custom, courts, and class formation: constructing the hegemonic process through the petty sessions of a southeastern Irish parish, 1828–1884

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This exploration of hegemony, law, and politics attempts to expand recent anthropological approaches to hegemony and the law both topically and temporally. Specifically, I try to insert notions of coercion, class formation, agency, and political process into what have largely been cultural approaches to hegemony; I do so by exploring the workings of a local court through time. This court, in the context of a colonial state, brought together numerous agents (landlords, laborers, farmers, and retailers) who had conflicting and also sometimes converging economic and political interests and understandings. Through their interaction, the court became a theater, forum, and arena while, over time, it proved simultaneously to be both a civilizing device and a way of reproducing local class experience. [hegemony, historical anthropology, political-legal anthropology, class formation, courts, Ireland, colonialism]

In 1833, an Anglo-Irish landlord and magistrate, living near Thomastown in southern County Kilkenny, described the "poorer classes" before a British Parliamentary Inquiry. His description provided insight into local custom: "To this habit of making their own regulations, and combining for the revenge of private injuries, may be traced much of the lawless habits of life so prevalent among them" (British PP 1836).[1]

This view of private restitution as lawlessness contained the assumption that the habits and behavior of the poor should be altered, presumably under the direction of the landed, civilizing classes. These landlords, however, were themselves, as magistrates, under pressure from the colonial state to improve the quality of law and order in the localities in which they resided. The Petty Sessions Act of 1827 thus had a dual purpose: to institutionalize public legal proceedings that would discipline the landed magistrates while civilizing the poorer classes. The resulting hegemonic process was complex, typified by the application of coercion alongside the construction of new meanings and practices, by the interaction of various kinds of agents, and by changing class alliances and class experiences.

law, politics, and hegemony in recent anthropological work

An early anthropological concern with formal courts (judicial processes) and the normative nature of law was complemented, by the early 1960s, with an interest in dispute settlement and conflict resolution through extrajudicial processes (Vincent 1990:375–376). As this change propelled anthropologists away from a concern with

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norms, institutions, and rules to concentrate instead on actors, choice, and strategizing (Yngvesson 1993:8), it also raised queries about the context within which disputes and conflict were located. How did these impact on political structures and on the law, and vice versa? Through such issues, legal anthropology by the mid-1970s had become linked to political anthropology and to the nature of political relations and struggles (Vincent 1990:378, 380). Several key foci had thus been designated: law, courts, disputes, and political processes.

Since that time, explorations into the conceptual and empirical fit among these four foci have provided the stimuli for a good deal of analytical ethnography. Most recently, such ethnography has been concerned with legal pluralism in colonial and postcolonial states,[2] in how law is implicated in the (re)emergence of gendered, ethnic, regional, and national identities,[3] and in studies of law and power. Through these, a great deal of insight has been gained into the relations among law, courts, and disputes. At the same time though, the nature of the associated political processes has been far less apparent. This, I would argue, reflects the ways in which legal and political anthropologists have been defining and applying the concept of hegemony in empirical situations. Specifically, and following Kurtz (1996:115–117), the recent so-called cultural turn in anthropology has led to a privileging of a notion of hegemony based more on the interpretations of Raymond Williams (1977) than on the work of Gramsci himself (1971).[4] What has this meant?

For Gramsci (1971:52), "the historical unity of the ruling classes is realized in the state" and, as anthropologists have been quick to grasp, this unity is not simply political or juridical but also moral and cultural, based "not so much on direct physical *coercion* as on the ability to organize people's everyday conceptions of the world, and therefore to organize and win popular consent on the ideological-cultural plane of society" (Schweitzer 1992:37). It is the cultural contests and conflicts emanating out of such processes that have formed the basis for anthropological approaches to hegemony. The resulting emphases on "cultural domination" or "culture process" have, of course, been very fruitful in providing the impetus for numerous and very differently theorized empirical studies.[5] It has also meant, however, that several important aspects of Gramsci's ideas on hegemony, and political-economic processes, have been neglected.

To begin, I refer to the fact that the definitive characteristic of the state, that is, of political society, is *coercion* (Cain 1983:101). This means that the construction of hegemony (consent) always occurs in dialectic with the application of coercion or punishment (domination). The former, of course, is built through the institutions and organs of "civil society," that is, through "private organizations like the Church, trade unions, or schools" (Lears 1985:570). The latter occurs through "political society," via the actions of the police, the military, and, sometimes, the law.[6] For the law has a dual character. Located in the interstices between civil society and political society, law has a special role, as both coercive/punitive and educative/civilizing.

> If every State tends to create and maintain a certain type of civilization and of citizen (and hence of collective life and of individual relations), and to eliminate certain customs and attitudes and to disseminate others, then the Law will be its instrument for this purpose (together with the school system, and other institutions and activities). It must be developed so that it is suitable for such a purpose. [Gramsci 1971:246]

Yet,

> It seems to me that one cannot start from the point of view that the State does not "punish" . . . but only struggles against social "dangerousness." . . . For, once the

> conditions are created in which a certain way of life is "possible," then "criminal action or omission" must have a *punitive sanction, with moral implications,* and not merely be judged generically as "dangerous." [Gramsci 1971:246–247; emphasis added]

Despite this interdependence of consent (hegemony) *cum* domination (coercion), approaches to hegemony and the law, or to law and power, have tended to focus on the means or processes of securing consent in ways that allow coercion to enter only as a broad implicit backdrop.[7] This is because law is seen as part of the cultural world—as practice, process, discourse, code, and communication (Lazarus-Black 1989:11). With its "ability to transform class-based edicts and principles into common sense" (Merry 1994:53), law shapes consciousness through processes (e.g., discourses of entitlement, enfranchisement), procedures (e.g., courts), symbols, and institutions. Moreover, given that law is "a maker of hegemony," it is also "a means of resistance" (Hirsch and Lazarus-Black 1994a:10–11) as when "subjugated peoples" grab hold of "the law in a variety of ways to advance their own interests" (Merry 1994:53). Court proceedings are taken as a good example of this. On the one hand, courts are "critical sites for the creation and imposition of cultural meanings" (Merry 1994:36). On the other hand, courts are "sites of resistance" and arenas of "oppositional practice" (Hirsch 1994:208). The paradox, of course, is that, as people challenge hegemonic meanings using the courts, they become increasingly implicated in the power relations and hegemonic categories that are embedded there (Merry 1994:54; Yngvesson 1993:6, 1994:148). At the same time, what goes on in courts can have cumulative and transformative outcomes because local meanings and discursive alignments may be created or (re)negotiated (Hirsch and Lazarus-Black 1994:9; Yngvesson 1993). In all these ways, law is central in the "making of subjectivity" (Hirsch and Lazarus-Black 1994:13). Thus, in such anthropological practice, law is about producing consent (hegemony) through the negotiation and struggle over meanings while its coercive aspect, and the coercion-consent dialectic, form only a static backdrop.[8]

Related to this trend is that much recent ethnography has been located in courts and focused on cases and actors—as participants, intermediaries, or professionals. In such an empirical context, people's experiences with the law have tended to be individualized. Thus, so-called subalterns and subjugated peoples may have class-based identities or positionings, but the process of hegemony/coercion is only tangentially connected to the politics of *class formation* itself. To some extent, this approach reflects the recent unconcern among anthropologists with theorizing about class. With the current anthropological gaze on relations between the local-global, rural-urban, female-male, colonized-colonizer, and ethnic groups, class is often now appended simply as one of many forms of oppression, as a concomitant of varying kinds of inequalities or power differentials, or as a general attribute embodied in subaltern or subordinate positioning.[9] This has meant, too, that *agency* has often taken on an individualized and apolitical hue.[10] Yet, according to Gramsci (1971), the process of constructing consent through, for example, the workings of the law, invariably involves the activities of political leaders—the so-called traditional and organic intellectuals who create knowledge and "who do the organizing and administrative work of a class" (Cain 1983:97). Indeed, the very notion of hegemony itself may be "construed as an organization of agents that provide intellectual and moral leadership" (Kurtz 1996:107). Such agents, who may be tied to the dominant or subaltern class and who "contest for the minds and support of the masses" (Kurtz 1996:108), are very much involved in political education, in the formulation and dissemination of ideas, and in

the construction of hegemonic and counterhegemonic ideologies. This process occurs in the context of economic institutions that comprise the "productive . . . life of a society" (Adamson 1980:176), such as the workplace. This vertical integration of the economy (structure) and ideas (superstructure) through the actions of leaders may be matched by a horizontal one when a class gradually develops values that can be detached from its own particular work or everyday experience and so enable it to ally itself to other political, power-seeking groups or classes who find its meanings and images attractive. "Hegemonies always grow out of [such] historical blocs" (Adamson 1980:176–178). Typified therefore by both vertical and horizontal integration, the concept of *historical bloc* signals that material and ideational relations must be linked in any analysis and that the process of hegemony is political as well as cultural: it is about class alliances, factions, and coalitions. It is this relation between the economy and meanings or ideas, as well as the nature of political processes, that may be obscured by cultural approaches to hegemony.

At the same time, recent work clearly shows that courts can be profitably analyzed as "points of articulation between the state and civil society" (Philips 1994:65), not simply because they are sites where individuals and ideologies meet, perform, impose, and resist. Rather, a local court can be used as a point of entry into a hegemonic process itself. To do this, of course, requires a historical approach, for hegemony is never a "finished monolithic ideological formation but . . . a problematic political process of domination and struggle" (Roseberry 1992:11).[11] Such an approach also calls for a clear structural and cultural depiction of class positionings, defined in terms of the mode of production. It requires the view that no culture or class can be treated as a "separate, autonomous, 'authentic' layer" (Hall 1981:229), and it entails the idea that hegemony is about class formation, reproduction, and blocs—as these are implicated with individual experience. Moreover, although Gramsci never theorized the role of law nor considered it in his discussions of political strategy, he did note the importance of law in creating homogeneity within the ruling class. For him, law played "a part in the creation of both the political and the ideological elements of hegemony, first by unifying the emergent directive class and its allies, and then by bringing the masses to conformity" (Cain 1983:101).[12]

class and locality in Thomastown, County Kilkenny

After the early 14th century, Irish magistrates were appointed by parliament or by the Lord Chancellor "to keep the peace in their respective counties." Property qualifications of course ensured that appointees were invariably only "the most sufficient persons" (Nun and Walsh 1844:1–3). By the early 19th century in County Kilkenny, such persons were locally resident members of the landlord class who held land that was farmed by tenant farmers. Rents were paid in cash. Such farmers were highly differentiated along a continuum according to size of holding: from those who held only a few acres to those who held several hundred. Landlords also had demesnes surrounding their large houses. These houses, gardens, orchards, and, often, tilled acreage or pasturage, required large numbers of wage laborers. Landlords and tenant farmers were rural dwellers. Virtually no tenant farmers or landlords lived in the town of Thomastown which had, in 1841, a population of 2,348.

The town was founded in the early 13th century as part of the Norman conquest of Ireland.[13] Located 30 miles inland from the southern Irish coast on a navigable river, it had for centuries served as a trading and commercial center—a link in the lengthy, international chain of European mercantile trade. As a reflection of this commercial past, the town's population was highly differentiated (Gulliver and Silverman

1995; Silverman 1993). In 1841, for example, residents included professionals (doctors, solicitors, bank managers, teachers) and industrialists (tannery and mill owners). The population also included 41 retailers. These publicans, drapers, grocers, apothecaries, hardware dealers, victuallers, bakers, saddlers, and bootmakers earned a livelihood from the circulation of commodities, some of which they produced themselves. Such retailers thus had some similarity to many of the town's self-employed artisans who did not retail goods but who provided services: tailors, masons, dressmakers, cobblers, carpenters, plasterers, painters, blacksmiths, and coopers. Some locally resident tradesmen, however, were waged artisans: the half dozen flour and grist mills all required carpenters, millwrights, and wheelwrights; the bakery shops required bakers, and so forth. Finally, rural landlords and many town enterprises hired unskilled laborers to do the work of carting and cleaning. Other unskilled laborers worked for farmers during harvest time and on such occasional public works as the building and repair of roads.

As a mirror of this economic differentiation, political and interpersonal relations among local people, certainly in the mid-19th century, were usually manifested in and through politics that were steeped in class difference. Not surprisingly too, such differentiation was also implicated in local meanings and language (Gulliver and Silverman 1990; Silverman 1989, 1992, 1993, 1995, in press; Silverman and Gulliver 1986, 1992b). Indeed, archival materials confirm the deeply embedded presence, daily usage, and vitality of distinct class categories that were, importantly, ranked hierarchically.[14] Relevant throughout the 19th century were the emic categories and ranks of landlord, gentry (i.e., landlords, professionals, and industrialists), farmers, shopkeepers, tradesmen, and laborers (see Gulliver and Silverman 1995). In the Catholic parish of Thomastown, containing the town and rural hinterland (about 45 square miles), the population in 1851 was 5,540 (a decrease from 7,416 in 1841).[15] Of these, from an etic perspective, approximately 22 percent were farmers, 4 percent were retailers, 7 percent were artisans, and 67 percent were laborers.

county magistrates, the colonial state, and the petty sessions

Throughout the 1828–84 period, only landlords or, occasionally in the later years, their agents, were appointed county magistrates. In fact, though, landlord-magistrates had long played a legal role in their counties, a role that most had pursued mainly in the vicinity of their own estates. Acting on their own and in private, albeit ostensibly "guided by the rules of law and reason" (Nun and Walsh 1844:45), they were responsible for suppressing riots, taking securities to bind people to the peace, apprehending and committing criminals to trial in cases of indictable felonies and misdemeanors or, alternatively, discharging or summarily convicting people charged with offenses that had been placed under magistrates' jurisdiction by statute.

At the same time, such county magistrates had long had an uneasy relationship with the British colonial state. Political and agrarian disturbances during the 1780s, for example, had led the British government to extend the Riot Act to Ireland and, also, to try to reform the magistracy and policing. Opposition to these latter reforms from the Irish gentry was "intense" and "bitter," based on the belief that "hirelings of state despotism would usurp the functions of local gentlemen" and "strengthen England's control" of Ireland (Palmer 1988:106–116). In other words, both localism and nationalism fueled ongoing opposition to British efforts. A bloody uprising in 1798, however, and continuing agrarian violence after Ireland was politically united with Britain in 1800, continued to raise questions about the efficacy of Irish magistrates and piecemeal policing in maintaining law and order. On several subsequent occasions,

therefore, the British regime acted both to educate and to coerce the magistrates. The results were mixed. For example, the Peace Preservation Act of 1814, which was "an attempt to coerce cowardly or corrupt magistrates into action" and "to reactivate the magistracy," established a police force. The force quickly proved inadequate because the local magistracy did not support it (Hay and Snyder 1989:12).[16] Partly as a result, an 1822 Act established a county constabulary. It was compulsory, paid for in part from central funds, and, although this constabulary was to be under the direction of local magistrates, a stipendiary (paid government) magistrate could be appointed if local magistrates did not cooperate (Hay and Snyder 1989:12–13).[17]

To allay this possibility, the Irish magistracy was reformed at the same time: "All existing commissions were canceled and new ones issued" (Palmer 1988:245). Related to this "purgation" of the "old, the enfeebled, and the unfit," the government began to encourage an informal practice that had been emerging—that of "neighboring Magistrates meeting on a given day in each week at Petty Sessions" (Palmer 1988:245–246). The 1827 Petty Sessions Act, which formalized this practice, as well as the reform of the magistracy lists, thus reflected the ongoing, equivocal relation of the magistrates to the British state and to the efforts of various regimes to subvert Irish attitudes and customs to their own efforts at securing the state. Thus, although the 1827 Act did not take away any rights that magistrates already held, it did not give them any greater jurisdiction than each member had when acting in private. The Act did, however, place great moral and administrative pressure on magistrates to cease acting on their own, in private, and to act instead collectively, in public, at the petty sessions. In so doing, new links were established not only among landlord-magistrates but also between them and other classes. According to a barrister at the time:

> The fullest possible publicity should be given to all magisterial proceedings in petty sessions. . . . The administration of justice should not only be pure, but it should also be unsuspected; when magistrates act separately and in private, they are . . . more accessible to undue influence, and are more liable, if not to partiality and prejudice, at least to suspicion and misrepresentation. It cannot, therefore, be less satisfactory to themselves than to the community at large, that they should act under the eye and observation of the public. . . . A confidence in the law, and in the magistrates who administer it, will thereby be created. [Nun and Walsh 1844:77–78]

Moreover, by having magistrates act collectively at a fixed time and place, the magistrates were to benefit from "mutual advice and assistance" and develop "a uniformity of practice" (Nun and Walsh 1844:81). Indeed, such were the supposed advantages to magistrates in acting collectively at petty sessions, that they were strongly advised to "decline acting singly or in private" except in emergencies (Nun and Walsh 1844:83).[18] Thus, Irish landlord-magistrates, along with all the other Irish, were being coerced and educated.

the public eye

Magistrates sitting in petty sessions as a judicial body took part in a summary process. After hearing and determining questions of law and fact, they either dismissed the complaint or imposed a fine or imprisonment. The matters assigned by statute to their jurisdiction were broad and potentially linked members of all classes. They included: employer-worker relations (wages, conditions of work), workers' combinations and unlawful societies or assembly, weights and measures, the licensing and operation of public houses, cruelty to animals, salvage, trespass, poaching (fish, game), forcible entry, petty larceny, malicious injury, simple assault, and the

Poor Law and workhouses. Complaints on these matters could be brought by three agents: a police constable, an aggrieved party, or an informer who became entitled to part of the fine.[19]

From their beginnings in 1828, the petty sessions in Thomastown were indeed public, not only in their sittings but also because county newspapers became increasingly concerned to report on the proceedings. Between 1828 and 1853, austere lists of offenders' names, offenses, and fines were published biannually. Then, after 1853, as if such rosters contained too little of the moral lessons to be learned, reporters began to select and report in detail on those cases they deemed, in their own words, "of public interest." They provided graphic descriptions of these cases, often including lengthy testimony of complainants, defendants, and witnesses. Although this reporting style precludes my knowing all the cases that came before the magistrates after 1853, the new style compensates dramatically by providing a wealth of detail on those incidents deemed sufficiently important and interesting to catch the public eye at the time. In this way, the cases that were reported, although limited in number, mirror the central and changing concerns, interests, and viewpoints of local people—as journalists, participants, and readers.[20] Because of this, I am suggesting that these reports allow the petty sessions to be used as a point of entry into how a hegemonic process took shape over time and through the educative and punitive roles of the law and its courts.

the nature of the petty sessions in Thomastown 1854–1884

By looking at the complainants and defendants whose cases were deemed to be of public interest, it is immediately clear that the petty sessions, in their coercive and punitive capacity, were largely directed against Thomastown's populous working class. As an illustration, during the 15-year period between 1854 to 1869, 253 cases were reported by the press. These involved people from all classes in Thomastown. Tellingly, though, laborers and artisans were the defendants in 68 percent of them; they were the complainants in only 11 percent. (Farmers and retailers, in contrast, plainted as often as they defended.) Yet varying agents with divergent interests brought the charges against laborers and artisans during 1854–69: landlords (19 cases), constables (34 cases), water bailiffs (45 cases), the Board of Guardians (40 cases), the occasional farmer (8 cases) or retailer (2 cases), and, not unimportantly, laborers themselves (20 cases).[21] This suggests that the notion and nature of the law as coercion must be examined more closely.

With what were laborers and artisans being charged?[22] In the 30-year period between 1854 and 1884,[23] labor (and artisanal) people were themselves involved in a total of 279 cases as either defendants or complainants, as reported by the press (see Table 1). Of the 85 cases brought by the constabulary against laborers, the majority (45 cases) were for offenses against public propriety (drunkenness, riot, nuisance), for breaching licensing regulations (drinking after hours, selling salmon out of season), or for trespass (theft, poaching). Clearly, public demeanor and private property were of great concern to the constabulary.

A large minority, however, of the 85 complaints brought by the constabulary against laborers (25 cases) came out of situations in which laborers were caught committing delicts against each other: assault, fighting, intimidation, manslaughter, attempted murder. Moreover, laborers themselves were only somewhat less active than the constabulary in taking up the role of complainant at the petty sessions. Laborers plainted in 72 cases. In 50 of these, they complained against each other: for assault (36 cases), theft (7 cases), and abusive language or threatening behavior (7 cases). In

Table 1. Petty Sessions Cases Involving Laborers, 1854–1884.

	Number of Complaints (n = 279)
Laborers as complainants against non-laborers:	22
Complaints against laborers brought by	
Constabulary	85
Laborers	50
Board of Guardians	47
Landlords	28
Water bailiffs*	18
Farmers	12
Retailers	7
Others**	10

*These complaints exclude fish-poaching complaints. They do include complaints brought by water bailiffs for assault, threats, and possession of salmon out of season.

**There were four complaints from professionals, four from the railway company, and two from the sheriff's bailiff.

short, 75 of the 279 cases reported from the petty sessions were about intralaboring class interaction.

Interclass violence also emerged at the petty sessions, although to a far lesser extent. Laborers complained against members of other classes in 22 cases, mainly against farmers and usually for assault.[24] Moreover, 15 of the 85 cases brought by the constabulary against laborers between 1854 and 1884 were because laborers had allegedly assaulted, obstructed, or threatened constables (9 cases) or had assaulted or intimidated farmers (2 cases), publicans (2 cases), or lodging-house keepers (2 cases).

In short, the multiplicity of complainants, the involvement of laborers themselves in this role, mainly against each other, and the general patterning of inter- and intraclass plaintings, suggest that a complex process typified the petty sessions. In a context in which laborers were certainly being coerced in terms of public demeanor and respect for private property, they also were consenting agents. Moreover, reporters at the time occasionally described the audience that attended the petty sessions. In the main, these were laborers. In part, this reflected their numerical dominance in the town. In part, it reflected the interest that was manifested among working people as to what went on there, for the petty sessions were a twice-monthly source of gossip and, at times, according to the newspaper reports, a place of entertainment.

Thus, the hegemonic process that took place after 1828 through the law and its petty sessions court was neither straightforward coercion nor clear-cut moral education. Nor was it a singular imposition of law or of resistance. What then was it? I suggest that the process can be seen as one in which three meanings and political processes intersected. First, the petty sessions were sometimes constructed by the participants as a *theater* in which the power of the state to punish and to educate was starkly dramatized. Second, it has been noted that the roles of laboring people as defendants were engendered from varying agents whose material interests and ideological outlooks were diverse and not necessarily coterminous. Given also that laborers in a small locality necessarily had varying personal relations with people from other classes and varying public reputations, the petty sessions also were a *forum* through which interpersonal ties were (re)created and, as a result, through which class relations were reproduced and class experience made manifest. Finally, the petty sessions

were an *arena* that laboring people appropriated in order to pursue their private, interpersonal disputes.[25] The coexistence and intersection of these various meanings propelled a hegemonic process in which agents of all classes, including laborers, were instrumental in defining the customs and crimes that comprised the grist of the petty sessions and, therefore, the civilizing process itself. The use of this state institution, however, geared as it was to repress dangerous behavior, punish antisocial actions, and inculcate civilized values in all classes, led to particular acculturative processes and unintended outcomes. It is to this process that I now turn.

guardians and laborers: the petty sessions as theater

It is often said that, under the Poor Law of 1838, poverty was turned into a crime and destitution made a punishable offense. Under this law, administrative *cum* territorial units (Poor Law Unions) were set up and the destitute in each union collected together and housed in a workhouse. The costs were borne by local rates on property. Union affairs were managed by a Board of Poor Law Guardians in part elected from among local ratepayers (usually farmers) and in part appointed from among local landlord-magistrates. Thomastown became the seat of a union in 1850 that covered an area within a radius of about twelve miles around the town.

Life in the workhouse for resident paupers approximated closely Goffman's notion of a total institution (1962). The daily round was closely regulated, unpaid labor was extracted, deviance was severely punished, and exit was not allowed without permission. In such a context, Gramsci's (1971) view of the law also was most closely approximated: punishment and moral education went hand in hand, wrought not simply by the state through the Poor Law itself but equally through the locally sited actions of the guardians who, as ratepayers, aimed to administer poor relief and the workhouse at the least possible cost and inconvenience to themselves.

As a total institution, workhouse authorities had their own internal mechanisms for struggling against social dangerousness, for education, and for punishment. At every biweekly board meeting, a punishment book was brought forward by the master of the workhouse for approval by board members. The book listed the offenses committed in the previous week by resident paupers and the punishments meted out. So, for example, at an 1863 meeting, the "following offenses and punishments appeared in the punishment book: Pat Finn, Michael Purcell, and John Neill, not working. Milk stopped at breakfast. Finn and Purcell for speaking to women in the dining hall—three hours each in cell."[26]

The board moved beyond its own jurisdiction, however, and turned to the petty sessions under four circumstances: when internal punishment failed to stop unwanted behavior such that the defiance of authority and insubordination became an issue; when the board, if still unable to control inmates, wished to expel them from the house; when an inmate committed a criminal or indictable offense; or when the board moved to pursue those whom it believed were shirking their financial and moral obligations to support their spouses and children, thereby forcing ratepayers to pay the costs of supporting them in the workhouse.[27]

So, for example, at a board meeting in 1865, it was decided that "William Matthews, Roger Tobin and Pat Comerford . . . be discharged [from the house] if they continue to refuse to clean the [septic] tanks." According to a later report, they continued to refuse. They also "declined to leave the institution when ordered by the guardians. The sturdy rascals were ordered to be imprisoned for a week with hard labor" by the magistrates at petty sessions. A month later, the workhouse master again prosecuted pauper Tobin for the same offense. He was imprisoned for one month.[28]

The severity of punishment is, of course, striking: insubordination in a total institution could not be tolerated and was therefore met by coercive sanctions. Local meanings went further, however, and the true nature of the petty sessions as a theater for the guardians becomes apparent from the fact that it was not just the delict or the insubordination that was being punished, but the economic and cultural status of pauper itself. In 1862, the workhouse teacher "prosecuted Johanna Connolly, a pauper, for biting and kicking him at the workhouse." She was confined in the county jail for six weeks, with hard labor. Six months later, Connolly was again imprisoned for a month after she assaulted another female pauper "by striking her with a poker." Two seemingly dangerous and violent crimes inside the workhouse were, apparently as usual, severely punished. Ten years later, however, Johanna Connolly, no longer resident in the workhouse but clearly labeled by the reporter's description of her as "late a pauper," was again before the magistrates. She had "deserted her child in consequence of which he became destitute, and was relieved by the guardians." Instead of being ordered, in more typical fashion, to remove the child from the workhouse, to begin paying his board, or to enter the workhouse herself, the magistrates sentenced Connolly to a month in prison.[29] In other words, a pauper had to be punished when education had repeatedly failed, regardless of the severity of the delict and despite other remedial options. A case of stolen property illustrates this further.

The theft and sale of union property by inmates was severely punished by the magistrates' bench because boots, blankets, furnishings, and crops from the workhouse farm were valued commodities locally. Thus, a week with hard labor was the penalty imposed on two inmates (Michael Reilly and Patrick Finn) for stealing parsnips in 1860, and a fortnight with hard labor was imposed on Michael Reilly for stealing a pair of shoes in 1859. In 1863, however, the board prosecuted Patrick Ennery, who lived on Chapel Lane in the town,

> for having a pair of blankets in his house, . . . the property of the Union. It appears that these blankets were sold by some of the paupers to Ennery's wife, without his knowledge and, on the bench considering this, they adjourned the hearing, so far as this man was concerned until next court day. It was ascertained that a pauper, William Whelan, then in the workhouse, with another pauper, who the day before had taken his discharge, sold the blankets to Ennery's wife. This Whelan did not deny, saying he found them rolled up in some straw, which was taken out of the poor house; and he expressed a wish to be tried by the Bench in preference to being sent to the Quarter sessions. He was ordered to be imprisoned for 3 months.

Then,

> further information was given about Union property being concealed in the houses in Chapel Lane and a search warrant was placed in the hands of that efficient officer, constable Thomas Mohan, who, on coming near Ennery's house, had his lynx eyes on the house, and saw Ennery's daughter about to start in with a bundle, which he saw concealed by her. On his coming up to her and examining what she had, he found it to consist of a blanket and a sheet, with the Union brand cut out, and which Mr Magee, the Master of the Workhouse, said were the property of the Union. Having been brought to the Courthouse, she also wished to be tried by the bench, and was ordered to be imprisoned for a fortnight.[30]

Ennery was a carpenter, not a pauper. His denial was accepted. His daughter was jailed for two weeks despite being caught with what she knew to be stolen property whereas former inmate Whelan, who claimed he did not know that the blankets were stolen, received three months. In this was reflected how the application of the law through the petty sessions was mediated by the sentiments of the magistrates and

what they presumed to know of the locality and its offenders. Because pauperism was a stigma and paupers were socially and morally dangerous,[31] landlord-magistrates acted as members of the dominant class and turned the petty sessions, as an arm of the Poor Law, into a theater through which the law clearly was a coercive instrument of the state. In this, the petty sessions closely approximated Gramsci's (1971) notion of the law as "punitive sanctions with moral implications." At the same time, offenders such as Ennery's daughter were not paupers and most complaints at the petty sessions were not made by agents of the Poor Law. The petty sessions, in short, were only in part a theater.

landlords, laborers, farmers, and retailers: the petty sessions as forum

The landlord-magistrates who sat on the petty sessions bench held land that was tenanted by farmers. They also hired laborers. With both their persons and property requiring protection, it might be expected that landlords would often appear as complainants at the petty sessions. This was not the case. Between 1854 and 1869, for example, landlords brought 21 of the 253 complaints to the petty sessions. Of the 21 complaints, 19 were against laborers who, in their turn, never plainted against landlords. Similarly, between 1854 and 1884 (see Table 1), landlords prosecuted only 28 cases against laborers. In 20 of these, the complaints in fact were pursued by the landlords' agents. It was the stewards, caretakers, and servants who accosted the laboring perpetrators, pressed the charges, and gave evidence.[32] This means that most delicts were committed against the landlord's property rather than the landlord's person. What were these delicts? Usually trespass and petty theft of subsistence goods: food (rabbits, apples), fuel (timber, cinders, fencing), and fodder (grass). These comprised 16 of the 28 cases. The majority involved women: in nine of the 16 cases, 14 women were charged. Only one other theft, also by a woman, of lead piping and a carpet, was reported.

There were also two cases of dangerous driving brought by a landlord and three evictions from town houses.[33] Only one assault against a landlord was reported. It occurred during an election fracas in the town in 1859 during which the landlord was the object of abuse from a crowd that had gathered outside the polling station. The landlord, however, "did not want to press the matter" so only a nominal fine was imposed.[34] Indeed, in two of the trespass *cum* theft cases, the complaining landlords had the charges withdrawn. In one, it was reported that the landlord's agent "had forgiven the defendant." In the other, the landlord, with his well-documented reputation as benevolent, "did not wish to press the charge."[35]

In these cases was reflected the general tenor of landlord-laborer relations in Thomastown at the time: nuanced, paternal, and educative rather than penal. The ways in which this was played out through the petty sessions was apparent in two other trespass cases.[36] Neither involved theft. Laborers had simply been found on private demesnes. The first trespass appears to have been an act of youthful, male enthusiasm. The second combined this enthusiasm with an explicit political challenge. Laborers in both cases were treated gently by the landlord bench.

> [In 1863,] a number of young people were summoned by the Earl of Carrick's steward for trespassing on the demesne of Mount Juliet; but it having transpired that the steward had allowed them to pass on, they alleging they were going to a funeral, the cases were dismissed. The Bench, however, cautioned the parties against going there any more, which they promised not to do.[37]

In 1849, however, a far more exuberant encounter had taken place in Mount Juliet demesne. It was the only reported complaint against laborers that suggests an intentional political motive among those accused. In this case, the earl of Carrick's caretaker, Thomas Bate, brought charges of "malicious trespass" against seven unmarried laboring men in their mid-twenties. Apparently, they played a drum and fife, "with which they made a great noise," near to Mount Juliet House. Bate "remonstrated with them" saying that the earl's brother-in-law, who was in residence at the time, was indisposed. But [laborers] Bryan and Phelan

> refused to abate the nuisance declaring that from time immemorial a band was allowed to proceed along the river bank from Thomastown, and that the path was of right, open to the public. Upon further remonstrance, the same two men threatened to throw witness into a sunk fence. . . . However, after some time the whole party turned back towards Thomastown, but Bryan and Phelan immediately called on the musicians to "rise the music," for the mere purpose of giving annoyance. The only defence was that the path was always open, and that it was the custom for a party with music to pass there every Sunday evening. [Magistrate] Greene observed that there was no right of passage by the river, and any musical parties permitted to pass were only allowed on sufferance. During the illness of a gentleman, the defendants ought to see the impropriety of making any noise near his residence which could disturb him. Phelan and Bryan, "for their very improper conduct and threatening language" were fined two shillings each or 48 hours in the bridewell. The others were fined a nominal one penny.[38]

Clearly, the disposition of landlord complaints against laborers suggests a legal regime and a code of conduct that were relatively uncoercive, ameliorative, and educative, particularly when compared with the application of the law against paupers in the workhouse. The reasons for this difference can be found in the meanings and practices that inhered in the political economy at the time. For, after the mid-1850s, from the magistrates' perspective, laborers posed little danger to landed property or landlord persons while being fertile ground for moral and behavioral improvement. Most importantly, laborers had become personal and political allies in the dominant conflict that was extant at the time, that between landlords and tenant farmers.

The population decline caused by massive emigration prior to and during the 1845–49 famine had done much to calm most of the fears that had been generated among landlords by the very visible presence of large numbers of poverty-stricken, landless, and unemployed laborers. In any case, petty theft from the demesne by poor women, and the exuberant actions of youth, even if politically inspired, did not threaten landed authority. The laboring youths were demanding a right of way across the land, not the land itself. This contrasted starkly with the gradual but extensive growth of tenant-farmer political organizations after 1860; these posed a growing and direct threat to landlords' control of the land. Indeed, as tenant-farmer agitation over such issues as security of tenure and fair rents increased, the logic of tripartite relations emerged among landlords, farmers, and laborers: the enemies of my enemies are my friends.

This tripartite logic was underwritten by the material and ideological relations that existed between tenant-farmers and laborers at the time. Between 1850 and 1884, farmers gradually came to dominate the seats and proceedings on the board of guardians. As extensive ratepayers and voters as well as guardians, farmers came to extend the stigma of pauperism to laborers. This was because, from the farmers' perspective, any laborer was only one wage packet or one illness away from the workhouse and from being a burden on their rates. What was reflected here, of course, was

that the laborer was without land or capital. Because of this, the laborer was ineligible as a marriage partner for a farmer's daughter or son.[39] This class endogamy, and the resulting absence of kin or affinal ties between laborers and farmers, was also manifested in very clear ideas held by members of both classes about their relative positions on a status hierarchy. This socioeconomic and cultural distance was exacerbated because farmers, unlike landlords, had no ethos of charity. Living in rural areas, they were seldom involved in the various charitable works and committees that centered on the town, on landlords, and on laborers during times of dearth and unemployment. Farmers, too, had the resources, such as turnips, furze, and pasture, that were open to trespass and small-scale theft. Yet, despite such material and ideological distance, it was farmers and laborers who were forced into daily interaction. Unlike landlords, tenant-farmers did not have stewards or keepers to mediate their everyday relations with their hired laborers and the conflicts that could ensue. From the farmer's perspective, then, laborers were simply an economic necessity because of the work they performed, especially at harvest time; but they also were a drain on household and public finances as well as a potential threat to property and person.

From the laborer's perspective, both farmers and landlords had land and capital. But it was the farmer who usually provided only seasonal rather than permanent work and, if the latter, insisted that the laborer live in a "tied cottage" that was lost if the job did not work out. It was the farmer who directly exploited the worker's labor, who did not moderate the wage nexus through charitable works, and who maintained a social and ideological superiority and distance despite daily interaction. In contrast, the immense social chasm that separated a "good landlord" from a laborer was seldom made manifest through daily interaction and was, in any case, at least occasionally bridged by the charitable relations that applied between the classes or by the personal paternal ties that sometimes developed between individuals.

The interaction between farmers and laborers that ensued as a result of the material and ideological conditions of their relationship was reflected at the petty sessions court where the landlords sat on the bench. The petty sessions, in other words, became a forum through which the relations between all three classes were lived and negotiated. Indeed, it was the only such routinized site in the locality at the time.

During the four decades prior to 1884, the newspapers reported a dozen cases brought against laborers by farmers. These were mainly for trespass and theft.[40] Laborers, in turn, used the petty sessions against farmers, not over issues of property but mainly over personal violence. Between 1848 and 1884, 14 cases were reported: only one was a complaint about wages. Eight, however, were for assault. Five were brought by women and one was brought by a "young boy." The details of this last case suggest the refuge that the magistrates' bench at the petty sessions provided for laborers.

A young farm laborer, Martin Ryan "appeared to prosecute a powerful man . . . for assaulting him." He had been sent by his farmer-employer to a neighboring farmer, James Power, to return trespassing cattle. His employer and Power were often in dispute over this issue and "were not on the best of terms." According to the report, "some words passed" between Ryan and Power "which were anything but complementary when Power kicked Ryan." Power admitted this to the bench "but said he was provoked" by the boy's talk. The landlord-magistrate "said that no amount of bad language coming from the boy could justify him in kicking him. If he was insolent, other means than kicking could be resorted to for removing him from the premises." Because Ryan "was not much hurt," Power was fined. If it happened again, however, he "would be sent straight to gaol."[41]

Such landlord support was not unequivocally extended to laborers, however. Laborers seldom pursued quarrels with people from nonfarming classes into the petty sessions in part because, when they did so, they fared poorly. Thus, only two of the 72 complaints that laborers brought between 1854 and 1884 were against retailers. They lost both. In 1876, fisher and laborer William Dunphy accused Patrick Hayden, a timber merchant, of theft. Hayden had bought some timber from Lord Carrick's steward and some of it that had been felled near the river floated away. Dunphy salvaged it, "believing he had as good a right to it as anybody else." Hayden later learned

> where the timber was and removed it to his own yard. The case was dismissed, and the court expressed its confidence that there had been no intention on Mr. Hayden's part to steal the timber, but their worships suggested that Mr. Hayden should pay Dunphy the amount of loss he had sustained by recovering the timber and taking care of it under the impression that it was his salvage.[42]

In a second case, farm laborer David Whelan sued retailer Patrick Hoyne for £5. Whelan stated that he had "paid off his account" with Hoyne but that, several weeks later, he was told that his account was £7.12.6, an amount that took no account of the £5 paid. Hoyne stated that only £1 had been paid. The case was found for "Mr. Hoyne."[43]

Such processes and outcomes in laborer-retailer complaints, discursively expressed in the naming of "Mr. Hayden" as against "Dunphy," contrast sharply with those in landlord-laborer and laborer-farmer complaints. They therefore highlight the way in which the court was rooted in class interest and class politics. When the court was implicated in the tripartite relationship that linked farmers, landlords, and laborers, it not only meted out punishment or education but also became a means for negotiating class alliances or cleavages. Similarly, when the court oversaw relations between laborers and retailers, it found in favor of the latter, in favor of private property. What also emerged, however, was the role of the court in the formation of class experience itself. The landlord-magistrates not only insulated retailers from the demands of labor, but they also refused to permit the kind of interaction between laborers and retailers that occurred when, through their own collusion, the petty sessions functioned as a working class arena. What did this arena look like?

the petty sessions as laborers' arena

As part of the civilizing process, according to Gramsci, the state uses the law to eliminate certain customs while disseminating others. In Thomastown, however, the majority of the cases brought before the petty sessions between 1854 and 1884 reflect more about the reproduction of laboring custom, with its above-noted concern for the "revenge of private injuries," and more about the reproduction of customary magisterial discretion than about the efficacy of the state. This pattern arose from two seemingly contradictory features. On the one hand, laboring people continued to define their quarrels as private. On the other hand, laboring people appropriated the public petty sessions. Alongside, the magistrates colluded. What was happening?

Between 1854 and 1869 (see Table 1), there were 85 reports of complaints laid against laborers by the constabulary. All concerned public demeanor: drunken or disorderly behavior and assault, mostly against other laborers.[44] In only nine of the 85 cases were laborers charged with assaulting or obstructing the constabulary. An incident involving laborer Michael Connors provides insight into how these delicts were often manifested in Thomastown.

In 1863, Connors broke a window in a pub. This was reported to a constable who came to the pub and directed Connors to leave. Apparently Connors "was not so drunk as to cause the constable to charge him with that offence." Instead, Connors "was again and again remonstrated with" by the constable, "but in vain; and on his moving a few paces towards the door, for the purposes of leaving the house, as the constable thought, he [Connors] caught the constable and thought to trip him. The constable then seized the defendant, with the view of bringing him to the barrack, when the assault complained of took place." Soon after, Peter Connors, Michael's brother and a shoemaker, "interfered with" the constable while he was "conveying his brother to the barrack." Peter was charged and found guilty of "obstructing . . . a police officer in the discharge of his duty" and was fined five shillings and costs or jail for 48 hours. Michael Connors was imprisoned for six weeks with hard labor.[45]

In this case, as in many others, drunkenness escalated into a minor brawl, kin or friends became involved, and the constable was assaulted, usually when trying to convey the parties to the barracks. Indeed, most of the above-mentioned charges against laborers for assaulting constables occurred while a constable was trying to make an arrest for public misbehavior.[46] At the same time, why were there so few such altercations? Certainly they would have been reported had they occurred. The answer emerges from the newspaper reports that suggest the existence of a coalition among laboring people to withhold information from the constabulary. Because this caused prosecutions to fail, it forced constables to refrain from getting involved in laborers' private disputes in the first place.

For example, in 1866, a constable charged blacksmith Michael Rogers with assaulting carpenter James Mohan "by striking and cutting him with a half-gallon on the face. Some witnesses were sworn in this case, for the prosecution, who stated that although they were at the time in the room and saw Mohan knocked down, yet they did not see by whom the blow was given." Or, when a constable "charged a small boy named John Meany . . . with having assaulted another boy named John Miller," laborer Patrick Dempsey, a witness, "swore that he saw a portion of the row between Meany and Miller, and that the latter 'shoved' the defendant, knocked him down and kicked him." However, Dempsey "could not say who commenced the row." The case had to be dismissed.[47]

These attitudes of working people were summed up in a complaint brought by a constable against blacksmiths Pat and Thomas Lonergan for "being drunk and disorderly." The "constable said he saw both parties fighting at their forge. Mrs. Lonergan sent for the police and said her son was killing his father. Pat Lonergan appeared and said it was a family row."[48] Clearly from the perspective of laboring people, disputing and fighting were private concerns. The coalitions that emerged from this viewpoint meant that the constabulary could successfully intervene in only two contexts. First, they could intervene when events actually occurred in their presence. Convictions, therefore, were obtained when a constable charged fishers Richard Donnelly and Martin Dawson "for fighting in his presence," or when Richard Murphy was charged with assaulting Thomas Woods "in the constable's presence."[49] Second, they could intervene when indictable delicts such as murder, manslaughter, or serious wounding were involved. This meant, therefore, that although laboring people treated disputes and fights as private, such disputes could escalate and, when this occurred, the constabulary could move in. The case of Richard Hale and the Whelan family illustrates this.

In 1866, a young laborer named Richard Hale "was allegedly assaulted by James Whelan . . . and Arthur Whelan, both laborers, by striking him on the head with a

pitchfork, thereby knocking him down and injuring him very much." James Whelan was remanded by the magistrates for eight days,

> pending the medical opinion as to the injured person being out of danger. It appeared that Hale was under the influence of drink, and went into Whelan's house to light his pipe, and as the parties about 12 months since had assaulted each other, his presence there in the state he was in, was not pleasing to Whelan, and an altercation took place out of which the assault arose. The case will be fully inquired into at the next petty sessions of Thomastown when it is possible that the accused may be able to show that he was not the actual aggressor in the affair.

By two sessions later, Hale had recovered and Whelan was charged with "dangerous assault." Meanwhile, a "cross-summons had been issued by James Whelan against Richard Hale for having entered his house in a riotous manner . . . throwing open the door, asking for James Whelan or his sons to fight; and also for having . . . then pulled and dragged Whelan's wife and daughter."[50]

In this case, escalation had allowed the constabulary an entry into a private dispute which in turn permitted the court to intervene and convert laborers' private concerns into public delicts. What the Hale-Whelan case also shows, however, is that laborers did not eschew the petty sessions. Rather, at the same time that they formed coalitions to keep the constabulary out of their quarrels, they came to the petty sessions, on their own terms, with their own complaints, meanings, and practices. As a result, many of the cases at the petty sessions that involved laborers between 1854 and 1884 (see Table 1) were ones in which laborers came to the court in order to charge other laborers or, as often occurred in the numerous cross-cases that were heard, to charge each other. Of the 72 cases reported in which laborers were the complainants, 50 were brought against other laborers. The petty sessions thus became part of custom: of "revenging private injuries" and pursuing private interests. What were these?

Of the 50 cases, 37 were for assault; the remainder were for threats and abusive language (five cases) and for theft or nuisance (seven cases). They were occasionally generated by disputes over property. Sometimes they were "simple disputes." That is, they led to a single appearance at the petty sessions to resolve a particular issue, and they did not bring in other parties as disputants. Thus, Anty Byrne summoned Mary Doran for assault because Byrne "went to Doran's house and demanded some furniture, which belonged to [her] sister, now in England, and who had written . . . wishing her to get the articles. On the demand being made, Mary Doran struck her for which offence she was fined 2s.6d. and costs, or in default, to receive a week's imprisonment."[51]

Neither Doran nor Byrne appeared against each other at any other time. When interest was linked with physical proximity, however, disputants often engaged in a series of cumulative altercations. Indeed, as time went on, there was an increase in summonses that were related to accumulated "ill-feeling" caused by physical proximity over long periods. These "complex disputes" involved women as well as men and, often, by the time a complainant reached the petty sessions, the original cause was deeply obscured by the history of the dispute itself. In 1882, for example, it was reported that Mary Ryan, Ladywell Street, summoned Mary Costigan, also of Ladywell, for assault. Ryan "said it was almost 4 years since she had last to prosecute the defendant and since then she had 'neither rest nor aise'." Costigan "denied the several allegations made against her" but the "Court held the charge proved."[52]

If proximity led to repeated disputing and the entry of the constabulary when violence escalated, it also was likely to bring in kin. For example, in the case of Hale and

the Whelans, when Richard Hale entered the home of James Whelan and "pulled and dragged Whelan's wife and daughter," he moved the dispute from the realm of a private quarrel between two men to one that brought in all those who were in the house that night. Not surprisingly, Hale was assaulted not only by Whelan but also by Whelan's son.

Indeed, what is striking about all these disputes is the absence of intra-kin complaints. It was not that intra-familial disputing and violence did not occur (the constabulary were reported as prosecuting three such cases between 1854 and 1884);[53] however, laborers did not bring quarrels with their families, kin, or affines to the petty sessions.[54] The corollary, of course, was that kin were likely to enter or be brought into disputes as coprotagonists or sympathetic witnesses. In such situations, when complex disputes, convoluted issues, and numerous people came before them, the landlord-magistrates took it upon themselves to investigate and interpret the nature of local relations. In exercising this customary independence, they invariably became enmeshed in local meanings and practices.

When Anne Reilly "charged Mary Kerevan with having assaulted her and made use of threatening language towards her . . . a good deal of evidence was taken and *after a patient hearing* the worships decided that it was 'a woman's quarrel' and dismissed the case." Or when laborer Patrick Hurley was put on bail for having assaulted Michael Walsh, the magistrates commented: "These parties have before manifested a love for litigation." And when Anastasia Murphy, Ladywell, summoned Ann Murphy (no relation), also of Ladywell, "for having assaulted her by striking her on the head with a tin quart," the constable provided the bench with the information that "these women in Ladywell were always quarreling and causing much annoyance."[55]

The parochial character of the proceedings in the above cases, with their use of, and deferral to, local knowledge, meanings, norms, and relationships, was well summarized in the case in which Simon Grace charged William Finnegan "with having assaulted him by striking him on the head with a shovel in Low Street." Grace swore that he was

> "a road contractor's man" and in that capacity has been in the habit of scraping the roadway in Low street; [he] had a heap of stuff [manure] collected on the side of the street on the day in question, but when he went to remove it at 6 o'clock the same evening he found that defendant had removed it to a heap of his own. According to the complainant's own evidence, he then made use of very strong language towards defendant, who thereupon (according to complainant) struck the latter a blow on the head with the handle of the shovel. He (complainant) gets nothing for scraping the road but what he makes by the stuff.
>
> A man . . . name[d] James Madigan was called by complainant in support of his case, and gave a most amusing account of the occurrence "from first to last." [Madigan] swore that the complainant had first of all struck defendant's donkey on the neck with a shovel, and that defendant then gave complainant a push.
>
> Complainant—Did you not see him knock me down dead (laughter), and then didn't I say to you "witness that James Madigan"? (much laughter).
>
> Witness—Now Simon Grace, I am sworn to tell the truth, and I must say you did nothing of the kind. Sure if you were knocked down dead and "kilt" entirely, you could not say "witness that James Madigan" (laughter), and more than that, Simon, if you were "kilt dead" you could not be standing on that "binch" today (laughter).
>
> Mr Finnegan had a cross-case against Grace whom he charged with having assaulted him on the occasion in question. The complainant swore that he had liberty from Mr Kenny, the road contractor, to scrape the mud off the roadway in question, and further, that he (Mr Finnegan) has been in the habit of doing so for the past 24

years. He also swore that Grace brandished a shovel and threatened to cut him (complainant) in two with it.

Their worships having consulted the chairman said that both parties before the court were old men and it was a shame to see them bad friends. However, Grace seemed to have been in default, but the court had come to the conclusion of dismissing both cases.[56]

The inclusion of the language and interests of laboring people in these reports, the personal and informal ambience of the courtroom, and the paternalism of the magistrates clearly suggest that the petty sessions, from the perspective of working people, was an arena in which they were consensual participants. They used the public petty sessions to pursue their private concerns: to seek compensation for damages inflicted, to air and intensify accumulated ill feelings, and to bring magistrates in as allies for their interests or as referees for their disputes. The petty sessions were oftentimes, therefore, an arena for negotiating interpersonal and neighborhood relations that included the landlords who sat on the bench as well as the laborers who brought the complaints. The constabulary were excluded from this public pursuit of private grievance while the landlord-magistrates, in pursuit of their own customary, independent action, colluded. In part then, the petty sessions were appropriated by laborers to reproduce their private and customary disputing process even though the institution was sited in political society, overseen by members of the dominant classes, and intended to civilize.

the hegemonic process: abusive language, respectability, and perjury

As theater, forum, and arena, the public legal proceedings that were established by the 1827 Petty Sessions Act had multiple and interdependent consequences, both intended and unintended, as the colonial regime struggled against social dangerousness while simultaneously attempting to educate and punish. On the one hand, the petty sessions caused landlord-magistrates to act in concert, to develop common norms and practices, and to be educated in what was considered by colonial agents to be the proper way of applying British law. They were, in other words, seemingly civilized into being colonial agents themselves. On the other hand, they retained their particularistic, locally sited and landed class interests, and these interests interfaced with the fact that laborers were also being civilized insofar as they became enmeshed, both through their own collusion and police or guardian coercion, in the interactions that came to typify the petty sessions. Yet this too served to reinforce key features of laboring custom. As paupers, political clients, or self-interested agents, laborers continued to combine to redress private injuries and to privilege personal grievances in the context of kin and neighborhood relations. Laborers' coalitions, which insulated certain of their practices from the state, were thus reinvigorated as the ties between colonial agents (landlord-magistrates) and laborers were intensified. In this process, laborers obtained greater leverage against farmers while being taught to respect the private property of merchants, landlords, and Poor Law guardians. In such ways, and in the context of a changing political economy, the civilizing process sharpened class distinctions and experiences. At the same time, the petty sessions introduced new ways for local people to relate to those of other classes, to state agents (constabulary, magistrates, and guardians), and to members of their own class. In other words, people of all classes were civilized as class divisions and differences were reproduced.

There were also cumulative aspects enmeshed in such processes. This was exemplified in part through the ideas that language could be "threatening," "insulting," or "abusive" and, therefore, that language could be a basis for a complaint at the petty

sessions. This notion only gradually emerged in Thomastown. As a delict, it did not simply mean to threaten violence, as when a constable prosecuted Michael Connors "for threatening to stab him" or when seamstress Honoria Quinn prosecuted Thomas Lee because he "appeared in front of her . . . house, in a riotous manner, and . . . threatened [her] life."[57] Rather, it was a notion that language itself could be a cause for complaint. As such, it dated only from the second half of the 19th century. Only two cases were reported before 1858; between 1859 and 1861, there were three. The next reported case was in 1869. Between then and 1884, nine further cases were reported.

Four of the earliest five cases, all before 1861, were ones in which laborers were charged, not by laborers in pursuit of quarrels, but by people occupying superior statuses: a landlord, a gentleman, the station master, and a water bailiff. At first, therefore, the delict linked different levels in the status hierarchy. Then, in 1869, on the complaint of Margaret Delahunty, a laborer's daughter married to a shoemaker, laborer Catherine Murray "was bound to keep the peace, for 12 months . . . for having repeatedly *abused her, and used language calculated to lead to a breach of the peace.*"[58] From that point on, the numerous newspaper reports suggest that not only had abusive language entered the disputing repertoire of the working class, but it had also become the exclusive idiom of workers; and it came to be used, equally, by men and women.[59] This meant that laboring people could now pursue quarrels into the petty sessions without any physical violence having occurred. This meant, too, that women and children could enter the disputing process more freely, thus reinforcing the notion of quarrels as both private and familial. The jurisdiction and scale of the petty sessions as an arena were therefore expanded even as physical violence was displaced as a disputing device. In this was reflected the successful civilizing mission of the state as it gradually appropriated the right to violence. In other words, as working people continued to grab hold of the legal process and to recast it into their customary way of "making their own regulations" and of private restitution, the law, the state, and civilized custom penetrated more deeply into their lives, experiences, and notions of legitimacy.

This was exemplified further by a key contradiction that gradually emerged from within the workings of this hegemonic process. Those workers who appeared once before the magistrates and were found to have been wronged were exonerated. If quarrels were continually pursued, however, "bad friends" could gradually become perceived by the magistrates, the constabulary, and, most importantly, by other laborers themselves, as quarrelsome people or litigious neighbors. Therefore, those who allowed disputes to escalate risked the entry of the constabulary (if physical violence escalated), public reprimand by impatient magistrates, or avoidance by other laborers. Similarly, those who appeared at the petty sessions once for public misconduct were punished and forgotten; however, repeated appearances were perceived as personal moral weakness—situations portrayed by the press at the time as one of "those disgraceful rows" that occurred among those "who drank too freely."[60]

The fineness of this line between legitimate cause and unrespectable public exposure was one of the reasons why not all of Thomastown's laborers were reported as taking part in the petty sessions. Richard Donnelly, fisher and laborer, was a case in point. Apart from his many appearances for poaching, he was reported as appearing before the magistrates seven times between 1844 and 1879: for trespass, petty theft, assault, and fighting. These appearances affected his reputation and credibility and this, in turn, affected how his kin acted and were perceived to act. In 1873, when hotelier Mrs. Bishop was charged by Donnelly's enemy, water bailiff William Murphy,

with buying salmon during the closed season, one of the witnesses was Donnelly's wife. She was asked by Murphy:

> Did you deliver any fish to Mrs. Bishop, within the close season?—I did not; I was not in Mrs. Bishop's for the last 16 years.
>
> Do you remember the 16th of September?—I will not remember anything for you, Billy.
>
> The witness was not cross-examined.[61]

Clearly, laboring people, and their family and kin, who had repeated appearances at the petty sessions, treated facts as relative to the state of their interpersonal relations at the time. The magistrates knew this. In 1878, fisher James Kelly was charged with assaulting Pat Ryan, a water bailiff. Kelly sought to prove an alibi by producing Richard Donnelly's nephew, Thomas, who swore that it was he, Thomas, who had assaulted Ryan and that Kelly was not there at all. "Chairman said he did not believe a word of it," and Kelly was fined.[62]

A lack of credibility thus signaled a too-public reputation that had been achieved, in part, by too many appearances of oneself and one's kin at the petty sessions. The equivocal meaning that gradually became attached to such a reputation was also in part caused by the fact that few people from other classes came to the petty sessions to pursue their quarrels—a feature that the landlord-magistrates tended to encourage when, for example, they privileged the private property of retailers over the private interests of laborers. Indeed, it was likely because the petty sessions had been so successfully appropriated by laboring people that members of other classes came to eschew both the court and the kind of interaction that brought people there. This, in turn, helped local people to construct notions of what constituted respectable behavior. That is, over time, respectability, for members of all classes in Thomastown, came to be associated, at least in part, with not using the petty sessions—with not "combining for the revenge of private injuries."

Thus, the delict of abusive language expanded the ability of laboring people, along with their kin, to pursue their "private injuries" in a public arena even as it allowed the state gradually to appropriate the means of violence and even as the importance of reputation and respectability came to constrain such participation. All this signified several seemingly contradictory processes through time: the intensification of laboring custom alongside its displacement; the increasing efficacy and legitimacy of the court, an organ of political society, alongside its avoidance; and the growing independence of landlord discretion inside the court alongside landlord collusion with the colonial state. That all this could co-occur was because the working class had become differentiated—socially as a result of accumulated disputes and culturally because of assignments of relative respectability. Nevertheless, the coalition among laborers to protect themselves from the intrusions of the constabulary was reproduced at the same time, a product of the antipathy that gradually emerged toward two key roles associated with the petty sessions, that of "informer" and "perjurer."

For laborers to inform was occasionally a material necessity. Thus, when an excise officer charged a rural lodging-house keeper, Patrick Burke, with "selling tobacco and spirits without a licence," it was two laborers who provided the necessary evidence. Both Daniel Fleming and James Magrath deposed that they had bought the items from Burke. Under cross-examination, it was made clear that they expected to be paid by the excise officers for their "swearing," that they were casual laborers, and that Magrath's brother had "absconded to America" under suspicious circumstances. Burke's solicitor maintained that the case "was from beginning to end one perfect tissue of falsehood and perjury by Fleming" and that "he could produce three witnesses

of unimpeachable character, who would contradict the evidence of the Informer Fleming." Thus, a servant in Burke's house, a wheelwright who was boarding with Burke, and a millwright all swore that they had never seen "a drop of whiskey" there. The excise officer interjected that "this Burke was [already] fined twice by the police for selling whiskey." This time, too, Burke was found guilty and fined a hefty £12.10s.[63]

In this case, three laboring witnesses, defined as being of "unimpeachable character" and gainfully employed, were ignored by the magistrates while the evidence of two casual laborers who had been denounced as "perjurers" and whose kin were suspect was used by the magistrates to decide in favor of what they believed to be true about Burke, in favor of the state. Through the process, respectable people had been denigrated and, perhaps, tainted with the implication of perjury themselves, and it was all because Fleming and Magrath were trying to earn a few shillings from the excise officer. Out of such collusion, the terms *informer* and *perjurer* came to be seen as synonymous epithets. They also came to be part of the abusive language for which a complaint could be made at the petty sessions, as part of the expansion of the jurisdiction of the court, and as part of local constructions of respectability.

This was the case when water bailiff George Sherwood charged Bridget Carroll with "threatening and abusive language" because she had "met him within the precincts of the court," that is, in a very public place, "and called him a perjurer."[64] It was also the case in 1883 when laborer Thomas Raftice charged Andrew Walsh, a victualler and rural publican, "with using abusive language towards him," because Walsh had "called him 'Tom Raftice, the informer'." In these cases, the magistrates concurred; they regarded the charges as sufficiently serious to remand the perpetrators for 12 months on bail set at the high figures of between £10 and £12.[65] Thus, both laborers and landlord-magistrates contributed yet again, through the petty sessions and political society, to framing the cultural boundary around Thomastown's working class, to defining the nature of working-class experience, and to constructing the civilizing process itself. All this suggests that, in 1884, the hegemonic process was still in train.

hegemony and the law in an Irish case: conclusion

Recent "calls for the abolition of the anthropology of law . . . reflect an emerging idea that anthropological understanding of legal processes needs to be based on a broader vision," particularly "the importance of power relationships and historical contextualization in understanding legal and social change" (Starr and Collier 1989:5). In the present article, the concept of hegemony has provided a means of incorporating this broad view of legal processes, particularly because, from a Gramscian perspective, hegemony is about power that is historically contingent. It is about the nature of the state, the dominant class(es); coercion or penal sanctions as these interact dialectically with moral education, cultural meanings, and the construction of consent. This means that the analysis of the law as part of a hegemonic process or, alternatively, of the hegemonic process through the lens of the law or its courts, must take into account several, simultaneously occurring dialectical processes. These include the relation between the application of coercion (punishment) and the production of consent (education); between the role of the law in unifying the dominant class and the role of the law as it educates and punishes the subaltern ones; between the productive relations that underlie the structure of classes in a society and the construction and promulgation of ideas; between the interdependent actions, reactions, and interactions of individual agents from all classes and the nature of class alliances.

Moreover, notions of coercion, law, agency, and political-economic process, when built into anthropological studies of hegemony, provide a wide-angle lens through which complexity can be described and through which the hegemonic process can be linked to class formation, class experience, and class identities. In other words, hegemony, which is about "acculturation processes" and about "the tendency of public discourse to make some forms of experience readily available to consciousness while ignoring or suppressing others"(Lears 1985:588–589, 577), is also, equally and importantly, about coercion, agency, and the trajectory of historical (i.e., political-economic) blocs. Hegemony is, therefore, a political *cum* cultural process. In this process, class is a fundamental part of subaltern agency, identities, and positionings; the application or threat of coercion and punishment is integral to constructing hegemonic and counter-hegemonic meanings; class formation and alliances comprise key ways through which ideas and meanings are elaborated and promulgated; and the interactions of class-based agents form part of the delineation and history of interdependent groups and classes.

Between 1828 and 1884, in Thomastown, County Kilkenny, through the variable meanings that the petty sessions took on, as theater, forum, and arena, the court proved to be a highly successful civilizing device. The vitality of laboring culture allowed workers to appropriate the petty sessions to pursue their "lawless habits" while simultaneously enabling the hegemonic process to navigate through other, more microprocesses, such as the stigmatization and punishment of paupers; the on-going politics and differential patronage of landlords, farmers, and retailers; the changing relations of landlord-magistrates with the state; the gradual appropriation of violence by the state; and the emergence of the idiom of respectability. At the same time, class difference and class boundaries in the locality were reproduced and accentuated through the different roles, treatments, and involvements that people from varying classes had at the petty sessions and through the emergence of such discursive categories as informer and perjurer, which excoriated collusion with certain agents of the colonial state. These agents, the constabulary, were outsiders. In contrast, the landlord-magistrates were locals, enmeshed in social relations and shared meanings with local people from other classes. It was largely through the agency of the magistrates, as members of the dominant, propertied classes but also as uneasy allies of the colonial state who themselves were being civilized, that the process of hegemony took shape through the petty sessions.

This process, and the long-term outcome, however, are apparent only in hindsight. Thus, to speak of what happened in Thomastown between 1828 and 1884 as "the colonization of consciousness" (Comaroff and Comaroff 1992) or as the "imposition of law" (Burman and Harrell-Bond 1979) is to deny the indeterminacy of the past and to privilege what is known about the past from a viewpoint in the present. Equally, to label the paupers' actions in the workhouse or the laborers' attitudes toward the petty sessions as resistance is self-limiting, tending to privilege a common, albeit implicit, notion in social history and anthropology that a society or culture is *encapsulated* (colonized, conquered, and so forth) by one more powerful, and that law and legal systems processes by which people are coerced by, or subverted into, their tenets and procedures. They may be viewed as resisting, contesting, or colluding, perhaps even using the mechanisms and meanings of the law as the means. Nevertheless, the die is cast by a priori relations of differential power while the law is reduced to being either a site of resistance (Merry 1996) or a site of control and colonization. What this viewpoint also implies is that a boundary can be drawn around each of the two groups or cultures.

While perhaps it could be argued that such common views of the past and of some peoples may be useful ways of conceptualizing parts of the world at certain times, it cannot be applied to a place such as Ireland in the 19th century. As of 1828, Ireland had been colonized for at least 200 if not 600 years, depending on the particular Anglo invasion one privileges. Local society and the colonial state had long been in mutual congress. Colonial law, police, and magistrates had long been part of local experience, in various ways and with varying degrees of intimacy. In other words, assumptions such as encapsulation, derived from what is now defined as the colonial world, cannot be used as a starting point or explanation for western Europe in recent centuries.

What else, though, allows an anthropologist or social historian to enter the picture in the middle of a long historical process? My own answer is to emphasize multiple dialectical relations, rather than assume a dichotomous structure of culture or class contact. In Thomastown, it was the ongoing (re)creation and dialectical relation of multiple and often contradictory discursive meanings, perpetrated and espoused by numerous agents with varying interests, that the process of hegemony—as acculturation, legitimation, political process, and locally rooted class experience—wended its indeterminate way through the petty sessions and the 19th century.

notes

1. The general nature of crime in Ireland in the early 19th century is often characterized as violent agrarian protest carried out by organized groups and supported by the community (e.g., Palmer 1988:43–45). More microapproaches have concluded that crime (violence and protest) was rooted in local causes and interpersonal relations or grievances and, therefore, was more individualistically inspired (e.g., Clark 1979; Gulliver and Silverman 1995:112–152). This latter view, described by the landlord in 1833, is emphasized here.

2. These studies may be historical or synchronic. Examples of the former include Lazarus-Black 1994 and Moore 1986. Examples of the latter include Caplan 1995, Moore 1993, and Zorn 1996. Of course, the study of legal pluralism covers areas far broader than courts and disputes (e.g., Wiber on property rights [1991]). For a review of the history of anthropological approaches, see Vincent 1990:375–384, 415–424.

3. Recent examples of this include Collier 1993, Ortiz Elizondo 1996, and Suárez-Navaz 1996.

4. I agree with Kurtz (1996) who cites, in particular, the work of Comaroff and Comaroff, Richard Fox, and Laclau and Mouffe as examples of this cultural turn.

5. For example, *hegemony* has been defined, among other things, as ideology, common sense, meanings, everyday practice, or domination *cum* resistance. Moreover, disagreement on the meaning of the historical specificity of hegemonic struggle has led to both diachronic and synchronic analyses. Different foci have also been used. Sometimes the arena of struggle, such as religious ritual or a development program, is foregrounded; in other studies, it has been the ideologies or practices of the dominant or subaltern groups.

6. For Gramsci, the distinction between civil and political society, and how they overlap, depended on context. Those "institutions which supported the state's claim to monopolize the means of violence and through which it exercised force" formed part of political society. Those which were "involved in the creation of organized consent through some combination of cultural, spiritual and intellectual means" formed part of civil society. The church, a newspaper, or a political party could be part of either, depending on time and place. The view that political society incorporated the institutions of the dominant class while those of civil society incorporated those of the subaltern classes only fit certain social formations (Adamson 1980:219–220).

7. Indeed, the role of the law itself is often not addressed in many anthropological studies of hegemony. This omission sometimes reflects a tendency among "Marxist anthropologists . . . to neglect the legal aspect of political economy and politics" (Vincent 1990:423) because the

law is seen simply as part of the coercive apparatus of the state and thus requires neither explanation nor exploration. Alternatively, the omission sometimes reflects cultural concerns that marginalize the material relations in which struggles are rooted.

8. Vincent (1994:120) has argued that extending the idea that producing consent is the main activity of the state "deconstructs the concept of power to such an extent that domination by coercion and legitimized force virtually disappear from the hegemonic equation." The critique has also been made that, from this "power and law" standpoint, the law has tended to be universalized. This means, on the one hand, that law has been conflated with the capitalist state. On the other hand, it means that different kinds of law have been ignored: people's experiences with the law are not simply through statutory law but also through administrative directives, codes of practice, and everyday regulations (Vincent 1994:120). It has also been argued that, from this "power and law" standpoint, law has been totalized. It has been treated as embodying "a single, coherent, pervasive interpretative perspective" when, in fact, there is "ideological differentiation within law" and diverse ideological viewpoints enmeshed within it (Philips 1994:61). These ideas are pursued in this article.

9. For example, see Brow 1988, Gill 1993, Lagos 1993, Seligmann 1993, Swedenburg 1991, and Woost 1993. Interestingly, this subsumption of class occurs even in western European ethnography where class ought to be, if not the object of attention, then certainly a key feature. Exceptions include, for example, Lem 1994 and Maddox 1995.

10. Even where courts are seen as complex arenas in which different kinds of protest may be manifested (e.g., gender, race, class, ethnicity) as a product of the different kinds of power relations that obtain in the wider society, the mere fact of interrogating acts or sites of resistance and contestation (Hirsch 1994:208–210) invariably depicts individual actions rather than class agency, formation, and alliance.

11. My aim here is also to depart from two ways of conceptualizing the law. First, law defined as an "imposition" that engenders "domination-resistance" cannot capture the complexity of a hegemonic process. For example, see critiques by Comaroff and Comaroff (1992:260), Hall (1981), and Smith (1991). Second, the idea of the law and courts as "social control" is also fraught. In common usage, social control refers to the mechanisms by which society ensures conformity (Coser 1982:13). Both conflict and Marxist theorists have criticized this view. For the former, conformity masks the various reasons why compliance occurs (utilitarian and coercive as well as normative), and it ignores the role of differential power, manipulation, and negotiation in what is an ongoing process (Comaroff and Roberts 1981; Coser 1982). For the latter, social control is premised on an ideal of social order that, by definition, is incompatible with the fact of endemic class conflict (Stedman-Jones 1983). As a common approach in British social history, social control has been heavily criticized (e.g., Thompson 1981).

12. According to Cain, Gramsci's view of the law was developed in relation to his analysis of revolution. Cain therefore concluded that "presumably the same analysis could be applied to law in the bourgeois state" (1983:101).

13. My research in the Thomastown area was begun in 1980 in association with P. H. Gulliver and continues until the present time. Overall, we have spent more than six years, off and on, in the locality, doing archival work as well as participant-observation. The research has been supported at various times by the Social Science and Humanities Research Council of Canada (SSHRC), Wenner-Gren, and York University.

14. Relevant archival materials include parliamentary papers, newspaper reports (1765+), national school registers, memorials of deeds, probate papers, minutes of the Board of Guardians, local business records, parochial records, civil registers, commercial directories, and so forth. The use of these is discussed in Gulliver 1989.

15. The population continued to decline. By 1881, the parish had 3,440 people. The social demography of this decline is discussed in Gulliver and Silverman 1995; Silverman 1993, in press; and Silverman and Gulliver 1997.

16. This was part of a series of Insurrection Acts that were passed between 1796 and 1835 in relation to the British perception of law and order problems in Ireland (Connolly 1989). Among other things, these acts provided for dusk-to-dawn curfews, the extension of summary

trial without jury, and an increase in transportation as punishment for convicted offenders (Hay and Snyder 1989:12).

17. The complexity of the politics surrounding the encroachment of the British state in policing and legal matters is described in detail in Palmer 1988.

18. Magistrates could still act in private if they were investigating complaints rather than acting judicially; however, even this activity was no longer encouraged.

19. Complaints brought to the petty sessions that were indictable (e.g., homicide, fraud), or that the magistrates considered sufficiently serious to be so defined (e.g., assault and battery, larceny), were sent for jury trial to the quarter sessions in Thomastown or to the semiannual County Assizes in Kilkenny City, the county seat.

20. Official local court records (petty sessions and quarter sessions) have not survived for the 19th century. The only data are those provided in these newspaper accounts. Such accidental traces of course raise issues of sampling and validity. Several points can be made. Anthropologists always use opportunistic and judgment sampling techniques (as distinct from probability sampling) in fieldwork, and they have always maintained that such techniques, in the context of relatively holistic ethnography, have a validity and reliability that derive from extensive knowledge of context; from the fact that "a common culture is reflected in practically every person, event and artefact belonging to a common system"; and from anthropologists' interest in patterns or systems of behavior and not simply in the way that individual traits "are distributed in a known universe" (Honigman 1982:83). With archival work, additional problems are that only certain documents survive and that traces from the past are invariably haphazard. Historians, however, have always worked with this ineluctable fact and have arrived at normative solutions which, while sometimes contested, allow them "to interrogate their sources" and "to do history" (Rogers 1992). In the present article, the surviving newspaper accounts cannot be cross-checked against official records or magistrates' diaries; they cannot be randomly sampled from a larger universe; dead people cannot be interviewed nor can their performances at the petty sessions be observed. Yet, these accounts are rich and provocative, leaping off the page to confront the contemporary researcher. That so much space was devoted to them means that people at the time perceived the cases as important. From our broad long-term research, we also know what journalists meant when they said that they selected cases which were "of public interest." They meant that these cases were local, class-implicated, entertaining, and educative. We also know from other sources (parochial records, valuation records, etc.) much about the actors and interests in the cases that were published. Thus, when doing archival work, anthropologists can certainly excavate sufficient traces of varying kinds so as to theorize. Other problems in "doing history" are discussed in Silverman and Gulliver 1992a,1992b.

21. Two complaints against laborers were also brought by the railway company and two by professionals. Farmers comprised 17 percent (43 cases) of the defendants in the 253 cases and 7 percent of the complainants (17 cases). They were charged mainly by the railway company for failing to close gates or crossing the line when a train was due (11 cases); by other farmers, usually because of trespassing animals (8 cases); by laborers (8 cases); or the Board of Guardians (5 cases) for failing to pay rates or support a wife in the workhouse. Only occasionally did water bailiffs (3 cases), landlords (2 cases), the constabulary (2 cases), professionals (2 cases), a publican (1 case), a sheriff's bailiff (1 case) bring complaints. The lack of landlord complaints against farmers at the petty sessions reflects the fact that "ejectment notices" for nonpayment of rents, a key issue, were heard at the quarter sessions. Apart from plainting against each other, farmers mainly complained about laborers (8 cases) for deserting service, cutting furze, and stealing turnips. One complaint was brought against a sheriff's bailiff. Retailers defended in 21 cases, as a result of complaints from the inspectors of weights and measures (12 cases), the constabulary (4 cases), the water bailiffs (3 cases), and the Board of Guardians (2 cases). Only three reports saw retailers bringing complaints: two were against laborers and one against a farmer.

22. During the latter half of the 19th century, artisans were increasingly pushed into the laboring class, both emically and etically, as a result of de-skilling, the penetration of manufactured commodities, and inflating dowries (Silverman, in press). Therefore, from this point on in this article, I use the term *laborer* to cover both the skilled (artisans) and unskilled (laborers).

23. Data for the 1854–1869 period include people from all classes in Thomastown. Data for the 1854–1884 period, found in Table 1, use only those data in which laborers appeared. Because I intend the frequencies of cases to be used only in a descriptive and suggestive way, I have felt free to use two overlapping time frames and two different ways of describing the involvements of local people.

24. The reported complaints against farmers were for assault (15 cases), back wages (3 cases), collision with a cart (1 case), poisoning a dog (1 case), and breaking windows (1 case). The other 7 of the 22 cases in which laborers plainted against members of other classes or groups involved one complaint against a landlord (obstructing fishing), one against the constabulary (assault), two against water bailiffs (presenting a revolver), and three against retailers (abusive language, manipulating a shop account, theft). The last two against retailers are described below.

25. I take the notion of *theater* from the work of E. P. Thompson (1974:396, 1978:145) and those working within his paradigm (e.g., Hay et al. 1975). Legal anthropologists have also used this idea, as well as the terms *forum* (e.g., Hirsch 1994:208) and *arena* (e.g., Grossberg 1994:153). There has been little attempt, however, to use these three concepts in analytical as opposed to metaphorical ways. This is one of the aims of the present article.

26. This was reported in a county newspaper, the *Kilkenny Journal*, June 3, 1863. Newspapers reported on most board meetings while, in any case, incidents in the workhouse were recorded in the minutes of the Thomastown Board of Guardians (Kilkenny County Library). Only the newspapers, however, described the petty sessions appearances that emanated from these incidents.

27. The board also moved against defaulting ratepayers and against contractors who failed to provide contracted goods or services to the workhouse. These were very seldom described as being "of public interest."

28. *Kilkenny Moderator*, May 10 and June 10, 1865. To avoid cluttering the text with references to archival materials, I am placing these in the endnotes. The *Kilkenny Moderator* is cited as "KM" in subsequent notes; the *Kilkenny Journal* is cited as "KJ."

29. *KM* July 12, 1862; January 21, 1863; May 10, 1873.

30. *KM* November 7, 1863.

31. The study of "crowds" and of attitudes to them have formed key foci in social historical analyses of the 18th and early 19th centuries. See note 25 above.

32. The landlord was cited as complainant in only 8 of the 28 cases initiated by landlords.

33. Evictions of tenant-farmers were handled by the quarter sessions. Landlords otherwise used the petty sessions.

34. *KM* June 15, 1859.

35. *KM* March 7, 1877; April 9, 1881.

36. Of the remaining 28 cases, one was for "threatening and abusive language" brought by a nonresident gentleman against a laborer *cum* fisherman. The latter was ordered to find bail to keep the peace for a year (*KM* December 8, 1860). The remaining four cases were all trespass cases unassociated with theft. Two of these also involved fishers. In one, fishers were charged with obstructing a landlord's angling by paddling their small boat across his line. In the other, fishers were charged with entering the land adjacent to a private fishery (*KM* June 8, 1872). The other two of these four cases are described in the text. For more detail on the political economy of these fishing cases, see Silverman 1992, in press.

37. *KM* July 15, 1863.

38. *KM* March 17, 1849.

39. Unlike what has been reported for other parts of Ireland, noninheriting farmers' sons did not become laborers. They emigrated.

40. Five of the 12 were for trespass and theft (furze, milking a cow, turnips); two for deserting the farmer's service before the year's contract had ended; two for the trespass of small livestock (goats, sheep); one for the theft of £2.12s. and a pair of spectacles; one for refusing a farmer his usual right of way across the acre on which the laborer had his house; and one for assault.

41. *KM* February 11, 1865.

42. *KM* October 6, 1876.
43. *KM* October 20, 1877.
44. In only 6 of the 85 cases were laborers charged by the constabulary with assaulting or intimidating non-laborers. They were twice charged with assaulting a publican, a farmer, and a lodging-house keeper (n = 6).
45. *KM* October 10, 1863.
46. The only exceptions were in two of the nine cases when constables complained of being assaulted while attempting to arrest fishers on poaching charges.
47. *KM* February 10, 1866; June 9, 1877.
48. Both were fined 10s. and costs (*KM* March 7, 1883).
49. *KM* May 8, 1869; May 10, 1873.
50. *KM* September 1 and 8, 1866; October 6, 1866.
51. *KM* November 6, 1858.
52. Costigan had to post £10 bail and find two sureties of £5 each or serve 14 days in jail (*KM* August 5, 1882).
53. A son assaulted his father (both were bootmakers); a woman murdered her illegitimate child; and a father and son, both blacksmiths, were charged with fighting.
54. The vast majority of participants in every dispute could be located in the parochial records and the surnames of their first-order kin and affines found. In only two cases brought against laborers either by the Royal Irish Constabulary or by other laborers were the disputants kin or affines. Sisters-in-law quarreled in one case and two women appeared in court who were married to two first cousins. Both cases were brought on charges of assault.
55. Italics added (*KM* November 11, 1876); *KM* January 20, 1866; *KJ* May 2, 1883 .
56. *KM* June 9, 1877.
57. *KM* July 6, 1861; June 10, 1865.
58. Italics added (*KM* April 10, 1869).
59. Of the reported cases from 1869 on, women were complainants in four cases; men were the complainants in six; and women and men each defended in five cases.
60. *KM* July 15, 1863; July 4, 1855.
61. *KM* January 18, 1873.
62. *KM* June 8, 1878.
63. *KM* August 16, 1851.
64. *KJ* April 7, 1880.
65. Both also had to find two sureties, Donnelly for £2.10 each and Walsh for £5 each (*KM* November 7, 1883).

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