

THE KILKENNY CITY CHARTER OF 1609

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The image of the 'shining city on the hill' was often used by President Ronald Reagan to convey his vision of the American dream. It was perhaps best expressed in his farewell address of 11 January 1989:

I've spoken of the shining city all my political life but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall proud city built on rocks stronger than oceans, windswept, God-blessed, and teeming with people of all kinds living in harmony and peace, a city with free ports that hummed with commerce and creativity, and if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get there.

Despite its apparent modernity, this is a very seventeenth-century view of what a city should be and, appropriately enough, President Reagan credited John Winthrop, the first governor of Massachusetts, as his source because in 1630 he inspired the first prospective colonists of that state with the words: 'We must be like a city on a hill; the eyes of all people are upon us'. Indeed it is the concept of the 'shining city' that lies behind the city status granted to Kilkenny in 1609. The aim, as stated in the charter's opening preamble, was to create 'a city of peace and quiet, to the terror and fear of the wicked and the reward of the good'. It is a vision that endured throughout the seventeenth century and was still there in 1687, when the city received a fresh charter from James II in which Kilkenny was to be 'a city of encouragement to the peaceable and quiet, of dread and terror to the evilly disposed, and of support for the good'. Kilkenny was not alone in having this aim. It reflected the Renaissance ideal of the perfect city.

As the embodiment of an ideal, a seventeenth-century city had to have more than just a large population, engage in considerable trade and commerce, and occupy a sizeable area. It also had to have an attractive appearance because this reflected the civility, urbanity and civic pride of the inhabitants. The maintenance of a visually attractive townscape was the justification of Kilkenny's right to be a city. This took the form of a co-ordinated street frontage of stone houses, paved streets that led to fine markets and shops, an almost continuous arcade of stone and timber porticos that sheltered shoppers from the rain (surviving now only at Rothe House and the Butter Slip), splendid churches in which God and the merchant families were celebrated, well-maintained defences that protected the inhabitants, strong gatehouses that controlled arrival and departure, as well as a series of gardens and orchards that provided fruit for the table and a leisured ambience for the owners and their guests. The development plan for early modern Kilkenny can be summed up in one sentence: it

was to make the city beautiful. This is the phrase that is tellingly used in 1573 when Richard Shee was praised for erecting a new house and buildings ‘of decent and civil show ... to the beautifying’ of Kilkenny.

It should not surprise us that the primary concern of the city charter of 1609 was with order and specifically with the establishment of authority and the continuation of that authority. The charter begins with a preamble explaining why city status was being granted, it goes on to define the area of the city and to give the name of the new authority, namely, the Mayor and Citizens of Kilkenny. It then proceeds to explain the rights of this new body in law before going on to name Thomas Ley as the first mayor and to give the names of the first eighteen aldermen. The duties, responsibilities, modes of election and removal of the mayor are set out, followed by those of the aldermen and citizens. The positions of escheator and recorder are next described. These are followed by the clauses that established the new county of the city of Kilkenny, which are preliminary to describing the major officials who will operate in that county, namely the sheriffs, coroners and justices of the peace. The positions of deputy mayor and clerk of the Tholsel (town clerk) are next defined before returning to the local authority’s judicial functions in upholding the law and maintaining peace, as well as its role in running markets and fairs. A major part of the concluding section is devoted to the city’s right to establish a merchant staple, which would regulate and supervise all economic activity within the city and be comparable to those at Dublin and Waterford. Along the way, both the city and the mayor are allowed to have seals, the mayor is permitted to have a sword carried before him, the local authority is confirmed in its existing ownership of property, it is allowed to purchase, receive and lease new property, and it is also granted the property and chattels of all convicted felons and traitors. The charter concludes with clauses designed to ensure continuity in law of the power, ownership and entitlements of the old urban authority with that of the newly established Mayor and Citizens of Kilkenny.

The 1609 charter did not simply descend on Kilkenny from above. The exact circumstances behind the grant remain unclear because the town books for this period are missing but it is evident that it was the fruit of over thirty years of hard work, persistent lobbying and good luck. The first evidence of the demand for new status occurs in 1574 when the town council pressed the lord deputy to write to London requesting that their chief officer, known as the ‘sovereign’, should become a mayor. The request fell upon deaf ears but the town attained a consolation prize, that of the right to a corporation. This grant raised the existing community to the level of a legal personality—a corporation—with the power to sue and be sued, and the power to own property and lease it. In addition incorporation gave the borough perpetual succession, a common seal and authority to issue by-laws. Only thirteen Irish towns were incorporated by this time so the charter of incorporation granted to Kilkenny on 12 August 1574 was a modernising move.

A further indication of Kilkenny’s move towards improvement was the relocation of the Tholsel into a more central position on High Street in 1578. The Tholsel was not simply the meeting place of the corporation it was also the spot where market dues were paid, where the sovereign held a weekly court, and where the merchant guild convened its meetings. There was clearly a problem of space. The population had increased, generating more members of the merchant guild and, consequently, more members of the commons when they gathered to elect the sovereign and corporation.

The physical constraints of the old site are evident from the fact that the local authority regularly held its meetings in St Mary's Church and had to move to the chapter house of the Dominican friary in order to hold elections. The new site had the advantage of being more central to the market place and it overlooked one of the key gathering points of the community, where the climax of the annual Corpus Christi and Midsummer drama was staged. This was the principal entertainment of the medieval and early modern town, and the re-siting of the Tholsel was the equivalent of locating today's County Council Offices along one side of Nowlan Park, with tiers of box seats for the County Council's visitors and guests.

The creation of a new Tholsel was part of a general rebuilding that included (among many others) Richard Shee's house at the present Market Cross (1573), Arthur Shee's house at the present Paris Texas (1580), Shee's Almshouse (1583), Rothe House (1594) and Nicholas Langton's house at the Butter Slip (1603), all buildings that were designed to give Kilkenny the appearance of an elegant city. The increasing use of coal ensured that fireplaces with chimneys became a necessity and the surviving sixteenth-century houses show that there was a move away from the centrally placed hearths and braziers of the medieval hall-houses to peripherally located fireplaces with chimneys in the walls. This shift from timber houses with thatched roofs to buildings of stone and slate was part of a wider urban development in Britain and Ireland.

The move from timber to stone is evident from the sixteenth- and seventeenth-century leases, about 500 of which survive. From these it is clear that the local authority took its responsibilities seriously and failure to comply with its requirements met with severe penalties. Tenants were required to maintain their premises 'stiff, strong, staunch and tenantable' and, failure to do so, such as, for instance, the collapse of a building awaiting redevelopment, led to the seizure and confiscation of the property. The modern code of building standards and specifications did not exist but the local authority had a clear idea of the desired end result. The normal statement in the leases is that the houses were to be built of 'lime, stone and oaken timber and covered [i.e. roofed] with oaken timber, laths and slates'. In some instances it is stipulated that the floors, partitions, doors and doorframes must be of oak, that the windows must be of stone, and that chimneys were to be built. There were also stipulations that new building work had to enhance the old by complementing it and by being in symmetry with it. In addition to the combination of social pressure and architectural consensus, the local authority imposed its own quality control. The phrase 'to be sufficiently built' is inserted regularly in the deeds and implies an agreed level of quality for the finished product. From at least 1351 it was normal to send an inspection committee of 'good and law-worthy men of the town' to report on the finished work. If the work was not up to the mark, it would have to be redone, and if the developer was found to have flagrantly flouted the building conditions, the structure could be demolished.

Apart from physical appearance, other important attributes of a city were size and population. After almost two centuries of abandonment, extra-mural suburbs began to develop again in the sixteenth century particularly as a result of the development of properties that became available after the Dissolution of the Monasteries. This expansion, however, was hardly sufficient to justify an elevation to city status but there was one large populated area, which, if incorporated into the Hightown, would increase the size of Kilkenny by over one-third and probably have the same impact on

its population. This was Irishtown, an independent borough that came under the lordship of the bishop of Ossory. It was the original nucleus of the town and was almost certainly a borough in pre-Anglo-Norman times. During the succeeding four hundred years, however, a strong rivalry developed between Irishtown and Hightown, a rivalry characterised by so many endless and trivial disputes that it give rise to the phrase 'Kilkenny cats'.

It is significant that in 1574, when the corporation was established, it was declared to consist of both Irishtown and Hightown. This union seems to have been more aspirational than real because it is clear from its council book that Irishtown continued to function as a separate entity. The refusal of Irishtown to co-operate with Hightown undoubtedly prompted the corporation's next move, which is recounted in a lengthy document known as the *Quo warranto* ('by what warrant') of Elizabeth I. Early in 1589, the provost, burgesses and commons of Irishtown were summoned before the king's bench in Ireland and were required to explain the basis ('by what warrant') they claimed to be a corporation with power to plea and be pleaded against in the courts, to levy fines without rendering any account to the exchequer, to make by-laws, hold markets, collect tolls and punish offenders.

Undoubtedly, the charges were a calculated affront to Irishtown because they were made in the full knowledge that the Hightown of Kilkenny had been operating on exactly the same basis until 1574, when it was granted corporation status, and that during the intervening fifteen years Irishtown had not received a charter of incorporation. Irishtown's defence was that it had been operating in this manner 'since time immemorial', in other words since beyond the memory of anyone then living. This defence was difficult to deny but the attorney general, Charles Caltrap, appearing for the prosecution, made a subtle distinction. If Irishtown had held these rights from time immemorial then they would be unchanged through time but if changes had been introduced then the question arose: by what authority ('by what warrant') did Irishtown make changes to its practices? Of course, Irishtown had changed its modes of operation over the years and, despite the fact that the case dragged through the court for six years, the final judgement was inevitable. Irishtown was not a corporation, it lost all of its rights and privileges, and had to pay a hefty fine.

In January 1596 a copy of the judgement was made for Henry Shee, then sovereign of Kilkenny, with the clear intention of producing it in any future court action. Irishtown was now without an independent governing body and the way was open to incorporate it into Hightown. On 4 February 1598, Thomas Archer, the then sovereign, petitioned Sir Robert Cecil for a new charter. Later seventeenth-century family tradition maintained that Nicholas Langton (1552-1632) was the person responsible for negotiating the 1609 charter. It is known, however, that he was already sent to London in 1600 by the corporation as their agent to negotiate with Queen Elizabeth and her government for money due to Kilkenny for providing food to soldiers that had been garrisoned in the town or supplied along the way for the previous three years. Langton met with Sir Robert Cecil, the son of Lord Burghley, Elizabeth I's long-serving chief minister. In their submission the corporation pointed out that Irishtown had been burned and devastated by supporters of Hugh O'Neill in February 1600, and they asked for a new charter incorporating a potential stimulus package of markets and fairs, a merchant guild and, interestingly, a port for Kilkenny

at Rosbercon, as the way of relieving Kilkenny's plight. On 21 October 1600, however, Waterford Corporation, Kilkenny's traditional rival, sent a strongly worded letter to Sir Robert Cecil objecting to the proposed new charter and in particular to the proposed development of a port at Rosbercon, which it said would destroy the overseas trade of Waterford. The objection seems to have been sufficient to halt the progress on relieving Kilkenny's distress because the destruction and depopulation caused during the Nine Years War are referred to in the preambles to both the 1608 and 1609 charters as if they were still living issues that had not been addressed until those charters were granted. Waterford's objection to the creation of a new port at Rosbercon also seems to have succeeded because no mention is made of it in the subsequent grants.

Nicholas Langton, however, was not the only member of Kilkenny Corporation who had connections at the summit of the English government. In 1574 Robert Rothe, who in many ways seems to have been the main force behind the city charter, met Lord Burghley while he was legal advisor to Thomas Butler, tenth earl of Ormond. Given that five other members of the first corporation, Patrick Archer, Thomas Archer, Walter Lawless, Helias Shee and Henry Shee were also important Ormond estate officials, it is possible that several members of the corporation had met the highest government officers in London at one time or another. In addition three members of the first corporation had served as members of the Irish parliament, Robert Rothe, John Rothe fitz Piers and Helias Shee, which would have introduced them directly to the leaders and officials of the Dublin administration.

It was customary with a change of monarch for corporations to seek a confirmation of their existing charters but when James I ascended the throne in 1603, the decision was taken to revive the request for a new charter. After a certain amount of negotiation, with the support of the lord deputy Sir Arthur Chichester, and on payment of the necessary fees the long-sought charter was eventually granted on 16 October 1608. The preliminary paragraphs explain why Kilkenny deserved the charter, namely because it was an ancient and free borough whose inhabitants were descendants of an old English colony; because they had long been loyal and had rendered many valuable services to the crown; because they had retained English laws, language and customs when all about them had lapsed into Irish barbarism; because they had repelled rebels and prosecuted the king's enemies; and because the townspeople needed a stimulus package in order to encourage people to return to Kilkenny and relieve the poverty and unemployment inflicted by the Nine Year's War (1594-1603) and a subsequent outbreak of famine and plague (1604). The effects of the plague were well known in England, where more than 40,000 died in London and at least 2000 out of Bristol's estimated population of 12,000 perished.

The 1608 charter was richly embellished with decoration and was clearly meant to function as the new great charter of the town, which, even for those who could not read, would impress by its colour and scale when put on display. Within six months, however, this charter was to be out of date, replaced by the charter elevating Kilkenny to city status. How is this turn around to be explained? Prim, who gave the first modern account of the granting of the city charter, suggested that the 1608 grant was not to the liking of the corporation and that they petitioned immediately for a new grant and obtained it. There is a major problem with this interpretation, however, which is that the corporation had been trying unsuccessfully for such a grant for at

least thirty-four years. Why would the government grant them so readily what it had refused for so long? It is more likely that the granting of the city charter reflects a change in policy by the government. It is here, perhaps, that Nicholas Langton's and Robert Rothe's connections at Westminster proved to be useful.

With the end of the Nine Years War (1594-1603) and the Flight of the Earls (1607) there were opportunities to devise a new economic policy for Ireland, one that would result not only in the Plantation of Ulster (1609) but, at a more basic level, would decide which villages should have markets, which towns should have fairs and markets (and how many), which towns should be boroughs with the right of representation in parliament, and which should be cities. These decisions were to be long lasting. When one looks at the other urban charters granted in 1608-9, it would seem that the government priority was its new economic arrangements for the south of Ireland, designed perhaps to secure the loyalty and (hopefully) the prosperity of the south while the government went ahead with its new and controversial policy in the north. The only other Irish towns that received grants in 1608 were Clonmel, which was awarded a charter of incorporation giving its chief officer the title of mayor, and the towns of Gowran and Inistioge, which were incorporated and granted markets and fairs. Kilkenny may well have argued that it was in a class above these settlements and should be recognised as such. In 1609, Kinsale, Limerick and Youghal were re-incorporated, Waterford had its ancient charters and liberties confirmed, while Cork and Wexford were incorporated for the first time. It seems likely that in the context of this new formalisation of urban life in the south of Ireland, Kilkenny took advantage of the moment, argued that it was akin to Cork, Waterford and Limerick, and should not be treated as if it was the same as Clonmel, Gowran and Inistioge. The result was its elevation to city status and the recognition of its position as Ireland's principal inland town.

Kilkenny was a winner in 1609 and its success in securing city status meant that other towns in the region, Carlow, Clonmel, Maryborough (now Port Laoise) and New Ross among them, would not become cities. Similarly, in terms of fairs, their location at Kilkenny deprived smaller towns such as Callan, Gowran and Thomastown of certain opportunities, and concentrated activity in the city. For most of the next 240 years, Kilkenny would be the second city of Leinster, not only in terms of title but also with regard to population and trade. The decisions taken in 1608-9 had far-reaching future effects.

There was another reason, however, why the government was keen to grant charters. Charters were expensive and the greater the privileges, the greater the cost to the inhabitants. James I's government was notoriously short of money and the granting of rights and privileges was an easy way of obtaining ready cash. Hundreds of towns and villages were granted fairs and markets or given borough charters at this time. At a policy level, the reorganisation of the Irish economy after the Nine Year's War was essential but it was also a reorganisation from which the treasury benefited directly.

The first mayor was named as Thomas Ley and the former chief burgesses of the 1608 charter were listed as aldermen together with the names of six new individuals who had presumably been elected during the intervening months. The aldermen were named in order of seniority of service as sovereigns of the town, which may coincide with the order of their election to the board of aldermen: Robert Rothe (sovereign

1581-2), Arthur Shee (1583-5), Richard Raggett (1592-3), Helias Shee (1594-5), Henry Shee (1595-6, 1600-1), Thomas Archer (1597-8), Patrick Archer (1601-2), Luke Shee (1602-3), Edward Rothe (1604-5), John Rothe fitz Piers (1605-6), Nicholas Langton (1606-7), Edward Shee (1607-8), and Thomas Ley (1608-9). The newly appointed members were elected mayors in due course, although they had to wait their turn until the older aldermen had enjoyed the mayoralty and the perks that went with it, including the right to be a justice of the peace for life. So Robert Rothe, as the grand old man of Kilkenny politics, was elected mayor for 1609-10 in succession to Thomas Ley; Henry Shee served for 1610-11, Thomas Archer was elected for 1611-12 but was replaced by Patrick Archer, probably because he refused to take the oath of supremacy; Edward Rothe was mayor in 1612-13, John Rothe fitz Piers was elected in 1613 but stepped down in favour of Nicholas Langton, again because of a refusal to take the oath of supremacy. Edward Shee was mayor in 1614-15 and Luke Shee for 1615-16. The first of the new cohort of 1609 to be elected was David Rothe, who was voted into office in 1616 but never served because he refused to take the oath of supremacy; of the others, William Shee was mayor in 1618-19, Walter Archer in 1621-2, Walter Lawless in 1622-3, Thomas Shee in 1623-4, and Michael Cowley in 1626-7.

The oligarchic and almost incestuous nature of the corporation is made clear by the fact that at least thirteen, and probably seventeen, of the original nineteen aldermen were related to one another by marriage or family connections. Robert Rothe was related to at least five members: David Rothe was his son and was married to Luke Shee's sister, Michael Cowley and Walter Lawless were his sons-in-law, while John Rothe fitz Piers was his third cousin; Edward Rothe was presumably another cousin although the exact relationship cannot be established. John Rothe fitz Piers was also a cousin of Luke Shee and Patrick Archer, and was the father-in-law of William Shee; Thomas Archer was the father-in-law of Patrick Archer and an uncle of Walter Archer, who was in turn a son-in-law of Henry Shee; while Nicholas Langton, John Rothe fitz Piers and Elias Shee were brothers-in-law, married to three Archer sisters, who all appear to have been daughters of Patrick Archer. Luke Shee and Henry Shee were first cousins once removed, while Arthur Shee, Edward Shee and Thomas Shee were clearly part of the wider Shee family group even if the exact relationships are unclear. Other connections are harder to detect but in the case of Nicholas Langton, it is known that Walter Archer was godfather to his son Mattias; Henry Shee's daughter, Elizabeth, was godmother to his son Joseph; Henry Shee's son, Robert, was godfather to his son Robert; and John Rothe fitz Piers' son, John, was godfather to his daughter Cate. Surprisingly, perhaps, Thomas Ley, the first mayor, who is described as a merchant, and Richard Raggett are the only ones who seem to have been outside this 'golden family circle'. Even so, Thomas Ley benefited financially from his connections because on 20 October 1609, shortly after stepping down as the first mayor, the corporation conveyed to him the plum grant of the Magdalen Mill and its profits for 121 years at a generous annual rent of £6.

Missing from the story of the 1609 charter is the role of the Butlers, earls of Ormond and Ossory. Missing, largely because they had little role to play. Traditionally, the Butlers were great patrons of the town and encouraged its economic development but when it came to the granting of royal charters of liberties that might infringe upon their powers, they were less than enthusiastic. On 13 October 1608, Thomas Butler, tenth earl of Ormond, petitioned the lord deputy, Sir Arthur Chichester, to ensure that

his interests were looked after in the new charter. Written onto the petition, by way of response, is a note stating Chichester's decision to ensure that Ormond's interests were protected 'as previously discussed' with his officials. Three days later, when the 1608 charter was issued to Kilkenny, it contained a clause protecting Ormond's traditional rights. Such a clause is missing from the 1609 grant, however, and this can only be because Ormond was kept in the dark about the charter despite the fact that at least six members of the corporation were employed by him and several others were his tenants. Was it an oversight? Was it an attempt by the corporation to exploit Ormond's great age? Was there the fear that if one had to wait for Ormond's approval, the charter might never be issued? Was it felt that a bird in the hand was worth two in the bush, and that it was better to take the charter as offered and work out the details with Ormond later? It is hard to know but the absence of a clause recognising Ormond's traditional rights suggests that the charter was either formulated very quickly or that the London government (the charter was issued at Westminster) took the conscious decision of annoying the old man. In any event, the absence of Ormond support meant that several years of legal wrangling followed. In June 1610 Ormond complained to the English privy council stating that 'the officers of the town [sic] of Kilkenny, by colour of a new charter lately granted ... do now go about to encroach upon his privileges'. The subsequent government enquiry, reflecting Black Tom's influence, was ordered to show 'as much favour to the nobleman as may be agreeable to equity'. He was not the only person with an axe to grind. The Dublin government itself, which had clearly been outmanoeuvred in the awarding of the charter, was worried about the extent of the jurisdiction given to Kilkenny and felt that its rights were infringed, while the lord deputy, Sir Arthur Chichester, had well-founded suspicions that the city was a Catholic enclave, which should not receive too much economic encouragement without a clear government payback in terms of Protestant loyalty. Within months of the granting of the city charter, Kilkenny experienced a lengthy period of uncertainty over its future. In Dublin it had to defend itself against a series of technical objections from the exchequer over the sort of fines that the city sheriffs could collect while in the course of 1611-12 it eventually reached a compromise with Earl Thomas over his rights. The continued election of Catholics to the mayoralty was another bone of contention. This came to a head in 1616 when the citizens were forced to elect five mayors within six months as Luke Shee (5 April), John Rothe fitz Piers (28 June), David Rothe (12 July) and Clement Ragget (21 August) were each made to resign the mayoralty after refusing to take the oath of supremacy when required by government commissioners. The resignations only ended when the corporation elected a Protestant, Sir Cyprian Horsfall, as mayor. John Rothe fitz Piers received a hefty fine while Luke Shee was both fined and imprisoned. In July 1616 the king encouraged the adoption of a harsher approach to the Irish towns suggesting that the charters of one or two of the principal cities, beginning with Kilkenny and Limerick, should be withdrawn. Lord Deputy St John, however, decided not to strip Kilkenny of its charter and liberties, despite a strong desire to do so in government circles. Attention instead was focussed on Waterford, which lost its charter in 1618.

Within fifty years, however, the Kilkenny city charter was suspended together with those of all other Irish towns. In 1653 Oliver Cromwell withdrew the city charter and suppressed the corporation. This was part of a wider reorganisation aimed at ensuring Cromwellian control of the parliamentary seats in the first protectorate parliament of 1654-5. The descendants of the first aldermen were evicted from their fine town

houses; most moved to smaller houses or cottages on their country estates outside the city and about ten per cent took up the option of new land in Connacht. When they returned to the city after the restoration of the king in 1660 only a handful regained their old houses from the new Cromwellian settlers and none regained their former position as part of the ruling elite.

Little could the aldermen of 1609 have known that their hard work in securing city status, which they regarded as ensuring the continued prosperity of their families, would be undone in two or, for a few survivors, in three generations. Proud of their loyalty to the English crown yet happy to defy the government and engage in a game of cat and mouse confident in the knowledge that they could rely on their London and court connections, little could they have known that in due course the government would cut off the king's head and their traditional loyalty to the king would count for nothing. Little could those aldermen have envisaged that within fifty years a republican regime would evict them from their houses, destroy their centuries-old business connections and reduce Kilkenny from its newfound prosperity to virtual penury.

However, on that April day in 1609 when Nicholas Langton, if it was he, returned to Kilkenny with the new charter, all of these events were in a remote future. Instead there was jubilation and celebration fuelled not only by the new status and the potential of increased prosperity but also by the fresh challenge facing Kilkenny—a challenge the city faces today and tomorrow—to find its place in the world not just as an economic centre but also as ‘a city of peace and quiet, to the terror and fear of the wicked and the reward of the good’. The challenge of the charter of 1609 was then, as it still remains, for Kilkenny to become a model place in which to live—to be ‘a shining city on the hill’.