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From Fisher to Poacher: Public Right and Private Property in the Salmon Fisheries of the River Nore in the Nineteenth Century

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In 1802, the rivers of southern County Kilkenny were "celebrated for their salmon" and the "fishing . . . [was] free by custom to the inhabitants of the shores."[1] Over the next eighty years, on the upper waters of these rivers, the rights of private property gradually encroached upon and finally criminalized these rights of custom. The process was complex—woven out of an uneven interaction of numerous factors working sometimes together, sometimes in opposition. State policy, parliamentary legislation, case law, market exigencies, administrative priorities, and class and private interests were all relevant in varying ways at different times. The process also was fueled by the interaction of class segments that came out of the various and often opposing interests in the salmon fisheries themselves.

In this essay, I describe the encroachment process as it evolved on the upper river Nore in an area called Thomastown[2]—a locality comprised of landowners, mill owners, shopkeepers, tenant farmers, and laborers.[3] Some members of each class, but certainly not all, were interested in salmon fishing. Interested parties also pursued or advocated different types of fishing. The permutations were as follows:

Type of Fishing	Land-owners	Millers	Farmers	Shop-keepers	Laborers
Weirs, fixed nets	x	x	x		
Angling (rod fishing)	x	x	x	x	x
Cots and snap nets[4]					x

There also were some from all classes who had no direct interest in the salmon fisheries but who occasionally entered the fishing arena in pursuit of other interests. Thus, classes seldom "marched into battle as solid phalanxes."[5] Instead, alliances across classes—based on interests in fishing or a lack thereof, and based on different modes of fishing—comprised part of the local and regional dynamic through which the process of encroachment wound its uneven but inexorable way in the context of a century increasingly dedicated to the rights of private property.

The Declining Salmon Fisheries: 1800–31

Although the right to fish was "free by custom," for generations the fishing itself had not been free from legislative controls. It is important to note, though, that such controls never had been linked to the ownership or occupation of any kind of property. There were acts against destroying salmon fry,[6] fishing in the closed season,[7] and working weirs if they interfered with navigation.[8] Barony constables supposedly enforced these laws,[9] but on the Nore, in 1802, salmon fry were destroyed by mill weirs, "cots . . . fish . . . whenever they please" and salmon were caught "out of season, at illegal times, and in illegal ways."[10] As a result, the "quantity of salmon has . . . very much decreased within the last forty years" and "little is done to prevent the fishery from rapidly declining."[11]

In the first quarter of the nineteenth century, the declining salmon fisheries had become a "general complaint" in the United Kingdom.[12] Several parliamentary committees investigated, and one of them pessimistically concluded in 1825 that the decline would continue "more rapidly, unless effectual measures be resorted to for their preservation."[13]

The conditions on the upper, freshwater Nore at that time were described before one such committee by C. H. B. Clarke, a Kilkenny M.P. He observed that the salmon fisheries had "decreased considerably" because weirs had been erected on the inland, upper waters by "parties" who did not have any grant to do so.[14] He allowed that there were gaps (fish passes) in such weirs, according to law, but either they were placed in inappropriate places or else "every means is taken to frighten the fish from passing through." In short, the law existed, but "there are means taken to secure its evasion." He added that the "proprietors of mill weirs observe the law more correctly than those of the private weirs."[15]

Clarke's testimony distinguished several inland interests: mill owners, landed proprietors who held fishing weirs, and the gentry, like himself, with no discernible interest in fishing but with a concern for the law and the cost of salmon for the table.[16] Shortly thereafter, in 1829, "gentlemen interested in the protection of the Fishery of River Nore" subscribed to a fund to hire a fisheries inspector,[17] who over the next few years brought suits against those whose weirs did not "comply with the Act of Parliament now in force on the subject"[18] and who, in 1831, charged several Thomastown laborers for snap net fishing in the closed season.[19]

By 1831, then, all the fishing interests were distinguishable, as was the fact that Thomastown had both "uncommon poachers" as well as "common" ones.[20] Local poaching, however, did not explain the decrease of salmon on the inland Nore. Instead, it is necessary to look to the regional context—to the tidal waters and the estuary downriver from the Thomastown area.

The Regional Context and the Uncommon Poachers

Patrick Magee, secretary of St. Peter's Society, a fishermen's association in New Ross, described how "since 1809, . . . some English and Scotchmen came over, and erected at Passage"—in the estuary—"Scotch weirs where the entrance to our rivers is very narrow; their fishery became very profitable, at the expense of . . . our tide and fresh water . . . fishery."[21] Earlier, in the estuary and tidal waters,

> gentlemen fished in cots; . . . our harbour's mouth was . . . fished legally by sea fishermen with drift nets; . . . there was abundance for all. . . . The cot fishermen had no objections to the small . . . weirs when fished by a gentleman for . . . his house, as each weir gave employment to one man, although they were contrary to the law, until they commenced . . . extending them into the rivers, and . . . setting them to tenants who fished them at all seasons.[22]

The law in all this, said Magee to an 1835 Parliamentary Inquiry, "appears . . . to protect . . . fishermen from the encroachment of the gentlemen and weir owners; but . . . these laws remained a dead letter for the last century; the gentlemen and magistrates who should have enforced them, became weir owners, and in receipt of great revenues therefrom, allowed the fishermen . . . to dwindle away into . . . poverty."[23]

Meanwhile, on the inland Nore, conditions also had worsened. By 1834, a fisheries inspector no longer was hired by private subscription and a petition "from the fishermen . . . on the Rivers Barrow and Nore, signed by about 1,000 persons complain[ed] of great distress."[24] According to Cornelius Maxwell,[25] a witness at the 1835 Inquiry: "Salmon are taken . . . with every description of net; . . . still-nets and stop-nets, which are illegal, are used on all the weirs. . . . Since the net and trap became of general use, the Salmon have decreased at least fifty-fold."[26] Those responsible for this were "powerful and influential individuals" who had "usurped" rights of fishing on the inland Nore—a river on which "there are no private rights of fishing." Maxwell cited two "landed proprietors," Tighe and Davis, who "claim a patent right of fishing with still-nets on their weirs; but might with them is right—they have no legal claim."[27]

Neither Magee, when referring to the tidal waters and estuary, nor Maxwell, when describing the inland waters, saw common poaching as relevant; the problem lay with the proprietors. They both also observed that voluntary subscriptions from the gentry were too erratic "to protect the salmon fishery, and to prosecute the weirs on the Nore." This failure, according to Magee, "induced us to try the only means left, that of forming a society."[28] This was St. Peter's Society; and "protection" meant a concerted attack on the tidal weirs. "Those weirs . . . became so destructive that by . . . 1830 our salmon fishery was reduced from about 500 to 20 nets, when we discovered many old Acts . . . in force against those weirs. . . . We commenced prosecuting and taking them down."[29]

Magee explained how a solicitor "gave a great deal of his time . . . to the fishermen, gratis. . . . At the last assizes of Kilkenny, he proceeded against weirs on the river Nore." Yet although the "parties pleaded guilty, . . . the weirs are kept standing, and fishing."[30] The Society also sent a stream of "papers and petitions" to the Waterford M.P. regarding "their rights as fishermen."[31] But the ineffectiveness of subscriptions, the courts, and petitions led to violent action. A proprietor in the Waterford estuary (near Passage) had "erected a weir . . . in . . . 1830, which proved most lucrative, and employed a great many hands. This weir was destroyed by a mob [in] . . . 1834, from the interior of the country."[32] Again, in 1837 and 1839, cotmen tore down "weirs that had been lately re-erected."[33]

Region and Class: 1832–42

Magee's testimony suggests that a crisis in the tidal area and estuary occurred in the mid-1830s with a breakdown of the normative constraints surrounding the use of weirs or fixed nets: proprietors leased them to tenants who fished all year round, thus depriving the cot and drift net fishermen of their livelihoods. At about the same time, on the inland waters, Maxwell's testimony suggests that weirs, some illegal, with illegal nets, had come to dominate, and potentially destroy, the freshwater salmon fishery.

In this context, a regional, class-based coalition was mobilized as St. Peter's Society. It was formed "at a meeting of the fishermen of the rivers Barrow and Nore, assembled at Ross, 1st November 1835," and it clearly was a cotmen's association. The fees were very low and the monthly meetings were "never at a public-house." It also was panregional: watchmen were appointed for locations all along the river—tidal and nontidal.[34]

As a class-based, regional coalition, St. Peter's Society opposed the gentry-owned fixed nets and weirs—in the estuary, the tidal waters, and inland. In yet another part of the wider region, along the freshwater portion of the river Suir, which also emptied into the Waterford estuary, another society was founded "for the protection of the salmon."[35] It was founded in "about . . . 1835 or 1836" by the gentry, although "some few humble persons contributed who fished upon the river." They raised £200 to appoint water bailiffs to protect the breeding fish in winter,[36] they "induced the millers to give up" their "illegal practice,"[37] and they caused a "great many of the Scotch weirs" in the tidal areas to be legally prostrated.[38]

Despite a shared opposition to the tidal weirs, this Suir coalition differed significantly from the one along the Nore. The reason lay in the oppositional context in which each Society functioned, and this derived from the particular fishing conditions on the upper reaches of each river. On the inland Nore were six "stone weirs" based on titles granted in the sixteenth century.[39] Four were in Thomastown parish and two were a few miles south. The inland Suir had only one stone weir. Most landed proprietors along the upper river Nore also were weir owners; this was not the case on the Suir. As a result, the Suir

Preservation Society was made up of all inland proprietors in coalition against Scotch nets in the tidal waters and, in their own locality, against recalcitrant millers and cotmen who fished out of season. These were inland gentry who, in the words of one, aimed "to protect the *property* of those who are proprietors of the river."[40]

Along the Nore, it was cot fishermen from both tidal and inland localities who allied as St. Peter's Society and who challenged both the coastal fixed nets and the inland weirs. In this effort, they were aided by a Society to Protect the Fisheries of the River Nore. It too had been founded in 1835, but its members were inland proprietors of whom only "gentlemen (not being weir-owners)" were appointed to its Committee.[41] This committee immediately sent "circulars . . . to . . . millers, requesting their co-operation" and laid charges "immediately against the proprietors of all illegal weirs."[42] The inland owners on the Nore thus were divided while the cotmen were united into a regional coalition.

Water bailiffs were hired by both of the societies on the Nore, and by 1837, there was an impressive list of inland gentry[43] who had been had up at Thomastown Petty Sessions for weir violations.[44] A year later, the earl of Carrick was again charged, and in 1840, the bailiffs again prosecuted three local owners.[45] As a result, Carrick's weir had to be "reconstructed" in a way "agreeable to the provision of the Act"[46] and the brewer, Anthony Nugent—lessee of Dangan weir owned by Sydenham Davis—had to remove an "illegality in the queen's gap and . . . tail-spur."[47] In addition, a farmer who leased both farm and weir in Dysart was fined because the queen's gap was too narrow; a second charge was dismissed after he altered the "tail spurs to conform" with the Act.[48]

Although these prosecutions had forced weir owners to spend money on alterations, they had little effect. For weir owners kept "constructing fresh and illegal obstructions for the take . . . of . . . fish"[49]—a fact reflected in the prosecutions reported in early 1842. The farmer, Carrick, and Nugent all were had up again.[50] Prosecution costs accumulated. In 1841, the waterkeepers wrote that a "heavy debt has been incurred . . . which we are unable to pay."[51] This was because convictions did not mean that costs were recovered. When Lady Carrick appealed her second conviction, not only was her fine lowered but she was released from paying court costs.[52] The reports show, then, that the battle was unremitting. They also show that another cross-class alliance operated at the time—that of the bourgeoisie and the cotmen.[53] In 1840, the waterkeepers wrote to the *Kilkenny Moderator* requesting that "gentlemen, particularly the Fish-

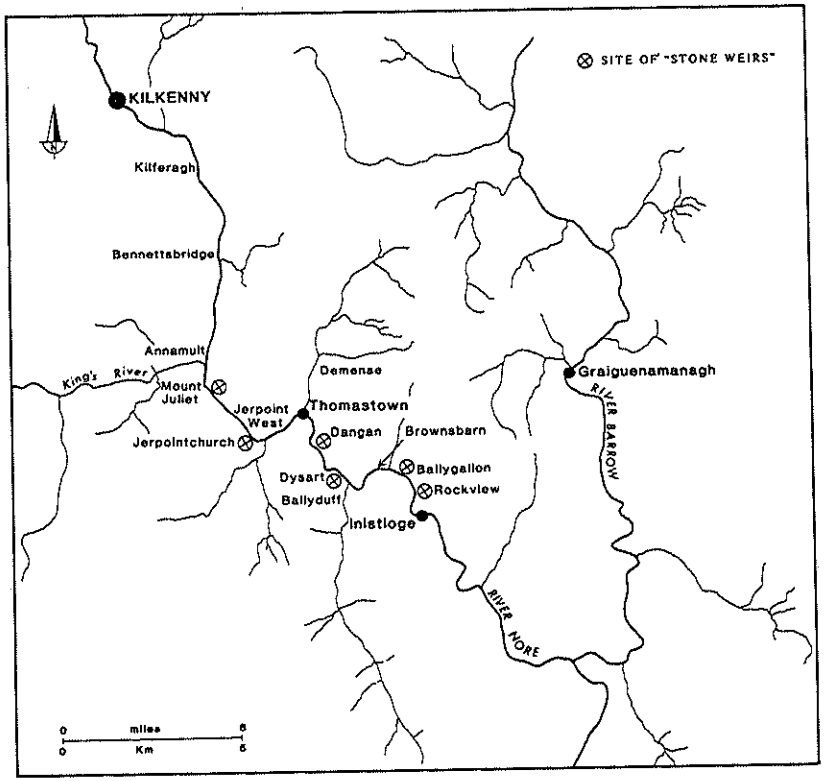

Figure 3.1. Localities and Stone Weirs along the Inland Nore River

ery Committee, . . . send in subscriptions to Peter Smithwick, esq., to enable them to prostrate" several new, illegal weirs.[54] Smithwick was a large brewery owner in Kilkenny city. In asking for subscriptions a year later, the waterkeepers described the editor of the *Kilkenny Moderator* as a "gentleman who feels an interest in the preservation of the river Nore."[55] The antiweir interests were linked with the urban-based, county bourgeoisie—a fact already apparent from the evidence given by Maxwell, the editor of the *Kilkenny Journal,* to the 1835 Parliamentary Inquiry.

That a similar alliance operated in the Thomastown area emerges from a lengthy dispute between 1836 and 1841. An 1841 petition "from the inhabitants of Thomastown" claimed that there had been a "communication with the sea for the last 500 years by means of the navigable Nore" but that, in 1836, a local proprietor, Sydenham Davis, had built a wall across the river "thereby putting an end to navigation." Davis "was brought before the petty sessions and agreed to remove the wall but later refused to do so." Then, "in the summer of 1838, one of the petitioners removed the wall himself at which Mr. Davis rebuilt it stronger than before." According to the petitioners, they were then "advised to proceed on an act of parliament of Henry VIII . . . by a memorial to the sheriff of the county."[56] They did this, but also "brought [Davis] before the petty sessions again. . . . The bench refused to intervene"[57] but reiterated that the "sheriff should be applied to . . . as it was without doubt that the wall was illegal."[58] That the sheriff had then refused to act precipitated the petition. In response, Dublin Castle confirmed the sheriff's responsibility, adding that he "is liable to a penalty if he refuses."[59]

This response was sent to a local flour miller. Indeed, all those named in the records of the dispute were local bourgeoisie[60] who, in fact, represented, as the petition claimed, "all shades of political and religious opinion."[61] They shared, however, a concern for the commerce of the town, and hence local navigation, and a distaste for the way in which Davis, sovereign of Thomastown Corporation, managed local affairs.[62] In this they were allied with local laborers who, as the petition stated, were undergoing "great hardship" because of the "flooding and . . . unemployment . . . attributable to the obstruction of navigation."[63]

These converging interests linked into the concerns of local cotmen who took over the dispute in late 1841. The waterkeepers brought a case—this time before the Kilkenny Petty Sessions as a breach of the fishery laws. In his evidence, waterkeeper Edward Bryan said that the length of the weir's spur wall interfered with the fish: "out of

every 100 . . . going up the river not more than 50 . . . could escape . . . Mr. Davis' trap." Both Bryan and a laborer testified that the weir, although "taken down in . . . 1837" as ordered by the Thomastown bench, had "been built up again." Another witness said that Davis was continually building up the wall: the spur wall was ten yards shorter a year before. In contrast, a laborer for the defense testified that he "never saw a shorter weir than Mr. Davis'." On cross-examination, the witness admitted that he was "in the employment of Mr. Nugent," Davis's tenant. Davis's solicitor then "addressed the bench . . . and contended that the magistrates had no power to interfere with the private property of Mr. Davis." The prosecution countered with the "hope that the magistrates would protect public right in opposition to individual interest." Instead, the magistrates decided "to consult the law officers of the Crown."[64] The case finally "was decided in favour of Bryan. . . . Davis then appealed at the Quarter Sessions but the conviction was affirmed."[65]

Laborers had given evidence both for and against Davis; they therefore were linked into both the pro- and antiweir factions. Bryan, in his testimony, had said that he was a "fisherman" but also a "butcher by trade. . . . Five years ago I commenced prosecuting persons under the fishery act; pure love of justice makes me do so."[66] This irony suggests the intensity of conflict between the so-called public right as against private interest. For in his testimony, Bryan also insisted that none of the local weirs was properly or legally constructed. For him the opposition of proprietors and their weirs was everywhere and unending.

By 1842, two features were central. On the one hand, it was a "golden age" for fishermen. The class-based alliance and the antiweir gentry had ensured, according to Magee, that "by 1840 our rivers were open to the free passage of the salmon; the fishery increased 100 per cent by our perseverence."[67] On the other hand, it was a continuous effort to keep the inland weirs "fair" and the tidal Scotch weirs leveled.

The Declining Salmon Fisheries: The Entry of the State in 1842

Salmon are species that migrate. The "most productive fisheries" were in the lower reaches of rivers, whereas it was landowners in the upper reaches who had to protect the breeding salmon, the spawning grounds, and the salmon fry.[68] Because the upper landowners had little "pecuniary interest in the fisheries," they were "indifferent to

poaching, and unwilling to co-operate, either in purse or in person, towards its abatement."[69] For the members of the 1835 Parliamentary Inquiry, the solution was simple: "Poaching in Ireland, though in part attributable to the circumstances and habits of the peasantry, is principally encouraged by the absence of an efficient Police; and this again is referable to the peculiar nature of the property, and the conflict of interests which that occasions."[70] The state therefore had to ensure that upper proprietors received a fair share of salmon; the policing of the so-called peasantry would improve as a result. The upper propriety was to be coopted; the peasantry was to be coerced.

The mechanism was provided by a new Act (5th and 6th Vict. c.105 and 106), which replaced all earlier legislation. Within the ideological context set out by the 1835 Inquiry, it had three ambitious but somewhat contradictory aims: to increase productivity, to allow everyone to fish, and to preserve the stocks.[71] Two aspects were crucial. First, to ensure supplies[72] and to mollify the lower proprietors, this 1842 Act legalized Scotch nets and "fixed engines" under certain conditions—such as whether the proprietor had exercised this right in the two decades prior to the Act. However, before 1842, the vast majority of weirs and fixed nets in the estuary were illegal—as St. Peter's Society had discovered. The 1842 Act legalized them.

Second, to coopt upper proprietors to improve preservation, the Act recognized the primacy of private property ("a several fishery") in inland waters; but it also recognized the public's right to fish ("a common of piscary"). Chapter 106, section 65

> enacted, That in the Inland and Freshwater portions of Rivers and Lakes in *Ireland* no Person, save the Owner of a several fishery within the Limits thereof, shall, . . . fish with . . . Net . . . unless in Cases when a general public Right of Fishing for Salmon with such Nets, in the Nature of a Common of Piscary, has been enjoyed for a Space of Twenty Years next before the passing of this Act.

Two problems were created. First, it was assumed that private and public rights could coexist on a daily basis. Second, the meaning of *inland* was unclear. *Murcott v. Carter* (1768)[73] distinguished navigable from nonnavigable waters and the kinds of fishing rights in each: "In rivers not navigable the proprietors of the land have the right of fishery on their respective sides; and it generally extends at *filium medium aquae*. But in navigable rivers . . . the fishery is common. It is *prime facie* in the king, and is public."[74]

Fisheries in navigable waters were public; in nonnavigable waters, they were private. The 1842 Act added the prescription that navigable/public waters were tidal and nonnavigable/private waters were nontidal, inland waters. However, the river Nore where it flowed through Thomastown created a difficulty: it was inland yet navigable. Its anomalous character was exacerbated because the rivers Nore, Barrow, and Suir had been designated "royal rivers" in 28 Henry VIII, c.22. They seemingly belonged to the Crown and thence to the public. The legal situation was summarized by a Q.C. and a fisheries expert two decades later: "There may . . . exist a public right of fishing in an inland water where the tide does not ebb and flow; and such is assumed to be the law in the Fishery Acts. . . . The public, however, cannot, except in such a royal river, claim the right of fishing. It exists in the owners of the adjoining lands."[75]

Until 1868, the navigable but inland, royal Nore and an Act that recognized public rights on private property formed the context for fishing and conflict in the Thomastown area.

1842–63: Irreconcilable Conflicts and the Evolution of Fisheries Policy

It was explicitly stated that the aims of the 1842 Act were to be realized without state intervention and that the "maintenance of the law was now with the public or with parties interested."[76] Some of the parties acted immediately. Within eight weeks, a notice of meeting was published "for carrying into effect the provisions of the New Fishery Bill."[77] The meeting was held in Kilkenny city with Major Izod, a proprietor, in the chair. After announcing that there now would be a "greater abundance of fish," he called for subscriptions "to defray the expenses of . . . prosecutions and . . . water bailiffs." Resolutions were passed to appoint a Fisheries Committee; to inspect weirs on the Nore, Suir, Barrow, and King's rivers; and to give "general support for the new . . . Act." Edward Bryan again was appointed bailiff.[78]

The closed time fixed by the Act came into effect in August 1844, but "it was not . . . generally observed." Even in 1845, it "has been but very partially observed."[79] Indeed, reports of fishery cases at the Thomastown Petty Sessions only began in late 1844. These had changed, however. Few weir owners were charged. Instead, it was fishmongers who were summonsed for possessing salmon in the closed season as well as one cot crew and one fisherman. The Act, and the gentry's response, were altering the nature of control.

This certainly was true as fisheries policy evolved over the next

decade and as laissez-faire policies dissolved before irreconcilable conflicts that, although predating the Act, were aggravated by it. First, the Act required a 124-day closed season. It immediately became policy to make it uniform everywhere so as to ease enforcement.[80] However, coastal interests wanted a "lengthened autumn fishery," whereas inland interests wanted the "fishing before the month of February" and had "no objection to the autumn fishing being cut short."[81] The intrinsic conflict between upper and lower proprietors was exacerbated by a fixed closed time that was to be both uniform and enforced.

Second, class conflict became overt. The new fishing associations were "composed chiefly of . . . proprietors, . . . and their efforts . . . against offences . . . caused many of the poorer order to be convicted . . . and thus created an impression, an erroneous one certainly, that the law was one for the advantage of the rich, and an additional source of coercion on the poor."[82]

Third, the Act aimed to ensure a supply of fish to the public. It therefore legalized a technology (fixed nets) that encroached on the public fishery in tidal waters.[83] Moreover, "under the assumed protection of . . . the Act, weirs have . . . continued . . . or . . . have been erected either in ignorance or evasion of the law, from both of which serious disputes have arisen."[84] Conflict over types of fishing—"fixed engines" against "moveable engines" (drift nets, snap nets, and rods)—was exacerbated.

The Waterford estuary was an important arena. Before the Act, "very few" fixed nets remained; by the spring of 1843, "all the weirs sprang up again."[85] A panregional coalition arose again in response. The drift net fishermen at Passage "sought the aid" of the Suir Preservation Society, as did the "cotmen . . . of the Nore, Barrow and Suir." The Society prosecuted the owners of the fixed nets for fishing in closed time. They were fined £5 but continued fishing. Shortly after, the secretary of the Society came to Waterford to find the "bridge lined with police, the military and the magistrates all out, a descent of cotmen having been threatened." The last "were dissuaded from going to prostrate the weirs" and the Society, with the fisheries commissioners, jointly charged the owners with using illegal nets. The bench on the Wexford side of the estuary indicted them; the Waterford magistrates at both the Petty and the Quarter Sessions refused to do so. "The peace of the whole country was at stake" as two thousand fishermen[86] then took the "law into their own hands and openly prostrated the weirs."[87]

With the gentry blatantly breaking the law, the fishermen's "riots" in the Waterford estuary, and, more generally, the endless complaints and objections raised by competing interests,[88] the commissioners increasingly had to intervene. First, in Waterford over subsequent years, the Crown indicted many persons criminally who were tried by juries at the assizes. However, the Act only allowed legal action against a particular fixed net or weir, and as fast as convictions were obtained and the weirs prostrated, the gentry reerected them—under a tenant's name, for example. The Crown then had to, and did, begin the legal process again.[89]

Second, funds for enforcement were a problem. Not only were voluntary subscriptions insufficient[90] but upper proprietors paid while lower proprietors fished.[91] This produced a "hostile feeling."[92] Third, more enforcement was needed in any case. The commissioners recommended that the Constabulary Act be amended to allow the police to act in fishery offenses.[93] Soon after, a new Act (7th and 8th Vict. c.108) did precisely that.[94]

In late 1844, a Fisheries Commission Inquiry into the closed season called two Thomastown area witnesses.[95] Major Izod, chair of the 1842 meeting of Kilkenny gentry,[96] observed that angling had been good before the 1842 Act, whereas after, the old obstructions remained, the closed season was not observed, attempts at protection had failed, and they had "got no assistance from those fishing in the tideway and estuary."[97] The fishery was declining. Izod, representing "the River Nore Fishery Association," asked that the closed season run from October 1 to March 1.

The second witness was Edward Bryan. He presented a very different picture. "At one time, in 1843, there were eighteen or nineteen water bailiffs on the Nore and its tributaries." It therefore was a "very valuable year" for a "man could well support his family by snap net fishing." There also was no "weir entirely across the river . . . nor any weir . . . that has not a Queen's gap." According to Bryan, then, there were no obstructions or poaching. Neither was there conflict over the varying modes of fishing: "there is no hindrance to angling, nor do any disputes take place in reference to fishing."[98]

Izod complained about a lack of enforcement; Bryan saw nothing to enforce. Either way, Thomastown people seemingly were free to fish as they wished. However, the two interpretations of local conditions suggest that the interests of gentry anglers were diverging from those of inland cotmen. A memorial signed by 108 Nore fishermen,

which duplicated precisely one sent in by 74 Barrow fishermen, made this clear. The cotmen requested a different closed season (August 30 to January 31) from that requested by Major Izod.

The cotmen's request also differed, as they pointed out, from the estuary cotmen, who wished "to leave September open."[99] The interests of freshwater cotmen thus had begun to link inland localities at the same time that they caused a divergence from tidal cotmen. However, the inland cotmen's final request still allied them with cotmen everywhere and with all upper proprietors: "That the Board will not neglect the prosecution of the illegal and unjust Scotch weirs."[100]

By 1845, the commissioners noted a "decided . . . improvement in the commercial value of the Irish Fisheries" because of "individual enterprise," an expanding English market, "improved modes of capture," and the "construction of railways."[101] In this expansionary context, the commissioners retained the principle of a uniform "close season";[102] in so doing, they finally set one priority as paramount: to ensure a "maximum . . . productiveness . . . of food." This meant that "commercial value . . . and not . . . private or local . . . interests" was central and that functional specialization was essential. Thus, the coastal and tidal fisheries were the "entire of the commercially valuable . . . fisheries," whereas the "fresh-water parts" were the "natural nurseries" that had to be regulated.[103]

This view received considerable fillip with the failure of the potato crop. That the fisheries had not provided an alternate food supply "established . . . the necessity for . . . developing . . . the fisheries . . . as a source of industry and trade, and consequently of food."[104] Initially, this was stymied because the years of distress had caused the inland fisheries to "suffer severely"[105] as a result of an "almost total neglect of . . . the close season, and of . . . the breeding fish and fry."[106] Illegal stake nets fished at all times; mill owners had nets attached "to their . . . premises; . . . whilst . . . persons of the better order . . . deliberately . . . angle[d] . . . notwithstanding the law." Either there was little enforcement or "merely nominal fines were imposed by the Magistrates. Under such circumstances, . . . little obedience could be expected from the other classes."[107] In Thomastown between 1846 and 1851, only one breach of the Fisheries Act was reported: the constabulary charged two fishermen with using an illegal net.[108]

Into the fray came financial and administrative change: 11 and 12 Vict. c.92 allowed funds for protection "to be raised . . . by a licence duty on the . . . instruments used for taking salmon."[109] Ireland was

divided into seventeen Fisheries Districts. In each, a board of conservators was to be elected "by the . . . persons paying licence duty."[110] Each board was to enforce the Fisheries Act and to pass bylaws if needed, subject to the approval of the commissioners. The principle was that "local duties should be performed by local parties."[111]

Thomastown became part of Waterford District, an area of thirty-four hundred square miles[112] comprising the tidal and inland portions of the rivers Nore, Barrow, and Suir along with the Waterford estuary and coastline.[113] Its new board inherited the problem of proliferating, illegal stake nets in the estuary and the fact that these were "highly conducive to the supply of good fish to the market."[114] It inherited the various interest groups that were demanding changes to the closed season. It also was given the principle that it "must be guided solely by the . . . dispassionate consideration of what is good or bad for the fisheries, as regards their permanent productiveness to the public."[115]

Over the next two years, the law was "rarely . . . obeyed and never fully enforced [and] . . . all the old complaints [were] repeated."[116] The commissioners, however, continued to believe "the law, if faithfully observed, sufficient"; for then the "proprietors in the upper waters and anglers generally . . . would obtain a sufficient share of fish . . . to enlist their co-operation in close-time."[117] Yet the license duties remained "insufficient . . . for ample protection"[118] and, on many boards, the gentry predominated and so "evade[d] prosecution for illegal practices."[119]

Despite this, a "decided improvement . . . in the salmon fisheries" began[120]—accompanied by "greater co-operation" as interested parties allowed each other a "fair participation."[121] Such "participation" included only proprietors, however; and this had serious implications. For the abolition of nets on the inland waters (and, therefore, of cotmen) now was mooted. The commissioners presented the idea as a "general public good" that would "sacrifice only . . . a few." They argued that "there . . . never can be, commercially considered, much value in fresh water net fishings" and that "far more remunerative results would follow by letting the right of angling only."[122]

No action was taken at the time, but a new idea had emerged: the inland fisheries, not the inland fish, could be commoditized. This idea was reflected in the fact that the "exclusive fishing right upon the Mount Juliet property" was being "let for profit" annually to the "best bidder."[123] In addition, this idea was becoming associated with a new ideological construct. An 1853 newspaper editorial noted that "complaints" as to the scarcity of fish "are of late . . . most numer-

ous" in the Nore. This was because "poaching is and has been . . . permitted."[124] Although "people pay for licences . . . willingly . . . as there was . . . hope for a better protection; . . . all the profits, to say nothing of the sport . . . are enjoyed by the unlicensed."[125] In other words, by removing the fish, the unlicensed removed the sport. In so doing, they lowered the value of the fishery. Moreover, although there were few prosecutions, "it is notorious that from one end of the river Nore to the other there are innumerable cot-owners whose sole occupation is the netting of . . . salmon."[126] For the editor of this gentry newspaper, cot fishing and unlicensed fishing (poaching) had become synonomous; and it lowered the value of a commodity—the inland fisheries.

The rhetoric subsided, but the number of prosecutions in Thomastown increased. There had been one in 1851, none in 1852 or 1853, and one in 1854. In 1855, there were five; and in 1856, three. None were weir violations. These prosecutions, in number and class bias, occurred in the context of an overall Irish fishery that "was steadily progressing. The quantity of fish captured has increased, and the value has become much enhanced by . . . steam communication." The "commercial importance" of the salmon fisheries was reflected in the "prices recently obtained for the rights of fishing," which also was "evidence of the position which such property now holds in the market for profitable investment of capital."[127] By 1860, two-thirds of the salmon catch was exported; and "with such demand and no possibility of an over supply," the commissioners happily declared that the interests of private property and public rights were "really identical."[128]

However, the "fishing season of 1860 was not so productive." The commissioners concluded that there were too many fixed nets "in the tidal portions" and that the rivers were "too closely fished." Apparently, the "high price of salmon . . . [had] induced many persons in the estuaries, and on the coast" to erect engines "within the last five years."[129] Ironically, the increasing prices had made salmon "a luxury" for "the wealthy." This, in turn, "stimulated . . . owners to procure fish for such profitable disposal."[130] Upper proprietors renewed complaints that the privilege of fixed nets had become "an abuse" and that the fixed engines were overfishing and evading the closed times. The commissioners forecast that if the "price of salmon in the market continue as high as at present, the further increase of such modes of capture may be expected." They suggested that "measures . . . be adopted to control this improvident system of fishing" in order to "secure the . . . largest supply of food at a moderate price."[131] They also recommended, again, that inland netting be banned. This suggestion previously had been made to mollify upper proprietors; now it was to alleviate declining stocks.[132]

Within two years, in 1863, the crisis was otherwise contained. The 26th and 27th Vict. c.114 proscribed any new fixed nets and set up special commissioners to investigate all fixed engines that, if found "in contravention of the common . . . [or] statute law," were to be prostrated.[133] By 1865, the commissioners had investigated 204 fixed nets and found that the "Act of 1842 was universally abused."[134] The nets were leveled. In their report, the commissioners announced that a "revolution has, in the past fifteen months, been effected in the modes of capture."[135] They also noted that "fishery property has much increased in value" as a result.[136]

1842–63: Class and Faction in the Salmon Fisheries

In 1861, there were complaints that illegal fishing in both the closed and open season by cotmen and anglers was rampant on the inland Nore and that more bailiffs were needed "who will do their duty without favour or affection to any person."[137] Clearly, enforcement was light at the time as bailiffs colluded, as local interest was minimal, and as the inland Nore fisheries were not yet of great economic value. Certainly there were few poaching charges before 1862.[138] This probably reflected the inability of the gentry to maintain subscriptions and, later, the concern of the conservators with policing mainly the tidal fisheries.[139]

In 1855 and 1856, however, there were the first reports that certain local owners were trying to assert the primacy of private right in Thomastown. Two proprietors, Davis and Marsh, each charged cot crews for fishing in their several fisheries without permission.[140] Despite "a crowded court" for the Davis case, "as all the cot fishers were interested," few details were reported.[141] Apparently, there were also no repercussions from these cases; certainly the owners did not repeat the charges. Probably this was because the more general trend at the time remained that of collusion between classes and of alliances across class lines. What form did this take?

First, proprietor-cotman conflict was constrained. Proprietors made up the Waterford board. At an 1856 meeting, one of the conservators opposed the raising of license fees because the "cotmen were not able to pay the small sum asked of them now." The chair, Thomas Elliott J.P., added: "The gentlemen who have weirs are the persons opposed

. . . to the only class who live by fishing; . . . it was . . . the strength of wealth against the poor man."[142]

Gentry "protection" of cotmen clearly derived out of the conflict between gentlemen weir owners and gentlemen anglers. It was enhanced by lines of collusion which followed personal connections. Elliott admitted to paying personally the license fees for several cotmen. When a laborer on the Carrick estate "was convicted for fishing . . . at Mount Juliet," the earl wrote "to say he did not wish [him] to be dealt with severely."[143]

Such gentry protection extended also from a paternalistic ideology. When the police brought a possession charge against the mother of Martin Murphy ("the notoriously frequent transgressor of the Fishery Laws"), the magistrates, "in consequence of the woman's poverty, decided that she would be sufficiently punished by the forfeiture of the fish" and a nominal fine.[144]

At the same time, of course, gentry protection necessarily was fragile—not only because it was based on a division among the gentry but also because the cotmen generally were seen by all gentlemen as natural poachers. When a conservator, at the previously mentioned meeting of the Waterford Board, asked Elliott "if he would reduce the licences if the cotmen gave up their cots during the close season," Elliott agreed.[145]

Second, there were alliances between the laboring fishermen and members of the Thomastown bourgeoisie. An example is provided by the relations between the cotmen and two flour millers, Pilsworth and Innes. The millraces for each of their mills were located in such a way that any alteration of either's weir affected the other's water power. In 1853, Pilsworth charged that two cotmen, Hutchinson and Kelly, "did . . . maliciously break down" his weir. Another cotman, Dawson, deposed that he "was looking for a fish in the mill race and saw Hutchinson and Kelly in an Innes boat at the weir; saw Hutchinson pull a stone off the weir at about the middle part." In yet another deposition, cotman Harry Colleton stated that "Mr. Pilsworth did not raise the weir even to its ancient height." Several months later, Innes sued Pilsworth for £2,000 "for doing great injury by diverting the course of the water that supplies his mill" by carrying out repairs to weir and millrace.[146] As this action reached the assizes, Innes was charged at the Petty Sessions "for allowing a net to be set on the Queen's gap of his mill-weir." The "two respectable witnesses" against him were two cotmen who apparently "found" the net in the gap.[147]

Clearly, the fishermen were aligned with particular millers; therefore, they were divided among themselves. This was reflected in other reported disputes. In 1844, a cotman charged another with

"assault and threatening language over fishing." The witnesses for both were cotmen.[148] Similarly, when "the . . . fishmonger of no small notoriety"[149] was charged by a wealthy brewer for "threatening language and assault," witnesses for and against were fishermen.[150] Such cases, however, do not mean that class conflict was not also manifested. Cotmen at the time were charged with offenses against water bailiffs, the constabulary and the bourgeoisie.[151] However, such conflicts were neither pervasive nor exhaustive. It is important to understand that they occurred later in the period, when controls were increasing.

That factionalism and interclass alliances dominated the local arena is shown also in the diverse occupations of those charged with fishing offenses after 1851. Many were millworkers. Others were artisans: a shoemaker and two blacksmiths. Still others were lumpen—known because they occasionally were charged with rabbit poaching. However, among the offenders between 1851 and 1863 were men from other classes. The son of a hotelier was twice charged, as were several small corn millers, a publican, and a small farmer. None of these were cotmen.

After the 1842 Act, then, a broad alliance of antitidal weir interests typified the region while factionalism and interclass collusion marked the local arena. However, as the market for salmon and salmon fisheries expanded along with the conflicts engendered by such expansion, the varying and often opposing interests in the salmon fisheries changed in tandem. First, the public became increasingly involved, and in the latter years, when "fishery cases were entered for hearing . . . they seemed to excite some public interest."[152] Second, through legislation and its administrative agencies, the state was increasingly active. All this was accompanied by a gradual divergence of former allies. The panregional alliance called St. Peter's Society disappeared as the interests of inland cotmen diverged from the tidal ones over the timing of the closed season. In the inland fishery, the common opposition of some proprietors and all cotmen to coastal nets and inland weirs was dissolving into an angling (gentry) as opposed to a netting interest (laborers). What would happen when the common enemy of all these interests—the tidal nets and weirs—was removed?

The 1863 Act and the Final Days of Public Right

The 1863 Act not only "revolutionized" the capture of salmon but increased the number that reached the upper waters.[153] More fish

produced more fishermen. In Waterford District between 1853 and 1865, the number of cots increased sixfold and the number of cotmen went up twelvefold.[154] In the latter year, "in the Waterford estuary and Barrow river, . . . the demand for cots was so great . . . last spring that the builders could not supply it."[155]

Although the increase mainly was in tidal waters, the fresh water expansion probably was proportional. Moreover, with the removal of the weir-owning, gentry segment, Thomastown cotmen now faced a unified landowning class. Each was quickly mobilized. As the *Kilkenny Moderator*'s editor noted: "The clearing away of the obstructions . . . will but provide a larger quantity of salmon to fall . . . into the nets of the many cot-fishers between Thomastown and our city who habitually act in the most illegal manner."[156]

The editor was somewhat consoled by Section 24 of the new Act that banned fresh water netting every night between 8 P.M. and 6 A.M. To prohibit an activity, however, raised the problem of enforcement. "From . . . previous experience," the editor was not optimistic and suggested a remedy: "the thorough proscription on the use of cots . . . for any purpose whatsoever." Yet the new restriction was better than nothing. "If the gentry . . . will but . . . act energetically, much may be done for the protection of salmon from illegal means of destruction and for the increase of the fish in our rivers for legitimate sport and profit."[157]

For the cotmen, the best fishing—indeed, the only fishing—was at night.[158] The annual closed time was tolerable because it coincided with the time of year when salmon were of poor quality—often inedible and virtually unsalable. The weekly closed time (from Saturday night to Monday morning) that had been introduced in 1842 was very inconvenient. The new nightly closed time, however, was a restriction that limited drastically the public's ability and right to net on the upper waters. Because it coincided with a larger number of cotmen and an intensified gentry opposition that was determined to take advantage of the increasing rentability of its fisheries, conflict along class lines necessarily escalated. This was reflected in proprietors' renewed organizational efforts, in the cases before the Petty Sessions, in the interest that the public now expressed in these cases, in a new rhetoric of opposition, and in a new cohesion among cotmen.

Two days after the *Moderator*'s editorial, a "conference of the gentry . . . interested in the local fisheries" discussed the "new Act [and] the protection of the rivers from illegal fishing."[159] The meeting was attended by land/fisheries owners, by local weir owners, by members of the Suir Protection Society and of the Barrow Protection Society,

and by a "number of fishermen from the locality" who "evinced a lively interest in the proceedings." At the start, the chair announced that "cot fishing in the fresh waters . . . was virtually done away with, as . . . it was useless to draw a net in clear daylight." Therefore, the object of the new Suir, Nore, and Barrow Protection Association was "to maintain the interests of the fresh water proprietors." Only Mulhalum Marum, an M.P. and a member of the Irish Party, mentioned other rights: cotmen would "benefit" from the Society's actions because they then could "have the fishing of the river at a reasonable rent from the owners of the several fisheries"![160]

The Petty Sessions soon reflected the proprietors' outlook, their new organization, and the fact that productive cot fishing now was poaching. First, no charges were laid against inland weirs. By 1865, all such weirs had their specifications fixed, and violations involving the structure of weirs seemingly occurred less frequently as a result.[161] Interestingly, no charges were laid against owners for fishing their weirs in the closed time. Second, charges against cotmen, and the number of crews charged—including crews from Bennettsbridge and Inistioge caught fishing in Thomastown waters—increased. That the enforcing agents—bailiffs and constabulary—were able to catch more crews more often was because there were more agents, more crews, and more activities that now were offenses. The scale of conflict escalated in tandem—as reflected in the *Moderator*'s numerous and graphic descriptions of "exciting chases after salmon poachers." Disguised cotmen were trailed on land and river by the head constable and groups of police and bailiffs who crept for hours along riverbanks in the middle of the night. Such exceptional commitment, planning, and effort by a large and diverse body of enforcement agents show clearly that the organization and scale of conflict had intensified. Interestingly, the cotmen refrained from any violence against the police. They were reported only as attempting to flee, never as attacking their attackers.

As the scale escalated, so did public interest and local rhetoric. At one Petty Sessions, the "court-house, on being . . . open, was immediately filled, the interest being, doubtless, to hear the result of a fishery case." A cotman, summonsed for "aiding . . . a party who had been illegally fishing," announced "that the next time he met the police at the river, or that they gave him any trouble, he would throw them into the water."[162]

A common consciousness among cotmen also overcame, gradually, the former factionalism. A cot crew was charged with fishing at night because a "squabble between two fishing crews" had "caused

. . . one of those crews to go to the head constable and say they were ready to prosecute the defendants." However, when the "head constable . . . had the case brought before the bench, . . . nothing could be elicited from these witnesses."[163]

The growing solidarity among cotmen was associated with confrontations between gentry and fishermen. A cotman charged John Greene, a weir owner, with angling in the closed season.[164] The watched became the watchers. Interpersonal violence began to correspond to class. A cotman was prosecuted by the police for assaulting a watcher, who, out of fear or sympathy, only "reluctantly" gave evidence.[165] In 1866, a cotman assaulted a publican,[166] and in 1867, two assault cases involved cotmen (a father and son) against housing middlemen.[167] During this same period, there was only one reported assault among the cotmen themselves.

It is not possible to know which of these conflicts were structural or idiosyncratic and perhaps the result of alcohol.[168] Yet by this time, the cotmen were demarcated as a distinct "category." George Bryan[169] stopped in Bennettsbridge on his way to address Thomastown's parliamentary electors and, "in reply to . . . fishermen, . . . promised that from henceforth he will have no one prosecuted for trespass on his property whilst engaged in fishing."[170]

In 1866, the Waterford Board passed a bylaw to "prohibit net fishing in fresh waters of the river Nore." That it did not cover the Barrow and Suir makes it clear that the Board was responding to pressures specifically from Nore owners. The bylaw went to the Fishery Commissioners for approval.[171] It was refused. The reasons were not given.[172] In any case, a judicial route was being pursued by the Barrow Fishery Protection Society, which already had received legal advice "as to the illegality of . . . cots in fishing in fresh water. . . . Owners of property along the . . . Nore . . . [are] preparing to assert their rights in accordance with that opinion. A notice has . . . been . . . posted . . . by . . . Francis Marsh Esq., forbidding . . . fishing . . . with cots, under penalty of a criminal prosecution."[173]

1868: Profits, Private Property, and Public Rights

Part of the proprietors' difficulty in "controlling" their fisheries stemmed from the cotmen's "right" to fish—a right legislated in the 1842 Act and subsequently supported by some legal experts. For example, a member of the Oxford circuit stated before a Select Committee in 1849 that "to whatever extent a navigable river goes, I hold

that it is a common fishery for the inhabitants." The chairman queried: "Even above the tidal portion?" "As long as it is navigable," replied the member.[174]

The public right to fish on inland, navigable waters ended on January 20, 1868, with the case of *Murphy v. Ryan.*[175] Cotmen on the Barrow had been found guilty of "trespass" on the "Plaintiff's close . . . and [of] fishing therein." In the appeal, the defense "averred that the close . . . from time immemorial has been part of . . . a royal river . . . and . . . a public and navigable river . . . in which every subject . . . had . . . the liberty . . . of fishing." The bench upheld the plaintiff: "a 'navigable' river must be a tidal river, in which the sea ebbs and flows."

> The designation "royal" does not, more than the description of navigable, . . . indicate a river of which the fishing is in the public. . . . The defence . . . relies on . . . an allegation of a custom that the public should have a *profit à prendre* in the soil, which, according to our view, is private property. . . . It is quite settled that such a custom cannot legally exist. . . . A right of way upon the land; . . . upon the water—all these rights may be established by usage because they are mere easements. . . . But no usage can establish a right to take a profit in another's soil; . . . and such a profit would be the taking of fish.

1868–71: Uncertain Law and the Personalization of Conflict

Immediately "Lord Carrick informed the fishermen that . . . cot-fishing, except in tidal waters or by the owner of a several fishery, was illegal."[176] This was not, as it turned out, correct. Instead, the precise implications of *Murphy v. Ryan* remained unclear; as a result, conflicts in the inland fisheries became highly confrontational and personal.

At the first Petty Sessions of the open season, the courthouse was filled with spectators very early—"it being . . . known that a number of fishermen were summoned for fishing in the fresh water . . . with cots and nets." Six cases were brought by water bailiffs against both Bennettsbridge and Thomastown crews. All were found guilty. One of the crews appealed to the next Quarter Sessions.[177] In the interim, confusion was generated when a Lough Erne fishery case established that the public had a right to fish in a navigable lake.[178] It was added to when, at the Thomastown appeal, the defense cited the 1842 Act. An elderly Thomastown resident "deposed that he knew the men to

have fished in that part of the Nore for more than 46 years, without hindrance."[179] The decision was held over.

Probably as a result, subsequent fishing prosecutions at the Petty Sessions did not include any charges of fishing in a private fishery. People waited; and other poaching offenses were heard in a volatile oppositional context. One fisherman, "when before the court, wilfully insulted the Justices" and "was sent to the county gaol for seven days." Another "was also imprisoned in the bridewell until the magistrates rose, for contempt of court, and wilfully insulting the Justices."[180]

By the Petty Sessions of May 1869, some unrecorded legal opinion probably encouraged a flurry of charges against cotmen for fishing in a several fishery. These were laid, however, not by bailiffs but by proprietors. The results further confused the legal situation when a subsequent appeal overturned a conviction because "the lands adjoining the fishery was not the property of Mr. Marsh, as they were tenanted."[181]

It is significant that only two proprietors—Marsh and Hunt—were responsible for these new cases. Neither lived in the Thomastown area yet both owned highly rentable fisheries there. This suggests that for a proprietor to bring a suit in his own name was the equivalent of a personal confrontation; and most proprietors seemed unwilling to do this. The nature of this dynamic is apparent in the following letter: "I beg you will correct a report that appeared in the *Moderator* . . . wherein Harry Innes . . . figures as respondent and Richard Hutchinson as appellant. Harry Innes never prosecuted any person for fishing in the river with rod and line, the prosecution . . . was instituted by a bailiff named . . . Read."[182] It had become important that the appropriate responsibility was properly assigned, even as to the particular bailiff.

Meanwhile, the law remained unclear. In early 1870, Marsh charged two crews with "entering" his several fishery. In one case, the cotmen were nominally fined.[183] In the other, the action was dismissed "without prejudice."[184] This uncertainty reached into the higher echelons of the fisheries administration. In a case brought soon after by the bailiffs, the cotmen admitted to fishing in the several fishery but "said they had the public right as far back as memory could reach." A magistrate "read [the] opinion of the law adviser, by which the bench were necessitated to fine them." The sympathetic reporter added: "This question has been before Petty Sessions, Civil Bill and Superior Courts for several years, and if the prosecutors succeed it will prevent these poor people fishing altogether, and probably drive them into the workhouse."[185]

In January 1871, an appeal at the Thomastown Quarter Sessions clarified the situation. Four cotmen admitted to fishing in a several fishery, claiming that they had "fished uninterruptedly for the last fifty or sixty years." The chairman noted this, adding that "in the recent case of *Murphy v. Ryan,* it was decided that no . . . right could be acquired by the *public* in rivers above the tidal flow. . . . To this decision, no exception can be taken." However, he added that this "was a decision by a civil court in reference to civil rights" and that, in the 1842 Act, the "Legislature can hardly . . . have been ignorant of the general law, in reference to the rights which could be claimed by the public by custom." Therefore, "what was meant" by the Act that allowed a "general right of fishing with such nets *in the nature of a common piscary*" if these "had been enjoyed for twenty years before the passing of this act"?

> It appears to me that the Legislature intended . . . that when such a public right, or perhaps more strictly speaking, "privilege" had been enjoyed or tolerated, for 20 years, the proprietors of the river banks . . . [must] . . . assert their legal civil rights by the civil remedies . . . but that the public were not . . . to be handed over . . . to the administrators of the criminal law.[186]

The Thomastown cotmen, having lost the "right" to fish, had regained the "privilege" of doing so, as long as the proprietor of the fishery did not resort to the civil courts to enforce exclusive rights to his private property. Ironically, it was privatization beyond what owners would have desired.

1871–84: The "Privilege" of Cot Fishing

The new privilege had major implications in the Thomastown area. It intensified the personalization process and, within the decade, it had factionalized the Thomastown gentry while simultaneously transforming the cotmen into a political force. A landowner now was required to lay his own charges. This personal involvement was associated with an increase in the potential for violence. A bailiff was caught in possession of an unlicensed gun, and another summonsed two cotmen, each of whom had, on different occasions, "threatened to drown him."[187] In court, the bailiff refused to testify: he "swore

that he was afraid the defendants would do him some corporal injury."[188] The violence and the accumulated animosities between bailiffs and cotmen were accompanied by an increasingly involved public. Ascertaining the truth in fishing cases became a severe problem as perjury became a common way of building a case both for the prosecution and for the defense.[189] A bailiff swore that he saw particular defendants fish at a particular place and time; the defendants swore otherwise, as did several witnesses.[190]

In all this, only two proprietors tried to exercise exclusive rights over their fisheries. Marsh was one. The other was Thomas Doran—lessee of the Hunt weir at Jerpoint, conservator, employer of private water bailiffs, and "uncommon poacher." Over the years, a feudlike conflict came to link him and the cotmen. In the earliest record, in 1868, the "court house was pretty well filled by fishermen" to hear the case brought by William Murphy, cotman, against Doran and his bailiff for cross-fishing in the closed season.[191] Doran was fined. The next recorded encounter was in 1872, when two conservators inspected Doran's weir. They brought along a local cotman named Dawson "to point out the defects." Doran later charged Dawson with trespass. Dawson presumably had reported the weir in the first instance! The trespass charge was dismissed, as was a charge brought by Doran's son that Dawson had used threatening language.[192] Several months later, Doran was again charged with illegally altering his weir. An inspector ordered it realtered.[193] The cotmen clearly were watching Doran; on occasion, they probably framed him. A hotelier was charged with possession after Doran's son had stated, during the weir inquiry, that he saw fresh salmon in her hotel. The defense solicitor asked Doran junior "if he knew what kippered salmon" was. He did not. The solicitor informed the bench that Mrs. Bishop bought a large amount of salmon for the hotel during the open season and pickled it for the winter. The case was dismissed, but a month later, Mrs. Bishop was charged by William Murphy, now a water bailiff, with buying salmon in closed time. Murphy stated that "to defray the expense of this prosecution," he had "borrowed from Mr. Doran."[194] This case too was dismissed.[195] Two months later, again on Murphy's evidence, the "most respectable inhabitants of Thomastown" were had up for buying salmon out of season.[196] The first case was dismissed and the conservators hurriedly withdrew the others: "They had been brought entirely on a statement made to Mr. Doran, a Conservator," by William Murphy.[197] Murphy was fired. He probably only had been hired to inform; but had he also been put up to it by the cotmen, to get at Doran?

More generally, these kinds of prosecutions show that the conservators were unable to catch the cotmen poaching. Their own comments at a Thomastown Division meeting confirm this: the water bailiffs were "of no earthly use," the constabulary was indifferent, and money from license fees went to Waterford, not to local enforcement.[198] They also had their own squabbles over how many bailiffs to appoint or where to locate them. A major problem was where to hold the next meeting![199]

By the mid-1870s, there clearly was little enforcement on the Nore. Indeed, there were no fishery cases at the Petty Sessions. Yet "salmon was never so plenty."[200] Prices too were good and the cotmen did well.[201] Still, there was concern. The *Moderator* began to provide weekly reports on the state of the fisheries and the poaching. Presumably also, because so little had been gained from its judicial and enforcement efforts, the "interested gentry" renewed the conflict in the political arena: the Waterford Board again passed a bylaw prohibiting nets on the inland Nore, and proprietors sent a memorial to the Fishery Inspectors in support.

In March 1875, the Inspectors held an inquiry to decide whether to pass the bylaw.[202] The reported evidence shows clearly that the interests of the fisheries administration had altered radically since 1863. Then, a weir-owning gentry had concertedly and illegally opposed the commissioners. By 1875, an officialdom that once had defended the "humble fishers" now viewed cot fishing as an anathema and the bylaw as a way to ensure that the fish went to market and the fisheries to proprietors.[203]

The testimony also shows the depth of antagonism toward cot fishing. The "memorial . . . from certain owners and occupiers" insisted that the "river was continually . . . poached." A proprietor *cum* conservator testified that the "illegal fishing is awful . . . between Kilkenny and Inistioge; . . . they fish at night with cots constantly; the weekly closed season is not observed."[204] Several police then described "poachers" they had seen but failed to catch, often because dogs were trained to "give the alarm." Although the cotmen's solicitor insisted that such testimony "proved no illegal fishing," the chair, Major Hayes, countered that they had "proved the next thing to it. Men do not go out at night in cots for their amusement."

The precise structure of the opposition to cot fishing came from the cross-examination of a Captain Forster, lessee of a house and fishery in Annamult, north of Thomastown: "no one has a right to intrude on private property; his private water has been intruded on; . . . has advocated putting down cot-fishing; . . . has written a letter

in the paper; . . . Mr. Tighe has not endorsed his opinion nor Lord Carrick."[205] Clearly, Forster had been trying to mobilize the gentry, and not all had joined him. Those who did shared two characteristics: they were either nonresidents (Marsh and Hunt) or outsiders who had rented a house and fishing (Doran and Forster). In contrast, such resident proprietors as Tighe and Carrick, the latter of whom was no supporter of cotmen, had not signed the memorial. Very likely, as residents, they wished to avoid the public confrontations that came from opposition.[206] They also may have wished to avoid the likes of Doran and Forster themselves.

To chairman Hayes, cotmen were "violators of the law." His opinion of Thomastown society was equally disparaging: "The more they encouraged gentlemen to settle amongst them the better."[207] In this he clearly misunderstood local class relations and sentiment in the salmon fishery. First, outsiders and absentees, concerned with sport and rents, respectively, were not necessarily part of local gentry society. Second, a Kilkenny fish buyer gave insight into the shopkeepers' position. He "can't answer that cotmen keep the close season," nor could he say that the fish he bought was "caught legally."[208]

Third were the millers. In 1869, 32 Vict. c.9 specified the lattices and bars that had to be attached to mills to aid salmon migrations.[209] The commissioners began immediate enforcement. At Innes's mill, "short work they made of it. Trial, conviction . . . and order" for works to be done "occupied just ten minutes. . . . A public meeting of the Nore millers is fixed for next week, to protest against future action of the Commissioners."[210] More generally, the millers were wary of fisheries officials, and their "dislike of . . . anything which may . . . remotely affect their water power is well-known."[211] They also had personal ties to the cotmen, many of whom were their workers. Ultimately, "poaching [is] carried on at the mills and weirs . . . owing to the protection which the . . . mill-grounds afford."[212] An arch inside Pilsworth's mill, where a sluice could be closed and salmon trapped, was a "celebrated place."[213]

Fourth, the absentees and outsiders were separated from farmers by an ideological twist made explicit in a letter to the *Moderator* from William Deady—a large farmer, corn mill owner, and Poor Law guardian. Deady objected to the "tone" of an earlier letter that "infer[red] that cot-fishing is illegal altogether."

> As is demonstrated by the Ulster tenant right, what is law but custom perpetuated legally? which in this case is tacitly admitted by having a special licence yearly granted for this very mode of taking fish. The idea of likening it to poaching is extremely puerile. . . . In the interest of fair play I have written, I may say, against myself, being a rod-fisher.[214]

The rights of cotmen had become part of a broad, nationalist sentiment. In late 1875, a returned emigré was charged by the police for "fishing with a Tasmanian . . . net." The *Moderator* commented that "during his absence [he] seems to have imbibed little respect for British law."[215] That fishing regulations were British was not unimportant at the time. Nor was the *Moderator*'s idyllic description of the lessee of Dangan Lodge, who "generously distributes" the salmon caught with his rod "among the gentlemen . . . in Thomastown, in the true spirit of a sportsman."[216] In contrast, local sentiment necessarily defended the cotmen's right to a livelihood—even if the more cynical were to trace such sentiment to the ever-present concern of the propertied classes with poor rates. Said Deady: "Cotmen cannot be . . . compelled to relinquish . . . the means of providing their daily bread . . . unless it can be positively shown that they are . . . injurious . . . to the increase of salmon."[217]

Clearly, there was great interest in, and sentiment associated with, the fisheries. The *Moderator* gave weekly reports on conditions, catches, and prices.[218] Fishing seemingly was uninterrupted—by bailiffs or "blow-ins." There were few Petty Sessions cases, although there was an occasional report of a chase.[219] In this context, the *Moderator* began to foster a crisis climate: in the "three great centres of poaching on the river, Instioge, Thomastown and Bennettsbridge" was an "evil" that required an "organised system of repression."[220] Poaching interfered with rentability: "other rivers make good incomes from foreign anglers and there is no reason why the people of the Nore can't do the same."[221] Throughout, the coalition of cotmen stayed firm—despite countervailing pressures.

> Accounts from Thomastown that paradise of poachers show an unusual state. . . . A feud . . . among the poachers . . . has led to a spate of informing . . . which will probably result in . . . fishing cases at next Petty Sessions. If advantage . . . is to be taken it must be done quickly for it will not last and the poachers will . . . turn against the common enemy . . . again.[222]

The cases did not materialize. Instead, the cotmen took the offensive and sent a memorial to Colonel Tighe "signed by upwards of 100 fishermen . . . urging him to discontinue his sweep net fishing . . . as it impeded the progress of the salmon up the river."[223] A week later,

however, the cotmen were on the defensive: the bylaw prohibiting nets on the inland Nore had passed.[224] "From Thomastown, where the main strength of the netting interest lie, . . . a petition is being organised to the Lord Lieutenant." Patrick Martin, M.P., was asked "to fight, on behalf of the fishermen's interests."[225] Four months later, "the net debate" still was "in the hands of the Lord Lieutenant."[226] It is not known what pressures were brought, or by whom, but a month later, a "meeting of the fishermen from Thomastown and Bennettsbridge and farmers with ground on the rivers banks was held at Bennettsbridge. . . . A vote of thanks was passed to all those around the county who had supported the cot men in their successful action against the by-law."[227]

If the farmers came out in support, the gentry bench in Thomastown preserved an impeccable fairness. A fisherman was charged with obstructing the bailiffs in their duty. A bailiff swore that "he saw a crew fishing on the river" and when he moved closer, the "defendant met him, and asked him in a loud voice so that the men on the river could hear him 'Who the d_____l are you at all?' and then struck a match . . . to give notice to the men fishing." In the chair was James Blake—a small, resident Catholic landlord. Like him, two of the other magistrates held no fishery; the fourth magistrate was Tighe's agent at Inistioge. Blake's response to the bailiff's evidence was that "there was no law to prevent a man from lighting a match on the bank of the river. The suggestion . . . was perfectly ridiculous." The case was dismissed.[228]

The paucity of reported cases and the charges of obstruction show that the bailiffs and constabulary were unable to lay poaching charges. With watch dogs and colleagues, cotmen were difficult to catch. Equally, there probably were few informers. This means that the cotmen—as fishermen—had the support of local people and—as poachers—they probably had the tacit approval of most. In the preceding Petty Sessions trial, they were not blindly opposed by their "natural enemy"—quite the opposite. For despite the efforts of the *Moderator* and those who supported its sentiments (e.g., Doran, Hayes, and Forster), most segments of local society (as represented by farmer Deady, the millers, the Thomastown bench, and the Kilkenny fish dealer) were unwilling to sacrifice the cotmen to increase the profits of absentee landlords and the sport of foreign gentlemen. In any case, as the fish dealer pointed out, he never asked whether the fish was legal or not. With heavy demand and high prices in the export market, locals depended on the cotmen to supply local needs. Indeed,

the cotmen wisely kept that market well stocked—judging by the quantities that Mrs. Bishop pickled in her hotel.

In late 1877, Marsh again entered the fray with two civil suits against cot crews for fishing on his property: "It is our right to the several fishery . . . that we are here to protect," said his solicitor.[229] Within a few months, the "feud of water bailiffs against cotmen [reached] a new stage of development." Two cotmen, interrupted one night by bailiffs, threw stones. A bailiff "fired his revolver . . . which brought [the] cotmen to the bank, armed with paddles and threatening . . . vengeance." The bailiffs retired.[230] At the Petty Sessions, the illegal fishing charge was dismissed, but all were ordered to the Assizes.[231] There the bailiff said that he had not fired at the fishermen; the fishermen said they had only thrown small stones. All were ordered "to stand on their own recognizances."[232]

This event was allowed to tail off, but the conflict again spilled onto the streets. On the evidence of two cotmen, the police charged Doran's bailiff, now "an old man," who maintained that the case "was got up . . . through spite." It was dismissed. As he left the court, he "was attacked . . . by a crowd of fishermen and their wives."[233] The violence escalated. Two cotmen were wounded—shot by a water bailiff. The cotmen were charged with assault. At the Assizes, the bailiff said that he fired only when the fishermen beat him with a paddle after he was thrown into the water. In stark contrast, the cotmen said that when they came near the bailiff's cot, he simply struck his cot against theirs and fired his pistol. The jury refused to convict despite instructions to do so from the bench: "they believed the cot men assaulted [the bailiff] to prevent him firing on them."[234] At the next Petty Sessions, the cotmen were up for illegal fishing. The defense asked that "their worships . . . consider the hardships" to which the men and their "families had been subjected." The bench, however, already "had decided to inflict no penalty."[235]

The bailiff had made enemies, and the lines were fixed. The bailiff charged a cotman with calling him a "perjurer on the public streets,"[236] and after a fisherman had apparently threatened him, he pulled his revolver. He was summonsed by the cotman.[237] The women entered the conflict. After a bailiff prosecuted a woman for possession, he later charged her with using abusive language because "four times subsequent to the case . . . she met him within the precincts of the court and called him a perjurer."[238]

Yet the central issue of private property did not abate. Davis's heirs in Dangan lived outside the parish and let the house and fishery.

They brought two cases in 1880 against cotmen for fishing without permission. Davis's solicitor, Mr. Boyd, said that if the defendants would not repeat the offense, Davis would accept a nominal penalty. For the fishermen were "tenants of Mr. Davis's and he does not wish to deal harshly with them."[239] In any case, "if they had only asked . . . to fish for two or three days in the week he would have granted it."

Davis clearly was concerned not with the cotmen's right to net but with establishing exclusive rights to his property. In turn, James Kelly, the cotman who led the defense, admitted to fishing "because we had a perfect legal right" to do so. The magistrates disagreed. At Kelly's request they then inflicted a penalty sufficient to carry the right to an appeal.

The defendants faced a second charge. Kelly announced that "if we have no right to fish there [Davis] has no right either (. . . laughter)." He then agreed not to fish in Davis's fishery until the appeal was heard. A third case ended the same way, after which the following occurred:

COLLETON: Well, we won't fish there—until it is dark (loud laughter).

MR. BOYD: Now, I shall prove the case against you, and I shall ask the magistrates to inflict the full penalty.

COLLETON: Very well, Mr. Boyd, sure we are all monied men (renewed laughter), and this is a good season.[240]

At the Quarter Sessions, Kelly's solicitor argued "that common usage" allowed them to fish and that, in any case, they were fishing on Mr. Greene's side of the river. The latter argument clearly removed the defense from that of "common right." The bailiff simply insisted that the cotmen had fished on Davis's side and the conviction was affirmed. Boyd said that "if the fishermen promised not to go there in the future, Mr. Davis would be happy with a nominal penalty." The cotmen did so and thus they conceded the principle set in *Murphy v. Ryan* (1868).[241] However, a new feature was apparent in the proceedings: cotmen were playing to an audience. It was an audience that was both inside and outside the courthouse theater. At a Thomastown Land League meeting, Mulhalum Marum, M.P., presented a posture different from that in 1863 when before the gentry. "Did not the fishermen of Thomastown know that they were begrudged even the fish that sported in these waters?"[242] Similarly, the nationalist *Journal* commented that, because of the "greed . . . for property, . . . the right of fishing hitherto enjoyed by the cotmen . . . is . . . challenged. It is a hard case that the humble descendants of fishers who trolled in these waters when vespers were sung in Jerpoint, before the abbey lands had been parcelled out to Hanoverian rabble, should be banished now. Even the water-bailiffs say that their hardship is a great one."[243] Indeed, "one of the fishermen who was in the affray" with the bailiffs was granted outdoor relief by the guardians. The chair noted: "There was no doubt but that there was a great distress existing among them."[244] In contrast, the commissioners noted the "valuable rod fisheries for which large rents are obtained"[245] and Bassett's 1884 Guide reported that Thomastown had "splendid salmon and trout fishing."

For the cotmen, the only option was to poach. When caught, they sometimes got off or had the penalty reduced because of a technicality.[246] The major tactic, though, was evasion. Alibis became central. A case was dismissed after a woman swore that a fisherman was "in her house, 'beastly drunk' . . . on the night of the alleged occurrence."[247] It also was still possible to torment Doran and he was charged with more weir violations.[248] Symbolic resistence, too, was possible. Two cotmen were fined for "obstructing Mr. William Percival of Dangan Cottage while he was legally fishing . . . by paddling a cot across his line."[249]

1884: A Privilege Criminalized and Poaching Institutionalized

In 1884, four cotmen were summoned at the Thomastown Petty Sessions by the head water bailiff for entering a several fishery. Convicted, they appealed to the Quarter Sessions. An outsider named Greenwood "proved that he . . . rented [Brownsbarn] house and garden, and the right of fishing and shooting from . . . the owner." He said that he had written "to the Conservators to prevent the cotmen from fishing." The cotmen's solicitor maintained that the bailiff had no right to institute the proceedings. The conviction was confirmed. On appeal to the Queen's Bench, the court held that: "It is clearly settled . . . that use by the public.. . no matter how long, will not confer a right to take fish in inland waters. . . . An action by a riparian proprietor . . . must succeed. . . . Why . . . should the owner be put to the necessity of bringing civil action against trespassers?"[250]

The new order was confirmed immediately. Bailiffs brought two cases against cotmen for fishing in Marsh's several fishery. They were convicted and did not appeal.[251] In 1899, a witness before a parlia-

mentary commission noted: "On the Nore, . . . there are a band of fishermen at nearly every town from the tidal water upwards who, perhaps, pay a pound . . . to the proprietors of one bank, and so get permission to net; . . . once they get leave on 100 or 200 yards . . . they take opportunities of . . . poaching for miles."[252] The land Acts gradually transferred ownership of the land to tenant farmers, along with the several fisheries. Because most farmers had little use for fishing rights, they rented the fishing to the cotmen, who, as was their custom, continued to net at night all along the inland Nore.

Conclusion: The Past, Local Studies, and Historical Process

In this paper, I have analyzed a process through which the rights of private property gradually encroached upon and finally eliminated customary rights. Although many of the issues surrounding customary rights are well studied in social history and in legal anthropology, the subject has received little attention in the Irish context where the historical and anthropological research agenda derives from other traditions and interests. *Anthropological analyses of the Irish past,* then, can broaden the research agenda for both historians and anthropologists in Ireland.

Equally, *ethnographies of the past* can complement the work of social historians. There are no studies of inland salmon fishermen in the British Isles and few references to the role of salmon in local political economies.[253] Thomastown's cotmen were "discovered" only in the course of collecting archival materials on the locality. Thus, because ethnographers often bump into the so-called people without history,[254] ethnographies of the past can expand the subject matter of social history. They also can add insights into subjects traditionally investigated by social historians. For example, poaching, as a social and cultural means of protest, is often analyzed as a fixed response to set conditions. However, historical ethnography can show how it also has been a slowly evolving cultural and social form, how it is a product of adaptation as well as protest, and how it results from negotiation as well as coercion.

Finally, cumulative processes may have a hidden trajectory that only *local, historical analyses* can uncover. In this paper, I have shown how changing interclass and intraclass relations at the local level directly affected and reflected an encroachment process that derived largely from an international political economy. That the conclusion was inevitable, in other words, is clear to us only in hindsight; it must be remembered that participants at the time had no such knowledge. As a result, their actions and reactions had a contextual logic that in turn partly explains how the unevenness was created in the first instance. It is this unevenness and indeterminacy that local historical analysis can uncover. In so doing, it allows for better understanding the dialectical relations between local and national, locality and region, class and segment, individual action and class formation, and material interest and ideology.

NOTES

1. Tighe 1802:149–50.

2. A total of slightly more than two years of field and archival research was carried out in the Republic of Ireland at different times between 1980 and 1989. It was variously supported by the Social Sciences and Humanities Research Council of Canada (SSHRC); the Faculty of Arts, York University; and the Wenner-Gren Foundation for Anthropological Research, New York.

3. The population of Thomastown "town" in 1841 was 2,350. For the Catholic parish of Thomastown it was 7,410.

4. A cot was a canoelike boat made locally by carpenters. It held two men. A salmon fishing crew was made up of two cots and four men. In each cot was a paddler and a netman. The two cots moved along the river with the snap net held by the netmen between the two cots, sweeping the bottom of the river. When a salmon hit the net, the netmen pulled it in. Only one salmon was caught at a time.

5. This was Lee's critique of many studies in the Irish context that have used a class analysis (1981b:179).

6. Salmon fry are the young salmon swimming downriver to the ocean. The Acts protecting them were 2 George I. c.21; 17 and 18 George III. c.19; 10 Charles I. sess. 3, c.14; and 12 George I. c.7 (Tighe 1802:152).

7. The closed time was legislated by 31 George II. c.13. However, it was "extended on the Nore, as it is said by custom" (Tighe 1802:152).

8. Using the 28 Henry VIII. c.22, the sheriff could prostrate such weirs, and the "5 Geo II. cap 11. provides against their re-construction when legally prostrated" (Tighe 1802:153).

9. According to 26 George III. c.50.

10. Tighe (1802:152).

11. Tighe (1802:151, 153).

12. IUP 1824 [427] vii, p. 145. This also is briefly referred to by MacLeod (1968:115), who cited Sir Walter Scott from 1828.

13. IUP 1825 [173] v, p. 285.

14. IUP 1825 [393] v, pp. 458–59.

15. IUP 1825 [393] v, p. 459.

16. As evidence for the decline of the fisheries, Clarke said that "salmon

used to sell in the town of Kilkenny for twopence a pound, and now, I believe, it will be found very difficult to be got for tenpence a pound" (IUP 1825 [393] v, p. 459).

17. *Kilkenny Moderator,* June 27, 1829.

18. *Kilkenny Moderator,* July 31, 1830.

19. *Kilkenny Moderator,* January 19, 1831.

20. This is a distinction made by Hay (1975:213) to play on the prejudices of the eighteenth century landed classes who "execrated the 'common poacher' " in a context in which members of the gentry also were poaching.

21. IUP 1849 [536] xiii, p. 549.

22. IUP 1849 [536] xiii, pp. 555–56.

23. IUP 1837 [82] xxii, p. 558.

24. *Kilkenny Journal,* March 19, 1834.

25. Maxwell was the owner-editor of the *Kilkenny Journal and Leinster Commercial and Literary Advertiser,* a newspaper that followed a nationalist line at the time (Kenealy 1978).

26. IUP 1837 [82] xxii, pp. 555–56.

27. IUP 1837 [82] xxii, p. 555.

28. IUP 1837 [82] xxii, p. 558.

29. IUP 1849 [536] xiii, p. 555.

30. IUP 1837 [82] xxii, p. 558.

31. IUP 1849 [536] xiii, p. 578.

32. IUP 1837 [82] xxii, p. 548.

33. *Kilkenny Moderator,* September 6, 1837. The *Kilkenny Moderator* reported other such actions on June 14, 1837, and July 20, 1839.

34. IUP 1849 [536] xiii, p. 553. Despite this emphasis on protection, one unhappy witness before the 1835 commission said, "I cannot learn that they do much in the way of protecting; . . . their object appears to be rather to subscribe to prosecute the stake-net proprietors, under the 10th Charles I. c.14" (IUP 1837 [82] xii, p. 551).

35. IUP 1849 [536] xiii, p. 270.

36. IUP 1849 [536] xiii, pp. 270–71.

37. The millers' interests were fairly straightforward. They did not want any interference with their water power, mill races, or machinery. When pressed to give up illegal fishing, they probably did so simply to avoid prosecution and the possibility of subsequent interference.

38. IUP 1849 [536] xiii, p. 179.

39. Went (1955).

40. Italics theirs. *Kilkenny Moderator,* November 14, 1838.

41. *Kilkenny Moderator,* February 25, 1835.

42. *Kilkenny Journal,* February 28, 1835.

43. The list included names that were to recur again: the earl of Carrick, Sydenham Davis, Hugh Greene, Edward Hunt, John Nixon, Anthony Nugent, and William F. Tighe.

44. There were several ways a weir could violate the law. It could be illegal altogether in that it was not held by a legitimate grant or charter. Or its "queen's/king's gap," which allowed salmon a fair chance of passing through, could be too small or blocked. It could be extended too far into the river. There could be spurs or abutments built onto the weir to which illegal nets could be attached. Finally, nets or traps may have been set on the weir.

45. *Kilkenny Journal,* September 19, 1838.

46. *Kilkenny Moderator,* January 18, 1840.

47. *Kilkenny Moderator,* April 29, 1840.

48. *Kilkenny Moderator,* April 29, 1840.

49. *Kilkenny Moderator,* August 4, 1841.

50. *Kilkenny Moderator,* March 26, 1842;*Kilkenny Moderator,* April 13, 1842.

51. Letter to the editor, *Kilkenny Moderator,* August 4, 1841.

52. *Kilkenny Moderator,* April 13, 1842.

53. There is little information on the cotmen in this early period. At the inquiry into the "condition of the poorer classes," local cotmen were described as laborers. The proportion who were full-time fishermen was never addressed (H.C. 1836 xxxi. Supplement to Appendix D, pp. 71–72).

54. *Kilkenny Moderator,* July 29, 1840.

55. *Kilkenny Moderator,* August 4, 1841.

56. It is not known who gave the advice to "proceed on an act of parliament," but it was the strategy of St. Peter's Society at the time.

57. *Kilkenny Journal,* March 10, 1841.

58. *Kilkenny Journal,* February 17, 1841.

59. *Kilkenny Journal,* March 10, 1841.

60. It was a bank manager (William Clifford) and a flour miller (William Bull) who "went about removing the wall" before Davis withdrew permission in 1836 (*Kilkenny Journal,* February 17, 1841). It was the parish priest (Rev. James Ryan), a Petty Sessions clerk (Edward Hutchinson), and William Clifford who brought the case against Davis in which the bench refused to intervene. (*Kilkenny Journal,* March 10, 1841). It was Harry Innes, the flour miller, who received the response from Dublin Castle.

61. *Kilkenny Journal,* March 10, 1841.

62. Silverman and Gulliver (1986:129–34).

63. *Kilkenny Journal,* March 10, 1841.

64. *Kilkenny Moderator,* August 21, 1841.

65. *Kilkenny Moderator,* November 10, 1841.

66. *Kilkenny Moderator,* August 21, 1841.

67. IUP 1849 [536] xiii, p. 549.

68. The commissioners did not explain why the lower fisheries were most productive because it seemed self-evident to them at the time. It probably was because more salmon were caught there, because it was closer to the export markets, and because saltwater salmon were considered of superior quality and commanded a higher price.

69. IUP 1837 [82] xxii, p. 490.

70. IUP 1837 [82] xxii, p. 490.
71. IUP 1843 [224] xxviii, p. 20.
72. The weirs and fixed nets were seen as the most efficient technologies (IUP 1837 [82] xxii, p. 548).
73. 4 Bur 2162. Cited in *Murphy v. Ryan, The Irish Reports* (Common Law Series) 1867.
74. Longfield (1863:10).
75. Longfield (1863:211).
76. IUP 1843 [224] xxviii, p. 21.
77. *Kilkenny Moderator,* October 15, 1842.
78. *Kilkenny Moderator,* October 26, 1842.
79. IUP 1846 [713] xxii p. 184.
80. IUP 1844 [502] xxx p. 36.
81. IUP 1844 [502] xxx p. 36.
82. IUP 1843 [224] xxviii, p. 21.
83. This was because fixed engines could only be set up by landowners who held land along the banks. Yet it had long been established that where a "river ebbs and flows and is an arm of the sea, then it is common to all" (1837 [82] xii, p. 561). It therefore was argued that, in the tidal waters, the 1842 Act "handed over to the landlords the rights which were then vested in the public" (1849 [536] xii, p. 547).
84. IUP 1844 [502] xxx, p. 37.
85. IUP 1849 [536] xiii, pp. 271–72.
86. IUP 1849 [536] xiii, pp. 271–72.
87. IUP 1844 [502] xxx, p. 37.
88. IUP 1844 [502] xxx, p. 36.
89. IUP 1849 [536] xiii, pp. 177–79.
90. IUP 1844 [502] xxx, pp. 37–38.
91. IUP 1843 [224] xxviii, p. 21.
92. IUP 1845 [320] xxvi, p. 217.
93. IUP 1844 [502] xxx, p. 38.
94. IUP 1845 [320] xxvi, p. 219. Increasing involvement by the commissioners was made simpler because nonfishing, propertied interests were not necessarily sympathetic to fisheries owners. For example, as rate payers, landed interests refused to pay compensation "for malicious injury done to fishing weirs now legally held." They were supported by the higher courts which "ruled . . . that these kind of weirs were not recognised as legal at the time of passing the Grand Jury Act" (IUP 1844 [502] xxx, p. 38).
95. IUP 1846 [713] xxii, pp. 255–56.
96. *Kilkenny Moderator,* October 26, 1842.
97. IUP 1846 [713] xxii, pp. 255–56.
98. IUP 1846 [713] xxii, pp. 256–57.
99. IUP 1846 [713] xxii, pp. 244–45.
100. IUP 1846 [713] xxii, pp. 244–45.
101. IUP 1845 [320] xxvi, pp. 211–13.

102. IUP 1846 [713] xxii, p. 186.
103. IUP 1846 [713] xxii, p. 186.
104. IUP 1847–48 [983] xxxvii, p. 240.
105. IUP 1847–48 [983] xxxvii, p. 240.
106. IUP 1847–48 [983] xxxvii, p. 243.
107. IUP 1849 [1098] xxiii, p. 494.
108. *Kilkenny Moderator,* September 30, 1846.
109. IUP 1849 [1098] xxiii, p. 495.
110. IUP 1849 [1098] xxiii, p. 495.
111. IUP 1849 [1098] xxiii, p. 493.
112. IUP 1846 [713] xxii, p. 199.
113. IUP 1849 [1098] xxii, p. 713.
114. IUP 1849 [1098] xxii, p. 496.
115. IUP 1849 [1098] xxiii, pp. 496–97.
116. IUP 1851 [1414] xxv, p. 71.
117. IUP 1851 [1414] xxv, p. 72.
118. IUP 1851 [1414] xxv, p. 239.
119. IUP 1851 [1414] xxv, p. 240.
120. IUP 1854 [1819] xx, p. 179.
121. IUP 1854 [1819] xx, p. 167.
122. IUP 1856 [21] xix, p. 39.
123. *Kilkenny Moderator,* February 10, 1849, and February 13, 1850. This was the earl of Carrick's property.
124. The editor complained that the water bailiffs were of little use; nor was he "aware of any . . . vigilance" on the part of the constabulary (*Kilkenny Moderator,* April 20, 1853).
125. *Kilkenny Moderator,* April 20, 1853.
126. *Kilkenny Moderator,* April 20, 1853.
127. IUP 1857 [2272, sess. 2] xviii, p. 28.
128. IUP 1860 [2727] xxxiv, p. 671.
129. IUP 1861 [2862] xxiii, p. 31.
130. IUP 1861 [2862] xxiii, p. 31.
131. IUP 1861 [2862] xxiii, p. 31.
132. IUP 1861 [2862] xxiii, p. 34.
133. IUP 1864 [3256] xxxi, pp. 33–34. Complaints no longer had to be made against each net individually. Instead, the special commissioners were empowered to investigate the legal title of all existing nets. By 1865, all legal nets and weirs were known and recorded as such. New nets could not be raised. Moreover, if a net had been declared illegal, prostrated, and then reerected, the commissioners could level it again without recourse to additional legal action.
134. IUP 1865 [3420] xxviii, p. 436. Among the weirs found illegal was one held by W. F. Tighe, Inistioge. It was "abated as injurious to navigation" (IUP 1864 [3256] xxxi, p. 45).
135. IUP 1865 [3420] xxviii, p. 433.

136. IUP 1865 [3420] xxviii, p. 433.

137. *Kilkenny Moderator,* February 9, 1861.

138. In 1857, there were four reported cases of illegal fishing in the Thomastown area. For 1858 and 1859, two cases were reported in each year; in 1860, there was none; in 1861, there was one; and in 1862, there was none.

139. In 1866, the commissioners reported that the Waterford Board spent too much of its funds on the lower waters, and they suggested a more balanced allocation (IUP 1866 [3608] xxviii, pp. 370–71).

140. Davis's land/fishery was in Dangan townland; Marsh's was in Jerpoint West.

141. In the Davis case it was reported that the bench adjourned to consult the law officers (*Kilkenny Moderator,* April 7, 1855). There was no follow-up report. In the Marsh case it simply was reported that the "parties were severally fined . . . and the nets . . . forfeited" (*Kilkenny Moderator,* May 14, 1856). I have no idea if or why the outcome of the cases differed.

142. *Kilkenny Moderator,* November 15, 1856.

143. *Kilkenny Moderator,* July 15, 1863.

144. *Kilkenny Moderator,* March 8, 1845.

145. *Kilkenny Moderator,* November 15, 1856.

146. The sources for these two cases are in personal papers, Thomastown.

147. *Kilkenny Moderator,* August 12, 1854.

148. *Kilkenny Moderator,* April 24, 1844.

149. *Kilkenny Moderator,* February 14, 1857.

150. *Kilkenny Moderator,* April 24, 1844.

151. For example, a water bailiff summonsed a fisherman for "using threatening and abusive language towards him" (*Kilkenny Moderator,* September 10, 1859), as did a constable (*Kilkenny Moderator,* December 8, 1860). The stationmaster summonsed the "notorious fishmonger" for the same offense and the fishmonger cross-summonsed the stationmaster (*Kilkenny Moderator,* April 6, 1861). Or, during a fracas in a pub, a cotman broke a window and then assaulted the constable who had been called in. The cotman's brother also was charged for obstructing the police officer who was "conveying his brother to the barracks" (*Kilkenny Moderator,* October 10, 1863).

152. *Kilkenny Moderator,* May 9, 1863.

153. IUP 1865 [34] xxviii, p. 433.

154. In 1853, 118 snap-net (cot) licenses were sold; in 1865, 374 were sold (IUP 1854 [1819] xx, p. 193; IUP 1866 [3608] xxviii, p. 392).

155. IUP 1866 [3608] xxviii, p. 358.

156. *Kilkenny Moderator,* October 21, 1863.

157. *Kilkenny Moderator,* October 21, 1863.

158. Salmon hide from the light of day in deep, inaccessible pools. They also can see and hence avoid a net in daylight.

159. *Kilkenny Moderator,* October 24, 1863.

160. *Kilkenny Moderator,* October 28, 1863.

161. The special commissioners set up by the 1863 Act to investigate the tidal stake nets also investigated the titles of the inland stone weirs. All in the Thomastown area were found legal and their proportions, gaps, and so on were specified and could not be altered (IUP 1867–68 [4056] xix, p. 685).

162. *Kilkenny Moderator,* March 5, 1864.

163. *Kilkenny Moderator,* April 6, 1864.

164. *Kilkenny Moderator,* May 6, 1865.

165. *Kilkenny Moderator,* August 12, 1865.

166. *Kilkenny Journal,* August 11, 1866. Several related suits and countersuits for abuse and assault ensued between the publican and the cotman—and both their kin (*Kilkenny Journal* and *Kilkenny Moderator,* September 8, 1866).

167. It was not uncommon for middlemen to control urban housing; generally, they also were artisans (*Kilkenny Moderator,* November 13, 1867).

168. Alcohol use among cotmen was heavy. For example, a "fisherman . . . attempting self-destruction whilst in a state of intoxication" was saved by the efforts of several police and cotmen (*Kilkenny Moderator,* July 7, 1866).

169. A landlord with some of his holdings in the Thomastown area, none of which adjoined the Nore. His seat was at Jenkinstown, County Kilkenny.

170. *Kilkenny Moderator,* July 19, 1865.

171. IUP 1866 [3608] xxvii, p. 394; IUP 1867 [3826] xviii, p. 33.

172. IUP 1867–68 [4056] xix, p. 653.

173. *Kilkenny Moderator,* March 24, 1866.

174. IUP 1849 [536] xiii, p. 361.

175. *The Irish Reports (Common Law Series)* 1867:143–55. The case was argued in early 1867 before the Court of Common Pleas.

176. He did so from the bench at the next Thomastown Petty Sessions (*Kilkenny Journal,* February 8, 1868).

177. *Kilkenny Moderator,* April 11, 1868. The cotmen together seemingly decided to take only one case forward, possibly on their solicitor's advice.

178. *Kilkenny Moderator,* June 6, 1868.

179. *Kilkenny Moderator,* October 21, 1868.

180. *Kilkenny Moderator,* April 10, 1869.

181. *Kilkenny Journal,* June 30, 1869.

182. *Kilkenny Moderator,* October 27, 1869. The letter was written by Edward Hutchinson, the Clerk of the Petty Sessions, about his son Richard. Innes was the flour miller. All were Protestant.

183. *Kilkenny Moderator,* July 7, 1870.

184. *Kilkenny Moderator,* August 6, 1870.

185. *Kilkenny Journal,* October 8, 1870.

186. *Kilkenny Journal,* January 14, 1871.

187. *Kilkenny Moderator,* March 11, 1871.

188. *Kilkenny Moderator,* May 15, 1872.

189. At a Petty Sessions, for example, the Resident Magistrate "spoke at some length, on the nature of an oath—the invoking the name of God . . . to witness the telling the truth; and he exhorted all to remember what . . . it involved (*Kilkenny Moderator,* March 11, 1871).

190. *Kilkenny Journal,* June 8, 1872.
191. *Kilkenny Moderator,* May 9, 1868; June 6, 1868.
192. *Kilkenny Journal,* June 8, 1872.
193. *Kilkenny Moderator,* October 5, 1872; *Kilkenny Moderator,* March 26, 1873.
194. *Kilkenny Journal,* December 7, 1872.
195. *Kilkenny Moderator,* January 18, 1873.
196. *Kilkenny Journal,* March 8, 1873.
197. *Kilkenny Moderator,* March 8, 1873.
198. *Kilkenny Moderator,* February 7, 1874.
199. *Kilkenny Moderator,* February 6, 1875.
200. *Kilkenny Moderator,* February 28, 1874.
201. Salmon fetched about 1s. a pound (*Kilkenny Moderator,* March 25, 1874).
202. *Kilkenny Moderator,* March 12, 1875.
203. IUP 1873 [c.758] xix, p. 644; IUP 1874 [c.980] xii, p. 601; IUP 1876 [c.1467] xvi, p. 582; IUP 1877 [c. 1703] xxiv, p. 391.
204. The cotmen seemingly took part from the audience. At one point, the chair "checked the fishermen for some ugly remarks which they were occasionally volunteering" and their solicitor "told the fishermen" that he "would give up the case, if it was not left in [his] hands."
205. *Kilkenny Moderator,* March 12, 1875.
206. For example, a fisherman loudly interjected during Forster's evidence that "Captain Forster poached himself . . . but there is no one to summon him" (*Kilkenny Moderator,* March 12, 1875).
207. *Kilkenny Moderator,* March 12, 1875.
208. *Kilkenny Moderator,* March 12, 1875.
209. IUP 1870 [c.225] xiv.
210. *Kilkenny Moderator,* October 27, 1869.
211. IUP 1866 [3608] xxvii, pp. 374–75.
212. IUP 1867 [3826] xviii, p. 41.
213. HC 1901 [Cd. 448] xii, p. 139.
214. *Kilkenny Moderator,* May 15, 1875.
215. *Kilkenny Moderator,* October 2, 1875.
216. *Kilkenny Moderator,* April 21, 1875.
217. This was part of his letter to the *Kilkenny Moderator,* May 15, 1875. This sentiment also was expressed when the cotmen's solicitor, in cross-examining Forster, accused him of doing "all in his power to take bread out of their mouths." Interestingly, chairman Hayes objected strenuously to this wording. Hayes added that a "gentleman is bound to protect his own property when he takes a house and land."
218. *Kilkenny Moderator,* March 17, 31; April 28; May 19; June 9; July 21, 28; August 11, 1875.
219. For example, *Kilkenny Moderator,* April 21; August 18, 1875.
220. *Kilkenny Moderator,* August 11, 1875.

221. *Kilkenny Moderator,* May 3, 1876.
222. *Kilkenny Moderator,* June 23, 1876.
223. *Kilkenny Moderator,* July 13, 1876.
224. *Kilkenny Moderator,* July 22, 1876.
225. *Kilkenny Moderator,* November 22, 1876.
226. *Kilkenny Moderator,* March 7, 1877.
227. *Kilkenny Moderator,* April 21, 1877.
228. *Kilkenny Moderator,* June 9, 1877.
229. *Kilkenny Moderator,* November 10, 1877.
230. *Kilkenny Moderator,* June 8, 1878.
231. *Kilkenny Journal,* July 3, 1878.
232. *Kilkenny Journal,* July 17, 1878.
233. *Kilkenny Moderator,* May 10, 1879.
234. *Kilkenny Journal,* July 12, 1879.
235. *Kilkenny Journal,* August 6, 1879.
236. *Kilkenny Moderator,* September 6, 1879.
237. *Kilkenny Journal,* October 8, 1879.
238. *Kilkenny Journal,* April 7, 1880.
239. Davis held urban property and a great deal of laborers' housing.
240. *Kilkenny Moderator,* March 6, 1880. This case is described in more detail in Silverman and Gulliver 1986, pp. 213–16.
241. *Kilkenny Journal,* April 17, 1880.
242. *Kilkenny Moderator,* December 1, 1880.
243. *Kilkenny Journal,* February 11, 1880.
244. *Kilkenny Journal,* May 29, 1880.
245. IUP 1881 [c.2871] xxiii, p. 431.
246. For example, an appeal to the Quarter Sessions that the penalty for an offence "did not encompass the forfeiture of the gear" resulted in the conviction being quashed (*Kilkenny Journal,* June 25, 1881).
247. *Kilkenny Moderator,* September 5, 1883.
248. *Kilkenny Moderator,* May 3, 1882.
249. *Kilkenny Moderator,* May 10, 1884.
250. *Reg.* [*Morrissey*] *v. Justices of Kilkenny, Law Reports (Ireland),* vol. 14, 1884:349–52.
251. *Kilkenny Moderator,* May 10, 1884.
252. HC 1901 [Cd. 448] xii, p. 137.
253. The few examples include Bartrip (1985) and Macleod (1968), who in fact were mainly concerned with the development of law and public policy.
254. Wolf (1982).