landed from Spain on the government's doorstep at Drogheda while the attainder was before parliament, was tried and executed.⁵⁸ Directly

⁵² *S.P. Hen. VIII*, II, 293 note 1.

⁵³ *L. & P. Hen. VIII*, IX, nos. 332, 358, 515, X, no. 301; *S.P. Hen. VIII*, II, 278-305.

⁵⁴ *S.P. Hen. VIII*, II, 369; *L. & P. Hen. VIII*, XI, no. 521; P.R.O., S.P.60/3/4 (*L. & P. Hen. VIII*, IX, no. 332).

⁵⁵ *S.P. Hen. VIII*, II, 275, 277-8, 321, 407.

⁵⁶ *Ibid.* II, 243, 264, 295, 308.

⁵⁷ *Ibid.* II, 320; *L. & P. Hen. VIII*, X, no. 1032, XII (i), no. 894. Cf. Edwards, 'Irish Reformation Parliament', pp. 62-3.

⁵⁸ *S.P. Hen. VIII*, II, 317; P.R.O., S.P.65/1/2 (*L. & P. Hen. VIII*, XII (ii), no. 1310 II 9); Brendan Bradshaw, *The dissolution of the religious orders in Ireland under Henry VIII* (Cambridge, 1974), pp. 51-2.

after the first session, on 1 June, the council renewed its request of June 1535 for a general pardon, advising the king to 'forbere the rigoure of his lawes ayenst the residue of his subjectes', providing 'rather for thenhabitation of those landes which his grace hath alredie' than for further attainders by which 'more desolacion and waste shall ensue'.⁵⁹

As has been plausibly argued,⁶⁰ this request seems to have been made in pursuance of a tacit agreement between councillors and the Palesmen whereby the former held out the promise of the king's pardon in return for parliamentary support for the government's legislative programme. Thus when the pardon continued to be withheld and instead members were presented with three bills to increase the king's revenue at his subjects' expense, cooperation turned to opposition in the second session. The bills were rejected and there developed an impasse which continued into 1537 despite letters from the king himself.⁶¹ Finally, in mid-1537 Henry conceded *inter alia* a pardons bill in order to regain control. The act for pardons provided that anyone guilty of offences against the king in the late rebellion might, up until 1 July 1538, make fine for pardon with seven commissioners deputed by the king for that purpose, or any two of them, and that the commissioners were to make out a warrant to the chancellor of Ireland for the issue of their pardons under the great seal. The act was not to extend to those 'alredie attaynted by especiall name by auctorite of parliament' – which presumably included all those attainted by process of the common law since 1 November 1534, even though the act seems to imply the opposite – and also any who did not submit and make fine could still be prosecuted: but effectively the act signalled the end of the government's efforts to bring additional rebels to justice.⁶² Thus almost the last victims of the king's vengeance were, appropriately perhaps, Thomas Fitzgerald and his five uncles, together with Sir John Burnell who had been marked for execution by the Irish act of attainder and had the misfortune to be recaptured for the second time, taken to England and lodged in the Tower in summer 1536.⁶³ The timing of the executions, however, perhaps owed more to the Pilgrimage of Grace: the executions formed a prelude to Henry's revenge on another group of dissidents whose aims were very similar to those of Kildare and who were perhaps more closely linked than the surviving evidence now suggests.⁶⁴ On 3 February 1537, the Fitzgeralds were

draune from the tower un to Tyborne, and there alle hongyd and heddyd and qwartered, save the lorde Thomas, for he was but hongyd and heddyd and hys boddy

⁵⁹ *S.P. Hen. VIII*, II, 246, 320–1.

⁶⁰ Brendan Bradshaw, 'The beginnings of modern Ireland' in Brian Farrell (ed.), *The Irish parliamentary tradition* (Dublin, 1973), pp. 72–3; 'Opposition to ecclesiastical legislation', pp. 291–300; *Dissolution*, p. 52.

⁶¹ *S.P. Hen. VIII*, II, 403–4, 422–6.

⁶² P.R.O.I., CH 1/1, Statute roll, 28–9 Henry VIII cc. 20, 35.

⁶³ *L. & P. Hen. VIII*, XII (ii), no. 181; *S.P. Hen. VIII*, II, 229, 477; Holinshed, *Chronicles*, VI, 302; as in note 72 below.

⁶⁴ Cf. Ellis, 'Kildare rebellion and early Henrician Reformation', pp. 829–30; G. R. Elton, *Reform and reformation: England 1509–58* (London, 1977), pp. 262–70.

buryd at the Crost Freeres in the qwere, and the quarteres with their heddes set up abowte the citte.⁶⁵

The sentences meted out to Fitzgerald, his uncles and supporters have attracted the familiar chorus of condemnation from modern historians,⁶⁶ though in fact they appear mild even by Henry VIII's standards, let alone those set by the German princes a decade before. Apparently eleven were tried and executed by the common law in Hilary term 1535,⁶⁷ twenty-six by martial law in March, and five by common law after Easter.⁶⁸ Nicholas Waffer, one of those instrumental in the murder of Archbishop Alen, must also have been executed about this time: he had been reprieved after the fall of Maynooth, presumably because the heavier penalty laid down by the common law was considered more appropriate to his crime.⁶⁹ In mid-May 1536, one of James Delahide's servants was executed after trial by common law, but none of those condemned to execution in the act is known to have been available in custody in Ireland. Seven more named in acts of attainders were executed at Tyburn in February 1537. Finally, a list of the value of goods and chattels of traitors attainted and outlawed comprises 23 persons most of whom appear to have been executed.⁷⁰ Nine were in those categories already discussed, but two more had been in custody in Dublin castle and must have been executed some time before mid-1536. Two others – David Nevell, baron of Roscarlon, who had been seneschal of the liberty of Wexford in 1534, and James Keating, another Co. Wexford gentleman – were certainly executed,⁷¹ and probably most, though not all, of the other ten.⁷² In addition to this total of about sixty who almost certainly paid with their lives, there were others whose fates are less certain. The commissioners of oyer and terminer who visited the Pale later in 1535 certainly brought a few small fry to justice, but probably no worthwhile addition to the accumulation of lands that the attainders placed at the king's disposal. Even so, only about half a dozen traitors were despatched at one session in Co. Kildare, the heart of the earl's influence, which suggests that elsewhere in the Pale the sessions were even less fruitful.⁷³ Other evidence of proceedings by the common law tends to support this suggestion. The

⁶⁵ J. G. Nichols (ed.), *Chronicle of the Greyfriars of London* (Camden Soc., no. 53), *sub anno* 1537. Cf. Charles Wriothesley, *A chronicle of England* (ed. W. D. Hamilton, 2 vols., Camden Soc., n.s. xi), *sub anno* 1537.

⁶⁶ E.g. Philip Wilson, *The beginnings of modern Ireland* (Dublin, 1912), p. 122; Margaret MacCurtain, *Tudor and Stuart Ireland* (Dublin 1972), p. 17; Brendan Bradshaw, 'Cromwellian reform and the origins of the Kildare rebellion' in *Trans. Royal Hist. Soc.*, 5th ser. xxvii (1977), 91.

⁶⁷ Cf. *S.P. Hen. VIII*, II, 206.

⁶⁸ It is unlikely that any more of Fitzgerald's gentry supporters were executed at this time, since evidence of this would have survived in the under-treasurer's account in connexion with lands forfeited, and probably also in the surviving calendars of inquisitions *post mortem*.

⁶⁹ *S.P. Hen VIII*, II, 231; P.R.O., S.P.65/1/2 (*L. & P. Hen. VIII*, XII (ii), no. 1310 II 9).

⁷⁰ P.R.O., S.P.65/1/2 (*L. & P. Hen. VIII*, XII (ii), no. 1310 I 45).

⁷¹ *L. & P. Hen. VIII*, XII (ii), nos. 135, 1310 II 9.

⁷² Thus the list includes Sir Walter Delahide who eventually escaped with his life and a life interest in certain of his lands. See above, note 39; *Cal. pat rolls, Ire., Hen. VIII Eliz.*, p. 97.

⁷³ *S.P. Hen. VIII*, II, 295.

treasurer's account for 1534–7 includes only five persons, besides those included in the acts of attainder, who suffered forfeiture of their lands as a result of the rebellion – Nevell and Keating, plus three denized Irishmen – though of course the landless would not figure in the account.⁷⁴ In addition, two more traitors of the town of New Ross were attainted and executed,⁷⁵ and six others, and probably seven, were certainly attainted, though it is not known whether or not they were executed.⁷⁶ It cannot automatically be assumed that those attainted suffered execution, for many of the ringleaders are known to have escaped the government's clutches by flight. At least six of the dozen specifically condemned to execution in the Irish act of attainder escaped in this way, and three of them – James Gernon and Peter and Robert Walsh – were later pardoned and partially rehabilitated.⁷⁷ Others attainted were already dead: John Teling, Waffer's accomplice in Alen's murder, was no doubt better off so, but the offences of John McGilsenan are unknown,⁷⁸ and perhaps even the earl of Kildare would have escaped attainder had he lived.

The evidence is by no means so full as we should wish, in particular the complete absence of any rolls of king's bench or those of the commissioners of oyer and terminer leave a large gap. But there is sufficient to yield fairly reliable conclusions about the nature and extent of the government's retaliation in the aftermath of the revolt. Altogether 66 people can with reasonable certainty be shown to have suffered attainder, by the common law or by act of parliament and usually both, though many of these escaped execution. Two more suffered forfeiture by act of parliament and were also executed, but were not attainted. At the outside, about 100 may conceivably have been executed after trial by common law or by martial law or after attainder by parliament, and at the least there is fairly solid evidence that the sentences were carried out in 63 cases. Most probably, however, the actual number of executions was in the region of 75. In contrast, it appears that at the peak of their success in August and September 1534, the rebels had between 4,000 and 5,000 men under arms.⁷⁹

⁷⁴ P.R.O., S.P.65/1/2 (*L. & P. Hen. VIII*, xii (ii), no. 131014–16). In addition, Peter Fitzgerald of Millonsgrange, Co. Kildare was attainted some time after Michaelmas 1537: *L. & P. Hen. VIII*, xvi, no. 777 I 37.

⁷⁵ H. F. Hore and J. Graves (ed.), *The social state of the southern and eastern counties* (Dublin, 1870), p. 62.

⁷⁶ Cf. J. d'Alton, *The history of the county of Dublin* (Dublin, 1838), pp. 745–6; extracts from Pipe Roll fragments, National Library of Ireland, MS 761, p. 349; Memoranda roll, 36 Henry VIII m. 50 (P.R.O.I., Ferguson repertory, iv, 151); Bodleian Library, Oxford, Laud MS 613, fo. 297; *L. & P. Hen. VIII*, xi, no. 200, xii (ii), nos. 729 (1), 1232, xvi, no. 777 I 37; 'Calendar to fiants... Henry VIII' in *Seventh report of the Deputy Keeper of the Public Records in Ireland* (Dublin, 1875), no. 484; P.R.O., S.P.65/3/2 (I am grateful to Professor Gearóid Mac Niocaill for allowing me to use his transcript of this document).

⁷⁷ 'Cal. fiants Hen. VIII', nos. 178, 203, 341, 372; *Cal. pat. rolls Ire., Hen. VIII–Eliz.*, p. 53. In other cases, including Kildare's, the attainders were ultimately reversed in favour of the descendants of those attainted.

⁷⁸ McGilsenan appears to have been a collector of subsidy in Coolock barony, Co. Dublin in 1533–4: Memoranda roll, 25 Henry VIII m. 26d (P.R.O.I., Ferguson coll. iv, fo. 179).

⁷⁹ Ellis, 'Tudor policy', pp. 260–1: based on contemporary estimates which may have exaggerated. On the other hand, Offaly faced little serious opposition at this stage and therefore had little incentive to muster his full military capacity.

In the event therefore the government's proceedings were considerably more limited than the king in particular had wished. The majority of Kildare's tenants and retainers escaped scot-free, and his more substantial gentry supporters seem to have been punished with fines which were generally far less heavy than those exacted after the Northern Rising. The deputy and council advised that the gentry were too poor to pay substantial sums in cash⁸⁰ – at 40s. and £10 respectively the fines of two Co. Louth gentlemen were light indeed⁸¹ – and altogether a mere £2,377 11s. 5d. was levied in fines for pardon.⁸² Since the goods and chattels of traitors were worth only £502 3s. 6d.,⁸³ these sums did not even begin to cover the cost of suppressing the revolt.⁸⁴ And in the longer term, although the lands of those attainted swelled the crown rental by just under £1,250 a year, the troops necessary to defend the land after Kildare's demise cost considerably more.⁸⁵

Yet Henry VIII certainly did not incline to leniency in dealing with rebels. If he had not previously shown much interest in Irish affairs, the king could certainly not afford to ignore the wider implications of this challenge to royal policy.⁸⁶ And in fact rebel propaganda, 'reviling his grace with most shamefull and detestable infamies', was sufficiently penetrative and scurrilous in tone to ensure that Henry would swallow no more insults than he had to.⁸⁷ Even so at no stage was the king able to indulge his appetite. Legal technicalities caused the government some difficulty and until the rebels were defeated justice had to take second place. Rebels executed in this early phase were mostly ringleaders who had had the misfortune to be captured and could be despatched *ad terrorem*, or the gunners executed for military reasons after the siege at Maynooth; and throughout, the proximity of the Irishry meant that some escaped who would ordinarily have suffered (though the Scottish border offered similar relief for northern rebels in 1536 and 1569). In general, however, the extent of the king's vengeance was limited by the need to retain local support for his parliamentary programme and the administration of the region more generally. Less obviously, Henry had played with the idea of excepting key members of the Fitzgerald family from his retribution so as to facilitate government. But again he had been forced to revise his strategy, in part by pressure of public opinion in the Pale which was insistent that only

⁸⁰ *L. & P. Hen. VIII*, xii (i), no. 983.

⁸¹ N.L.I., D. 15978-9 (*Dowdall deeds*, nos. 534-5).

⁸² P.R.O., S.P.65/2/2 (*L. & P. Hen. VIII*, xvi, no. 776). I am indebted to Professor D. B. Quinn for this reference. Except where otherwise stated, sums are given in pounds Irish: one pound Irish was the equivalent of one mark sterling.

⁸³ P.R.O., S.P.65/1/2.

⁸⁴ Cromwell claimed in June 1536 that the revolt had cost £40,000 sterling to suppress, though this may be an exaggeration: *L. & P. Hen. VIII*, x, no. 1051 ii. See S. G. Ellis, 'Thomas Cromwell and Ireland, 1532-40' in *Historical Journal*, xxiii (1980), 510. In contrast, the Cornish rising of 1497 had cost £13,200 st. to suppress, but Henry VII received £14,700 st. in fines for pardons: D. M. Loades, *Politics and the nation, 1450-1660* (London, 1973), p. 107.

⁸⁵ See Ellis, 'Thomas Cromwell and Ireland', pp. 510, 514-16 for these calculations.

⁸⁶ Cf. Ellis, 'Kildare rebellion and early Henrician Reformation', *passim*.

⁸⁷ P.R.O.I., CH 1/1, Statute roll, 28 9 Henry VIII cc. 1, 8 (*Stat. Ire.*, i, 68-9, 95); Ellis, *loc. cit.* pp. 826-9.

the Fitzgeralds, if any, should be sacrificed, but also because Henry's honour required more executions than were now apparently forthcoming from other families less clearly involved in the rebellion. In order to adapt to these pressures, Henry had been forced into some morally, if not legally, dubious expedients: in the event, the rule of law only prevailed by dint of reversing both a royal pardon and a proviso in a parliamentary act of attainder by another act of attainder, by disavowing the promise of another pardon, and by resorting to a parliamentary attainder in a case when the evidence was insufficient to secure a treason conviction by the common law. Exceptionally, the cases of Sir James and Richard Fitzgerald show that the government could even be induced to greater severity in particular cases where leniency had initially suggested itself. Thus the exercise of the royal prerogative of pardon had been determined, not by the wishes of the king, but by the growing realization among ministers and Henry himself that anything more than the execution of ringleaders would alienate the local community thereby making government in the normal manner impossible.

But how typical was the Kildare rebellion as an example of Henrician practice concerning the enforcement of the law? Of course the necessity that the government was under at this time of calling a parliament in Ireland provided an exceptional opportunity for successful opposition, but this only demonstrates how carefully English parliaments of the decade had to be handled. The making and execution of Henry's policy of revenge is also in this case exceptionally well-documented, but perhaps not otherwise untypical. The parallel with Henry's strategy in handling the northern risings of 1536-7 is certainly striking: the concessions made by Norfolk as king's lieutenant, the reception of delegations at court, the proclamation of a pardon, all these aimed at splitting the opposition; and once this had been achieved, the king could take limited revenge. But again full vengeance could not be extorted or the north would have become ungovernable, and in the aftermath of the revolt Henry had perforce to appoint ex-rebels to prominent places in the government of the region.⁸⁸

Now the most obvious distinction between this type of noble-backed rebellion and the less exceptional forms of treasonable activity documented in Cromwell's papers is that the former were movements involving a substantial section of the political nation who together were sufficiently influential, given the government's reliance on their cooperation to maintain order, to extract concessions. More normally the government detected (or perhaps only pretended to do so) only isolated individuals from the ruling classes among movements of dissent, and in these circumstances the law could be allowed to take its course. No doubt significant opposition to royal policy would usually manifest itself in parliament where a compromise might be worked out, though it is worth noting the Pilgrims' demand for a free parliament with the north

⁸⁸ R. R. Reid, *The king's council in the north* (London, 1921), pp. 133-52; M. H. and R. Dodds, *The Pilgrimage of Grace 1536-1537 and the Exeter Conspiracy 1538* (Cambridge, 1915), II, ch. 21.

adequately represented and the king's servants excluded.⁸⁹ Nevertheless, in one sense, it is difficult to see any real distinction between these concessions to public opinion and other well-known cases in which the rule of law could more obviously be held to have prevailed – the Taxpayers' Strike of 1525, for example, or the acquittal of Lord Dacre in 1534 on a charge of treason. In Ireland at least, where the king's deputy was especially dependent on the goodwill of the local community, political pardons were apparently common. 'To this tyme', Henry was advised in 1534,

where manye men have bene takyn and parte of them indytede of felonies and treison, yf they be pore wrachys not havynge landes ne goodes ne frendes, then shall they have the extremetyss of justice; but yf he be a grete man haivynge landes othyr goodes wherby your deputie maye be pleased, then shall this malefactor have ys pardon.⁹⁰

It would be surprising if in England the king invariably exercised his prerogative, outside the context of rebellion, as he wished instead of in accordance with the wishes of the political community.

Henry VIII was so far from establishing a despotism that he could not even be sure of enforcing undoubted rights, even in matters which touched the crown most nearly. Perhaps therefore it would be safer to say that the rule of law was an ideal towards which the king by and large aspired (despite a few notorious examples to the contrary) rather than an undoubted fact of government. Certainly, by the sixteenth century this goal was almost within reach, and Cromwell probably came closer to bringing this about than anyone else before Elizabeth's reign. But then Cromwell's unpopularity may in part be ascribed to his advocacy of a principle which was not yet universally accepted by the political nation. Even in the 1530s, the law had to be applied selectively, and still later congregations were probably required to pray that royal officials 'may truly and indifferently minister justice' more especially in support of the principle than to counteract the activities of corrupt individuals. By Elizabeth's reign, however, the rule of law was so far accepted that she could extort much greater revenge in 1569 for a less serious revolt.

The principal distinction between proceedings against the Kildare rebels and their counterparts in England, it appears, was Henry's initial failure to realise that the practical restraints on his powers were the same. Faced with popular dissent in England Henry VIII had the necessary political acumen to judge accurately and speedily the extent of concessions necessary to retain control. But this failure provides a valuable demonstration of why that king's initial fulminations might sometimes be followed by merciful mildness.

⁸⁹ Reid, *King's council*, pp. 131–2.

⁹⁰ *S.P. Hen. VIII*, II, 192.