

**‘One Law, Many Justices: An
Examination of the Magistracy in Pre-
Famine Ireland, 1830-1846’**

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Abstract

This thesis examines the role of magistrates in pre-Famine Ireland, examining their relations with one another, with central government, and with local society. It considers the role of the magistracy in enforcing law and order and also examines precisely which members of the gentry controlled rural affairs through the office of magistrate. This thesis further assesses the effects of central government encroaching upon the local autonomy of the landed magistrates in the pre-Famine decades and explores the reaction of local magistrates to the incursion of Stipendiary Magistrates into their sphere of power.

The sense of identity of landed magistrates is considered and questions raised as to its essentially local focus. Questions are also asked about the partisan nature of the enforcement of law and order locally and the effect the magistracy had on suppressing agrarian unrest.

To address these question government reports, correspondence with the Chief Secretary's Office, local newspapers and the personal papers and memoirs of individual magistrates are all used to place the local magistracy in the wider socio-economic context of the early nineteenth century.

The study concludes that the landed gentry, using positions such as that of magistrate, redefined its identity and authority in rural Ireland during the pre-Famine period. In doing so some members of the gentry actually used the advances of central government (which were intended to reduce their power) to their own advantage, facilitating the re-establishment of their authority over local society.

Declaration

I hereby declare that this thesis represents my own work and has not been submitted, in whole or in part, by me or any other person, for the purpose of obtaining any other qualification.

Signed: _____

Date: _____

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Introduction

This thesis examines the role of magistrates as law officials, landlords and elites in pre-Famine Ireland. The nineteenth-century was a period of great social and political upheaval in Ireland, particularly the pre-Famine decades. The Act of Union (1801), which abolished the Irish parliament and combined it with the English house and further recognized the Anglican Church as the official church of Ireland, was the precedent that would produce a number of oppositional movements throughout the century. The campaign for emancipation in the 1820s under O'Connell, which saw monster meetings across the country, transferred to the repeal movement of the 1840s and awakened a political consciousness in the Catholic middle and poorer classes but for the most part were peaceful political movements. The tithe-war of the 1830s however, which was a protest by Catholics against levies placed on them to support the Anglican Church, was a much more violent protest which eventually led to this tax being retracted. However, by far the largest thorn in the side of the administration during the first half of the century was the issue of agrarian outrage, secret societies and the threat of a Catholic uprising similar to 1798. The historiography of agrarian crime and disorder in pre-Famine Ireland has predominately focused on the socio-economic conditions that drove the lower orders to commit offenses or on the legislation and tools used by the Irish administration to stop these outbreaks of violence. Lee argued for a recognizable moving frontier of collective disorder which corresponded with the growth of commercialized farming.¹ To support his claim he pointed to the fact that previous hotbeds of agrarian disturbances in the late eighteenth-century like Kilkenny and Queen's County were now relatively quiet in the early nineteenth-century because commercialism had won and any protest from the tenants and cottier class would have been futile. In contrast, he pointed to areas like Roscommon and Leitrim, which were previously tranquil, were now becoming disturbed with the establishment of commercialized farming which threatened a customary way of life. Deeply involved in the suppression of agrarian disturbances were landlords and local elites who not only controlled their own estates and the lives of their tenantry but as county magistrates dominated local law and order also. While each outbreak of agrarian

¹ Joe Lee, 'Patterns of rural unrest in nineteenth century Ireland: a preliminary survey' in L. M. Cullen and F. Furet (eds.) *Ireland and France 17th-20th centuries: towards a comparative study of rural history* (Paris, 1980).

unrest from the early decades of the nineteenth century onwards was predominately centred on land and the protection of agricultural employment, each subsequent outbreak saw the emergence of a new grievance, different objectives and new targets of retribution.² For instance, the Rockite movement in West Limerick in the early 1820s was directed against high potato prices, the displacement of labourers and small holders and animosity to the police and it also tapped into and played upon religious fears.³ In contrast, the Terry Alts in Clare a decade later were mostly motivated by grievances about the lack of potato ground, disturbances which resulted in many landlords and magistrates fleeing their estates. There are indications that grievances around the Limerick and Tipperary border in the earlier part of the nineteenth century centred on enclosure of common land; while further south in the Golden Vale the wage rates of labourers and the displacement of small holders seems to have been the most serious complaint while further west towards Castleconnell in Limerick and into O'Briens bridge and Killaloe in Clare, the loss of employment in turf collection in the 1830s caused major disorder, despite being home to a large concentration of magistrates. Meanwhile, in the northern portion of the country, Ribbonism, which was a Catholic confederacy incorporating Defender principles, carried some political and nationalist ideology. The need to contain these multiple forms of agrarian disorder was something that permeated state policy after the Union and right up to the famine years and beyond. To control disorder, government trusted the words of officials within Ireland but more specifically the words of magistrates were heavily relied on as they were the government's watchdogs on the ground, living among and within the communities under attack.

However, the magistracy have largely been ignored by historians throughout this period. Although the holders of these civil positions enforced law and order and presided over local courts dealing with minor offences, the fact that the ranks of the magistracy, or Justice of the Peace, were filled with landed gentry meant that magistrates were much more than mere agents of law enforcement: They were essentially the rulers of rural society. What has been written about the magistracy to date is largely negative and focuses on their inability to stem outbreaks of rural violence because of their corruptness, sectarianism and partisanship. Broeker was one of the first modern historians to commentate on the inefficacy of the magistracy in the opening decades of the nineteenth-century, labelling them, and the police, as a failure which forced the Government to overhaul of the police-force and reduce

² Maura Cronin, *Agrarian protest in Ireland, 1750-1960* (Manchester, 2012).

³ James S. Donnelly, Jr., *Captain Rock: the Irish agrarian rebellion of 1821-1824* (Cork, 2009).

magisterial control over this force.⁴ In his extensive study on the reform of the English and Irish police-force, Palmer also noted the ineffectual nature of the Irish magistracy as compared to their English brethren, insisting that ‘the nature of Irish society and demography dictated that the Irish JPs in education, property and status were poor, contemptible cousins to the English.’⁵ Similarly, Bonsall claimed that that corruption and inefficiency were endemic among the Irish magistracy in the first half of the nineteenth-century, and forced the administration to introduce government paid magistrates to meet these complaints.⁶ One of the first commentators on the issue of Irish agrarian disorder was George Cornwallis Lewis who, in 1836, blamed landlord-tenant relationships as the main cause of Whiteboyism, yet as Beames points out Lewis noted, somewhat paradoxically, that the main victims of peasant violence were other peasants and not landlords.⁷ Throughout his study Lewis highlighted the magistracy intermittingly, noting some complaints of partisanship and unwillingness to tackle major outbreaks of Whiteboy disturbances but he never fully attacked the magistracy which again seems contradictory as the majority of magistrates were landlords. However, this is not to suggest that magistrates, as landlords and leaders of rural society, were a unified group. In reality the magistracy was a loose association of rival groups which included the owners of small and large estates some member of the Protestant clergy.⁸ Thus, though the terms ‘gentry’ and ‘elites’ are used throughout this thesis to refer to the magistracy, at no time must it be regarded as a homogenous group and the divisions within this group will be explored as the thesis advances. However, a contemporary view of Irish magistrates can be gauged in *The New Sporting Magazine*, which catered for elite pastimes and leisurely pursuits like hunting and fishing, and regularly recalled past events and people through fictional pieces retold as fact. In one of its 1845 issues it published one such article, titled ‘An Irish Justice of the Peace thirty years ago.’ This is an eight page story about a Justice of the Peace, Jack Mahon, who resided at Kanturk and was supposedly a Justice of the Peace for three counties-Limerick, Cork and Kerry. The crux of the story is how Jack was outsmarted by a local member of the community, who for a reward, served Jack a legal writ summoning him to court. Throughout the back story Jack is depicted as a big drinker, good humoured but quick to anger and a greedy character. His friendship with the local parish priest, his regular drinking partner, is used to show an element of tenant/authority figure patronage in a local

⁴ Galen Broeker, *Rural Disorder and police reform in Ireland* (London, 1970), p.

⁵ Stanley H. Palmer, *Police and protest in England and Ireland 1780-1850* (Cambridge, 1988), p. 60.

⁶ Penny Bonsall, *The Irish RMs: the resident magistrate in the British administration in Ireland* (Dublin, 1997), pp 12-13.

⁷ George Cornwallis Lewis, *On local disturbances: the Irish church question* (London, 1836), pp 48-53.

⁸ The composition of the magistracy is discussed in detail in Chapter 1.

setting as Mahon, through Father O’Flanagan, often had local tenants take in his corn or cut his hay.⁹ Yet, for all the negatives used to paint a portrait of Mahon, he is acknowledged as capable of dealing successfully with agrarian disturbances, as the local Whiteboys were said to have lived in dread of him: for ‘Jack the devil was a magistrate, aye, and there were but few of the ‘boys’ that wouldn’t rather have a troop of horse stationed next to them, than have Master John in the same barony.’ This description was apt in relation to a small minority of real life magistrates, particularly early Stipendiary Magistrates like Major Sirr in Dublin in the late 1790s and T.P Vokes in Limerick during the 1820s and 1830s, both discussed in more detail in Chapter 4. Such men were known for their no nonsense yet even-handed approach when dealing with the public, they spoke Irish which allowed them converse with the peasantry and they were not afraid to bang heads when and if a situation needed it.¹⁰ However, Garnham and Connolly both note that there was a severe shortage of landed magistrates throughout the eighteenth century suggesting that by the end of the century there were as few as five hundred magistrates active outside metropolitan areas, concluding that this dearth of magistrates proved a continuing weakness in the Administration’s ability to enforce the law and contain rural disorder.¹¹ Therefore, it is important to remember that many parts of rural Ireland in the first half of the nineteenth century could be deemed a type of frontier, with few roads, and a communal approach to justice on the part of the population, something which often spilled over into acts of violence between neighbours, a violence whose control required strong characters in authority at local level.

Society and local governance.

The position of magistrate was also part of the wider system of local government in the nineteenth-century. County Lieutenants, High Sheriffs and Grand Jurors together administered rural and urban Ireland, deciding how local taxes were spent and picking criminal juries to sit at the assizes.¹² These positions remained almost exclusively Protestant and were safe-guarded by the Ascendancy throughout the eighteenth-century and into the nineteenth to ensure their authority despite being a minority of the population at a local and

⁹*New Sporting Magazine*, Vol. IX, No. 44, 1845, pp 392-398.

¹⁰Sylvie Kleinman, ‘Sirr, Henry Charles’, in James McGuire and James Quinn (ed) *Dictionary of Irish Biography*. (Cambridge, 2009); Henry Robert Addison, *Recollections of an Irish police magistrate* (London, 1862).

¹¹ See Neal Garnham, *The courts, crime and the criminal law in Ireland, 1692-1760* (Dublin, 1996); S.J Connolly, *Religion, law, and power: the making of Protestant Ireland, 1660-1760* (Oxford, 1992).

¹² Local government positions are discussed in more detail in Chapters 1 and 2.

national level. Crossman notes that following the Act of Union of 1800 Robert Peel wanted local governance in Ireland to be based on the English model which left authority in the hands of the local landed magistrates, but because the religious composition of the Irish magistracy simply served to remind the peasantry of their unknown position, therefore, Irish magistrates did not enjoy the same level of paternalism that English magistrates did.¹³ A second complaint frequently aimed at the magistracy was their use of local taxes when sitting on the Grand Jury, while jury stacking was another grievance the Catholic lower orders often levelled at those in local authority, a practice they felt denied them justice. Because of all these objections Peel, and the administrations that succeeded him over the following two decades, realized that the English system was a failure in Ireland and spent the period between the 1820s and the mid-1840s gradually reducing the power of local landed elites and introducing a centralized form of government. The two main instruments used to implement Castle control were the introduction of government paid Stipendiary Magistrates, and the introduction of courts of petty sessions. Further to this a new government controlled police-force was also established and it was hoped that Stipendiary Magistrates would exert control over the police and stem complaints of partisan judgments by sitting at petty sessions with local Justices of the Peace. However, initial recruits to the position of Stipendiary Magistrate were men with landed backgrounds, who, in many instances, had previously been local JPs who were driven by factionalism, partisanship and in some cases sectarianism. Thus, the pre-Famine decades were very much a transitional period in regard to the shaping of civil society and the enforcement of law and order, and one that never saw Castle authority at a local level materialize fully despite sweeping changes to the system. If anything, in some cases these changes strengthened the authority of landed JPs who through factionalism and family bonds were able to turn petty sessions into personal arenas of power. However the government did begin to slowly erode the power of the gentry at a local level and McDowell notes that as the

nineteenth-century progressed, the government both began to supervise in some detail the activities of local bodies and even took over some of their more important functions...the government supervised local lunatic asylums (from 1817) and took over from the county authorities the control of the police (in 1836) and the prisons (in 1877).¹⁴

The introduction of courts of petty sessions in the 1820s presented the lower landed gentry with a chance to gain local authority by regularly attending and dominating the local administration of justice where previously court sessions were held on the estates and in the

¹³ Virginia Crossman, *Politics, law and order in 19th century Ireland* (London, 1996).

¹⁴ R.B McDowell, *The Irish administration 1801-1914* (London, 1976), p. 165.

homes of the larger landlords. McDowell, McCabe and McMahon note that this was nothing new and that reform of local courts of justice was a consistent measure used by government throughout the eighteenth century to replace less formal types of justice.¹⁵ This thesis explores how many members of the landed gentry reinvented themselves and their role in civil society throughout the pre-Famine decades as Dublin Castle tried to make reduce the gentry's dominance over rural civil society. In an agrarian society lacking any industrial base these civil roles were among the few ways in which landed gentry could enhance their social and economic standing. This thesis also seeks to explore the encroachments made by Dublin Castle upon the authority of local JPs by examining the latter's relationship with Stipendiary Magistrates and their engagement with petty sessions. Throughout the eighteenth and nineteenth centuries the government had encouraged a system of patriarchal county governance which encouraged social and economic competition between the gentry. In Ireland this ensured that landed gentry never formed a collective identity since competition for civil appointments, advantageous marriages and an increase in capital resulted in a scramble for patronage from both the government and other local elites. Although leisurely pastimes like hunting, cricket and social occasions like balls expressed at one level unified elite culture they were also used as avenues to gain influence or patronage, or in the case of balls to align families through marriage by selecting potential suitors at such occasions. This thesis further looks to examine the pursuit for power by the gentry for positions such as a magistrate or Grand Juror and will investigate the social and political tools that elites used to pursue these titles. In doing so this project also seeks to gradually understand specific aspects of the self-identities of the gentry.

Political Context.

While this thesis concentrates on the magistracy in pre-Famine Ireland in the context of their everyday lives, it is important also to understand the political context of the period under examination.

In comparison with the uniformed bureaucracies of continental Europe [the British administration] seemed ramshackle and amateur, remaining for most of the nineteenth

¹⁵ R.B McDowell, The Irish courts of law, 1801-1914 in *Irish Historical Studies* Vol. 10, No. 40, 1957, pp363-391; Desmond McCabe, 'Magistrates, peasants and the petty sessions courts, Mayo, 1823-50' in *Cathair na Mart*, Vol. 5, 1985, pp 45-53; Richard McMahon, 'The courts of petty sessions and society in pre-Famine Galway' in Raymond Gillespie (ed), *The remaking of modern Ireland, 1750-1950: Beckett prize essays in Irish history* (Dublin, 2004), pp 101-37.

century piecemeal and small-scale and hostile to any cautious centralizing pretensions harboured by central government. There was no national bureaucracy, no national police force and no national system of education¹⁶

However, the need to address social and economic questions, and particularly deficiencies in law and order in Ireland meant that a greater degree of centralization was needed to make Ireland a more equal partner within the Union. According to Hoppen, the 1830s saw a sizeable shift in attitude to governing Ireland on the part of metropolitan elites in the wake of the Catholic Emancipation crisis 1828-9. He describes this change in stewardship as an *awakening*, suggesting that ‘Ireland came to be seen not simply as a far-off and wild country best controlled by predominantly coercive means, but as a land of opportunity in which a spirit of ‘improvement’, combined with the paternalist disciplines of British institutions, might yet turn a wilderness into another Sussex or Kent.’¹⁷ Essentially, both Tories and Whigs were aware of the failures of the gentry in Ireland. Peel never doubted that responsibility for law and order within the countryside lay with local magistrates even when he set about installing a more organized and centralised administration in Ireland, including the police-force. During times of wide-scale agrarian disturbances Peel backed magistrates by consistently giving them coercive powers with which to deal with large outbreaks of violence, and this was a continued Tory policy during times of agrarian unrest. Even when the Tories introduced measures denying magistrates the authority to appoint members of the new Irish constabulary in 1822, they quickly relented under objections from the Irish gentry, who remained as a steadfast Tory support base throughout the pre-Famine decades. While the Tories harboured genuine concern for the welfare of Ireland, they felt that many of the country’s problems would be solved by introducing measures that addressed the health and education of the peasantry, rather than checking the landlord system then in place.¹⁸ Yet, though Peel and the Tories had spent the period up to 1829 trying not to alienate the resident gentry, they had actually eroded some of their powers; improved the police-force which was now run by central government, and increased the number of Stipendiary Magistrates – a measure which did little to alleviate Protestant fears of further erosion of their local autonomy in the face of Catholic emancipation.¹⁹ In contrast, the Whigs had always held the gentry accountable for the economic problems and disordered state of Ireland and while they promised to aid the

¹⁶ David Philips, ‘A weak state? The English state, the magistracy and the reform of policing in the 1830s’ in *English Historical Review*, Vol. 119, 483, pp 874- 891.

¹⁷ K. Theodore Hoppen, *English Historical Review*, 2000, Vol. 115, 462, p. 754.

¹⁸ Paul Delman, *Peel and the Conservative party, 1830-1850* (London, 2014), pp 1-8.

¹⁹ Brian Jenkins, *Era of Emancipation: British government of Ireland, 1812-1830* (Quebec, 1988), p. 67.

gentry in the administration of their lawful duties, they were more concerned with winning over the hearts and minds of the populace, an approach which put the magistracy and the government on a collision course as the Whigs saw law and order as one of the main areas in which they could win over the public and establish lasting peace.²⁰ In doing this, the Whigs continued to erode gentry power, but also heaped extra responsibilities on the gentry by reforming the grand jury and introducing poor laws that made landowners, or poor law guardians, accountable for collecting a poor rate.²¹ Similarly, McDowell notes that while the Whigs' policy of reform and administrative fair-play won over large sections of the Irish public, reform was rolled out with the full intention of preserving the Union, something in which both Whigs and Tories believed, but the Whigs were set on breaking the Ascendancy's monopoly of local authority in Ireland and set about redressing the balance of power by identifying 'the administration with the community.'²² This is not to say that prior to the Whigs gaining power in the 1830s that the Tories did not introduce any administrative reforms: lists of magistrates were revised in 1822, improvements in electing Sheriffs and petty sessions were introduced so as to make magistrates act in concert rather than individually, all of which measures were an admission that the magistracy were inadequate to carry out their civil duties yet the Tories at all times were cautious not to alienate the gentry while introducing such measures.²³ However, by continuing to professionalize the constabulary and increasing the number of stipendiary magistrates the Whig government 'were in danger of reducing County Lieutenants and magistrates to insignificance.'²⁴ This was further cemented when Drummond issued a memorial to the magistracy informing them that they could no longer use the constabulary or military to collect rents or tithe, an action the Tories had once threatened but with which they had never followed through. Thus, where the constabulary had once looked to the magistracy for appointment and direction, as the 1830s advanced they now looked to central government, something that was to become a major source of tension between the central administration and the local magistracy by the end of the decade. The results of this strain are explored in Chapter 5, but it resulted in a fracture in the dispensation of law and order during times of acute disorder.

²⁰ Virginia Crossman, *Politics, law and order in nineteenth century Ireland* (London, 1996), pp 55- 70.

²¹ David Nally, 'The coming storm': the Irish poor law, colonial biopolitics, and the great Famine' in *Annals of the Association of American Geographers*, Vol. 98, No. 3, 2008, pp 714-744.

²² R. B. McDowell, *Public opinion*, p. 179.

²³ Gearoid Ó Tuathaigh, *Ireland before the Famine, 1798-1848* (Dublin, 1972), p.88

²⁴ Crossman, *Politics, law and order*, pp 71-76.

Geography.

The counties on which this thesis focuses on are Limerick, Clare, Tipperary, King's County, Queen's County, Roscommon and Leitrim. In the decades prior to the Famine Ireland experienced numerous outbreaks of agrarian disorder, with the seven counties outlined being the most disturbed.²⁵ Connolly took a similar approach with his study of late seventeenth and eighteenth century banditry in Ireland and while he warns historians of law and order to find a balance between the sensational and the bland, he suggests that studying areas where law and order has completely broken down reveals a lot more about the system of law and order as a whole than does the study of regions that were relatively tranquil.²⁶ Therefore, while this study steps outside these seven counties from time to time, the main concentration is on the magistracy within these troubled middle-belt counties between 1830-1846. But certain limitations of primary material, such as a lack of government commissions and the content of regional newspapers, for Roscommon and particularly Leitrim, does not allow for a balanced discussion of the middle belt as a whole, but what limited sources are available, both primary and secondary, have been used to try bridge this gap. This focus on a specific region also allows concentration on regional differences in the social, political and even geological spheres. Leitrim and Roscommon were more affected by Ribbonism (part economic, part political) while Tipperary and Limerick were associated more with Whiteboyism or agrarian tension based solely on immediate local grievances. Queen's County and King's County had added sectarian tension since they contained large pockets of Orangeism while County Clare was especially affected by accelerated politicization in the wake of the 1828 election. Noticeably, the southern counties, particularly Limerick and Tipperary, had better farming land which meant more resident gentry and generally more competition for land but which also meant that there were more tenants which meant more economic and social tension and the threat of agrarian disturbances but it also meant that there was greater levels of competition among the gentry. Except for Limerick, none of the other counties had a city but many country towns were rapidly expanding at this period and towns such as Clonmel, Ennis and Birr had populations between eight and ten thousand in the mid-1830s and these large urban centres both derived from and fostered the growth of the newer Catholic middle-classes that were emerging as a further challenge to the authority of landed elites, Lane describes this class as 'those who stood between the large landowners and the nobility and who sold their

²⁵ Andres Eiriksson, 'Crime and popular protest in County Clare, 1815-1852' (Unpublished Ph.D. Thesis, Trinity College Dublin, 1991), pp 19-20.

²⁶ S.J Connolly, *Religion, law, and power: the making of Protestant Ireland, 1660-1760* (Oxford, 1992), p. 203.

labour to secure their livelihood.’²⁷ They were made up of the most part of merchants and small industrialists while middle to large farmers can also be included. In comparison, North Leitrim, North Roscommon and West Clare, with rugged terrain and smaller towns, were proto-capitalist and almost insulated from the modernizing forces that were affecting the portions of these counties with better farming land and growing towns. However, none of the counties under examination possessed any industry and agriculture was the basis of each county’s economy and prosperity. This increased the importance of controlling access to land, which meant that the attitudes of magistrates towards farming and introducing new farming techniques were essentially the driving force behind each county’s economy. Most landlords were slow to introduce improving farming techniques such as drainage and crop cultivation but by the 1840s several leading gentry formed or were members of farming societies that aimed to encourage improvements among their tenants. However, as part of this improvement a great many landlords were involved in clearing their estates of smaller tenants to make way for larger cattle farms after the post-Napoleonic war slump. When paternalism broke down in this fashion, tension often spilled over into violence as was the case in the outbreak of Whitefeet violence in Queen’s County in 1831 and throughout this thesis this role of landed magistrates exacerbating tension is examined.

Sources and methodology.

Correspondence between local Justices of the Peace and the Dublin Castle administration were nowhere near as regular as that between Stipendiary Magistrates and the Castle, since regular correspondence was central to the role of Stipendiaries. However, a quantity of archival material from the registered papers of the Chief’s Secretary’s Office at the national archives, including private index, official papers and the outrage reports, provided enough material to understand the relationship between local Justices and the Castle. A wide variety of newspaper reports, government commissions and House of Commons debates complemented the archival material which makes up the bulk of the primary material for this thesis. Newspapers proved to be the most fruitful source for tracing individual magistrates and especially for tracking tensions between magistrates and local society and examining accusations of misconduct against these individuals or against the magistracy of a locality as

²⁷ Fintan Lane, ‘William Thompson, class and his Irish context, 1775-1833’ in Fintan Lane (ed.), *Politics, society and the middle class in modern Ireland* (Great Britain, 2010), p. 24.

a whole. Newspapers also helped the tracing of disputes at petty sessions as well as providing commentary on local meetings and investigations held by magistrates. Yet newspapers are also not without their own shortcomings. Conservative journals had a tendency to ignore instances where Tory magistrates or members of the Ascendancy were accused of allegedly abusing their position. This leaves the historian with the tricky job of navigating through such accusations in the liberal journals. Thus, the *Freeman's Journal* has been cited frequently throughout this thesis, but despite its liberal outlook, and when its findings are compared to those of other contemporary sources, more often than not the paper provides an accurate time line of events. As no official hand-book was provided by the government at this early stage, private papers, contemporary magazines, journals and magistrate handbooks were particularly useful in gaining some insight into the role of the magistracy. Stipendiary Magistrates were expected to keep a diary to log their activity throughout the year, however, as a source for the middle belt counties they proved to be unsatisfactory as those that remain largely only record attendances at fairs or petty sessions (without accompanying detail) and have therefore been used sparingly throughout the thesis. Providing the spine of each chapter is a database which was compiled from the personal information available from multiple sources for 850 magistrates from each of the seven counties referenced. The names of these men were generated from two government commissions on the magistracy in Ireland carried out in 1832 and 1836. These commissions serve as a form of census of the magistracy in the pre-Famine decades but do not provide much biographical information, so the database (admittedly incomplete) provides information on a number of personal details for each magistrate including, the size of landed estates, other unpaid positions held, membership of clubs and societies, education and marriages. A wide range of sources was used to compile this database including material from the Landed Estates Database NUIG, multiple editions of Burke's *Peerage*, John Bateman's *Great landed families of Great Britain and Ireland*, school registers for Eton and Harrow, newspapers, government reports and private correspondence. Records belonging to the Royal Society of Dublin and the History of parliament also provided substantial biographical information on a number of its patrons who were members of the magistracy. There were a number of questions that proved particularly difficult to answer, except for newspapers, there are no substantial records available to provide concrete evidence of land-holding in the immediate pre-Famine years and only a limited number for each county was uncovered. Determining land-holdings is important as it signifies the social standing of the individual. For example, Burke determines that an individual with 3000 acres or earning £3000 can be considered a great land owner and thus a

member of the upper gentry.²⁸ Using this model, Mingay and Shipley, break the gentry down into sub-sections of minor gentry-middle gentry and upper gentry using income\acreage as the starting point. Thus, acquiring the land-holdings of the gentry provides an insight into the social strata of the magistracy. In all three of these sub-sections of the database, Education, landholdings and clubs and societies the records for the greater gentry and peers were more readily available and thus, they dominate the discussion. The most basic thing, such as locating the residence of certain magistrates where the government commissions did not provide it was a challenge especially in relation to the minor or lesser gentry who do not feature in Burke's *Peerage* or Bateman's *landed families* and who are infrequently documented by Landed Estates Database NUIG. However, these foundations the database and study provide enough information to gain, through the development and background of social and political identities an understanding of the magistrate's principal purpose and aims. Another difficulty that arose throughout this study was the omission of magistrate's names from government debates or newspapers when they were suspected of misconduct. The O'Driscoll affair discussed in Chapter 4 is a prime example of this, he was accused of beating a young boy in his locality and was initially relieved from his position by the government. While the liberal press readily reported on the case conservative journals just ignored it and this was repeated throughout this period when similar cases occurred.

The administrative role mostly usually filled by the gentry in both Ireland and England was that of Justice of the Peace, so that to make reference to the gentry was essentially to make reference to the magistracy. Because there has been no extensive research on the Justice of the Peace in pre-Famine Ireland similar studies in England provided some of the building blocks for this thesis, particularly Balchin's study of Yorkshire, 1782-1836. Balchin's dissection of the role of the magistracy, their distribution within the county and their involvement in local governance within Yorkshire raised several questions that shaped the direction of this thesis. Similarly, the position of the gentry as elites in Ireland is still under-researched so work on the English gentry by Thompson, Mingay and more recently, Shipley provided a platform on which to build on notions of gentry identity and culture within Ireland. In both countries the gentry were landlords and figures of authority who controlled the fortunes of large sections of the rural population and served as members of parliament, county lieutenants, Grand Jurors and sheriffs. Discussing the English gentry Shipley notes:

²⁸ John Bateman, *The great landowners of Great Britain and Ireland* (1883, reprinted 1971).

Enduring though its presence was, the gentry was not as a group static or unchanging. To accomplish and sustain this degree of predominance over such a broad span of time and across so many spheres, its members repeatedly adapted to the prevailing economic conditions and to new political circumstances. The composition of the gentry was ever evolving. Old families died out or declined and new entrants, sometimes from business or the professions, and sometimes from the ranks of slowly rising smaller landowners, took their place.²⁹

This was also true of the Irish gentry but given the agrarian nature of the economy and the religious composition of the island, the ability of the gentry to advance economically was more limited in Ireland than in England. This thesis focuses on this issue throughout the study and shows that central to any advancement made by landed elites, on an economic or political scale, was the importance of holding the position of magistrate. Local studies of agrarian disorder also provided this study with insights into regional interactions between magistrates, the tenantry and Dublin Castle. Kelly's study on Ribbonism in Leitrim suggests that the peasantry had more trust in Stipendiary Magistrates than the local landed justices. Similarly, Huggins' work on crime in Roscommon concludes that despite the introduction of Stipendiary Magistrates the land-owning elite 'retained a certain cultural hegemony, remaining as leaders of opinions' despite their gradual replacement on the bench by professional magistrates.³⁰ Ridden focuses on the social, religious and political differences of a group of landed magistrates in the Shannon estuary region, highlighting the separate notions of paternalism and identity among the gentry.³¹ Daragh Curran's work on the Protestant community in Ulster, 1825-1845, examines the importance of the magistracy to county life both on an administrative level through the Grand Jury and through social occasions like balls and banquets.³² Curran concludes that the magistracy, through its member's service on the Grand Jury, controlled the fiscal affairs of the county as well as overseeing law and order: this issue is also examined in relation to the seven middle-belt counties in this study to further assess the extent to which magistrates dominated rural affairs. A recent collection of essays edited by Ciaran O'Neil on elites in the nineteenth-century addresses what he calls a

²⁹ Peter Samuel Shipley, 'The Leicestershire gentry and its social and cultural networks c.1790-1875' (PhD thesis, University of Leicester, 2010), p.1.

³⁰ Michael Huggins, *Social conflict in pre-Famine Ireland: the case of County Roscommon* (Dublin, 2007), p. 60.

³¹ Jennifer Ridden, 'Making Good Citizens': National Identity, Religion, and Liberalism among the Irish Elite, c. 1800-1850' (PhD thesis, King's College London, 1998).

³² Daragh Curran, *The Protestant community in Ulster, 1825-1845* (Dublin, 2014).

‘neglected topic’ and provides an insight into elite behaviour and elite formation.³³ However, largely missing from this collection is a study on the magistracy who should be central to any study on elites in Ireland during this period, especially in the pre-Famine decades.

Chapter Description.

Chapter One defines and identifies the magistracy. It looks at the social structure of the gentry, and breaks down what level of the gentry, whether lower, middle or upper gentry was the magistracy comprised of. This chapter also maps the geographical distribution of the magistracy in each county noting the spatial differences and uneven spread of magistrates on a county by county basis.

Chapter Two examines the issue of patronage and networking in both a social and political setting. It shows the relationship between the position of Justice of the Peace, the Grand Jury and the other positions of county officialdom such as Deputy Lieutenant. Thus, this section considers the position of Justice of the Peace as a stepping stone in order to gain influence in order to pursue other local government positions.

Chapter Three considers patterns of elite identity, education and marriage. It predominately focuses on sport and leisure, such as cricket, hunting and horse racing as expressions of gentry identity and networking. It further considers patterns of education and marriage with the hope of showing that while social activities promoted a shared identity, issues such as marriage highlighted the diverse social composition of the gentry.

Chapter Four looks at the petty sessions as a seat of local power and authority for the Justice of the Peace. As in Chapter 1 it looks at the distribution of petty sessions and examines the percentage of magistrates that carried out their magisterial duties in this setting. This chapter also allows for a deeper examination of the character of magistrates and complaints over the misuse of their powers. The Petty Sessions Court is also used in this section to portray the challenge to gentry autonomy through solicitors who represented the growing rural middle classes.

Chapter Five considers the introduction of Stipendiary Magistrates and the slow introduction of centralized law and order directed from Dublin Castle and the impact it had on the local

³³ Ciaran O’Neil (ed.), *Irish elites in the nineteenth century* (Dublin, 2013).

Justice of the Peace. It also offers a social profile of Stipendiary Magistrates and scrutinizes the relationship between the paid and unpaid magistracy and the effect this had on law and order at a local level.

Chapter 1: Defining the magistracy.

The position of Justice of the Peace was created in the Fourteenth Century by Edward III who was wary of the power then attained by county sheriffs in England. The position was essentially created to act as a buffer to the King's power and a new commission was introduced that employed both local gentry and merchants to keep the peace. Over the ensuing centuries these magistrates became the 'administrative, legal and political deputies of the Crown in the counties, under the direction of the King, who appointed them, and his council.'¹ In Ireland, and following the coming into force of the Act of Union (1801), these county justices were appointed by the Lord Chancellor's office *via* the Chief Secretary who, along with the Lord Lieutenant and the Under Secretary, made up the Irish executive. Although the Irish parliament had been abolished with the Act of Union the fact Ireland had an executive made the country semi-autonomous,² though each position was filled by the Prime Minister's office. On paper the Chief Secretary was subordinate to the Lord Lieutenant but, with the fusion of both parliaments, the Chief Secretary played a far more prominent role in the everyday running of the country as he journeyed back and forth between Dublin and London quite frequently.³ Thus, it was with the Chief Secretary's office that county magistrates communicated when relaying magisterial business, whether reporting on crimes or calling for military or police reinforcements for deployment in their barony. However, though communication with the Chief Secretary's office was regular, the county justices received no prior training for their role, nor did they receive pay, and are thus regularly described as amateur magistrates.⁴ The main reason justices went without pay was born out of the notion that the gentry should uphold law and order out of a paternal sense of duty. This notion was a lot more sustainable in England as there were a larger number of persons with the right education, background and wealth who matched these criteria. In Ireland, however, a significant number of landowners were absent, or absentee as they were more commonly

¹ John Hostettler, *A history of criminal justice in England and Wales* (Hampshire, 2009), pp 63-4.

² Brian Jenkins, 'The Chief Secretary', in D. George Boyce and Alan O'Day (eds.), *Defenders of the Union: A survey of British and Irish unionism since 1801* (New York, 2004), p.42.

³ Brian Jenkins, *Era of emancipation: British Government of Ireland 1812-30* (Montreal and Kingston, 1988), pp 55-56.

⁴ Though magistrates received no formal training, McDowell points out that there were a host of textbooks prepared for their use, outlining their duties and responsibilities, dating as far back as 1633. R.B. McDowell, *The Irish administration 1801- 1914* (London, 1964), p. 112. However, Nun and Walsh highlight that compared to their English counterparts, such texts for Irish magistrates were low in comparison. Richard Nun & John E. Walsh, *The power and duties of the Justice of the Peace in Ireland* (Dublin, 1844), p. iv.

described, reducing significantly the number of gentry suitable for a role in the magistracy in Ireland as compared to the situation in England.⁵ The religious composition of the island's population (7 million Roman Catholics and 2 million Protestants of various denominations)⁶ also played a role in limiting the number of potential magisterial candidates, specifically penal legislation which until 1794 prevented Catholics from taking up commissions, but even after these laws were relaxed the number of Catholics in the commission remained significantly low as such civil roles were coveted and protected by those in the Ascendancy.⁷ This opening chapter gives a brief overview of the role of magistrates, the manner of their recruitment and their social background so as to outline the basic components of the magistracy and the pursuit of this position by landed élites whose position and role are more fully explored in the subsequent chapters of this thesis.

What was a Justice of the Peace?

By the nineteenth century local magistrates were generally appointed by commission, which was awarded by the Lord Chancellor or the Keeper of the Seal. Historically magistrates could also be appointed by parliament (i.e. by statute) or by the monarch's authority (by charter). However, these measures were largely redundant by the nineteenth century but in times of emergency, such as rebellion, both could be used to add new members to the magistracy.⁸ At their most basic, magistrates were judges of records, or surveyors of certain laws, a role which was typically specified for a certain county in Ireland, but some magistrates were only given commissions to act within towns, boroughs, baronies or unions. Other basic duties included 'suppressing riots, taking securities to bind people to the peace, apprehending and committing criminals to trial in cases of indictable felonies and misdemeanours or, alternatively, discharging or summarily convicting people who had been charged with offenses and placed under the magistrates' jurisdiction by statute.'⁹ In a county with a large

⁵ McDowell, *Public opinion and government policy in Ireland, 1801-1846*, pp 80-81.

⁶ P. D. Hardy, *Religious statistics of Ireland* (London, 1849), p. 8.

⁷ The Test Act of 1693 was the particular penal law that prevented Catholics from attaining any office, civil or military unless they took an oath denouncing their faith.

⁸ Leonard MacNally, *The Justice of the Peace for Ireland* (Dublin, 1808), pp 80-81. MacNally, barrister at law, wrote a number of books pertaining to the laws and legalities of Ireland. In this volume he laid down the authorities and duties of the office of Justice of the Peace, like a mini handbook on how justices should act in given situations, according to the laws and statutes ascribed to their role.

⁹ Marilyn Silverman, 'Custom, courts, and class formation: constructing the hegemonic process through the petty sessions of a south-eastern Irish parish, 1828-1884' in *American Ethnologist*, vol. 27, no. 2 (May, 2000), pp 400-430.

municipal centre, such as Limerick, the urban magistrates acted for the most part within the city boundaries and had no jurisdiction outside those boundaries. Similarly, county magistrates had no jurisdiction within the city limits. Furthermore, a justice with a commission for a county could only execute his authority within the county for which he held a commission. However, magistrates were not restricted from entering another county to take statements relating to crime committed in their own jurisdiction but they had no authority to detain persons or to command the local police. Neither could they regularly carry out a judicial act when outside their own county though from time to time they could sit upon the bench of petty sessions in other counties.¹⁰ There were also protocols in place to stop magistrates carrying out magisterial functions outside of their own county and Nun and Walsh noted that where a magistrate experienced doubt over his jurisdiction that he was not compelled to carry out his duties.¹¹ In all such instances where a magistrate found himself in a county (or city) other than his own, he needed the authority of a local magistrate in that other area if he wished to carry out official functions as a magistrate, particularly if he wanted to use the local police force. The stifling affect this had on law and order in a cross-county context is examined in Chapter 5 but this reflected the localized nature of society at this time but also the boundaries the gentry put in effect to maintain their paternal control over their own localities.¹² The duties of a magistrate were varied but Justices of the Peace acted as judges and early detectives in investigating crimes within their locality, although they were restricted from acting as a judge over any case they may have investigated.¹³ They also took affidavits, writs and testimonies: to swear in front of a magistrate was the equivalent of taking an oath at petty sessions and any falsities could be treated the same as was lying or being in contempt of court.¹⁴ There was also in existence a provision to allow magistrates residing close to the boundary of an adjoining county to hold a commission in both counties. In many counties the far-reaching town lands, often near the border of an adjoining county, did not have petty sessions. To combat this complication, government allowed some magistrates to use a petty sessions court in a bordering county, provided they lived within five miles of where the petty sessions was held. Again, this points to the local structure of society and law

¹⁰ MacNally, *The Justice of the Peace for Ireland*, pp 91-92.

¹¹ Richard Nun & John E. Walsh, *The power and duties of the Justice of the Peace in Ireland* (Dublin, 1844), p. 48.

¹² This theme is examined in Chapter 5.

¹³ Ireland did not have properly trained detectives until 1847, see Elizabeth Malcolm, 'Investigating the 'machinery of murder': Irish detectives and agrarian outrage, 1847-70', in *New Hibernia Review*, Vol. 6, No.3, Autumn 2002, pp 73-91.

¹⁴ *Freemans Journal*, 11 October 1844.

and order as gentry living within a five mile circumference of the same petty sessions tended to be familiar with each other.¹⁵ However, this did result in some anomalies in the distribution of magistrates as can be evidenced in King's and Queen's Counties where six magistrates for King's County resided near the town of Clonasee in Queen's County while there was just one single active magistrate for Queen's County in the same extended area which covered roughly forty kilometres squared.¹⁶ Thus, magistrates had the power to jail persons, or bind them to the peace, and MacNally noted that all magistrates were equal under the law: 'no earl, baron, or duke had more power to keep the peace than private persons.'¹⁷ Justices also had power over the local police and to a lesser extent the military, and could call on them to carry out house raids, order them to patrol certain districts or to show their presence at the fairs which were a particular flash-point for violence in the pre-Famine decades. Historically justices also had the power to choose new members of the police force but they were stripped of this power after the 1836 Constabulary Act.¹⁸ Nevertheless, such appointments must have created a level of patronage between magistrate and police officer, patronage with a potential to disrupt the implementation of impartial law and order but this theme will be examined more in Chapter 5. The magistracy, however, were allowed to continue using the police-force after the 1830s in times of unrest, riot or to aid them to carry out a search for suspects or guns in a house or premises. Furthermore, in the case of a serious riot neither the military nor the police could fire upon rioters without the authority of a magistrate, highlighting the fact that the position still retained a high level of responsibility and trust even in the aftermath of the government reforms of 1836.¹⁹ Above all, however, the magistrates' main duty was to sit at petty and quarter sessions, which were lower forms of courts. Petty sessions, which are examined in more detail in Chapter 3, were local courts for the least serious crimes and neighbourly squabbles and while they often took place in town centres they also often moved to a magistrates' residence or rector's parish hall; the only premises magistrates were prohibited from using for petty sessions being those which sold or held fermented or spirituous liquor.²⁰ By the 1830s urban centres were starting to intrude

¹⁵ Robert Hartigan, 'Fabricated crime and religious tension in pre-Famine Offaly' in *Offaly Heritage* (Journal of the Offaly Historical & Archaeological Society), Vol. 8 (2015), pp 8-18.

¹⁶ See maps and discussion of distribution of magistrates for middle belt counties pp 30-38, and appendix figures 1-4.

¹⁷ MacNally, *The Justice of the Peace for Ireland*, pp 73-74.

¹⁸ Constabulary (Ireland) Act 1836, C A P. XIII. An Act to consolidate the Laws relating to the Constabulary Force in Ireland. [20th May 1836.] See www.irishstatutebook.ie.

¹⁹ Even without the presence of a magistrate, the constabulary were warned against using their arms without 'absolute necessity'; NAI: CSORP, Outrage Report: 8099 16 1840.

²⁰ John O'Donoghue, *The summary jurisdiction of magistrates*, pp 3-4.

upon rural life with schools, dispensaries, jails and post offices springing up in the larger market towns, a development which often made these urban centres into interfaces between modernity and a traditional way of life that often spilled over into violence.²¹ This is not to say that Ireland was modernising in a conventional sense at this period, from a folk form of structure to an industrialised one as the economy remained predominately land based, but urbanization and the growth of towns was increasing rapidly.²² This last point is somewhat ironic when it is considered that the driving force behind the growth of many towns was successive governments' desire to introduce impartial law by building courthouses and police stations, yet these introductions did very little to diminish the crime rate as between 1837 and 1843 there was only a slight decrease in crimes reported to the police from 6575 in 1837 down to 5361 in 1842, a decrease of just over one thousand.²³ Yet during the period 1820-1843 some 24 courthouses were built in the middle-belt counties. Purpose-built court-houses started to become a permanent fixture in many towns throughout the first half of the nineteenth-century and in some cases the ground for building these new sessions' houses was donated by one of the local large landed magnates.²⁴ Where no such patronage materialized, however, the cost of building a courthouse fell on the Grand Jury, and where no building was erected, a sum of £10 was allotted by the Grand Jury for the renting of each public courthouse within a county.²⁵ Petty sessions were expected to be regular occurrences, monthly at least, and while sessions frequently served as social occasions for the gentry and magistrates, in more remote locations the duty of presiding often fell to the same few magistrates who repeatedly attended at these petty sessions. Quarter sessions were intended for trying more serious crime and took place four times a year and dealt with all crimes within a county or

²¹ Gary Owens, 'A moral insurrection: faction fighters, public demonstrations and the O'Connellite campaign, 1828' in *Irish Historical Studies* 30: 120 (Nov. 1997), pp 513-44.

²² John Hickey, 'Religion in a divided society' in Patrick Clancy et al (eds.) *Ireland: a sociological profile* (Dublin, 1990), p. 278. See footnote 15 in Chapter 3 for growth of Irish towns.

²³ An examination of Outrage returns for the 1830s and 1840s shows that there was a surge in crime in the second half of the 1830s that coincided with the growth of many towns and the introduction of government reforms; Outrages (Ireland) *Return of outrages reported by the constabulary in Ireland 1836-1842*, H.C 1843 (460) li. 149. The seven counties studied experienced the highest levels of crime in the immediate pre-Famine years yet King's County

²⁴ Isaac Weld, *Statistical survey of the County of Roscommon* (Dublin, 1832) p. 212. Weld notes that the building of a new petty sessions house and bride-well were to be built in Boyle with a cost of almost £2000. Viscount Lorton contributed the ground and £500 towards its construction.

²⁵ The new Nenagh court house cost the North Tipperary Grand Jury £6000 in 1839. *The sessional papers presented by the House of Lords, 12 & 13 Victoria*, session 1849, p. 126. Other courthouses built in the Middle-Belt counties included; Tullamore, 1835. Kilmallock, 1830 and 1841. Tulla, 1838, Killaloe 1830. Kilrush, 1830. Ballyneety sessions house, 1820s. Boyle, 1830. Roscommon, 1832. Manorhamilton, 1835. Ballinamore, 1830. Carrick-on-shannon, 1822. Borris-in-ossory, 1828. Stradbally, 1830. Abbeyleix, 1820. Rathdowney, 1830. Durrow, 1820. Edenderry, 1826. Thurles, 1826. Borrisokane (barracks), 1840s. Carrick-on-suir, 1840. Clogheen, 1841. Dundrum, 1824.

city,²⁶ though more often than not the more violent cases were forwarded to the assizes, a twice yearly court that was the antecedent to the high court and was presided over by professional circuit judges.²⁷

Justices were encouraged to reside within twelve miles of the petty sessions they presided over in order to exert full authority over their neighbourhood: however, in the 1832 commission into the state of Queen's County both the commissions and the local magistrate, Hugh Boyd Wray, felt that two magistrates within a twelve mile diameter radius was insufficient.²⁸ Magistrates were severely discouraged by the Lord Chancellor from executing their office at petty sessions in cases in which they had a personal interest. Ideally a magistrate who investigated crimes did not pass judgement on the accused himself and instead sent them onto petty sessions for a ruling from his fellow magistrates. This was to show transparency at all times, which was further reinforced by Dublin Castle with the insistence that there had to be at least two magistrates sitting at any sessions for decisions to be legitimate,

These are such as render it not less the interest than the duty of magistrates, to form or frequent such meetings, and, where they can do so, to decline acting singly or in private, unless when called upon by sudden and pressing emergency, or upon occasions which will not conveniently admit of postponement or delay.²⁹

It was hoped to reduce the degree of partisanship exercised and to keep over-ambitious magistrates in check as it often turned out many magistrates used the court to impose their authority as they saw fit. This was corroborated in the House of Lords findings of 1823 after the introduction of petty sessions in some counties when it was attested that:

The mere knowledge of the existence of the plan of revision has produced salutary consequences, by increasing the diligence, accuracy, and careful conduct of the magistrates, and by a more effectual and pure administration of law. The useful practice of assembling frequently and regularly at petty sessions has been

²⁶ Though Quarter Sessions were expected to be held four times annually, in most places this varied. For example, in Limerick sessions were only held in Bruff once a year. Quarter Sessions for the Middle-Belt counties were; for County Limerick; Bruff, Rathkeale and Newcastlewest. In Leitrim; Manorhamilton, Carrick-on-Shannon, Ballinamore. In Queen's County; Stradbally, Borrisinossory, Maryborough, Abbeyleix. In Roscommon; Strokestown, Athlone, Boyle, Roscommon, Castlerea. In Tipperary; Clonmel, Nenagh, Thurles, Clonmel. In Clare; Ennis, Ennistymon, Milltown, Kilrush, Sixmilebridge. In King's County, Birr, Philipstown.

²⁷ Desmond Keenan, *Pre-Famine Ireland: social structure* (Indiana, 2001), p. 214. Assizes for Middle-Belt counties; In Tipperary; Nenagh and Clonmel. In Limerick, Kilmallock In Clare; Ennis.

²⁸ *Evidence before the select committee into the state of Ireland, 1832* (H.C) 1832 (677) v.73, pp 218-230.

²⁹ Richard Nun & John E. Walsh, *The power and duties of the Justice of the Peace in Ireland*, p. 82. For more see Chapter 4.

introduced... and the dangerous habit of administering justice, by separate magistrate, at their respective residences, is gradually subsiding.³⁰

Where magistrates resided in isolated areas and at a long distance from a petty sessions within their own county, there was a provision to allow such magistrates to hold a Commission of the Peace in a neighbouring county if the nearest petty sessions was in this adjacent county, though there was no example of this in the middle-belt counties. The main provision in such instances was that the petty sessions had to be no more than five miles from the part of the adjoining county that was being administered.³¹ Such measures, however, again suggest the preoccupation the administration had with ensuring that a smooth and impartial justice reached all corners of the island at this time.

There was no real qualification required in order to become a magistrate. It was stipulated in all magistrate manuals that a basic income from land should be the only real qualification a person should meet before entering the magistracy, and while this was certainly true in England before the industrial revolution, in Ireland it often happened that persons without sufficient land entered the commission.³² In fact, where no suitable landed candidates could be found to fill the position of magistrate 'the Chancellor shall have power to put other discreet persons in such commissions, though they have not lands.'³³ Unlike the situation in England, the magistracy in Ireland was for the most part a position monopolised by one religious section of society and used to maintain the Protestant Ascendancy. Catholics did attain commissions but never in great numbers³⁴ and given the very uneven ratio between numbers of Catholics and Protestants on the island, the Irish magistracy allowed persons from a lower social stratum than was desired to enter their ranks simply in order to retain a strong Protestant presence on the bench.³⁵ It is very hard to determine exactly how many Catholic magistrates there were in the middle-belt counties but the McNamara family in Clare were Catholics and returned five magistrates for the county. The Cassidy brothers in King's

³⁰ Dispatches from the Lord Lieutenant to Mr Secretary Peel relative to the State of Ireland, House of Lords sessional papers, Vo.1 158, 1823, p. 6.

³¹ O'Donoghue, *The summary jurisdiction of magistrates*, pp 2-3.

³² MacNally, *The Justice of the Peace for Ireland*, pp 84-85. An example of some low acreage holding magistrates in the middle-belt counties were; Thomas Browning and John Heffernan 250 acres each, Croom and Mannister, Limerick. Henry Spaight 300 acres, Quin, Co. Clare. Richard Grattan 400 acres, Edenderry, King's County John Duckworth 100 acres and John Devenish 200 acres, Boyle and Strokestown, Roscommon. William Fennel 300 acres, Cahir, Tipperary.

³³ Richard Nun & John E. Walsh, *The power and duties of the Justice of the Peace in Ireland*, p. 3.

³⁴ As an example, Roger Hayes was sworn in as magistrate for Waterford city in 1832, he was the first Catholic magistrate sworn in the county since the reign of James II; J Murray, *The correspondence of Daniel O'Connell, the liberator*, vol. II (Dublin, 1888), p. 373.

³⁵ Further analysis on the denominational breakdown of magistrates is discussed in Chapter 2.

County were also Catholics as were the Roche and Russell families in Limerick, the Moores and Daltons of Tipperary. Thus, despite Broeker's use of an 1825 report on the state of Ireland to attest that there were 'many' Catholics in the southern magistracy, the words of the Marquis of Landsdowne appear to be far more accurate:

Why the number of Catholic magistrates did not bear the same proportion to the Catholic property of Ireland as the Protestant magistrates to the Protestant property? Why, in some counties, where persons of the Catholic persuasion were qualified, were there no Catholic magistrates?...By not being so admitted, a suspicion could not fail to be infused into the minds of the lower classes, that impartial justice was not dealt out to them.³⁶

According to one handbook, the only other prerequisite desired to hold a commission was that the magistrate had to possess the finer traits associated with being a gentleman, namely, having elevated manners and the best intentions and respect when carrying out the law, i.e. showing impartiality. It was also important that the magistrate should have an impeccable reputation and while this also alludes to the non-partisan nature of the position in relation to the parties in court, it also addresses the working relationship between the gentry since some magistrates refused to work with other magistrates whose reputation had been tarnished. An example of such was the case of Reverend Luke McDonnell in Kilkenny whose overzealous actions increased opposition to tithes in 1830 with the result that his fellow magistrates refused to sit with him, the case of Thomas O'Brien in Chapter 2 is a further example of this.³⁷ It was natural that men of such character were coveted by the administration, particularly when magistrates were faced with decisions that meant life or death for the general public, but again, the numbers game meant that some magistrates did not meet these requirements. Writing in 1808 Leonard McNally insisted that 'contrary to statutes men of small substance crept into the commission whose poverty made them both covetous and contemptible.' He held the belief that no justice should be appointed who did not hold at least £20 per annum from land, which due to inflation in the aftermath of the Napoleonic wars was closer to £100 in the period 1830-1846.³⁸ The reasoning behind the requirement for such qualifications was that it was believed that a lack of wealth led magistrates to act corruptly,

³⁶ The Marquis of Landsdowne's motion on the State of Ireland, *The parliamentary debates*, Vol. VII, 1822, p. 1052.

³⁷ MacNally, *The Justice of the Peace for Ireland*, p. 82; Edward E. Deacon, *A digest of the criminal law of England, Vol. 1* (London, 1831), p. 712. Patrick O'Donoghue, 'Causes of the opposition to tithes, 1830-38', in *Studia Hibernica*, No. 5 (1965), pp 7-28.

³⁸ MacNally, *The Justice of the Peace for Ireland*, pp 84-85.

oppressively and partially while engaged in their duties. Nun and Walsh note how any magistrate not ‘thus qualified’ acting as a magistrate was fined £20.³⁹

Justices of the Peace formed just one spoke in the wheel that made up local administrations in the pre-Famine period in Ireland, although they were the largest body within the local authorities and in many respects wielded most power. However, many of the other offices within local government involved magisterial power, including the right to detain accused persons, take statements or grant rewards, but these powers were never as great as those of the individuals holding a Commission of the Peace. Deputy Lieutenants (DL), who had a say in selecting and proposing magistrates to Dublin Castle, played a large part in the administration of the county in addition to being granted military powers during times of serious disturbance, namely enrolling volunteers into the local militia.⁴⁰ Most DLs were also magistrates but the position on its own allowed them to receive complaints and issue summons in the same manner a JP could. How often DLs used these powers or were involved in the day to day business of the magistracy remains unclear but DLs like Joseph Gubbins in Limerick who attended twenty-three of twenty-seven petty sessions at Bruff, Co. Limerick and a further two petty sessions in Kilmallock for the year 1835. His fellow Limerick DL, James D. Lyons, attended twenty-five of forty-five petty sessions in Croom. In Queen’s County George Adair was a regular attendee at the Ballybrittas petty session, though exact dates are not available. While Denis Kelly in Roscommon only attended two petty sessions at Mount Talbot. In all, forty-two Deputy Lieutenants from a total of seventy-one attended petty sessions across the middle-belt counties in some form, and some sat at more than one petty session, though each individual’s attendance varied greatly from each other.⁴¹ The High Sheriff, an office holder appointed by the crown on a yearly basis, was usually selected from a list of three persons whose names were selected by the Lord Lieutenant of the county and forwarded to Dublin Castle for consideration. The position was largely ceremonial, with minimum magisterial powers and came with a huge financial burden, but Sheriffs, through an under-sheriff, were responsible for calling freeholders for criminal jury duty. Sheriffs did not possess the same level of magisterial power as did a DL but had the authority to detain and question suspects if witnessing unlawful acts in their immediate vicinity.⁴² Likewise, the

³⁹ Richard Nun & John E. Walsh, *The power and duties of the Justice of the Peace in Ireland* (Dublin, 1844), p. 3.

⁴⁰ Virginia Crossman, *Local government in nineteenth-century Ireland* (Belfast, 1994), pp 17-18.

⁴¹ *Returns of Petty Sessions in Ireland, 1835*, H.C. (415) xlii, 463.

⁴² Connolly makes reference to the Sheriff of Galway arresting a suspected Hougher in Galway City in the 1720s. S. J. Connolly, ‘The Houghers: agrarian protest in early eighteenth-century Connacht’ in C.H.E Philpin

County Coroner could also interrogate or mediate for parties if he was in the immediate vicinity of a dispute and thus, if a magistrate was to be made coroner or sheriff for a county, he was required to give up any authority to act as a justice within the said county.⁴³ Finally, the last cog in the local legal administration during the immediate pre-Famine years was the clerk of petty sessions or quarter sessions, who was regarded as a magistrate but only in an administrative capacity. The role involved recording the proceedings of sessions, dealing with any fines dispensed to guilty parties and informing the public and county treasurer of any escheats and all other such legal administrative duties. Clerks were often attorneys and as such were more familiar with the intricacies of the law than were JPs and they assisted justices both in and out of court, thus, were an essential part of the everyday life of magistrates. While clerks were generally appointed by Deputy Lieutenants, they were also recommended to government by Resident Magistrates, particularly where no clerk was present at petty sessions; in such instances the Resident Magistrates could elect one on the day, a further example of the growing responsibility given to government magistrates rather than local magistrates which is explored in more detail in Chapter 5.⁴⁴ However, the resounding issue revolving around Clerks was the issue of payment as they were reliant on fees generated from fines at petty sessions, an issue highlighted in the liberal *Dublin Evening Packet* whose editor described clerks as ‘ignorant’ and ‘uneducated’ and asserted that they should not have the power to decide what cases should be heard as, firstly, there was a personal interest due to needing cases to be tried to receive payment, and secondly, the editor hints at collusion with local magistrates in regards to cases that were acquitted, namely where landlords or interests of landed magistrates were at stake. The editor infers that clerks need to be men ‘beyond local influence’, implying that law and order needed the intrusion of central government, which is a theme that is tackled throughout this thesis.⁴⁵ Thus, the numbers of those involved in the local administration of governance were varied but the Justice of the Peace sat at the heart of the administration for each county and was more than a mere instrument of law and order, an issue which will be further explored when the subject of the Grand Jury, which was the forerunner to county councils, is discussed in Chapter 2.

(ed.), *Nationalism and popular protest in Ireland* (Cambridge, 1987), pp 139-162. Robert Harding, Sheriff of Cork, arrested John Sweeny in 1797 for spreading seditious literature outside the city goal. Sir Richard Musgrave, *Memoirs of the different rebellions in Ireland* (Dublin, 1801), appendix no. 11, p. 38.

⁴³ MacNally, *The Justice of the Peace for Ireland*, pp 83-84.

⁴⁴ N. Simons, *The statutes of the United Kingdom of Great Britain and Ireland* (London, 1829), pp 226-227.

⁴⁵ *Dublin Evening Packet*, 18 January 1845.

Peers, Gentry, Under Gentry and the Clergy.

By the nineteenth century each county had a number of magisterial positions filled by the large landed magnates, who more often than not took the position in an honorary capacity, though this position did allow them to attend magisterial meetings and have an input into county business. Their elevated stature within society meant they were automatically leaders of the county community regardless of their being in the Commission of the Peace or not, but those that held a commission, did not usually wield their magisterial powers or attend to magisterial duties in the same manner as the gentry and under gentry below them as their wealth already cemented their place in society, whereas those below them, as Chapter 2 will demonstrate, used official roles to enhance their standing in society. Many of these magnates were also peers, some conducted parliamentary business at the House of Lords or many also acted as Deputy Lieutenants for their respective counties, such as Lord Clarina Eyre Massey who was a Poor Law Guardian, Deputy Lieutenant and member of the House of Lords for Limerick.⁴⁶ Initially Deputy Lieutenants had some military or militia responsibility insofar as they raised, maintained and housed the militia during times of unrest, and it was hoped that these DLs would become the link between the magistracy and the Chief Secretary's Office. However, by the middle of the nineteenth century the office was largely reduced to an honorary position that carried little meaningful power but came with some serious financial burdens including having to house and feed the militia once it was raised in their district.⁴⁷ The position also required that Deputy Lieutenants put forward recommendations when an opening appeared in the magistracy and as a result Deputy Lieutenants received a large amount of mail looking for their patronage. Both peers and county lieutenants were often listed in official reports, commissions and newspapers as being active members of the magistracy – something which can be misrepresentative of the actual number of (lay) magistrates who carried out their duties. The 1832 government commission into the numbers of magistrates in Ireland lists those peers who were in the Commission of the Peace for the seven counties – Clare, King's County, Leitrim, Limerick, Queen's County, Roscommon and Tipperary.⁴⁸ The list does not signify whether any of these persons were Deputy Lieutenants, but from the outset it can be seen that the numbers varied widely between counties. Limerick,

⁴⁶ Sir Andrew Armstrong was an MP and DL for King's County, Viscount De Vesci was a DL for Queen's County, Lord Edward Crofton was the Chairman of the Board of Guardians and M.P for Roscommon, Sir Henry Carden was a Grand Juror and Deputy Lieutenant for Tipperary while the Earl of Leitrim was an M.P for Leitrim.

⁴⁷ Crossman, *Local government in nineteenth century Ireland*, pp 15-23.

⁴⁸ See table of peers and honorifics in the Commission of the Peace, Appendix, Figure 9.

with a population of c. 300,000,⁴⁹ had the largest contingent with twenty peers out of 141 magistrates, which is roughly fifteen-percent of the total magistracy in Limerick almost totally inactive in day-to-day regular magisterial duties. Tipperary, a larger county of 1,662 square miles, with a population of over 350,000, had nineteen peers out of 169 magistrates in the Commission of the Peace, equalling just over eleven percent of the total number of magistrates.⁵⁰ In Clare, with a population similar to Limerick, only six honorifics from 118 magistrates were in the Commission of the Peace, which was five percent of all commissions in the county. Leitrim had thirteen-percent, Roscommon eleven percent, while Queen's County and King's County each had just over ten percent. Therefore, with the exception of Co. Clare, the other counties recorded a minimal presence (an average of ten per cent) of peers and honorifics in the Commission of the Peace. These individuals' motives for procuring a commission are unknown, but the role and conduct of landed élites in general, and of the magistracy in particular, was under growing pressure and criticism from many quarters throughout the opening decades of the nineteenth-century. One motive may have been in response to critics, as public men, the poor, various Catholic organizations, the Catholic clergy and the government, all attacked the role of the landed magistracy in some capacity during this period, hence the permanent introduction of Stipendiary Magistrates to remedy these complaints. Thus, many of 'the greater gentry and peers saw the magistracy as a natural stage from which they could respond to these charges and reassert their local influence.'⁵¹ In consequence, by the 1830s, the position of magistrate became a buffer protecting local landed authority from the advances of central government as up to this juncture landlords held far more sway over the local tenantry, but central government threatened to break this dominance by introducing a greater measure of impartial law and order.⁵²

The second issue that becomes clear in Figure 1 below is the duplication of names across the seven counties. George King, the Earl of Kingston, is listed as a magistrate for Roscommon,

⁴⁹ Population (Ireland) *Abstract of answers and returns under the Population Acts, 55 Geo. III. Chap. 120. 3 Geo. IV. Chap. 5. 2 Geo. IV. Chap. 30. 1 Will. IV. Chap. 19. Enumeration 1831*, H.C 1833(634) xxxix.59

⁵⁰ Names of peers in the Commission of the Peace taken from; Returns (Magistrates, Ireland) to *House of Commons (HC), 1832 (531). A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections, H.C 1836, (318) xxxviii.139. xxxviii.139.*

⁵¹ Andrew Timothy Balchin, 'The Justice of the Peace and county government in the east riding of Yorkshire, 1782-1836' (PhD thesis, University of Hull), pp 78- 79.

⁵² Patrick Duffy, 'Colonial spaces and sites of residence: landed estates in nineteenth century Ireland' in Michael M. Roche and Lindsay J. Proudfoot (eds.) (*Dis) placing empire: renegotiating British colonial geographies* (Hampshire, 2005), pp 15-40.

Limerick and Tipperary while also being listed as a justice for Cork, Sligo and Waterford, and his brother, Robert King, also appears for Limerick and Tipperary. The King family had its residence in Mitchelstown, Co. Cork, but their lands spread across the several counties in which Robert King was listed as a magistrate.⁵³ While the family might have held a commission across multiple counties, naturally they could only be in one place at a time, and as a result, such absentees often let agents or middlemen act on their behalf in the counties in which they were not resident.⁵⁴ While absenteeism is often thought of in relation to landlords of Irish estates who resided in England here is a prime example of the phenomenon within Ireland. The Massey family were another élite landed family; originally Cromwellian settlers in Limerick, but by the nineteenth century had residences in many neighbouring counties. Sir Hugh Dillon Massey, who resided in Doonass, County Clare less than two miles from Castleconnell, was listed as a magistrate for both Clare and Limerick, while George Massey was listed for Limerick and Tipperary and Hugh Baron Massey for Limerick alone. Unlike the Kings, the Masseys were not absentees and had involvement in the civil and social life of the three counties of Limerick, Clare and Tipperary in which they resided, something which gave them significant powers in some of the best farming land in the country, allowing them to build a web of patronage as well as family networks across multiple counties.⁵⁵ In Clare both Hugh Dillon and his son Hugh Dillon Massey Jnr were members of the magistracy, while in Tipperary Hugh Massey, William Massey and James Hewitt Massey Dawson all appeared as members of the magistracy along with George Massey.⁵⁶ However, their stronghold was in Limerick with some ten members of the family itself and of those married into the family listed as members of the magistracy. Five of those listed as magistrates for Limerick, however, were also named for Clare and Tipperary, which highlights the fact that such duplication of the names of magistrates across county lists was not limited to peers

⁵³ The first of the King family to come to Ireland was an officer in the Elizabethan army, John King, who married the daughter of the highest ranking official in Ireland at the time. It was John's grandson who inherited the estate in Mitchelstown through marriage. Donald MacKay, *Flight from Famine: the coming of the Irish to Canada* (Dundurn, 2009), pp 46-48.

⁵⁴ Magistrates (Ireland) *Returns of the names of magistrates in the Commission of the Peace, in Ireland; magistrates who have directed a writ of dedimus to be issued for the renewal of their commissions, and paid their fees; and persons who have been superseded as magistrates by the issue of new commissions; specifying those who are in holy orders, practising barristers, solicitors, or attornies at law*, 1832, p. 15, H.C (531), xxxv.297.

⁵⁵ For a wider history of the massy family and their settlement of Limerick see Frank Tracy, *If those trees could speak: the story of an Ascendancy family* (Dublin, 2005).

⁵⁶ Magistrates (Ireland) *Returns of the names of magistrates in the Commission of the Peace, in Ireland; magistrates who have directed a writ of dedimus to be issued for the renewal of their commissions, and paid their fees; and persons who have been superseded as magistrates by the issue of new commissions; specifying those who are in holy orders, practising barristers, solicitors, or attornies at law*, 1832, p. 15, H.C (531), xxxv.297.

alone, suggesting that positions such as magistrate were semi-feudal and the local authority derived from positions such as magistrate was central to the aspirations and empire building of landed families in the pre-Famine decades.

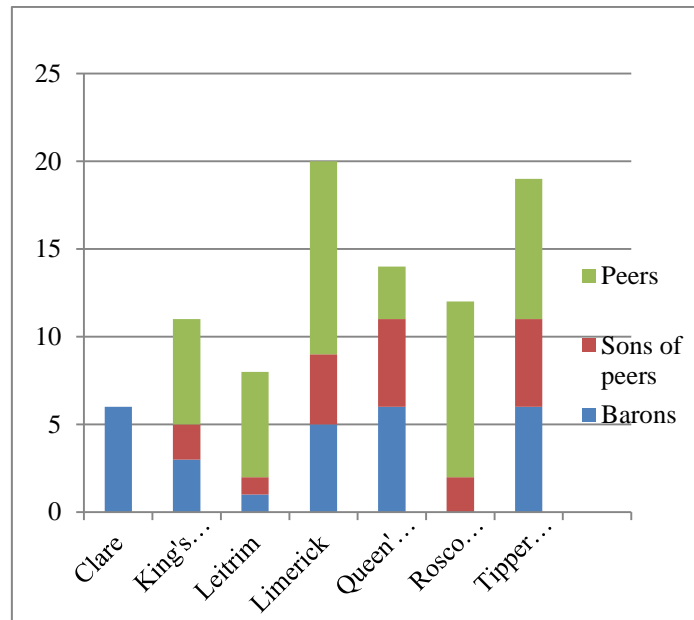


Figure 1. Number of magistrates in each county who held a peerage or title.⁵⁷

While histories have claimed that the magistracy in Ireland was largely formed from the under-gentry, Figure 1 displays a full breakdown of the peerage in the magistracy during the 1830s and allows further dissection of the ranks of the magistracy who held a peerage or title. County Clare was the only county without any representation from the peerage in the magistracy, but had six Barons which was the lowest form of honour bestowed upon someone, which reflects the low level of honorifics in the county as a whole, while in contrast Roscommon's magistracy was top heavy with ten peers and no knights.⁵⁸ The other counties had representatives from each tier of the peerage. As stated, many of these were honorary positions and it was rarely that members of the élite carried out their magisterial duties but as Chapter 3 will show, some long-standing families like the Masseys in Limerick did perform their full magisterial duties including regularly attending petty sessions. However, this prompts the question as to why so many honorifics held a Commission of the Peace? If it was a question of having their interests represented in petty sessions or at important magisterial

⁵⁷ *Returns of the number and names of the magistracy 1832*, H.C (531), xxxv.297. p. 15.

⁵⁸ A number of peers and honorifics residing Clare were also listed as such for neighbouring counties such as the Fitzgibbons, earls of Clare, who were magistrates and Grand Jurors for Limerick.

meetings, most landed élites delegated land agents to serve in magisterial or Grand Jury positions for this purpose.⁵⁹ An example of such was Alfred Furlong who was agent to the Downshire estate in Limerick and a Justice of the Peace for the county. As discussed, a number of such élites also had sons and members of extended family who were in the magistracy and who could also be relied on to act in the family's interest, as Curran notes 'the Tyrone Independent Club claimed that the Grand Jury was a closed shop 'frequented by the same men or their sons.'⁶⁰ While it is impossible to state individuals' motives for retaining their commissions, the sons of the upper gentry were all encouraged to enter civil society to learn responsibility and duty from a young age and perhaps this provides another explanation as to why this group retained their commission, reflecting the tradition whereby the values of public service were instilled in them from a young age by their fathers.⁶¹ The lists of the names of the magistracy are littered with the names of fathers and sons concurrently acting as magistrates for their county, this is even more evident in the 1835 returns of petty sessions which is discussed in Chapter 4. This sense of public service also led to sons of the gentry serving in the military and the clergy, thus making public service an important aspect of élite culture and an instrument that helped landed persons cement their position as élites in society. The Gough family, originally from Limerick, reflect élite attitudes to public service at this time. A landed family whose forbearers arrived with the Cromwellian invasion not residing on the outskirts of Limerick City in the 1790s and the head of the house, Lieutenant Colonel George Gough, led the local militia during the during the 1798 disturbances and fought at Westport and Johnstown. Following in his footsteps, all of his sons, except the eldest who entered the clergy, joined the military and the most famous of them, Hugh Gough, became a highly decorated officer and received a multitude of honours from the King for his services, including Baron and Viscount. In the wake of his career Viscount Gough established his relatives as leading families in County Tipperary.⁶² Nevertheless, such public service was double edged insofar as it helped maintain élite status in the short-term but it also concealed the decline in power which became more serious as the century wore on, firstly with the effects of the famine upon rentals and the loss of income for many landlords, but also with the challenge of the rising middle classes, who, through a series of land and political reforms,

⁵⁹ Terence A. M. Dooley, 'Estate Ownership and management in nineteenth and early twentieth-century Ireland' (www.aughty.com accessed on 1/3/2015), p.1.

⁶⁰ See Curran, *The Protestant community in Ulster, 1825-45* (Dublin, 2014), p. 84. A similar complaint about the Longford Grand Jury appeared in the *Freeman's Journal* in 1833: *Freeman's Journal*, 8 August 1833.

⁶¹ David Roberts, *Paternalism in early Victorian England* (London, 1979), pp.56-61.

⁶² Anne Chadwick, 'Tipperary Joe: Field Marshall Viscount Gough' in *Tipperary Historical Journal*, 1994, pp 91-95.

in many ways usurped the power of landed élites at local level.⁶³ At its most basic however, the possession of a Commission of the Peace gives some indication of those families that were either motivated by a sense of civic duty or saw the position of magistrate as a stepping stone to or apprenticeship for some higher position. This was certainly most applicable in the case of the second or third sons of the landed élite, who had to make their own fortune on reaching adulthood, though this is generally attested to the gentry below the level of the grand landed magnates whom all received lands and/or financial subsistence from the head of the family or through inheritance. Yet in the middle-belt counties there was a plethora of sons of large landowners in the ranks of the magistracy but as an overall per-cent age they remained low in comparison to lesser gentry; Sir Aubrey De Vere, Lord Dunraven in Limerick, Sir Augustine Fitzgerald in Clare, Earl of Rosse in King's County, Sir Charles Coote in Queen's County, Lord Edward Crofton in Roscommon, Lord Dunalley in Tipperary and Lord Clements in Leitrim.⁶⁴

While peers played a limited role in the magistracy across the middle-belt counties most members came from the ranks of the gentry, which is a loose term used to describe an homogenous group with shared ideals of culture and religion, and more or less on the same economic footing. But the reality of the term, particularly in relation to Ireland, was a lot more fluid than that. Thompson and Mingay have focused specifically on the English gentry and for the most part describe them as the layer of land owners between the peers and the yeomanry, but found the term 'gentry' vague rather than helpful, as those persons who made up the ranks of the gentry came in different shapes and sizes.⁶⁵ Shipley's more recent study dissects the social composition of the gentry of Leicester into sub-groups depending on their landed wealth, finding that definitions such as upper and lower gentry were less than obvious in the application of their role both within Leicester and on a national level.⁶⁶ But even here, Shipley stresses that 'some qualification must be made; some members of the gentry were richer than some peers and at the lower levels they were little wealthier than the more prosperous farmers.'⁶⁷ The same analysis can be equally applied to Ireland: here industrious men at the lower end of the social spectrum, who gradually built up their fortune by networking or procuring land, at times financially equalled or surpassed some older, more

⁶³ For more see Terence Dooley, *The decline and fall of the Dukes of Leinster 1872- 1948* (Dublin, 2014).

⁶⁴ *Returns of the number and names of the magistracy 1832*, H.C (531), xxxv.297. p. 15.

⁶⁵ F.M.L Thompson, *English landed society in the nineteenth century* (Oxford, 2007); G. E. Mingay, *The gentry: the rise and fall of a ruling class* (London, 1976)

⁶⁶ Peter Samuel Shipley, 'The Leicestershire gentry and its social and cultural networks c. 1790-1875' (PhD thesis, University of Leicester, 2010).

⁶⁷ Shipley, 'The Leicestershire gentry and its social and cultural networks c. 1790-1875', p. 22.

established, families who were living off titles granted to their ancestors. An example of this is demonstrated by the opposing fortunes of the 3rd Earl of Portarlington and the land agent Charles L. Sandes in Queen's County. The 2nd Earl of Portarlington, John Dawson, lived so far outside his means that by the time the estate passed to his nephew, Henry Dawson-Damer, the estate was in debt to the tune of some £600,000 which in today's money could range from twenty to thirty million pounds.⁶⁸ In contrast, Charles Sandes came from a small landowning family in Limerick, but through the marriage of his father to Sarah Croker of the large landowning family in Limerick, and his own marriage to the sister of Sir Charles Henry Coote, Baronet of Ballyfin (to whom Sandes was land agent) Sandes emerged after the famine with estates in both Limerick and Queen's County nearing three thousand acres, which as will be explained below, placed him on the periphery of the upper gentry.⁶⁹

At this juncture and to help clarify how the social stratum of the gentry was gauged, a brief explanation and outline of the incomes of these families is necessary. Thompson and Mingay's research on the English gentry during the eighteenth century, found that by the opening decades of the nineteenth-century £1000 was the minimum annual income required to sustain a country gentleman. Any person earning such a sum from land revenues, but no more than £2000, can be considered as a member of the lesser gentry. Terence Dooley supports this calculation in an Irish context by confirming that land agents typically earned up to five percent of an estate's rental income or an annual income of up to £1000.⁷⁰ Reilly notes that 'with a salary of £500 per annum Francis Berry was the best paid land agent in Kings County, followed by Thomas Murray who received £350' both of whom were also magistrates for the county.⁷¹ Bateman's series of the great landowners of Great Britain and Ireland, written between 1876 and 1883, set an income of £3000 from 3000 acres as the minimum required to be considered as a great landowner.⁷² Thus, with £1000 being the minimum income required to be deemed a member of the gentry and £3000 being the marker for the upper gentry, this suggests that the middling gentry were those who lived off an annual income of £2,000 to £3,000 from land revenues. Incomes for Knights, and some

⁶⁸ W.T.H, *The encumbered estates of Ireland* (London, 1850), p. 17.

⁶⁹ NUIG Landed Estates Database, Moore Institute. U.H. Hussey De Burgh, *The landowners of Ireland: An alphabetical list of the owners of estates of 500 acres or £500 valuation and upwards in Ireland with the acreage and valuation in each county* (Dublin, 1876).

⁷⁰ Terence A. M. Dooley, 'Estate Ownership and management in nineteenth and early twentieth-century Ireland' (www.aughty.com accessed on 1/3/2015), p.1.

⁷¹ Ciaran Reilly, 'Land agents and estate management in King's County during the Great-Famine, 1838-53' (PhD thesis, NUI Maynooth, 2010), p. 45.

⁷² John Bateman, *The great landowners of Great Britain and Ireland* (London, 1883).

baronets, typically fell between the middling to upper levels of income. While the peerage, generally the great landed magnates, were those who earned over £10,000 annually. Precise sources and accurate determining of land-holdings in the pre-Famine era are near impossible to find. The Devon Commission is a valuable source in regard to the size of estates but while it is a contemporary source the number of persons who disclosed their precise holdings was limited enough, less than five per cent,⁷³ and the number of these that were magistrates was even fewer again. However, the landed estates database generated by the Moore Institute, National University Ireland Galway (NUIG), and the landowners of Ireland census taken in 1876, together provide a rough estimate of the land holdings of individual magistrates in order to determine, using the guidelines laid out by Mingay et al, the social strata of the gentry who made up the magistracy in each county. Of the 141 Limerick magistrates examined for the period 1830-1845, information on holdings is available for sixty-two. It must be noted that the effects of the Great Famine did have negative consequences for a number of these landholdings and many estates in Ireland in general were greatly reduced or ran into ruin, but even with an allowance for some loss of acreage, seventeen magistrates in Limerick held lands smaller in extent than the minimum size of one-thousand acres. Of the remaining forty-five magistrates, seventeen had estates that fit the model of middling gentry with holdings ranging between one-thousand and two-thousand acres, leaving twenty-seven magistrates with significant estates of over two thousand. Omitting peers and knights from the calculation, this leaves a fairly even split between the lower-gentry, middle-gentry and upper-gentry in Limerick and this is important to note as contemporary sources and later historians often noted the lack of ‘suitable’ men in the Irish magistracy.⁷⁴ The acreage of eighteen magistrates only is discernible for King’s County but fourteen of these were upper gentry with estates of over three-thousand acres. In fact, five of this fourteen held estates of over ten-thousand acres and were not typical of the calibre of gentry from the county as a whole who took a Commission of the Peace. However, King’s County also had eight land agents holding a Commission of the Peace – more than any other county and demonstrates exactly how official roles such as the magistracy brought all tiers of the gentry together as equals. As explained earlier, land agents were generally classed as under-gentry, earning between £800 and £1000 per annum. However, in many cases land agents also held land of their own, but took the position of land agent in order to supplement their yearly income. In

⁷³ Joel Mokyr, *Why Ireland starved: a quantitative and analytical history of the Irish economy, 1800-1850* (Routledge, 2013), pp 81-150.

⁷⁴ *Returns of the number and names of the magistracy 1832*, p. 15, H.C (531), xxxv.297.

some cases their combined earnings were sufficient to place them in the category of middle gentry. For instance, Daniel Manifold, Justice of the Peace of Cadamstown, King's County, held 1,000 acres of his own yet he was also land agent to multiple land owners in the county, including the magistrate Thomas Bernard.⁷⁵ This offers an intriguing example of the social layers of the magistracy. As land agent, Manifold was answerable to Bernard the landlord, yet as magistrates they were equals. Manifold also acted on the Grand Jury and was also a poor law guardian. Yet, Bernard's extensive land holdings, over 15,000 acres, and more importantly the large sums of capital these estates generated, meant that Bernard would always eclipse Manifold in social standing in such an agrarian society.⁷⁶ While land-holding has long been acknowledged as the basic prerequisite for power in the nineteenth century, gaining political office was almost equally as important, particularly for lesser gentry such as Manifold. Not all land agents came from the under-gentry, however: the second and third sons of honorifics and large landed magnates sometimes acted as agents to family estates or to other large landed magnates to supplement their income in order to maintain an élite gentry lifestyle, and this is where the lines of gentry social strata become even more blurred.⁷⁷ For instance Thomas Crowe, magistrate and agent for the Wyndham estate in Clare, was charged with evicting a number of families from the estate by Wyndham, a fellow magistrate. Crowe, accompanied by a number of military and police, evicted the families in order to consolidate their small holdings and not because of any defaulting or infringement of the law on their part, as each tenant was willing to pay the rent.⁷⁸ George Gresson, a magistrate and agent to numerous estates in King's County, evicted over fifty families during the Famine years, in some cases physically taking people from their sick bed and laying them on the ground outside their home.⁷⁹ In total there were twenty-nine land agents identified across the middle-belt counties who also held a Commission of the Peace. This is a sizeable contingent, especially since up to 1836 local magistrates had considerable powers over the police. One of the main accusations against the police was that they were an extension of landlord authority and aided in the collection of tithes and in evicting tenants from their homes— something

⁷⁵ *Report from Her Majesty's Commissioners of Inquiry into the state of the law and practice in respect to the occupation of land in Ireland*, p. 545, H.C. 1845, [605] [606] xix.1, 57. [hereafter cited as *Devon Commission*].

⁷⁶ Reilly, 'Land agents and estate management in King's County', p. 19.

⁷⁷ Daniel Barrington, JP for Limerick and second son of Sir Matthew Barrington, was land agent to the Pery estate. Sir David Roche JP had acted as agent for his father's estates in Limerick, while Richard U. Bayly JP acted as agent to his brother's estates in Tipperary. Ciaran Reilly discusses the background of land agents in more detail in his PhD thesis.

⁷⁸ *Cork Examiner*, 2 October 1844.

⁷⁹ Reilly, 'Land agents and estate management in King's County', p. 136.

which was bound to have implications for land agents who were also magistrates.⁸⁰ In May 1832 police officers protecting bailiffs serving notices came under attack in Coolalough, a town land between Hospital and Knocklong in east Limerick, and near the Tipperary border, which left a member of the peasantry seriously injured. Similarly, in 1834 a large number of the peasantry attacked a police and military patrol led by the Resident Magistrate, T. P. Vokes, in Feohanagh, some five miles from Newcastle West, Co. Limerick.⁸¹ In this instance the armed patrol was protecting tithe bailiffs who were collecting over-due tithe for Rev. Thomas Locke, the local Protestant clergyman and Justice of the Peace, the affray resulting in the death of three of the peasantry while two were seriously injured, though the *Limerick Chronicle* later reported that four men were killed and up to twenty injured.⁸² In this regard, where landlords, land agents and clergy were magistrates for the county, the process of law and order was stacked in their favour. While the size of landholdings of magistrates in other counties remain unclear, from cross-referencing the partial figures available with details of magistrates' educational background, marriage, and other positions held (e.g. land agent, Deputy Lieutenant or Sheriff, all open only to men of means), a clearer picture of the social background of magistrates is generated. While the historiography of magistrates in pre-Famine Ireland points to men of less means and character than in the English context filling the position, it seems that all levels of the gentry, lower, middle and upper, took out commissions of the peace.

Clergy

The Protestant clergy also played a significant role in the ranks of the magistracy. Typically it was the younger sons of the gentry who entered holy orders, but as with the gentry themselves no one specific grade of clergy provided the personnel that entered the magistracy. In England the growth in the numbers of clergy entering the magistracy rose steadily from the mid-eighteenth century to peak in the 1820s, after which numbers began to decline again. Hempton argues that the numbers of clerical magistrates in England trebled for three quarters of a century after 1761 due to the rise in the social status of the position of cleric, but his remarks that the correlation in numbers between 'the counties in which tithe commutation for land was most prevalent was those with the highest number of clerical magistrates' is perhaps

⁸⁰ Stanley H. Palmer, *Police and protest in England and Ireland, 1780 -1850* (Cambridge, 1990), p. 353.

⁸¹ Constabulary (Ireland) Returns of the number of persons who have lost their lives in affrays with, or otherwise by, the constabulary in Ireland since first day of December 1830 (H.C), 1846 (254) i.183.

⁸² Constabulary (Ireland) Returns of the number of persons who have lost their lives in affrays with, or otherwise by, the constabulary in Ireland since first day of December 1830 (H.C), 1846 (254) i.183; *Limerick Chronicle*, 3 May 1834.

really an indicator of what influenced the younger sons of the gentry to join this profession.⁸³ Shipley also touches on the correlation between gentry numbers joining the clergy and tithe able land in Leicestershire, stating that ‘the high number of clergymen was remarked upon by Bateman. He calculated that in Leicestershire, Rutland and Northamptonshire, around one in five of landowners among what he called the ‘yeomen’ with between 100 and 1,000 acres were clergy, twice the national average.’⁸⁴ He attributed the high numbers of clerical magistrates in Leicestershire to a tradition of gentry patronage and the promise of more lucrative livings and tithe increasing the income of clergy who were also small landowners or large landowners’ sons with a yearly income from an allowance.⁸⁵ It must be assumed that the reasons for joining the clergy in Ireland was no different by some sons of the gentry, as in a country whose economy was rooted in land and agriculture, there was even less possibility for the younger sons of the gentry to pursue careers outside of the military and navy.⁸⁶ Thus, clerical magistrates continuously provided a steady stream of recruits to the magistracy in Ireland during the eighteenth century, but this was also purely the lack of viable Protestant candidates in penal law Ireland meant that magistrate numbers had to be supplanted as best possible and from a limited pool.⁸⁷ Smyth takes this further and claims that as the clergy of a minority church which ‘depended on the confessional state for its existence’ the Protestant clergy needed to exert themselves and joined the magistracy to protect their place in society.⁸⁸ However, numbers remained relatively low, totalling no more than five or six per county at any one time. Twenty-five such clerical magistrates were active in the seven counties focused on in this study during the mid-1830s, with King’s County once more recording the greatest number with seven clerical magistrates, while Leitrim in contrast only recorded one.⁸⁹ It is unclear why King’s County records such high numbers of clerical and land agent magistrates but Reilly notes that in 1838 there were only thirty-three landed estates in the county with 1,000 acres or more, yet there were almost one-hundred magistrates for the county through-out the 1830s-1840s which suggests that a large proportion of the gentry were

⁸³ David Hempton, *Religion and political culture in Britain and Ireland* (Cambridge, 1996), p. 9.

⁸⁴ Shipley, ‘The Leicestershire gentry and its social and cultural networks c. 1790-1875’, pp 183-184.

⁸⁵ *ibid*, p. 184.

⁸⁶ Shipley asserts that the well-educated sons of the gentry joined such professions as it drew down ‘the virtues of application and public service’ which had been drilled into them from a young age. p. 185.

⁸⁷ Catholics were barred from holding public office as part of the penal laws enacted in Britain and Ireland during the seventeenth and eighteenth century. The law was amended in 1793 allowing landed Catholics to serve on juries and enter the ranks of the bar and magistracy. See Kathleen S. Murphy ‘Judge, jury, magistrate and soldier: rethinking the law and authority in late eighteenth century Ireland’ in *American Journal of Legal History*, Vol. XLIV, 2000, pp 231-256.

⁸⁸ Nancy J. Curtin, ‘The magistracy and counter-revolution in Ulster, 1795-1798 in Jim Smyth (ed), *Revolution, counter-revolution and Union: Ireland in the 1790s* (Cambridge, 2000), pp 39-54.

⁸⁹ *Returns (Magistrates, Ireland) to House of Commons* (HC), 1832 (531) xxxv.297.

supplanting their income from means other than from landed interests.⁹⁰ While these numbers do not seem particularly high, the Protestant clergy represented – or were made to represent – tithe and oppression to the majority of the larger Catholic population. This was recognised by Col. John S. Rochfort, magistrate and land owner in Queen’s County, when speaking to the 1832 commission into disturbances:

I should wish to see the clergy confined to their clerical duties, particularly on account of their religion, the great bulk of the people being Roman-Catholics. I think it expedient that the clergy should not act in a political or judicial character.⁹¹

Outside the middle-belt, large clerical magistrate numbers was particularly true in counties such as Cork which had forty-one clerical magistrates, fifteen per cent of all magistrates, while Kilkenny had nine clerical magistrates, eight per cent of the grand total, but over half of Kilkenny’s magistrates were absent, this meant that clerical magistrates actually accounted for twenty-one per cent of the magistrates resident in the county. Such a high proportion of clerical magistrates in Kilkenny was perhaps another reason for anti-tithe violence in the county during the 1830s and while Cork did not suffer a sustained campaign of tithe opposition it witnessed one of the most serious tithe riots and loss of life in Rathcormac which resulted in the deaths of twenty inhabitants of the town after the clerical magistrate, William Ryder, led a number of troops to distraint un-paid tithe in the town.⁹²

Distribution of Magistrates.

By the middle of the nineteenth-century the Irish landscape had been greatly changed due to changes in the rural economy following the Napoleonic wars. Traditional shared grazing lands for cattle were now enclosed, as were larger farms which also grew in number and size due to the clearance of smaller tillage farms and their occupiers by larger grazing farmers. Thus, by the 1820s a large portion of the labouring poor in most counties had been forced onto mountainous or reclaimed land, and because these areas were so under-developed and without roads they often became the escape and hideouts of agrarian agitators within the

⁹⁰ Reilly, ‘Land agents and estate management in King’s County’, p. 138.

⁹¹ Evidence of Col. John S. Rochfort, *State of Ireland. Minutes of evidence taken before the select committee to inquire into the state of the disturbed counties in Ireland*, May 1832, H.C. 1832, (667) xv1.1, p. 240.

⁹² See Edward Garner, *Massacre at Rathcormac* (Cork 1984). Joseph Jackson, MP for Bandon, charged both the lay and clerical members of the Established Church for the massacre; *Hansard Parliamentary Debates*, H.C Deb 03 June 1836 vol 34 cc8-117; Reid notes how the loss of life in Rathcormac and other tithe riots eventually forced the government to retract police and military support for the collection of tithes and ‘the clergyman was thrown on his own resources to try and collect his tithe.’; David Patrick Reid, ‘The tithe war in Ireland, 1830-1838’ (PhD thesis, Trinity College Dublin, 2012), p. 284.

locality. In contrast, where tenants cleared from estates were treated humanely there was little resistance or later retribution which was something repeated numerous times in the evidence of those examined by the Devon Commission.⁹³ However, the most common way of acting humanely in such situations was often to pay for assisted emigration, typically to America or Australia.⁹⁴ Thus, studying the distribution of magistrates in the middle-belt counties should provide an insight into how the enforcers of local law and order were setup to tackle crime within their respective counties. In both Limerick and Clare magistrates resided largely in the eastern half of the county, which was primarily better farming land,⁹⁵ nevertheless, many of them largely resided on the edges of country towns. The triangular region of Castleconnell, stretching into Doonas and Clonlara in Clare and Newport in Tipperary, had a significantly higher ratio of magistrates compared to most regions in Ireland, with some thirty magistrates within a thirty mile radius, while in parts of the west of Limerick and Clare there were only two or three magistrates within a sixty mile radius of each other, in fact an area over 154 square miles between Newcastle-West and the Limerick/Kerry border had only two magistrate resident in the region.⁹⁶

⁹³ See *Evidence of Michael Doheny* (Cashel), p. 294, *T. P. O'Flanagan* (Tullamore), p. 637, *the state of the law and practice in respect to the occupation of land in Ireland*, H.C. 1845 [616], xix.1, 57.

⁹⁴ See *Evidence of Richard Bourke before Her Majesty's Commissioners of inquiry into the state of the law and practice in respect to the occupation of land in Ireland*, p. 723, H.C. 1845 [616], xix.1, 57.

⁹⁵ Although Griffith's Valuation was completed post-famine it still offers a useful assessment to the valuation of lands and estates in the pre-Famine period. As an example of the difference in land in East/ West Clare and Limerick, 652 acres in the parish of Killard, Doonbeg, West Clare was valued at £164 while 424 acres in Doonass, in the East of the county, were valued at £353. Similarly, 943 acres in the parish of Caherconnell, Abbeyfeal in West Limerick were only valued at £179 while 477 acres in Cahernarry, Ballyneety in East Limerick were valued at £443, almost 1 pound per acre, highlighting the massive discrepancy between the quality and price of land in the different parts of the county.

⁹⁶ *A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections*, H.C 1836, (318) xxxviii.139, pp 312- 365.

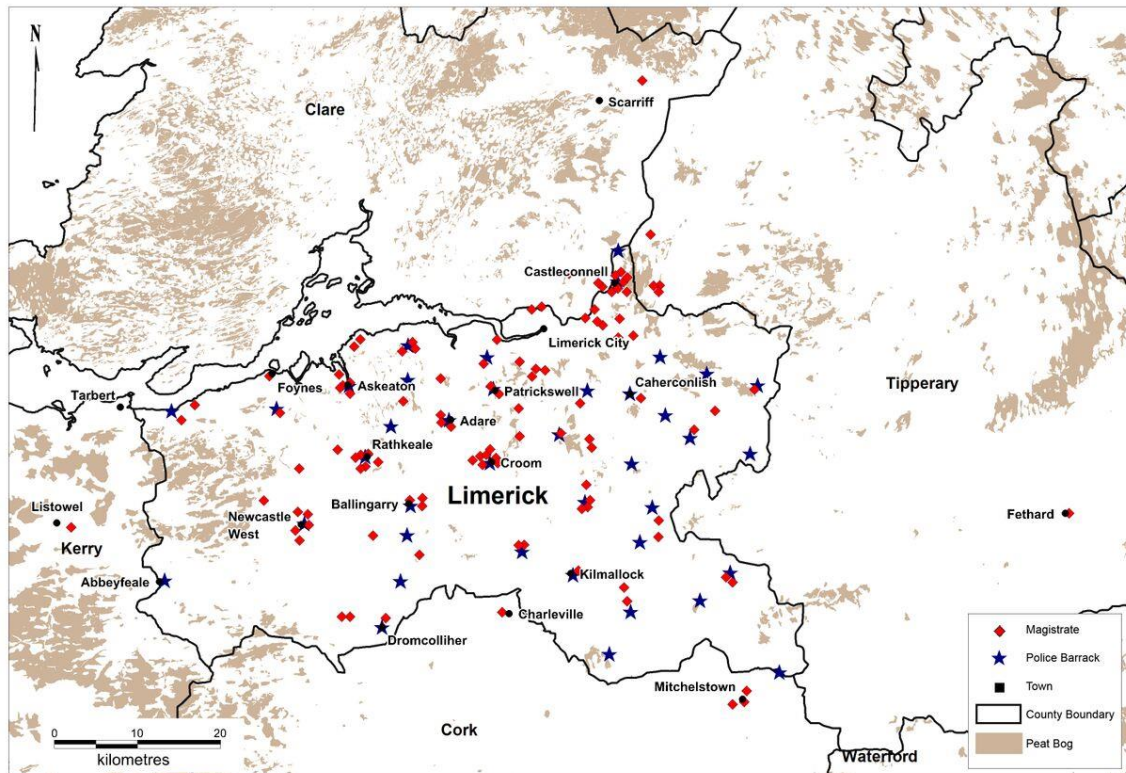


Figure 2: Distribution of magistrates in Limerick.⁹⁷

With good farming land also came intense competition for land and displacement of cottiers and small farmers by newer grazing farms as the century pushed on into the 1840s, which in turn led to a substantial level of agrarian outrage as the lower orders of society used an alternative community-based law to address their grievances and as a tactic to instil fear in the larger land holders.⁹⁸ For example, the Molly Maguire disturbances in Leitrim led to a prolonged period of tenants withholding rents from their landlords out of fear and unwillingness to break the Molly code, even when – as in the case of John O’Brien of Drumsna – some of these landlords were also the very magistrates before whom the

⁹⁷ *A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections, H.C 1836, (318) xxxviii.139, pp 312- 365.* The location for each magistrate was taken from the 1836 census of the Deputy Lieutenants and Magistrates for each county. Where this information was not given in the census returns a combination of the Landed Estates Database (NUIG) and genealogy sources such as Burkes landed gentry were used to fill in the missing criteria. This process was replicated for all maps in this thesis.

⁹⁸ Allan Blackstock, *An Ascendancy army: the Irish yeomanry 1796- 1834* (Dublin, 1998), p. 254. Blackstock refers to this as the insignificance of the contrast between law-enforcing and law-breaking where traditions of local custom were strong: ‘the majority of the local community could constitute an alternative system of ‘law’ to be defended against central or outside interference and internal treachery.’

perpetrators of agrarian violence, if apprehended, were tried.⁹⁹ Even in the Castleconnell region of County Limerick, which had a higher concentration of magistrates than most areas, the local magistrates could not persuade the local tenantry to pay tithes without resorting to force.¹⁰⁰ Similarly, there was much anti-tithe agitation in the Queen's County towns of Maryborough, Mountmellick, Stradbally, Mountrath a geographical area that had over ten magistrates in residence. Thus, though these particular areas had a high concentration of magistrates during this period they also had the highest level of agrarian outrages, giving credence to Joe Lee's assertion that such outrages in the period leading up to the famine were being carried out in the middle belt of counties where modern economic systems were meeting traditional agrarian society.¹⁰¹ Roscommon, Leitrim and King's County followed a completely different pattern of magisterial distribution to that in the two southern counties as magistrates bunched together around the county on the periphery of urban areas, leaving the rural spaces between these clusters without a magisterial presence. Of the 118 magistrates analysed for King's County, just over a quarter of the total number resided in and around the urban centres of Tullamore (9), Birr (12) and Clara (7). With another twenty-three percent residing outside the county boundary, this left half the total compliment of magistrates to act for the rest of the county. When breaking this percentage down further it transpires that almost another twenty percent of the magistrates were resident in the urban centres of Banagher, Shinrone, Edenderry, Kinnetty and Kilcormac. Allowing for a radius of ten to twelve miles (the maximum riding distance possible for an individual on horseback doing a return journey on bad roads) from each residence or town, this left some 185 square miles of rural terrain in the eastern half of the county, using Tullamore as the centre point, with just four magistrates to cover this wide area. Similarly, there were also just four magistrates left to cover the western half of the county, stretching from Tullamore to Edenderry, an area of 174 square miles.

⁹⁹ Jennifer Kelly, 'Local memories and manipulation of the past in County Leitrim', in Terence Dooley (ed) *Ireland's polemic past: views of Irish history in honour of R. V. Comerford* (Dublin, 2010), pp 51-67.

¹⁰⁰ Thomas Vokes to Sir William Gosset 6 May 1832, Chief Secretary's Office, Registered Papers Private Index Outrage Paper 1832: 857.

¹⁰¹ Joe Lee, 'Patterns of rural unrest in nineteenth century Ireland: a preliminary survey' in L. M. Cullen and F. Furet (eds.), *Ireland and France 17th-20th centuries: towards a comparative study of rural history* (Paris, 1980)

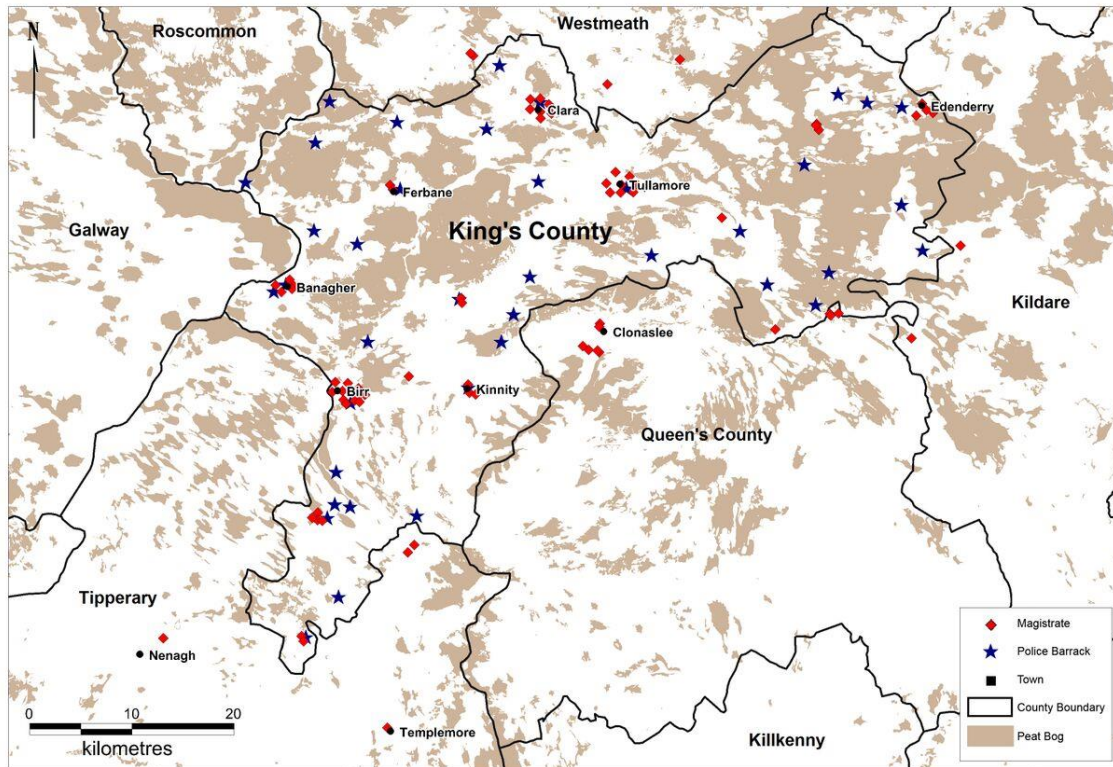


Figure 3: Distribution of magistrates in King's County.

Leitrim and Roscommon, mainly due to the rough terrain, followed similar patterns of magistrate distribution: South Roscommon, an area of approximately 186 square miles, as well as the 175 square miles in the north of the county, had no magistrate in residence. In Leitrim there were only seven magistrates residing in the whole northern half of the county, an area almost 270 square miles, while the southern portion had twenty-three magistrates covering close to 310 square miles, again confined largely to rural towns or villages which were up to ten miles apart in some instances. Differing slightly from the other counties examined, Queen's County had a much wider distribution of magistrates. The pattern of clinging to urban centres was still prevalent here, but the distribution of magistrates outside urban areas and residing in more isolated pockets was significantly higher in Queen's County than in any of the other counties examined. Thirty-three magistrates lived in isolated areas, including four along the foot of the Slieve Bloom Mountains and five near bog regions east of Abbeyleix. One reason behind this, and unlike the other counties except perhaps King's County, was that Queen's County had a very strong Orange Order presence and tradition, and this conceivably provided a sense of security amongst the gentry, particularly those living in

more isolated areas, in relation to their carrying out magisterial duties without fear of reprisal from the surrounding Catholic tenant and small farmer class. As a comparison, in 1835 Queen's County had eight lodges while King's County had only three.¹⁰² This differed from the situation of their fellow magistrates in other counties who secured themselves in or near urban centres or by concentrating in clusters.¹⁰³ Hugh Ruves Baker, deputy grand treasurer to the Dublin Grand Lodge, told the committee into Orange Lodges in Ireland, 1835, that the growth of Orange lodges around the counties of Wexford, King's County and Queen's County had led to a sense of security among the gentry of these counties stating that 'in the Queen's County...there is hardly a gentleman of property or station in the county who is not a member.'¹⁰⁴ However, the evidence of Hugh Boyd Wray, from the 1832 government inquiry into the state of Ireland, gives some insight into the desired distribution of magistrates in relation to distance between each other and also the process of appointing men to the commission. When asked how he became a magistrate he responded:

At the time the commissions of the peace were to be renewed, the next magistrate to Maryborough declined renewing his commission, being about to leave the country; the next magistrate then lived one mile and a half from the town, and though a highly respectable old gentleman, many years a magistrate, from ill health was unable to act; then no magistrate resided nearer than six miles; under these circumstances, the gentlemen pleased to appoint me a magistrate for the county.¹⁰⁵

This suggests that men of good character did not always fill the commission in Ireland but rather it was filled by any available person matching the restricted criteria and political needs of the time. However, Wray's remark about there not being a magistrate within a six mile radius as being one of the main reasons he was given a commission suggests that the administration in Ireland wanted to keep a close network of magistrates across counties.

¹⁰² Roscommon had one lodge, Limerick and Tipperary had three each while Clare did not seem to have any. Leitrim is listed as having twenty-nine lodges but it is presumed these were small local lodges and not county lodges. *Report from the select committee appointed to inquire into the nature, character, extent and tendency of Orange Lodges, associations or societies in Ireland; with the minutes of evidence, and appendix*, H. C. 1835 (377), xvi, p. 198.

¹⁰³ Des Keenan, *Pre-Famine Ireland: social structure*, 2000, (www.dekeenan.com accessed on 26/2/15).

¹⁰⁴ *Report from the select committee appointed to inquire into the nature, character, extent and tendency of Orange Lodges, associations or societies in Ireland; with the minutes of evidence, and appendix*, H. C. 1835 (377), xvi, p. 198.

¹⁰⁵ Evidence of Hugh Boyd Wray, *State of Ireland. Minutes of evidence taken before the select committee to inquire into the state of the disturbed counties in Ireland*, May 1832, H.C. 1832, (667) xvi, 1, p. 221.

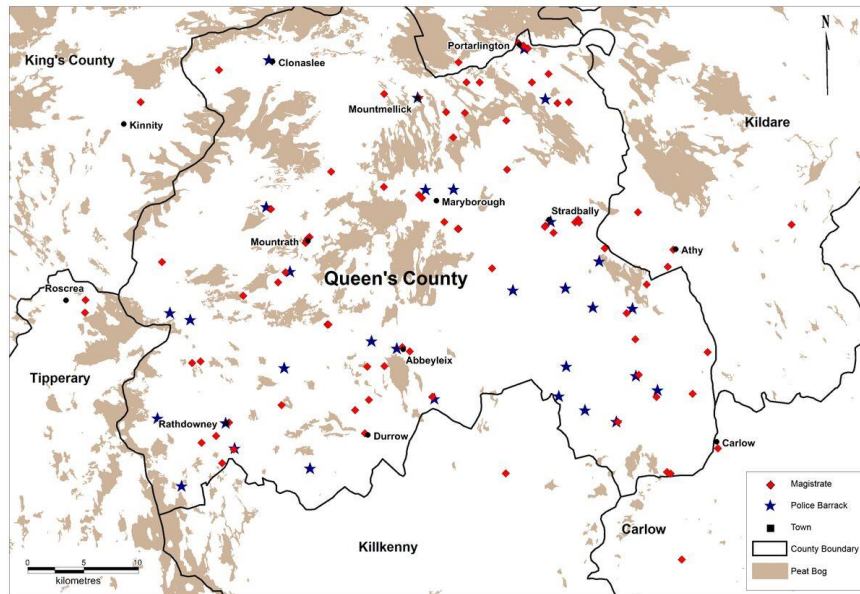


Figure 4: Distribution of magistrates in Queen's County.

However, the distribution of magistrates in the middle-belt counties illustrated in the maps above shows that in many parts of these seven counties the government fell well short of this desired distribution. Connolly argues that mid-eighteenth century banditry and rural agitation ‘existed because it depended on there being substantial territories that were not fully under the control of government and its agencies of law enforcement.’¹⁰⁶ Yet almost a century later the government had still failed to fully rectify this problem. The placement of government paid Stipendiary Magistrates was supposedly used to off-set this distribution problem, but resistance from local magistrates meant that the introduction of Stipendiaries did not always run as planned.¹⁰⁷ What must have caused local magistrates more ire, if indeed they were aware of it, was that it was the Stipendiary Magistrates already within the county who informed the government where to place new incoming Stipendiaries.¹⁰⁸ T. P. Vokes, Stipendiary Magistrate for Limerick, wrote to the Lord Lieutenant in 1838 doing precisely this, and informed the Castle that the eastern part of the county stretching from Pallasgreen to O’Brien’s Bridge would benefit from the services of a police magistrate. In his report Vokes stated that there were only two local magistrates in the barony of Coonagh, East-Limerick,

¹⁰⁶ Connolly, *Religion, law, and power*, p. 201.

¹⁰⁷ See Chapter 5.

¹⁰⁸ Kelly notes that incoming Stipendiary Magistrates often struggled at first due to their lack of knowledge of ‘local circumstances and local geography’; Jennifer Kelly, ‘An outward looking community? : Ribbonism and popular mobilisation in Co. Leitrim 1836-1846 (PhD thesis, University of Limerick, 2005), pp 55-56.

The Rev. Coote and Darby O'Grady, and one magistrate, Thomas Evans, in the barony of Owneybeg, North-Limerick yet up to ten magistrates are listed as residing within both baronies. It can only be presumed that Vokes meant that these men were the only active magistrates in the area and used this as justification for the introduction of a Stipendiary Magistrate in the county. As if to drive this point home, Vokes also drew attention to the fact that Rev. Coote's lands included a large number of tithe-payers, as if to illustrate that he was not fully impartial.¹⁰⁹ In the end Vokes was able to recommend a logical placement by suggesting the town of Abington as the residence of any incoming Stipendiary Magistrate as it was as close to possible to the centre of the county and offered a gateway to each barony in the county.¹¹⁰ The dearth of magistrates in a district, town or area was enough to force the peasantry to seek their own form of retribution when they felt they had been slighted by another member of the community. The deputy Mayor of Cashel, Benjamin White, indicated the prevalence of this tendency in 1836 while seeking clarification on his authority to act as a magistrate in the absence of the Mayor who had withdrawn from his duties to mourn the loss of his recently deceased wife. White notified the Castle that his uncertainty as to his ability to act as a magistrate was a cause of major inconvenience to the town as the Stipendiary Magistrate was over-stretched in dealing with the territory in his jurisdiction, and was missing from the town for days or weeks at a time. White finished by informing the Lord Lieutenant that his inability to investigate crime was leading to further outrage as people were seeking their own justice.¹¹¹ Once again, there were eleven magistrates residing in or around the town of Cashel, yet this communication gives the impression that none of these individuals was active in his role.

While this study discusses and maps the total number of magistrates in the region throughout the 1830s and 1840s, these numbers actually fluctuated greatly year on year as individuals did not renew their commissions, retired or died. In fact, an 1815 investigation into the magistracy by the then Tory government discovered that of the 4,175 persons listed as magistrates, some 2,223 were either dead, no longer active or else they were residing outside the country.¹¹² A prime example of the inadequacy of both the government lists of

¹⁰⁹ See Chapter 2.

¹¹⁰ Thomas Vokes, Limerick, to the Lord Lieutenant, Marquis of Normanby, 2 January 1838. Chief Secretary's Office, Registered Papers Official Papers 1838: 1888/20.

¹¹¹ B. White, Clonmel, to Dublin Castle, March 1836. Chief Secretary's Office, Registered Papers Private Index 1836: 1004/42.

¹¹² Galen Broeker, *Rural disorder and police reform in Ireland 1812-36* (London, 1970), p. 42. Here Broeker further expands on the character of the remaining 1,952 magistrates as a major headache for Peel and his inability to fully reform the magistracy for fear of losing political support from Tory supporters.

magistrates and some of the individuals listed as active can be evidenced in an episode that took place in Thurles in 1831. As a faction fight involving close to one hundred people took place at the local fair, Chief Constable Lowrie of the local constabulary sought help from the only magistrate in the town, William Nicholson, who refused to act. Lowrie described Nicholson as ‘an old and infirm gentleman’ and was forced to send for reinforcements elsewhere. This highlights the deficient magisterial system in place in the pre-Famine era.¹¹³

Two government censuses of the magistracy are used in this thesis to determine the names and addresses of county justices during this period. The first census was released in 1832 after a major debate in the House of Commons in 1830 as to the effectiveness of the magistracy in the wake of the widespread agrarian outrages witnessed in County Clare and the midlands during the first few years of the decade.¹¹⁴ The second such census was taken in 1836, a significant year for law enforcement in Ireland, as this was when the new Irish Constabulary, a measure which was part of a whole host of reforms that had repercussions for local magisterial powers, none more significant than the increase in the numbers of Stipendiary Magistrates, which will be discussed in much detail later.¹¹⁵ These censuses show not only the increase in numbers of magistrates in some counties within the four years, but also an influx of new commissions in those other counties where numbers of magistrates stayed more or less static. The increasing number of appointments suggests that despite a constant state of agrarian disturbances and general outrages across the south and middle part of the country, the position of magistrate was still coveted by some members of the gentry. The examination of a number of such men who became magistrates in the period between these censuses throws light on the character of individuals entering the magistracy during these years. It must be remembered that such censuses were not always accurate and were compiled at the discretion of both the county clerk, who gathered the information, and the magistrates themselves who had to apprise the clerk of their status on a yearly basis. Such streamlining was central to the vision of Robert Peel and a vital part of the Administration’s efforts to introduce a more efficient system of law and order. A prime example of the shortcomings of the system was illustrated by the returns of Robert Chambers the clerk for County Meath in the 1836 returns:

The justices have not for many years last past registered their commission with the Clerk of the Peace for the County Meath, therefore I have no way of knowing who are

¹¹³ Chief Constable Alex Lowrie, Thurles, to Dublin Castle, 1 March 1831. Chief Secretary’s Office, Registered Papers Private Index 1831: T/18.

¹¹⁴ *Hansard’s Parliamentary Debates*, H.C Debate 15 December 1830 vol. 1 cc1188-201

¹¹⁵ Palmer, *Police and Protest*, pp 316-353.

in the Commission of the Peace, or who are resident and non-resident, or who are Deputy Lieutenants, as not attending at any Petty Sessions, I do not know who act, and can only from recollection state those who attended Quarter Sessions. Any returns made would be quite useless and very imperfect.¹¹⁶

The clerk for Mayo returned a statement along similar lines and while there is no way of assessing the diligence and honesty of the clerks for the other counties in filling out their respective returns it seems unlikely that such loose record keeping was confined to just two counties. Further questions are raised about the validity of both Clerks' statements when one considers the extent of the Petty Sessions returns the year previously, which gave a full list of the names of magistrates who attended Petty Sessions and of the days they attended.¹¹⁷ Nevertheless, since four of the seven counties under examination here showed either an increase or a decrease in magistrates' numbers, some form of assessment must have been undertaken.¹¹⁸

Of the middle-belt counties examined in this study both Limerick and Tipperary saw a significant increase in magisterial numbers whereas the numbers in Queen's County and Roscommon remained the same. Clare and King's County both witnessed a small increase in magisterial appointments while Leitrim had its magisterial numbers reduced by one. Apart from Limerick and Tipperary the other counties actually lost a number of justices who were replaced by Stipendiary Magistrates appointed by Dublin Castle. However, a number of fresh commissions were also issued to replace outgoing magistrates which again suggests that the position was much sought after as it offered a chance of local power and social advancement.¹¹⁹ It seems some members of the magistracy quite often let their commission lapse only to renew it a short time later. The Petty Session's officer for Trim, County Meath, wrote to Dublin Castle in 1836 on behalf of Captain Mockler, who had been a JP for the county since 1818, stating that Mockler had let his commission lapse since the new government had come to power and had not 'been sworn in under the new dynasty' – to apply to you for the form of oath necessary to be taken on his resuming the duties of a

¹¹⁶ *A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections, H.C 1836, (318) xxxviii.139.*, pp 312- 365.

¹¹⁷ See *Returns of Petty Sessions in Ireland, 1835, H.C. (415) xlii, 463.*

¹¹⁸ *A return of the names and residents of Deputy Lieutenants and Magistrates...H.C 1836, (318) xxxviii.139.*, pp 312- 365.

¹¹⁹ The reasons behind why the position was so sought after are discussed right throughout the thesis, but especially in Chapter 2.

magistrate.¹²⁰ This creates the question as to how long Mockler had gone without renewing his commission and whether he had acted as a magistrate during this period as he appeared on both the 1832 and 1836 government lists of magistrates for Meath. Nevertheless, the Castle's reply to the Trim petty session's clerk did not indicate that any such questions had been asked or infer that Mockler had done anything out of the ordinary, merely stating 'that the proper literature of oaths will be forwarded to Captain Mockler immediately.'¹²¹ Thus, this episode highlights the unreliable nature of official record keeping in the first half of the century and to a lesser extent emphasizes the degree to which magistrates intermittingly left and returned to their post. In Limerick and Tipperary there was also an influx of Stipendiary Magistrates into the magisterial ranks after 1832, signifying the intention of Dublin Castle to have a voice in local law enforcement, as far back as 1813 Peel intimated to the Earl of Desart his eagerness for more control over local law and order and insisted he would 'care little for any odium that may attach to any increase of the powers of the Government.'¹²² A whole host of new commissions was also created to replace those of local JPs who had relinquished their commission in the middle-belt counties. This point will be dealt with in more detail later but while Dublin Castle was intent on increasing the role of centralized government in the enforcement of law and order in Ireland they were wholly reliant on local justices for political and local support and thus numbers were readily replenished. As Conley notes 'the officials at Dublin Castle frequently found the locals less than cooperative and were often involved in a delicate balancing act between those who felt the government should do more to keep order and those who felt the government was tyrannical.'¹²³ A selection of twenty-three such new commissions between 1832 and 1836 are explored here in the table below, to provide some insight into the calibre of person being awarded a Commission of the Peace on the eve of the Dublin administration's overhaul of the system of law and order in the country as a whole.¹²⁴

¹²⁰ Petty sessions officer, Trim, to Dublin Castle, April 1836. Chief Secretary's Office, Registered Papers Private Index 1836: 3999/42.

¹²¹ *ibid.*

¹²² Palmer, *Police and protest*, p. 199.

¹²³ Carolyn A. Conley, *Melancholy accidents: The meaning of violence in post-Famine Ireland* (New York, 1999), p. 134.

¹²⁴ *A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections, H.C 1836, (318) xxxviii.139.*, pp 312- 365. The new commissions for the middle-belt county were as follows; For (**Limerick**) Michael Furnell, Robert Fetherson, Eyre Evans Jnr., Thomas Lloyd; (**Tipperary**) T. B. Willington, William Markham, Charles Clarke, Godfrey Taylor; (**Clare**) Thomas Keane, William Casey, John Browne; (**King's County**) John D. Nesbitt, Rodger North, Bernard Mullins; (**Queen's County**) J. Kemmis, Sydney Cosby, Thomas Parnell; (**Roscommon**) Thomas Digby, Edward O'Connor; (**Leitrim**) Rev. John Little, William Walker, John Caulfield.

Some sixteen of these twenty-three magistrates came from a landed background and held substantial acreages but apart from Charles Clarke who held over 2,000 acres in Tipperary, the rest owned lands ranging from 1,000 to 2,000 acres, placing them in the category of middle to lower gentry. Two of these men, John Browne and Thomas Keane, both from Clare, were land agents, typically – though not always – a position filled by lower gentry. Keane was also one of a group of six whose family members had also held a Commission of the Peace, highlighting the issue of family continuity within the role of Justice of the Peace. Eyre Evans sat as a magistrate concurrently with his father, Eyre Evans Snr, while both Thomas Lloyd's father (1820s) and Godfrey Taylor's father (1790s) had also both previously held a commission; Lloyd's father was also M.P (1826-1830) for Limerick at the time Lloyd received his commission.¹²⁵ Sydney Cosby's father had been both a JP and Sheriff for Queen's County while Edward O'Connor was brother to Denis O'Connor Donn, M.P and magistrate for Roscommon.¹²⁶ Thus, such family continuity reinforced both the control which landed élites possessed over Irish society in the pre-Famine era and the semi-feudal nature of positions like that of magistrate at a local level. Professionals, or individuals involved in commerce, very rarely gained a commission in the pre-Famine period and none were identified within the middle belt for this study.¹²⁷ Instead a system of patronage and networking was used by the landed gentry to gain and retain local influence. Marriage alliances also played a prominent role in such networking – something that will be discussed in more detail later. An example of this from among the individuals listed in table 1.6 was the marriage of Thomas. P. Evans, a long standing naval officer,¹²⁸ who married into the Pennefather family from Newport, Co. Tipperary, and soon after received a Commission of the Peace.¹²⁹ Among these twenty-three magistrates, there was only one member of the clergy, Rev. John Little, who was also a magistrate for Roscommon, a position which he retained after moving to Leitrim to succeed Rev. Charles Seymour as rector of Moville in that county. The appointment of William Walker and John Caulfield, both given commissions for Leitrim,

¹²⁵ Sir Bernard Burke, *A genealogical and heraldic dictionary of the peerage and baronetage of the British Empire* (London, 1868), p. 678.

¹²⁶ Sir Bernard Burke, *A genealogical and heraldic dictionary of the peerage and baronetage of the British Empire*, Vol. 1 (London 1862), p. 294.

¹²⁷ Some men who had originally made their fortune through commerce, such as the Spaightes in Clare and Thomas Waller in Limerick, the latter discussed in Chapters 4 and 5, gained commissions after they had commenced a landed lifestyle

¹²⁸ William R. Byrne, *A naval biographical dictionary: comprising the life and services, vol. 1* (London, 1843), p. 343. Evans entered the navy in 1800 as a first class volunteer and by 1814 had worked his way up to Acting-Lieutenant, most of his service was in the Mediterranean during the Napoleonic wars.

¹²⁹ Sir Bernard Burke, *A genealogical and heraldic dictionary of the landed gentry of Great Britain*, (London, 1852), p. 1025.

but who were also magistrates for other counties, suggests that there was a shortage of suitable men in Leitrim at this time. Caulfield was a large land-holder in Roscommon where he was also a Deputy Lieutenant and had served as Sheriff, and with his residence at Athlone, attaining a commission for Leitrim must have proved more taxing than beneficial. In contrast, Walker was a land agent for estates in both Longford and Leitrim, and had acted as a tithe commissioner also, both roles generally under-taken by the lower gentry.¹³⁰ Therefore, the addition of two men, neither fully resident in the county and from opposite ends of the gentry social spectrum suggests that there was a need for as many men in the Commission of the Peace in Leitrim as possible. One of the more interesting cases here is that of Michael Furnell, Limerick. He was landed, but his family who had an extensive banking background.¹³¹ He himself was a freemason, an improving landlord and built schools on his estate at Caherelly, some five mile from Herberstown in South Limerick, for his tenants. He was also awarded a patent to hold a market and four fair days in his small townland which introduces the notion of an improving élite, something largely missing from the discourse on the magistracy to date and will be looked at further in Chapter 2 specifically in relation to farming societies.¹³²

Therefore, while the position of magistrate was originally created to protect the King's power in England it evolved over the centuries to become one of the most important positions in rural society. While it is generally held that magistrates were from a level below the elite,¹³³ the reality in the Irish context seems to be less clear and the evidence for the middle-belt counties suggest there was an even representation of lower, middle and upper gentry in the ranks of the magistracy. However, because the position of magistrate was a voluntary position this meant that the government had no control over the distribution of magistrates within a county, something which resulted in many areas being over-stocked while other areas had a shortage of magistrates. These shortages sometimes meant the government had to avail of the services of men of less 'suitable' background, such as members of the Protestant clergy who had a personal interest in recovering tithes, which the administration were looking to clamp down on by employing men with no connection locally to land or tithe. However,

¹³⁰ *Evidence of William Walker taken before the Committee on the Longford County Election Petitions*, H.C. (319) x, 1837, 303.

¹³¹ See Eoin O'Kelly, *The old private bank and bankers of Munster: Part 1: Bankers of Cork and Limerick cities* (Cork, 1959).

¹³² Galen Broeker was one of the first scholars to address the magistracy in nineteenth-century Ireland and describes them as corrupt and ineffectual. Other scholars, such as Crossman, Bonsall and Beams have all touched on and critiqued the Irish magistracy negatively; Samuel Lewis, *A topographical dictionary of Ireland* (London, 1840), p. 241.

¹³³ Curran, *Protestant community in Ulster*, p. 82.

the position of Justice of the Peace was readily sought after by landed elites in pre-Famine Ireland and the local prestige and influence that came with it are explored in the next chapter.

Chapter 2: Patronage and Networking.

In 1831, and in response to the large scale outbreak of violence in the County of Clare, a debate in the House of Commons took place discussing the state of the county.¹ William Smith O'Brien, who raised the issue, claimed that poverty was the undeniable cause of distress, which in turn, led to disturbance, and urged the government to introduce the Insurrection Act to save life and property which seemed an illogical conclusion to deal with poverty.² However, the *Belfast Newsletter* noted that O'Brien was only relaying the unanimous decisions of the magistrate in Clare who felt no other means could restore order to the county such was the level of murder and 'dreadful outrages perpetrated in the face of day.'³ During the ensuing debate a number of issues arose to counter O'Brien's claims and most notable amongst them was the issue of ineffectual magistrates and their appointment to these positions in the first instance as a cause of outrage. It was Maurice O'Connell that gave the most insight into this subject, noting a lack of confidence in the magistrates by the 'people of the county', by which he meant the peasantry, but he also poured scorn on the system of patronage that awarded these magistrates their position. He stated 'that it would become apparent that many popular magistrates in Clare, not in favour of the government, have been expunged from the commission while many others, not of so unobjectionable a description, have been retained.'⁴ He himself had put forward the name of a gentleman he felt would have been well suited for the role of magistrate but did not even receive acknowledgement of his letter from the chancellor, an indication perhaps that his real agenda here was score settling for being snubbed, yet a number of other members of the house reinforced this view of the ineffectualness of the magistrates and their tendency to go to ground as soon as the violence had erupted, leaving the population of Clare to fend for itself.⁵ Indeed, it was the murder of one such magistrate, William Blood of Applevale, near Corofin

¹ The large scale violence that disrupted Clare through 1829-31 is generally known as the Terry Alt movement for more see James S. Donnelly Jr., 'The Terry Alt movement 1829-31' in *History Ireland*, Vol. 2, 1994.

² The Insurrection Act, first enacted in 1796 (36 Geo. 3 c.20) was a coercive measure introduced during times of large scale disturbance that gave magistrates extra powers and usually involved a curfew for cottiers and small farmers. Andres Eiriksson, 'Crime and popular protest in County Clare, 1815-1852' (Unpublished Ph.D. Thesis, Trinity College Dublin, 1991), p. 22.

³ *Belfast Newsletter*, 19 April 1831.

⁴ Quoted in J. H. Barrow (ed.) *The mirror of parliament 1828-1841* (London, 1831), Vol. 2, pp 1366-1379, 13 April 1831.

⁵ *Hansard's Parliamentary Debates*, H.C debate 13 April 1831 vol.3 cc1284-305.

on 21 January 1831,⁶ that sent a wave of terror through the gentry, forcing many of them to flee to Ennis or beyond for fear of their lives.⁷ While no individual magistrates were named, O'Connell was defiant in his assertions when he declared that 'the gentlemen of the county deserted their houses, and fled to the towns for protection, setting, as he must say, no bright example of self-devotion to the maintenance of the authority of the laws, in defence of which the country had a right to expect they would stand forward, not only at the expense of the loss of their ease and comfort, but at the peril of their lives.'⁸ An estimate or report on how many magistrates fled does not appear in the press or official reports but both M.Ps for Clare, O'Gorman Mahon and O'Connell, felt that every magistrate in the County had failed to perform their duty, but both men were Catholic and liberals largely at odds with the rank and file of the Ascendancy who controlled the magistracy.⁹ The magistrates remaining in the county called on the government to introduce the Insurrection Act for the County of Clare, which was essentially an admission on their part that they could not, or would not, deal with the situation head on and instead wanted a large military force to do it for them with the aid of a nightly curfew forced upon the labouring classes, which was a central part of the Insurrection Act.¹⁰ Determining the reasons why certain individuals received a commission, this present chapter examines the issue of patronage and the political appointments of magistrates and those in influential positions (especially members of the Grand Juries) that influenced law and order.

Was the office of magistrate secured by persons who tended to use the position to enhance their status or careers rather than to enforce the law? In fact, in many instances magistrates were, at least indirectly, the cause of outrage due to their partisanship. Magistrates' enforcement of coercive acts such as the Insurrection Act, instead of dealing directly with crime, also often aggravated instances of outrage and distress initially. An 1825 commission into the state of Ireland questioned senior law officials and local magistrates on the effect the Insurrection Act had in combating the Rockite disturbances experienced in Munster during the period 1821-1825. While nearly every official examined stated that the Act was

⁶ *Clare Journal*, 24 January 1831. The editor of the paper described Blood as a popular magistrate, fair landlord and put the cause of the murder down to a robbery gone wrong. Other conservative papers echoed the *Clare Journal's* sentiments towards Blood, however, while no liberal paper contradicted this narrative nothing negative appeared in any reports by the newspapers about Blood's activities.

⁷ It cannot be ascertained for certain from where the magistrates fled but soon after the murder the *Clare Journal* reported that the north of the county was flooded with police.

⁸ Barrow, *The mirror of parliament*, pp 1366-1379.

⁹ *Waterford Mail*, 20 April 1831.

¹⁰ *Clare Journal*, 24 January 1831.

instrumental to quashing disturbances in their locality, each individual also noted that in other districts it did not have the desired effect while in other, previously peaceful, districts outrages and violence emerged despite the threat of Insurrection Act. Perhaps what was more pertinent to peace can be gauged from the minor issues raised by these individuals who hailed the Act as a success, namely the introduction of a professional police and the introduction of petty sessions, which suggests that when the magistrates performed their duties it led to a more peaceful outcome.¹¹ This is highlighted by the response of Matthew Barrington, magistrate for Limerick, in the 1824 commission into the state of Ireland, when he stated there is a rancour remaining in the country for years after, and hostility against Magistrates who act under the Insurrection Act.¹² In assessing this, the issue of government patronage, appointments to the Grand Jury and its local influence will be examined to highlight the semi-feudal nature of the position of magistrate.

Throughout the period 1830-1846 government changed between Whigs and Tories four times. Except for a brief period during 1835 the Whig party, incorporating Irish liberals and repealers, dominated parliament from 1830-41, which then offered the Catholic population of Ireland the promise of a favourable administration. On coming to power, one of the main issues the Whigs promised to tackle was that of government patronage, particularly concerning the position of Justice of the Peace, or unpaid magistrate, which up to 1830 was something reserved almost exclusively for Tory supporters with accusations of Orange favouritism coming from Irish liberals and their supporters in the press, with the knock-on effect that much of the peasantry in Ireland had no confidence in the law, though as the work of McCabe and McMahon has shown, not all members of the peasantry lacked this confidence.¹³ Not all the reform measures introduced by the Tory party in relation to law and order in Ireland at this period were negative. The restructuring of the constabulary, for example, was welcomed on both sides of the political divide, but even here, members of the Whig party felt that the accompanying reform of the magistracy had fallen well short of what

¹¹ For example, see the evidence of Francis Blackburne, Maxwell Blacker and George Bennett *Minutes of evidence taken before a select committee into the nature and extent of the disturbances in Ireland*, 1824 (H.L), 1825 (200) vii.501.

¹² *Hansard's Parliamentary Debates*, H.C Deb 28 February 1833 vol. 15 cc1299-364.

¹³ Questions about magisterial appointments permeated many debates on Irish matters in the House of Commons highlighting their importance to governing Ireland. Using Hansard's Debates online search engine, the Irish magistracy were brought up in the debates some 2,870 times during the 1830s and 1,640 times during the 1840s. Such concerns relating to the appointment of magistrates in the rest of the United Kingdom do not seem to be as prevalent in comparison however. See <http://hansard.millbanksystems.com>.

was needed.¹⁴ Writers in the *Edinburgh Review* were far more frank in their opinions on the matter of magisterial reform and claimed that a number of improper persons had been left in the commission while some good magistrates were removed and that a number of unsuitable persons who had previously been removed from the commission had been restored all as a result of government patronage. The author was further of the opinion that too many magistrates were open to bribery and to dispensing arbitrary justice.¹⁵ Maurice O’Connell, commenting on the behaviour of the magistracy, stated that ‘the conduct of the Magistrates, too, with scarcely an exception, was oppressive, and in many instances most atrocious.’¹⁶ Commenting on the Whig Government’s use of patronage, R. B. McDowell noted that ‘the deliberate and systematic bestowal of official posts on Catholics and liberal Protestants could to some extent demonstrate its ideals and obtain its objectives.’¹⁷ This was not the first time the question of patronage was raised in Ireland, however, as it was one of the first tasks taken on by Sir Robert Peel in his role as Chief Secretary 1812-17. Initially Peel was instructed by Lord Liverpool to harness support for the Tory party by using patronage as leverage, something which had played an increasingly significant role in Irish politics since the coming into force of the Act of Union in 1801. The problem for Liverpool and subsequent governments was the difficulty in making parliamentary majorities in light of a host of social reforms during the 1790s which had eradicated the traditional system of patronage deployed in England, Scotland and Wales throughout the eighteenth-century. However, Ireland was still very much a part of the old regime where one could employ interests to secure a majority.¹⁸ But it soon became apparent to Peel that these efforts were largely futile, as no amount of patronage seemed to give the Tories the majority of Irish votes they needed in parliament. The efforts and the exasperation at their failure is captured in a letter to Undersecretary William Gregory in 1813, when Peel asked Gregory to ‘Pray use every exertion to get the Irish members over...They treat us very ill, and, receiving ten times as

¹⁴ The magistrates of King’s County were applauded for putting aside personal differences and performing their public duty by accepting the new Constabulary Act, *Dublin Evening Post*, 9 November 1822. The only middle belt M.Ps to vote against reform of the constabulary were Hon. Francis Pritte, JP and M.P for Tipperary, and Luke White, M.P for Leitrim. Both men were members of the Whig party, see *Hansard’s Parliamentary Debates*, H.C Deb 07 June 1822 vol. 7 cc852-73.

¹⁵ *The Edinburgh Review*, Vol. VI, 1836, p. 343. Brian Jenkins, *Era of emancipation: British Government of Ireland, 1812-1830* (Quebec, 1988), pp 210-11.

¹⁶ *Hansard’s Parliamentary Debates*, H.C debate 31 May 1832 vol 13 cc262-78.

¹⁷ McDowell, *Public opinion and government policy in Ireland, 1801-1846* (London, 1952), p. 179.

¹⁸ Douglas Kanter, ‘Robert Peel and the waning of the “influence of the crown” in Ireland, 1812-1818’ in *New Hibernia Review*, Vol. 5, no. 2, (2001), pp 54-71.

many favours as the English members, do not give us one tenth of their support.’¹⁹ In the end Peel decided to check the system of patronage and introduced a policy of reform putting emphasis on administrative efficiency, which would become the cornerstone of his life’s effort in relation to Irish affairs in the several positions he held throughout his career. The issue of patronage, however, did not disappear, and if anything it intensified in the post-Napoleonic economic slump which had a direct effect on the Irish budget. This was reduced sharply from £574,000 in 1815 to £394,000 in 1818, which in turn had a negative effect on patronage when a cap on pensions, salaries and titles offered by government was put in place.²⁰ For many historians the post-Napoleonic slump is almost always the starting point in analysing the causes of agrarian outrage in the pre-Famine period, citing large rents, competition for land and a general deterioration of economic conditions as the catalyst for peasant revolt.²¹ This study offers an alternative twist on the same point, insofar as the lack of industry and government salaries in the wake of economic despair forced many of the gentry below the rank of the great land magnates to enter unpaid legal positions to increase their chances of later attaining more beneficial positions. The result was that many unsuitable or ineffectual persons, such as the magistrates in Clare who fled from their duties, filled the position of magistrate. More importantly, this secured the object of law enforcement firmly in the hands of the landed, whose concerns for the most part, as expressed by O’Brien in 1831, was property rather than justice, therefore leaving many of the poorer classes to subscribe to an alternative law based on communal values.²² The character of such magistrates will be examined in Chapter 4, but the appointment of John H. Sheil to the Westmeath magistracy in

¹⁹ *ibid.* Kanter displays the voting patterns of the Irish MPs for a number of Parliamentary votes between 1813-1820 using Hansard Parliamentary Debates. The middle belt M.Ps between 1820-1845, twenty-four of whom were magistrates, were: (Tory/Conservative) Limerick: Standish O’Grady, Thomas Lloyd, James Hewitt Massey Dawson, William Smith O’Brien. Clare; William Vesey Fitzgerald, Lucius O’Brien. Queen’s County, Sir Charles Coote, Hon. Thomas Vesey. Tipperary: William Bagwell, Robert Otway-Cave. Roscommon: Stephen Mahon, Robert King. Leitrim: Luke White, John La Touche, John Marcus Clements. (Liberal/repealer/radical) Limerick: Hon. Richard Fitzgibbon and Caleb Powell. Clare: William Nugent MacNamara, James Patrick Mahon, Cornelius O’Brien, Daniel O’Connell, Maurice O’Connell. King’s County: William Parsons, Earl of Rosse Lord Oxmantown, Hon. John Westerna, Nicholas Fitzsimon, Sir Andrew Armstrong. Queen’s County: Henry Parnell, John Fitzpatrick, Patrick Lalor. Tipperary: Hon. Francis A. Prittie, John Hely Hutchinson, Thomas Wyse, Richard Lalor Sheil, Valentine Maher. Roscommon: Arthur French, Owen O’Conor, Denis O’Conor, Fitzstephen French. Leitrim: Samuel White, Robert Clements, William Clements.

²⁰ *ibid.*, pp 54-71.

²¹ See Michael Beames *Peasants and power: the Whiteboy movements and their control in pre-Famine Ireland (Sussex, 1983)*, pp 11-12, Samuel Clark, ‘The importance of agrarian classes: agrarian class structure and collective action in nineteenth-century Ireland’, pp 22-40; Peter Gray, *Famine, land and politics: British Government and Irish society 1843-1850*, pp 2-4.

²² Laird describes the law of agrarianism and secret societies as a system of carefully outlined rules, records, judgements and penalties which were more powerful than official law since its measures were far more violent and immediate. *Subversive law in Ireland, 1879-1920: from ‘unwritten law’ to the Dáil Courts* (Dublin, 2005).

1836 exemplifies the practice of the administration's handling of magisterial appointments. Despite repeated refusals by the Marquis of Westmeath, Deputy Lieutenant for the county, to grant Sheil a commission on the grounds that 'the number of magistrates already appointed was amply sufficient, and that Sheil was not in a situation in life, that could in any way entitle him to expect to be placed in the Commission of the Peace in a county in which there were a great many gentlemen of rank and property' yet Sheil was still given a commission by the Lord Chancellor. As Chancellor, Lord Plunkett wrote to the Marquis of Westmeath asking him whether he had any objection to Sheils' appointment other than there being a sufficient number of magistrates in the county, to which the Marquis replied he had not and so Sheil was given a commission on the strength of being recommended by Lord Mulgrave, Lord Lieutenant of the country.²³ Within two years Sheil and Westmeath were caught up in a government inquiry into Sheil's behaviour as a magistrate, an inquiry which had been initiated by Westmeath who claimed that Sheil had been drinking late at night with men of lower status in the community and had disgraced the bench by doing so.²⁴ Throughout numerous debates on the issue, both in the House of Lords and at the inquiry, Westmeath repeatedly made reference to the fact that Sheil was a very small landowner, making £600 per annum from three-hundred acres, which in his eyes seemed enough to disqualify Sheil from the commission.²⁵ Perhaps Westmeath had been annoyed from the start that Sheil had been given a commission despite his insistence that the county did not need any more magistrates, or perhaps he was genuinely concerned with the class of men such as Sheil, who lacked sufficient property or station, entering the ranks of the magistracy. Westmeath may certainly have leaned towards the latter point since Sheil, very early in his term as a magistrate, had been served with a writ by a bailiff for years of outstanding tithes. To compound this Sheil was served the writ while he was sitting on the bench at the Moylisker petty sessions in 1837.²⁶ However, the newspaper coverage given to the inquiry suggests that party politics also played a part in the affair and the *Freeman's Journal* revealed how Westmeath had once been the chairman of the local Liberal Club in the county but had switched political allegiances and become a member of the Conservative Club in London, and was a fierce opponent of the then Whig government in power.²⁷ This is further highlighted in his House of Lords speech when he attacked the liberal agenda and stated that 'the term liberal was used by a

²³ *Hansard's Parliamentary Debates*, H.L Deb 29 March 1838 vol. 42 cc33-9.

²⁴ *Freeman's Journal*, 11 June 1838.

²⁵ *Freeman's Journal*, 11 October 1838.

²⁶ *Connaught Telegraph*, 13 March 1839.

²⁷ *Freeman's Journal*, 4 May 1838.

band of persons whose only object was to place the whole of Ireland under the dominion of the Roman Catholics' and therein adding another stand to the attack on Sheil.²⁸ In the end the inquiry petered out as the administration claimed certain correspondence relative to the case had been lost while the government magistrate, Rowan, had been denied permission to give evidence at the inquiry about what he witnessed in the tavern the night Sheil was reportedly drinking, which indicates the government were eager to cover up the episode despite Sheil's consistent claims that he had done nothing wrong. The conservative press did not miss the opportunity to attack Sheil and the Government during this affair and the word 'tavern' was transformed to 'common public-house' by the *Dublin Evening Packet* who described Sheil's company as a 'crowd of disorderly persons amounting to fifty.'²⁹ Whether Sheil innocently entered the property or not was immaterial, the fact remained that members of the gentry did not associate in taverns and by doing so Sheil left himself and the government open to attack. The case also highlights the system of government patronage at work during the pre-Famine decades, particularly as the *Freeman's Journal* revealed that Sheil was the secretary for the same local Liberal Club of which Westmeath had once been a member and it is clear that his role in this club played a part in Sheil's gaining a commission from the Whig government despite the protestations of a Deputy Lieutenant of the county and the fact that he fell short of the land-owning income desired for members of the magistracy. As far back as 1832 Westmeath had clashed with other local magistrates when for reasons unknown they refused to renew their Commission of the Peace, allegedly leading to an increase in crime. Writing to the Lord Lieutenant he stated 'that he has no control over them and cannot make them take out the commission. It continues to be inconvenient and embarrassing but no one will feel the effects of such a measure more than themselves.'³⁰ While the meaning of this last point is unclear, it could either have been in reference to the effects of crime in the neighbourhood or to the fact that patronage would be denied to these individuals in the future.

What intensified controversy surrounding the issue of patronage further at this period was the religious divide and the challenge to Protestant Ascendancy post-Emancipation. Throughout the 1830s 'O'Connell worked with 'real gusto' to secure public office from successive liberal administrations for his supporters, friends and family.'³¹ MacDonagh acknowledges that this was done to further the twin causes of repeal and reform, hence the unsettling of

²⁸ *Hansard's Parliamentary Debates*, H.L Deb 19 February 1839 vol. 45 cc601-8.

²⁹ *Dublin Evening Packet and Correspondent*, 5 May 1838.

³⁰ NAI: CSORP, Private Index: 1832: 115, 22.

³¹ James McConnell, 'Jobbing with Tory and Liberal: Irish nationalist and the politics of patronage 1880-1914', in *Past & Present*, no. 188, (2005), pp 105-131.

many Protestant supporters of the Union as they saw themselves being squeezed out of positions by Catholics and this damaged relations between the central administration and the local magistracy who felt they were being usurped, this will be discussed in more detail in Chapters 4 and 5.³² Such was this fear that Lord Mulgrave, then Lord Lieutenant of Ireland, had in an 1837 debate in the House of Lords to contradict the claim that O'Connell had a monopoly on government patronage:

Mr O'Connell holds no government patronage in Ireland, nor does he exercise any of the patronage that belongs to the Government. Mr. O'Connell does not bind nor control me in the exercise of my judgment, or in the distribution of my patronage. I bow to no man. But whilst I bow to no man...I will "proscribe" no man.³³

Never-the-less, many Catholics did gain access to office during this period, but the position of magistrate continued to be dominated by Protestants as were positions on the Grand Jury, ensuring that local power remained firmly in landed and Ascendancy hands. Indeed, even the newer and paid position of Stipendiary Magistrate, which over time became a position open to more Catholics than the position of Justice of the Peace had ever done, was still dominated by Protestants thanks to greater influence with Dublin Castle on the part of Grand Juries and landed Tory magnates. By 1836 there were only six Roman Catholic magistrates out of 112 magistrates in total holding a Commission of the Peace in King's County which was the only middle-belt county to record the religious composition of the magistracy. The only other county outside of the North of Ireland to record Catholic magistrates was Kerry, with sixteen Catholics recorded from a total of ninety-nine magistrates.³⁴ O'Connell was at pains to point this out in an 1833 government debate in the House of Commons when he charged the Whig government with appointing, since they had come to power, twenty-six new Stipendiary Magistrates, yet not one had been a Roman Catholic.³⁵ The *Freeman's Journal* was the first to raise this issue some two years before O'Connell, and a year after the Whigs had gained office, listing the names of twenty-one Protestants who were appointed as Stipendiary Magistrates within this short period and no Catholics appointed, and all within a year of issuing promises of change and patronage and appointments favourable to Catholic Ireland.³⁶ A government inquiry held a month after O'Connell's contribution to the parliamentary

³² James McConnell, 'Jobbing with Tory and liberal', pp 105-131.

³³ *Hansard's Parliamentary Debates*, H.L debate 27 November 1837 Vol. 39 cc 212-82.

³⁴ *A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections*, H.C 1836 (318) xxxviii.139, pp 312- 365.

³⁵ *Belfast Newsletter*, 12 February 1833.

³⁶ *Freeman's Journal*, 7 June 1831.

debate lists only twenty-four serving and active Stipendiary Magistrates, with only fifteen appointed since the Whigs had first come to power in 1830, three years previously. Of the fifteen, they included one Roman Catholic, John Roberts, who was based in Cork and was one of only two Roman Catholics in the commission of stipendiary, the other being Richard Mangan who was stationed in Kilkenny.³⁷ This is slightly at odds with O'Connell's and the *Freeman's* claims but it is plausible that a number of persons were not listed as stipendiaries as they had not begun service or were inactive at the time of the inquiry for varying reasons such as health, but the distorted numbers in favour of Protestant appointments are still evident and valid. In fact, O'Connell went even further and pointed out in the same debate that not one of the five inspectors-general of the police was Catholic and asked was it any wonder, that in a country dominated by Catholics, and being marshalled by a Protestant law enforcement, society was so disturbed. Instead of looking to the agitators as the cause of trouble, he insisted that parliament should look at the Irish Administration and the system of appointing magistrates.³⁸ Thus, though many liberals and Tories, Protestant and Catholics, worked together throughout this period at a local level, the religious and political patronage in favour of one over the other, was a major issue of contention, particularly through the medium of the press, and one that will be discussed later in this chapter. The statistical data for a complete breakdown of the religious persuasion of each Justice of the Peace is not available as clerks and magistrates were not obliged to provide their religion on any returns, the same returns that were constantly being amended and persons who had superseded their position or even died were still included in many returns. Palmer, though his work is primarily focused on the police and police magistrates, lists just 285 Catholic Justices of the Peace in the mid-1830s, leaving some 2,085 Protestant Justices, eighty-nine per cent of the total number of individuals in the Commission of the Peace.³⁹ This uneven religious distribution was further investigated in an 1835 commission investigating the number of clergy in the commission of peace the results of which showed some 177 Protestant clergy in the commission and no Catholic clergy.⁴⁰ In more remote parts of the country with small

³⁷ *Returns (Stipendiary Magistrates, Ireland) to House of Common.s* (HC) 1831 (360) xxxiii.561.

³⁸ *Hansard's Parliamentary Debates*, H.C debate 5 February 1833 vol. 15 cc139-217; *Stipendiary Magistrates (Ireland). Returns of the number of Stipendiary Magistrates, their names, religion, time of appointment, from what situation chosen, where and how long appointed, the amount of their emoluments and out of what fund*, p. 2 H. C. 1833 (191) xxxii.465.

³⁹ Palmer, *Police and Protest*, p. 346. Within his study Palmer uses more concrete evidence of men employed as police constables and police magistrates to show a steady rise of Catholics within the constabulary from the 1830-1840s.

⁴⁰ *Commissions of the Peace (clergy), Ireland: A return of all the clergymen now in the Commission of the Peace in Ireland* (H.C), 1835 (102) xlvii.93.

Protestant populations, sometimes these Protestant clergymen filled the role of magistrate out of necessity, whereas in areas with a larger Protestant presence, their clerical role gave them no advantage when applying for the magistracy as the appointment reverted to patronage or along familial lines just as it did for anyone applying, again, indicating that the role of Justice of the Peace was semi-feudal. In fact, by the mid-1830s, and largely due to tithe agitation in the south-east and midlands, the Irish administration tried to avoid placing Protestant clergy in the magistracy as complaints against these magistrates were rife with claims that they were using the police as a personal force to extract tithe payments.⁴¹ Major George Warburton, Inspector of police, informed an 1824 inquiry into the state of Ireland that he had known instances where clerics used their position as magistrates to collect tithes owed to them. He explained that ‘a magistrate sometimes went out with a party, on pretence of executing a magistrate’s warrant, and whilst protected by that party, executed private writs for tithe, or private decrees or processes.’⁴² One such magistrate was Rev. Luke McDonnell, Church of Ireland curate for Graiguenamanagh, Co. Kilkenny, also a tithe agent, who is credited with sparking the Tithe War in 1830 when he tried to force the local Catholic parish priest, Martin Doyle, to pay tithe even though there was an informal understanding in place that Catholic priests were exempt: this resulted in a major standoff between the local Catholic inhabitants and six-hundred military personnel which forced the Castle to be more particular as to who they chose for the position of magistrate.⁴³ Similar incidents also occurred across the middle-belt counties, and the rest of the country, with clerical magistrates at the centre of tithe or other controversies. For instance, in 1832 in Bilboa, near Doon, County Limerick, a sale of goods by distress for tithes due to Rev. Charles Coote, JP, led to a serious riot involving the local tenantry and the combined forces of the police and military.⁴⁴ The Clerical magistrate, Rev. Nicholas Herbert, led a similar force of military and police to impound the ‘flocks and herds of the Catholic gentry and farmers of the parish of New Inn, South Tipperary, for refusing to pay tithes due.’⁴⁵ The magistrate Rev. Charles Moore also distrained cattle belonging to the farmers from the parishes of Harristown and Rikardstown, West King’s County, even though no Church of England church or Protestants in the locality.⁴⁶ Such

⁴¹ Michael Huggins, *Social conflict in pre-Famine Ireland: the case of County Roscommon* (Dublin, 2007), p. 150.

⁴² *Minutes of evidence taken before a select committee into the nature and extent of the disturbances in Ireland*, 1824 (H.L), 1825 (200) vii.501, p. 81.

⁴³ Stewart. J. Brown, *Providence and empire, 1815-1914*, (Edinburgh, 2008), pp 80-81.

⁴⁴ *Evening Mail*, 16 April 1832.

⁴⁵ *Tipperary Free Press*, 11 May 1833.

⁴⁶ *The Pilot*, 23 December 1831.

stand-offs eventually forced the administration to issue instructions that no tithe owner who was also a magistrate could grant a military escort for tithe duties or take any part in enforcing its payment.⁴⁷

In that same 1831 debate discussed earlier, Maurice O'Connell declared that the gentleman he had proposed for the magistracy was overlooked in favour of two men who were insolvent, one having been discharged through the Insolvency Act, concluding that 'it cannot be expected that the people can have confidence in such magistrates.'⁴⁸ It appears that there were indeed a number of magistrates in financial trouble in 1830 and the O'Gorman Mahon, M.P for Clare, called for a full return of their names more than once in the House of Commons but this never materialized and the names of these men seem to have been kept concealed from public men and the public alike.⁴⁹ Again, one suspects that O'Gorman Mahon was striking right at the heart of the issue of patronage and of the character of its recipients, but nevertheless, the question then arises: why then would any member of the gentry volunteer for an unpaid position that put them in danger of retribution from subversive societies, disgruntled members of the public, and the liberal press alike? The short answer is power. The natural paternalism of landlords also transferred itself from their estates to local and regional life and the position of magistrate was one way to seek and exert power. Politically and away from Dublin Castle, power was wielded through local government via the Grand Jury system, which Virginia Crossman describes as 'a sort of county parliament, in which members were anxious to have a seat' and while this was largely for political and financial purposes it also presented the opportunity to obscure justice as will be demonstrated further into this chapter.⁵⁰ One of the main duties of the Grand Jury was to direct tax, or cess, towards developing local infrastructure and creating employment in the process, much as with a local county council after the 1898 local reform act and became another arena for the magistrates to influence local dominance.⁵¹ The Grand Jury foreman, the High Sheriff, was the main representative of central government in the county in the execution of the law and

⁴⁷ Noreen Higgins, 'The 1830 tithe riots' in William Sheehan and Maura Cronin (eds) *Riotous assemblies* (Cork, 2011), p. 94.

⁴⁸ Quoted in Barrow (ed.) *The mirror of parliament 1828-1841*, vol. 2, pp 1366-1379.

⁴⁹ www.historyofparliamentonline.org (accessed 20 March 2015); *The Tralee Mercury*, 22 December 1830.

⁵⁰ Crossman, *Local government*, p. 26. It must be highlighted that the Grand Jury was not a criminal jury, though it did meet to discuss which crimes went to court and helped decide who would sit on the criminal jury for these same cases. A criminal jury was called the petit jury and was made up of a number of cess payers from the county for more serious trials at the court of Assizes.

⁵¹ The Local Government (Ireland) Act 1898 (61 & 62 Vict. c. 37) established a system of county councils in Ireland, both urban and rural, similar to those of England and Wales. The act essentially ended landlord control of local authorities.

was responsible for the implementation of legal process in both civil and criminal actions arising from the courts. His duties ranged from selecting the Grand Jury to the overseeing of parliamentary elections.⁵² Appointments to the petit jury were also often met with complaints from the Catholic labourer and small farmer class with claims that the jury was often stacked against them and in favour of Protestant and/or landed interests.⁵³ As for the Grand Jury, Lord Stanley, while debating the need to reform this system after being presented with Irish petitions demanding revision of the system, expanded on the powers that Irish Grand Jurors had in contrast to their English counterparts, stating:

In addition to their criminal functions, [they] had the whole administration of the civil affairs of the country intrusted to them. They fixed the salaries of public officers; they regulated prisons and houses of correction; they levied funds for the support of hospitals; they made and repaired roads and bridges, and they framed accounts of the expenses incurred in these matters. They had, in fact, not only to transact the business which was usually performed by an English Grand Jury, but they exercised, at the same time, many of the functions of the English Legislature. They determined what public works should be undertaken—what price should be paid for them, and who were the individuals that should undertake them, and be responsible for their completion. They settled the amount of the local taxation of the county, and, under their direction, it was levied from the actual occupiers of the land.⁵⁴

The eagerness of individuals to have such a say in local matters via the Grand Jury was partly driven by the chance to gain financially from the position rather than from a sense of civic duty.⁵⁵ This was particularly true of the late eighteenth and early nineteenth centuries, when frequent complaints were made yearly of cess payers' money being spent on roads, bridges or walls that enhanced the large estates of those that served on the jury.⁵⁶ When asked about this exact issue by the committee inquiring into the workings of the Grand Jury in 1825, Major-

⁵² Crossman, *Local government*, p. 15.

⁵³ Niamh Howlin, 'Controlling jury composition in nineteenth-century Ireland', in *Journal of Legal History*, Vol. 30, Issue 3, 2009, pp 227-261.

⁵⁴ *Hansard's Parliamentary Debates*, H.C debate 19 February 1833 vol. 15 cc955-73.

⁵⁵ Naturally, this statement was not true of every Grand Juror but the paternal sense of doing right for the peasantry was usually reserved for the landed magnates who were few and far between on grand juries. Grand juries were predominately made up of an aspiring middle entity, a class below the landed gentry.

⁵⁶ Daragh Emmet Curran, 'A society in transition: the Protestant community of Tyrone 1836-42' (PhD thesis, National University of Ireland Maynooth, 2010), pp 74-5; Edward Brynn, *Crown and Castle: British rule in Ireland, 1800-1830* (Dublin, 1978), p. 80.

Gen. Richard Bourke,⁵⁷ a magistrate from Castleconnell, Limerick, felt that many persons served on the Grand Jury to influence how the county taxes should be spent and felt that such powers should be transferred to the local magistrates as was the case in England. However, as shall be touched on a little further on, most Grand Jurors in Ireland were already magistrates and this would have placed even greater local power in the hands of the magistracy.⁵⁸ In the middle belt counties so troubled with outrage in the years leading up to the Famine, accounts of such abuse of cess and position were no different: In 1829 Thomas Spring Rice noted the systematic abuse of cess payers' money in Limerick, commenting on how works carried out with taxes raised were used to increase the value of the estates of Grand Jurors, and that between the years 1790 and 1829 the Grand Jury rates of Limerick rose from £7,122 to £34,324, asserting that high cess was as crippling to tenants, if not more so, than any other economic burden.⁵⁹ This economic burden and Grand Jury mismanagement is also highlighted in County Clare when the tenantry suffered particularly badly during the crop failures of the late 1820s and early 1830s. This failure resulted in famine-like conditions during 1830 which led to almost two years of serious outrage throughout the county carried out under the name of the Terry Alts, or Lady Clares, bands of agrarian agitators.⁶⁰ In August 1829 an article appeared in the *Freeman's Journal* discussing changes to the meeting times of the Clare Grand Jury as the gap between Summer and Spring assizes was too long. This article urged the members of the said jury, particularly the two new Catholic members appointed, to be mindful of the state of the people and to ensure that public works were kept in order throughout the winter. In fact, little was done to alleviate the situation and while McMahon points out periods of famine were followed by outbreaks of violence in Clare, the two years of murder and destruction of property that followed the 1830 famine were a result of Grand Jury abuses and an expression of tenant protest when landlords did not hold up their end of their paternal obligations.⁶¹ This form of protest was repeated almost a decade later when the labourers of Clare were in the same predicament and again facing starvation. In June 1842, such was the distressed state of the labourers that a mob numbering in the hundreds marched on Ennis from the surrounding neighbourhood to alleviate their hunger by

⁵⁷ Richard Bourke was a liberal landlord and member of, what historians have named, the Shannon estuary group. A lifelong Whig supporter he was awarded the position of Governor General of New South Wales in 1831, three months after the Whigs had come to power. During his time in Australia he encouraged the emancipation of convicts and fought for an end to transportation. He returned to Ireland in 1837.

⁵⁸ *Report from the select committee on Grand Jury presentments, Ireland* (H.C), 1827 (555) III.745, p. 308.

⁵⁹ *Freeman's Journal*, 8 November 1831.

⁶⁰ See Michael McMahon, 'Ribbonism in County Clare, 1815-1831' (unpublished MA thesis, 2002, University of Limerick).

⁶¹ *Freeman's Journal*, 6 August 1829; Michael McMahon, 'Ribbonism in Clare', pp 61-63.

ransacking the town's stores, according to some reports. Other reports, and more likely closer to the truth, suggested that the store of Mr Banatyne was to be targeted as it 'charged a higher price for meal and flour than any other store in the town.'⁶² John Cunningham writes about the affray more extensively, linking it to other food riots of the period in Galway and Limerick, but paints all three riots as an expression of E. P. Thompson's 'moral economy' as a contributory factor in each riot.⁶³ Thus, during times of hunger attacks such as those on Banatyne's store were legitimate in the minds of the peasantry particularly when landlord paternalism had failed; it was these same landlords who controlled local government during times of scarcity.⁶⁴ The net result of this affray however, was the loss of five lives when the police opened fire on the unarmed mob. Although there was more than enough evidence to convict both the police officers and magistrates on duty for ordering the soldiers to fire, the jury, picked by the Grand Jury, dismissed all charges against the magistrates and officers first, and later all charges against the police constables, infuriating the inhabitants of Ennis and the contemporary liberal press, but perfectly highlighting what was perceived to be an unjust system of jury stacking practiced by the Grand Jury in this period.⁶⁵ In contrast, conservative papers such as the *Limerick Chronicle* were subdued about the final verdict but did everything possible in the lead up to the inquiry to blame the crowd, insisting they were out of control, attacked the local Catholic priest, Plunkett, thereby intimating that the police had choice but to fire upon the crowd.⁶⁶ This jury stacking can be evidenced more clearly in the private letters of Lord Leitrim in an exchange with John Robert Godley when discussing the recent outcome of a trial:

I trust, after the exhibition presented at our assizes, that you have come over to my opinion about juries. Our only chance now is to get their composition altered, and I hope you will use your influence with Tenison to get the highest cess payers and most respectable people called upon the petit juries in the criminal court. We were, as you say, very negligent of our duty in not taking more pains to purify the list at the proper time, but the fault may be in some measure remedied by a rearrangement of the panel, over which the sheriff has unlimited power as long as he upon the list. He can put

⁶² *The True Tablet*, 18 June 1842.

⁶³ E.P Thompson, 'The moral economy of the English crowd in the eighteenth-century' in *Past and Present*, no. 50, 1971, pp 76-136.

⁶⁴ John Cunningham, 'Compelled to their bad acts by hunger: Three Irish urban crowds, 1817-45', in *Éire-Ireland*, Volume 45:1&2, 2010, pp 128-151.

⁶⁵ *Freeman's Journal*, 10 June 1842; *Nenagh Guardian*, 9 & 14 July 1842; Niamh Howlin, 'controlling jury composition in nineteenth-century Ireland', in *Journal of Legal History*, Vol. 30, Issue 3, 2009, pp 227-261. In her article, Howlin discusses the difficulties in securing convictions in nineteenth-century Irish courts of law and references jury stacking in the pre-Famine period as one cause of this problem.

⁶⁶ *Limerick Chronicle*, 17 June, 5 July 1842.

whom he pleases first, etc., and I am sure it would be far better for some of our-selves to serve on the petit, than on the Grand Jury.⁶⁷

Although government reform was introduced to reduce misappropriation of cess, the Grand Jury remained an extremely powerful institution within local society and not just in relation to directing cess levies, but in recommending appointments as magistrates (paid and non-paid) and to the Board of Guardians. This latter body was another local government position whose holder could spin a web of patronage for their own benefit as tenders for food, clothing and work tools were all contracted out to the public. Thus, an examination of Grand Jury members and of individuals in positions of local authority which were all dominated by members of the magistracy, is central to any study on magistracy and on élites and élite networking during this period. Therefore, using the seven middle belt counties as example of such activity it is clear that in most cases magistrates accounted for eighty to ninety percent of each Grand Jury. From the Limerick spring and summer assizes of 1835 only six people serving on the jury from a possible twenty-seven had not been appointed as magistrates up to that point.⁶⁸ In King's County for that same year only two from a total of twenty-one persons were not magistrates, and one of these two had served as High Sheriff in 1815.⁶⁹ In Leitrim the numbers of non-commissioned magistrates serving on the jury was slightly higher in 1839, with seven from a total of twenty-one jurors not then magistrates. Even among these seven, three were Deputy Lieutenants for the County who had a say in selecting and proposing magistrates to the administration in Dublin Castle. From the Queen's County spring assizes of 1835, only two from the then twenty-one strong Grand Jury had held no magisterial office at that point, and one of these two had previously held the position of High-Sheriff, while four more jurors were listed as Deputy Lieutenants. Perhaps the most interesting Grand Jury to dissect during this period is that of Tipperary, which after 1836 saw the introduction of a second jury when the county was split into the North and South ridings, each with separate assizes. On the South Riding assizes, which was the remnants of the original county assizes before the split, only four from thirty-three jurors were not in the magistracy and the list of names on the jury was composed of those families long established in the county since the Cromwellian land settlement, such as Barton, Purefoy and Pennfeather.⁷⁰ In contrast the newer North Riding, eleven persons made it onto the jury without holding a commission or

⁶⁷ NLI Killadoon Papers, MSS 36,010-36,070, Godley to Lord Clements, 20 March 1845.

⁶⁸ County Limerick Grand Jury presentment books, *Summer & Spring Assizes 1835*, p. 103.

⁶⁹ *King's County Directory*, 1890, (published by the *King's County Chronicle*, 1890), p. 241.

⁷⁰ For more on the gentry in Tipperary; William Hayes & Art Kavanagh, *The Tipperary gentry, volume 1* (Dublin, 2003). This study provides a concise biographical history of some of the leading landed families in Tipperary ranging from Cromwellian settlement up to the twentieth-century.

public title. One, Michael Hackett, being the son of a land owner on the Grand Jury in Offaly, Similarly, Vere Dawson Hunt's father had been High-Sheriff up to 1829, William Henry Head whose father was a Lieutenant General and had links to the Earl of Norbury. In fact, where a magistrate was not sitting on the Grand Jury, in almost every instance a relative of his was, which again indicates the closed nature of the local administration as it evolved under Ascendancy control. It also highlights how extremely local society was in its outlook in the pre-Famine decades as official positions such as magistrate and Grand Juror were largely sought to consolidate local autonomy.

Among the 'other positions' held by magistrates in civil the position of Grand Juror was the most frequently held by magistrates, followed by Deputy Lieutenant, Sheriff, Poor Law Guardian and various military and militia positions.⁷¹ The social composition of the Grand Jury was as varied as those holding a Commission of the Peace, with representatives from the lower-gentry right up to the great landed peers. For instance, in Limerick in 1835 there were five honorifics on the county Grand Jury, five individuals who were large landholders and classed as upper-gentry, another five individuals who were lower-gentry, including one land agent, while the landholdings of the other six jurors could not be found.⁷² However, this clearly shows the diversity of the individual members of the gentry that made up a Grand Jury panel. In other middle-belt counties; The Kings County Grand Jury had two honorifics, five upper-gentry, four lower-gentry of which three were land agents.⁷³ In North Tipperary, there were two honorifics, five upper-gentry, five middle-gentry while the status of the other members of the panel were unknown but these figures give an insight into the typical make-up of a Grand Jury at this period. Unlike other positions in civil society, Grand Jurors were sworn in as a group and generally carried out county business, either fiscal or judiciary, on the day they met. Thus, while many titled gentry were magistrates in name only, those honorifics that sat on the Grand Jury actually carried out the duties entrusted to them, giving a clear indication of the appeal of a body which offered certain members of the aristocracy a chance to take their natural position over the rest of society in this patriarchal setting. Recognising the need to modernise the make-up and control the Grand Jury had, the Emancipation M.P for Tipperary, Thomas Wyse, stated that Grand Juries 'were deemed the fortresses of the aristocracy and the Ascendancy, as against the people... no privilege too exclusive, no power too exorbitant, could be confided to such hands' and wanted to transfer

⁷¹ Many local magistrates were active militia men; See Galen Broeker, *Rural disorder*, pp 69-70.

⁷² *Grand Jury Presentments for the County of the City of Limerick, Spring & Summer Assizes for 1835*, p. 103.

⁷³ *The King's County directory*, 1890, p. 241.

the power wielded by the aristocracy through the Grand Jury to the people who contributed mostly to the county cess, namely the middle classes.⁷⁴ However, in a society where individuals derived their social status and privileges from land ownership, those in control of land continued to dominate those with less or none at all, and it is presumed that this was also true of the nobles and lower gentry who served together on the Grand Jury also.⁷⁵ The guidance of such men was also required in this context as they had a broad experience from their regular travels abroad and from their education at the most prestigious schools such as Eton and Harrow⁷⁶ they were able to impart their more worldly knowledge and education to the gentry and lower gentry who made it on to the grand panel. Crossman notes the value in membership of the grand panel and believed that a hierarchy did exist between the nobles and the gentry below them who sat on the panel, she argued that this hierarchy was displayed by the order in which jurors were named on the Grand Jury list, which indicated the member's social standing.⁷⁷ As for the lower gentry, a number of those who managed to make the Grand Jury without already holding a public office or title soon took advantage of their position to do so and later progressed to either a Commission of the Peace, or a membership of the Board of Guardians. An example was Alfred Furlong who served on the Limerick County Grand Jury, was a land agent to the Downshire estates in Limerick and was later elected chairman to the Kilmallock Board of Guardians in 1839.⁷⁸ Crossman maintains that such land agents appeared as representatives for major land owners on grand juries and acted in their interests but it is clear that such men also served their own interests and built their own empires.⁷⁹ A further six other minor-gentry from Limerick have been identified as advancing this way with the majority first gaining a commission before entering other positions, mainly that of Poor-Law Guardian. Daniel Manifold, an agent to a number of land owners in King's County and holder of one-thousand acres himself, served on the Grand Jury and later became a poor law guardian.⁸⁰ Francis Berry, also from King's County, was a solicitor, an agent for the Earl of Charleville, Grand Juror and chairman of the local relief committee in 1846.⁸¹ James P. Poe served on the Grand Jury in Tipperary in the 1820s, became a Justice of the Peace for the county and later served as High Sheriff in Kilkenny

⁷⁴ *Hansard's Parliamentary Debates*, H.C Deb 03 March 1836 vol. 31 cc1181-91.

⁷⁵ Angus Hawkins, *Victorian political culture: habits of heart and mind* (Oxford, 2015), p. 59.

⁷⁶ See Chapter 3.

⁷⁷ Crossman, *Local government*, p. 27.

⁷⁸ Sean Kelly, 'The Newcastle West workhouse' in *The Old Limerick Journal*, Vol. 32, 1995, pp 151-152.

⁷⁹ Crossman, *Local government*, pp 27-29.

⁸⁰ *Devon Commission*, p. 545.

⁸¹ Reilly, 'Land agents in King's County', pp 4-10.

where he also owned land.⁸² This trend is evident across each of the seven counties but the inability to fully determine landholdings of the gentry at this period hampers a fuller examination of the total number of lower, and indeed higher, gentry who advanced in this fashion. It is also noticeable that the position of these lesser gentry was usually capped at the lower spectrum of local administration, though not in every case as seen. In contrast, the middling to upper gentry aspired to become a Deputy Lieutenants or High Sheriff for the county which were far removed from the low-level administrative duties involved with Poor Law Boards and relief committees which were frequented by lower-gentry magistrates. This suggests that not only was the position of Justice of the Peace sought after and used as a stepping stone to get on the Grand Jury, which was used in turn for further self-serving purposes. Likewise, getting on the Grand Jury first was used to get a Commission of the Peace and later again to attain the position of Sheriff, Deputy Lieutenant or a membership of the Board of Guardians precisely as happened in the case of Grand Jurors in the post famine period. Thus, while land ownership was central to advancing one's status and authority in a patriarchal rural society, in the absence of sufficient land, acquiring political office offered individuals the correct cultural capital to establish or further their élite status.⁸³ This was one of the headaches faced by Robert Peel, and successive Whig and Tory governments, when they tried to redress the structure of Irish law and order, since the overwhelming majority of magistrates prior to Peel's taking office were unpaid JPs, or men who had also held other positions in their home counties, namely Sherriff, Grand Juror or Deputy Lieutenant.⁸⁴ Therefore, since most magistrates and Grand Jurors were landed or from élite families and predominately Protestant, the administration of law and order was viewed as a tool to safeguard property from the cottier and small farmer classes which led 'contemporary commentators such as Alexander de Tocqueville to note that for the majority of the people the magistrates were their oppressors.'⁸⁵

In essence, magisterial positions and the influential position of Grand Juror were semi-feudal and outside the reach of many persons, regardless of wealth, unless they had some political influence to aid them. Joseph M. Rivers, of Castlecomer, Kilkenny, formerly of Tybroughney

⁸² Sir Bernard Burke, *A Genealogical and Heraldic Dictionary of the Landed Gentry of Great Britain and Ireland, Volume 2* (London, 1863), p. 1205.

⁸³ Michael John Woods, 'Elites in the rural local state' (PhD thesis, University of Bristol, 1997), p. 188. Woods defines cultural capital as that non fiscal asset that promotes social mobility beyond economic means.

⁸⁴ Penny Bonsall, *The Irish RMs: the resident magistrates in the British administration of Ireland* (Dublin, 1997), p. 16.

⁸⁵ Gearóid Ó Tuathaigh, 'Thomas Drummond and the government of Ireland 1835-41', (M.A Thesis, Galway, 1977) The O'Donnell lecture series, (Dublin, 1971), p. 11.

Castle some forty-two miles to the south, wrote to Lord Duncannon, Deputy Lieutenant for Kilkenny, in 1839 to inform him that he had recently moved to the area and sought a Commission of the Peace. He noted that although he did not have his favour, which presumably meant he had no patronage, he stated ‘it might be considered a want of courtesy if I made the application through any other than the County Lieutenant.’⁸⁶ Rivers’ request was denied by Duncannon who insisted there was at this stage no need at present of a magistrate in the county, prompting Rivers to take up the issue with the Lord Lieutenant’s office, where he informed the Lord Lieutenant that he was a man of considerable wealth and property and that Duncannon’s reasons were not good enough. Although the Lord Lieutenant also refused his request stating that Duncannon’s word was final, the episode gives a number of interesting insights into the attitude to public office in the late 1830s. Firstly, there was Rivers’ belief that property was enough to secure a commission and to allow him to become an instrument of local law and order. His admission that he was not in Duncannon’s favour is an obvious indicator and acknowledgement of the patronage system in place and the widespread reliance on such favour to attain positions of influence. This was confounded when Dublin Castle appointed John Vignoles, a Stipendiary Magistrate based in Galway, as a magistrate for Castlecomer within a few months of Rivers’ request.⁸⁷ Vignoles himself had only become a police magistrate in 1837 after spending twenty years as a superintendent of schools for the Kildare Place society, involved in proselytising efforts in the south and west of Ireland.⁸⁸ In contrast to Rivers, Caleb Powell, had, in 1825 moved within his own county from Nenagh to Templederry, in North Tipperary. Decidedly wealthy and initially without any judicial or civil role, Powell, soon after settling in his new locality, worked his way onto the list of cess payers who were given commissions to act at the special road sessions, a form of interim court sessions between assizes. Following this he worked his way onto the Board of Guardians before becoming a magistrate and later M.P for Limerick. The son and brother of Sir Richard Bourke, of Castleconnell, Limerick, was also appointed to that same list of special road sessions, with his son, Richard Jr., going on to be an Assistant Commissioner of the poor law for Ireland and later a Deputy Lieutenant for Limerick.⁸⁹ The names of others appointed to the road commission in Tipperary tell a similar story: they were the relatives of

⁸⁶ Joseph M. Rivers, Kilkenny, to Dublin Castle, May 1839. Chief Secretary’s Office, Registered Papers Private Index 1839; 4540/42.

⁸⁷ *The Sessional Papers: on Education, Health and Magistracy (Ireland)*, H.L. 1844, Vol. IX, p. 429.

⁸⁸ Returns (Resident Magistrates, Ireland) to House of Commons (HC), 1852-53 (107), iv.615.

⁸⁹ Hazel King, 'Bourke, Sir Richard (1777–1855)', *Australian dictionary of biography*, national centre of biography, Australian National University, <http://adb.anu.edu.au/biography/bourke-sir-richard-1806/text2055>, published in hardcopy 1966 (accessed online 17 April 2014).

magistrates or members of the Grand Jury, some starting out on their career, some not so well off but still deemed to be people of status at some level through their connection to a landed élite or member of local administration. Speaking to a commission set up to investigate how best to revise the Grand Jury laws, Barry Gibbons, the then Kingstown Harbour Engineer and former County Wexford surveyor, gave an example of the working of these road sessions and believed that attendance by magistrates and cess payers was very uncertain and irregular and hinted that non-cess payers were used at times to sit at the road sessions to serve the interests of élite members in society. However, when larger projects were to be presented to the sessions Gibbons stated that attendances were large such was the excitement, often drawing in magistrates from far-off districts who did not own property in the area being taxed. It was claimed that only at these occasions were the sessions treated properly by those charged with sitting at them.⁹⁰ Thus, it would appear that the attendance required at these road sessions was arbitrary at best and only fulfilled to suit personal interests. Therefore, unlike Joseph Rivers' wading in and demanding a Commission of the Peace, if individuals did not have a family member or patron to help them acquire civic roles then these positions had to be earned and the ladder of patronage climbed, and this was the norm throughout the pre-Famine decades.

The appointment of Stipendiary Magistrates was very much at the disposal of the Grand Jury, as witnessed in David Roche's memorial to the Lord Lieutenant in 1836 Lamenting his absence from the recent County Limerick Grand Jury Roche recommended George Pinchins as a Stipendiary Magistrate for Abbeyfeale, as voted for by the rest of the Grand Jury members in his absence. He stated that Pinchins' many years' experience in the constabulary made him a suitable candidate but more tellingly remarked how he also had the backing of all political parties, which did not necessarily mark him out as the best candidate for the job, but rather indicated that neither side of the political and religious divide had had any strong objection to his appointment.⁹¹ However, getting such cross-party consent on issues such as patronage and magisterial appointments was not always easy: newspapers carried daily reports of Whig or Tory dissatisfaction at appointments made to the magistracy. In July 1841 the *Freeman's Journal* was angered at the government's continued practice of employing Tory Police magistrates, and 'placing the lives and liberties of the people in the hands of men

⁹⁰ Grand Jury Laws (Ireland) *Report of the commissioners appointed to revise the several laws of which monies are now raised by the Grand Jury presentment* (H.C), 1841 (386), 1842, xxiv.1, p. 19.

⁹¹ David Roche, Limerick, to Chief Secretary's Office, 18 July 1836. Chief Secretary's Office, Registered Papers Official Papers 1836: 128.

in whom they could have no confidence.’⁹² The *Morning Chronicle* also attacked the Whigs in 1836 for appointing Orange magistrates.⁹³ One such case that caused a major stir during 1844 was the appointment of Thomas O’Brien as a Stipendiary Magistrate, to no particular county initially, but his name did not appear on the initial list of new government appointees and instead the government tried to conceal his appointment. O’Brien, a Catholic from a relatively large landholding background, from Fairfield County Mayo, had been a one-time ultra-supporter of repeal, so much so that he caused a huge scandal by not carrying out the customary toast to the Lord Lieutenant at a dinner he presided over in 1840.⁹⁴ The cause of his snub was that the then Viceroy, Lord Ebrington, ‘had declared his intention not to bestow anymore of the patronage at the disposal of government upon advocates for the repeal of the Union.’⁹⁵ Within four years, O’Brien was expelled from the repeal party due to his radical nature which led to a number of clashes with O’Connell. As a result, O’Brien became a staunch opponent of the very same movement he had once championed and had become a friend to supporters of the Union, using his new allegiance to get a magisterial position. The issue of his appointment and omission from the government’s list of newly appointed magistrates was first raised in March 1844 in the House of Lords by Lord Normanby, member of the Whig party, and used as political clout against the then ruling Tory party, whose members in the house protested over the inappropriate manner in which Normanby raised the issue and for not giving them time to investigate the matter.⁹⁶ The reason why O’Brien’s name was not printed on the list of new appointees was never explained by the administration. The ploy of slipping him into the role unnoticed proved to be short-sighted due to his notoriety, but it typified how patronage worked. The lax attitude of Dublin Castle in awarding patronage and placing a man such as O’Brien in a position of authority amongst a population who were mostly keen supporters of O’Connell was even more short sighted and raises the questions as to whether the Castle cared about the public response to such a magistrate. The furore caused by his appointment continued for a number of days, with the press and opponents alike looking for an explanation that never arrived. Instead, Lord De Grey sent O’Brien to Nenagh for his first post only to have him replaced within three days due to complaints from the Tipperary magistrates (most of those in the Nenagh area being

⁹² *Freeman’s Journal*, 30 July 1831.

⁹³ *Morning Chronicle*, 25 August 1836.

⁹⁴ *Cork Examiner*, 1 April 1844.

⁹⁵ *Freeman’s Journal*, 1 April 1844.

⁹⁶ *Hansard Parliamentary Debates*, HL Deb. 29 March 1844.vol. cc.1601-10.

Liberals) who refused to sit on the bench with a man of O'Brien's political character.⁹⁷ The liberal *Tuam Herald*, under the headline 'De Grey's protégé' continued to attack the appointment and asked whether the gentlemen of Down, his next appointment, would be happy to serve on the bench with him, insisting that it was a 'downright insult to any gentleman to ask them to sit on the bench with a man whose public conduct has been disgraceful', a full thirteen years after O'Connell had complained in the 1831 debate about the same issue.⁹⁸ Similarly, the appointment of William Cooke as a Stipendiary Magistrate for Abbeyfeale, Co. Limerick, by the then Liberal government caused a stir in 1840. In somewhat contrasting circumstances to those of O'Brien, Cooke had been a long-time tory and had enjoyed a high degree of tory patronage up to 1836 when he attempted to gain the position of Stipendiary Magistrates. The *Freeman's Journal* claimed he was denied the position due to an article that appeared in their journal outlining his misdeeds, which they described only as 'political acts and predilections.'⁹⁹ Once again the government was challenged for appointing a tory magistrate and questioned as to whether there were any liberal men suitable for the position in Cooke's place. Attacks on De Grey's Irish government regarding patronage and appointments were also a common theme upon the Tories regaining power in 1841. In one of the first lists of magistrates appointed. The *Freemans Journal* deconstructed magisterial appointments to the major cities around the country to show how the overwhelming majority of those appointed were Tory supporters, and asked how so many people that were at odds with the majority's wishes could receive a commission.¹⁰⁰ Of course the political leanings of all newspapers during this period have to be taken into account since many were the organ of political parties, nevertheless questioning of appointments as that carried out by the *Tuam Herald* provides a clear indication that despite all the major reforms and supposed balancing of the religious equation, Protestants and particularly those who were landed and supporters of the Tory party had a far greater chance than did their political and religious rivals of availing of Dublin Castle patronage and civil appointments in the pre-Famine period.

Further examples of patronage being dispensed to Tories can be evidenced in other magisterial appointments. In 1836 the Protestant inhabitants of Killorglin sent a petition to Lord Kenmare, who in turn forwarded it to the Lord Lieutenant's office, seeking to have Reverend Robert Hewson given the Commission of the Peace as they were in desperate need

⁹⁷ The liberal complexion of the Nenagh magistrates is discussed in more detail in Chapter 4.

⁹⁸ *Tuam Herald*, 6 April 1844.

⁹⁹ *Freeman's Journal*, 12 June 1840.

¹⁰⁰ *Freeman's Journal*, 1 December 1841.

of a magistrate in the area. The motion was also backed by the local Stipendiary Magistrate who lived just outside Kilgarvan almost twelve miles away from Kenmare and admitted to visiting the town only occasionally due to the wide area he had to patrol. Kenmare informed the Lord Lieutenant, however, that William Godfrey, son of Sir John Godfrey and ex-Justice of the Peace, had plans to return to his father's residence, Godfery Senior having decided to retire to England after years of serving in the local magistracy.¹⁰¹ Although the inhabitants and stipendiary both described Hewson as a gentleman and one always in residence, in this case he was overlooked for someone who had not lived in the area for many years on the grounds that since both his father and uncle were both JPs, he also would make a good JP. In reality, even though the Whigs were in power, Hewson was being pushed aside in favour of the son of a great land magnate and Tory supporter, who could begin his climb up the ladder of government patronage. By the 1840s Godfrey had taken over his father's title as Sir and had become a Deputy Lieutenant for the county, again highlighting the semi-feudal nature of the position of magistrate. In fact, many Tory supporters gained from patronage while the Whigs were in Government because the Whigs needed all members of the Ascendency and those in favour of the Union in order to sustain law and order and, indeed, the Union itself.¹⁰² Another appointment that caused controversy was the appointment of Matthew Singleton, a long serving member of the police force promoted to Stipendiary Magistrate for Galway, an appointment which was soon followed by the promotion of his son to the office of Chief Constable in the police, which caused consternation in the *Freeman's Journal* in 1839. Singleton senior had a long and varied career, serving as a constable and magistrate in numerous counties but on more than one occasion he was overzealous in his role which ultimately led to his being removed from his position.¹⁰³ In 1832 while acting as a Stipendiary Magistrate in Portumna, Co. Galway, Singleton wrote to the editor of the *Western Argus*, informing him that he and his men had quashed the local 'terries' and taunted the local inhabitants of East Galway 'for putting their faith in certain men who had now turned informer.'¹⁰⁴ This was hardly the actions of an impartial enforcer of law and order and Dublin Castle were quick to remind him of this, informing him that 'a paid magistrate should not

¹⁰¹ Lord Kenmare, Killarney, to Dublin Castle, November 1836. Chief Secretary's Office, Registered Papers Official Papers 1836: 1/42, 8970/42.

¹⁰² See Alvin Jackson, *The Two Unions: Ireland, Scotland, and the Survival of the United Kingdom, 1707-2007* (Oxford, 2012).

¹⁰³ *Freeman's Journal*, 19 January 1839.

¹⁰⁴ *Western Argus*, 1 January 1832.

publish any matter concerned with his office in that manner.’¹⁰⁵ The article in the *Freeman* recounted another incident, this time while Singleton was serving in Kerry where his actions were described as ‘violent’, stating that his ‘removal was deemed as much a matter of prudence as it was of justice.’ The crux of the issue was that as a well-known Tory supporter and ‘protégé of Goulbourn’ Singleton continued to enjoy the patronage of the Liberal government. In contrast, the conservative press made very little of the event and merely highlighted the appointment in a few lines which suggests they either saw nothing wrong with such practices or they that they were very aware of the implications but did not want to cause any further controversy over the issue.¹⁰⁶ Some four years earlier the Whig *Dublin Evening Post* had noted that Singleton ‘rose from a very humble station...we shall content ourselves at present with intimating that he owes his present elevation (as magistrate) to Lord Stanley.’¹⁰⁷ Singleton’s was not an isolated case either, as the *Freeman* further pointed out O’Connell’s claims that over two-thirds of the appointments made by the then Liberal government were given to English or Scotch men of Tory leanings, again highlighting the fact that regardless the political ideology of the ruling party, or what was best for the majority of the population, patronage was largely awarded to those that upheld the Ascendancy and the Union. In the western and southern parts of the country, particularly in rural areas, such gentlemen were few and greatly outnumbered by surrounding Catholic population and therefore even liberal governments had to ‘sacrifice their friends to conciliate their enemies.’¹⁰⁸ The ratio of magistrates to population in Queen’s County was roughly 1:1200, in Limerick and Tipperary the ratio was roughly 1:2000 and in Leitrim 1:2200, highlighting the fact that Whig governments could not discard their political opponents when it came to dispensing magisterial or other civic positions.¹⁰⁹ Thus, the study of magisterial appointments provides a glimpse of broader political spectrum in the pre-Famine era and it further demonstrates that for all their electoral dominance the Whigs were reduced, as were the Tories, to awarding élites with government positions and economic advantages. In another article from the *Freeman’s Journal* in 1835, the author highlighted the Orange card as another factor in allocating patronage. This was true of all appointments and the question of religion and Orange magistrates will be dealt with later on, but though the government tried

¹⁰⁵ Captain Nugent, Galway, to Dublin Castle, 6 January 1832. Chief Secretary’s Office, Registered Papers Private Index 1832: 606/3, 110/22.

¹⁰⁶ *Galway Patriot*, 9 January 1836. *Dublin Evening Post*, 5 January 1839.

¹⁰⁷ *Dublin Evening Post*, 17 November 1835.

¹⁰⁸ *Freeman’s Journal*, 19 January 1839.

¹⁰⁹ These figures are only a guide and were calculated using the population figures from the 1831 census against the average number of magistrates for a county mid-1830s.

to clamp down on the Orange Order and party feelings it was nigh on impossible to counter local favouritism. Indeed, the article highlighted that a number of persons put forward by the Viceroy's office for appointment as High Sheriffs were either men of no property in the county for which they were put forward or, as the young offspring of influential men, were themselves insufficiently inexperienced for the position. In total the paper claimed the twenty-nine of thirty-two men put forward were 'Orange, high Tories...and bitter enemies of reform and the current government.'¹¹⁰ In Leitrim Westby Perceval was put forward but the paper emphasized his lack of property within Leitrim, emphasising that he was a known Deputy Grand master of the Orange Order, though this latter point did not seem as important whether or not the appointee owned land in the county. Likewise, the other two candidates put forward, Mr Percy and Captain Tennyson, did not 'possess an inch of estate in Leitrim' with Tennyson, described as the 'son of a gentleman of fortune' from Roscommon, was not even in the country at the time but was off serving in the army abroad. The article equally listed a number of liberals whom the paper claimed were more than suitable for the job, all residing and owning land within Leitrim, yet were overlooked by the judges who put the names forward. However, of the three men listed, only one had sufficient wealth and property. The *Tralee Mercury* followed suit in its condemnation of these same appointments, claiming that men put forward as potential Sheriffs for Cavan, Louth, Wexford and Longford were all members of the Orange Order. Where those proposed were not Orangemen the paper was at pains to note that they were members of the Grand Jury, such as Edward Staples of Queen's County and William Ponsby Barker of Tipperary, and in doing so the paper was suggesting there was a direct link between the Orange Order and Grand Jury.¹¹¹ In contrast, conservative journals such as the *Leinster Express* and the *Belfast Newsletter* made no comment on the appointments other than listing the recipients for each county.¹¹²

Thus, while the gentry were natural leaders in the rural areas due to the paternal nature of landed society, the position of magistrate was not necessarily sought to implement the law of the land or out of a sense of civic responsibility, but in many instances it was pursued to obtain other positions in society that furthered an individual's power and status. In this pursuit, the use of patronage was readily employed as a tool to gain these influential positions but political and religious demography meant that Tory supporters gained a high proportion of offices and positions, especially the role of magistrate, even when the Whigs were in

¹¹⁰ *Freeman's Journal*, 16 November 1835.

¹¹¹ *Tralee Mercury*, 18 November 1835.

¹¹² *Belfast Newsletter*; 13 November 1835; *Leinster Express*, 14 November 1835.

power. This was essentially to ensure that positions of authority remained largely in the hands of the Ascendancy and supporters of the Union. However, in many cases it led to men gaining a Commission of the Peace or being employed as Stipendiary Magistrates who were not suitable for the role and as such these men were responsible for prolonging crime and outrage rather than helping to suppress it.

Chapter 3. Culture and identity.

Clubs, societies and elite networking.

Associational culture was also central to networking and facilitating a gentry lifestyle, and was another important aspect of the cultural capital individuals could use to establish elite status in the absence of economic resources. Hunting clubs, political clubs and religious-political institutions such as the Orange Order played a leading role in the social life of the gentry in the eighteenth and into the nineteenth century. Such clubs and societies frequented by the magistracy are investigated here to shine a light on the associational networks and social outlets of county justices in the pre-Famine decades. Essentially, through local governance and networking the county gentry built up a system of reciprocity and patronage that central government struggled to dismantle. However, while networking and associational culture provide an insight into themes such as identity and class, they also reveal the fragility of such bonds and the danger of identifying the gentry as one homogeneous group. Too often the discourse on landed elites in Irish history has placed them in opposition to the peasantry and labourer, in effect ignoring the fact that the gentry were as much in competition with each other for land and prosperity as they were with those below them. These divisions were noted by the contemporary writer, Kenelm Digby, who remarked how the gentry were guided by two contrasting cultural desires – the need to promote their own self-interest among their peers and the need to defend their ‘virtuous independence’.¹ Self-interest was equated with materialism and greed, something Digby believed the chivalrous man needed to transcend. Flame takes this notion further and argues that Digby was commenting on the divide between the ideology of the (urban) middle-classes, who were diluting gentry life in England, and the (rural) gentry. He argues that the middle-class represented self-interest in Digby’s model while the ‘superior’ gentry represented ‘virtuous independence.’² While the middle-classes did not infiltrate landed life to the same degree as they did in England, the rural/urban divide was evident in counties with a large municipal centre such as Limerick, Cork, Galway, Dublin and Waterford. Digby believed that culture was missing from urban life and was

¹ Kenelm Digby, *The Broad Stone of Honour, or Rules for the Gentlemen of England* (London, 1822).

² Michael John Flame, ‘All the common rules of social life’: the reconstruction of social and political identities by the Dorset gentry, c. 1790- c.1834 (PhD thesis, University of Warwick, 1997), p. 281.

‘artificially constituted by power, class, reason and money.’³ In contrast, the rural gentry had culture, which constituted on morality, god and a superior natural social order. Nevertheless, while the gentry subscribed to the same values this chapter explores networking amongst the gentry as a double edged sword for while at one level it enforced unity, institutions like marriage and social engagements reminded lesser gentry of their lower social standing in élite society. In these clubs and at social occasions were men who were either members of the magistracy or had designs on becoming magistrates, marking them and the position out as central to the pervading élite culture in the pre-Famine period. Therefore, the following is a guide to some of the cultural activities and customs the gentry used to better their position within society but it also serves to dilute the conventional view of a unified gentry landed class.

This chapter looks at the other means which the gentry employed to establish patronage and solidify their position in society. The main instrument utilized for this purpose was social networking. For élites from the 1600s onwards networking became a means to social advancement and incorporated a multitude of different strands ranging from sport to education and marriage alliances. Kelly and Comerford discuss the difficulty in reconstructing social networks from the past, which is particularly true the lower one descends down the social scale. The obvious problems appear when one is investigating the pastimes and education of the lower gentry, who did not leave a footfall in the same manner as their social superiors. Nevertheless, Kelly and Comerford suggest that ‘one way to trace’ social networks ‘is through the structures of associational culture’ which can be found in voluntary activity ‘such as participation in clubs, societies’ and such voluntary organizations that promoted social exclusiveness. The study of membership patterns in these organizations can provide information not only on individuals but also on the groups which subscribed to them.⁴ While recent scholarly work on associational culture has begun to shift towards the long nineteenth-century it still requires much more attention, especially in the first half of the century when networking was predominately a pursuit of the élite but was beginning to filter down to the lesser gentry and merchants, and thus, this period, through the study of associational culture, equally maps the rise of the middle-classes in Irish society. While the second half of the century saw the rise of codified field games such as rugby, cricket and the Gaelic games – including associations that eventually involved all social classes by the

³ Flame, ‘Dorset gentry, c. 1790-c. 1834’, p. 281

⁴ Jennifer Kelly and R. V. Comerford (eds) *Associational culture in Ireland and abroad* (Dublin, 2010), p.1.

twentieth century, the immediate pre-Famine period in Ireland represents the twilight of old world élite social networking before social barriers began to disintegrate in the second half of the century.⁵ Yet Kelly shows how attitudes of authority figures such as magistrates and landed elites played a significant role in determining which sports were deemed socially acceptable.⁶ While this has been a key use of sports for élites since the medieval, this chapter expands on this notion and shows how middle belt magistrates employed cultural political capital of sport to build or sustain social hierarchies.⁷ The industrial revolution in Britain saw the social barriers between landed élites and merchants undermined rapidly in the nineteenth century due to growing improvement in industry on the part of many landed gentry at the same time as rich industrialists and merchants became increasingly involved in local and national government, using patronage and networking to do so. In contrast, the fact that Ireland did not experience an industrial revolution on the scale Britain did, and the fact that the economy remained land-centred, meant that local authority and positions like that of the magistrate remained out of the reach of merchants and firmly in the grips of the landed gentry. Even as late as 1874, Henry Glynn, the wealthy Kilrush merchant and industrialist struggled to attain a Commission of the Peace for Co. Clare because of his non-landed background.⁸ Thus, competition for social advancement among a small number of landed individuals emphasized the importance of developing ties and patronage before the Famine.⁹ Therefore, there were many ways in which the gentry could partake in associational culture in the pursuit of their own personal agenda. Curran discusses the benefits of attending dinners and banquets in the 1830s, which, he showed, allowed Ulster magistrates to ‘build a web of patronage.’¹⁰ In the same light, Shipley highlights the importance of the ball as another social occasion which provided an important element in building the Leicestershire gentry’s social networks. These were occasions on which they could gather in a structured but relatively relaxed context. Hearn argued that balls provided ‘an occasion for the gentry to assess the social

⁵ Peter Bailey, ‘The Victorian middle class and the problem of leisure’, in *Victorian Studies*, 21:1 (Autumn 1977), p. 22.

⁶ See James Kelly, *Sport in Ireland, 1600-1840* (Dublin, 2014).

⁷ Thomas S. Henrick, ‘Sport and social hierarchy in medieval England’ in *Journal of Sport History*, Vol. 9, No. 2, 1982, pp 20-37.

⁸ Glynn Archive, doc 10, box 4. Paul O’Brien has carried out extensive work on the Glynn family of Kilrush using the family archive which contains materials mapping the family’s growth as merchants for over three hundred years. In the instance cited Glynn was being curtailed by members of the landed gentry from entering the local magistracy as they wanted to keep the position free of merchants and retained by members of the landed gentry.

⁹ Thorstein Veblen, *The theory of the leisure class*, (London, 1994). Veblen maintains that the existence of leisure class influences the behaviour of individuals from the classes below it. To rise in society the individuals in the lower class emulate the attributes of the desired upper class.

¹⁰ Curran, ‘The Protestant community in Tyrone’, pp 77-79.

acceptability of a new lawyer or banker, and were also a way of introducing daughters, and sons, to others in socially equivalent families in a strictly regulated environment.¹¹ Although describing a post-famine ball, Henry Addison, writing in the 1860s, alludes to the social snobbery of the gentry on occasions such as a ball hosted by a large wealthy farmer in honour of his daughter:

And invited to it many of the young gentlemen, sons of magistrates and Grand Jurors, who lived around him. These pleasure-seeking lads gladly accepted the proffered civility, anxious at the same time to dance with the lovely heiress, and make up for the stern exclusiveness of their parents, who refused to visit one whom they styled a mere yeoman.¹²

The fact that the sons of the gentry were willing to socialize where their parents refused to suggests that the mind-set of the gentry had evolved after the famine, perhaps due to economic necessity, but it also highlights the selectiveness of the parents who were born, raised and did most of their socializing in the pre-Famine decades.

A ball in Limerick City to mark Queen Victoria's engagement was attended by over two hundred people from city and county and the surrounding counties.¹³ While the article only lists a select number of prominent names, the list was dominated by members of the magistracy and/or their wives. One of the leading families attending was the O'Grady family from Limerick, whose extended family owned over ten thousand acres in the east of the county roughly between the townlands of Ballyneety and Bruff.¹⁴ Six months prior to the ball, Darby O'Grady, a magistrate residing near Pallasgreen, Co. Limerick, had written a letter to the Tipperary JP, Crosbie Moore, of Mooresfort just outside the village of Emly on the Tipperary and Limerick border. In the letter O'Grady had sought to form a political alliance with Moore and announced that his brother, and head of family, Standish O'Grady¹⁵ had intended to run against Fitzgibbon in the next election in 1841, presumably this was Richard Fitzgibbon, Earl of Clare. Highlighting how gentry networks were forged but also required when making political moves, O'Grady also revealed that they had the support of Lloyd

¹¹ Shipley, 'The Leicestershire gentry', p. 177.

¹² Henry Robert Addison, *Recollections of an Irish Police Magistrate, and other reminiscences of the South of Ireland* (London, 1862), pp 259-260.

¹³ *Limerick Chronicle*, 20 November 1839.

¹⁴ For more see, Gerard Madden, *History of the O'Grays of Clare and Limerick* (Clare, 20017).

¹⁵ See Chapter 5.

Apjohn and Thomas P. Maunsell, who were both from élite landowning families in Limerick.¹⁶ Both men were also in attendance with Darby and Standish O’Grady at Queen Victoria’s ball some months later which highlights that not only were these occasions’ opportunities to build alliances but they could also be used to display to the rest of elite society already existing or groupings already developed.¹⁷ Such balls were also a way for élites to show off their wealth as the cost of hosting such events often ran into thousands of pounds, as was the case with the 1838 Shannon Regatta Ball held in the Assembly Rooms in Kilrush under the patronage of the landlord and magistrate, Crofton Moore Vandeleur. Such patronage and local press coverage was a way of reminding the wider community of the family’s wealth and status.¹⁸

Another important strand of associational culture in the pre-Famine decades was religion. Ridden highlights the importance of religious identity for liberal Protestants and a shared heritage with ‘emphasis on piety and theological interests’ which allowed them to re-invent themselves as a legitimate and non-denominational Christian élite in Ireland.¹⁹ Religion also played another important role in forming a strand of associational culture in Ireland that caused division and controversy, that involving the Orange Order and Brunswick Clubs.

While all tiers of the gentry and peerage mingled in certain outdoor pursuits such as hunting, which will be discussed later in this chapter, association in political clubs was reserved for the upper gentry and peers only. Though local county clubs and even the Orange Order and Brunswick Clubs, which catered for all three tiers of the gentry (upper, middle and lower) and all had political agendas, honorifics and landed magnates were members of exclusive clubs like the Reform Club, Carlton Club and Whites and Travellers. One reason why these bodies were exclusive to the élite is because they were based in London and Dublin (the Kildare Street Club being the premium Dublin club) where many of the upper-gentry had second homes.²⁰ In the middle-belt counties over twenty magistrates have been identified as being members of London Clubs.²¹ While these clubs acted as political organizations they

¹⁶ *Dublin University Magazine*, No.59, Vol. 10, 1837, p. 624.

¹⁷ *Nenagh Guardian*, 19 February 1838.

¹⁸ *Clare Journal*, 20 July 1838.

¹⁹ Jennifer Ridden, ‘‘Making good citizens’’: national identity, religion and liberalism among the Irish elite’ (PhD thesis, King’s College London, 1998), pp 22-79. The five men who provide the backbone of Ridden’s study were all magistrates for Limerick and in this regard it highlights associational culture within associational culture.

²⁰ Patrick J. Duffy, ‘Colonial spaces and sites of resistance: landed estates in nineteenth century Ireland’ in L. J. Proudfoot and M. M. Roche (eds.), (*Dis*)*placing empire* (Aldershot, 2005), pp 15-40.

²¹ All but one of these men, John Carroll, Miltown Malbay, Clare, were large landowners or came from large landowning families.

also doubled up as gentleman's clubs which included gambling and drinking. At a local level, in counties such as Limerick, which had a sizeable urban centre, it is important to draw a distinction between the urban and rural élites by mid-nineteenth century. At the onset of the nineteenth century there was a clear relationship between the urban and rural élites, who were almost one and the same,²² however, as Limerick's Georgian quarter began to expand at the end of the eighteenth-century, it both reflected and allowed for the growth of a thriving merchant class, or middle class, which resulted in a newer urban élite with a distinctly different background, values and structures. McNamara argues that while the gentry and aristocracy continued to act as patrons for urban benevolent or voluntary associations from the 1830s onwards, they did so on the terms laid down by the middle classes.²³ While all Irish counties experienced a growth in the number of urban centres throughout this period, for the most part they remained small in comparison to the larger municipal centre like Limerick, Cork and Galway.²⁴ Even large towns like Ennis and Clonmel, which had a sizeable number of merchants, were still rural in outlook as a great many of the landed gentry had homes in or near these towns.²⁵ Eleven magistrates had residences in or around Clonmel, including the Earl of Donoghmore and the wealthy Moore and Bagwell families. The largest town in King's County was Tullamore, with a population of 5,517 in 1841, and nine magistrates resided here including John William Tarleton, described by Reilly as a major land owner, and two land agents, Francis Berry and William Crawford.²⁶ In Roscommon, eleven magistrates resided at Boyle, population of 3,300, including Viscount Lorton, Morgan Crofton and the Lloyd family, all major landowners in the county.²⁷ These towns were also often the centres for county fiscal business and held Grand Jury meetings which were dominated by the landed gentry. The indifference to industrialization and urbanization led many Irish landed élites to look inwards and while numerous urban centres were growing, many landed elites turned to

²² See Peter Borsay, 'The landed élite and provincial towns in Britain, 1660-1800' in *The Georgian Group Journal*, Vol. 13, 2003 and John Garrard, *Democratisation in Britain: elites, civil society and reform since 1800* (London, 2001).

²³ Sarah McNamara, 'Formation of the Limerick City middle classes, 1830-40 (PhD thesis, Mary Immaculate College, University of Limerick, 2010), pp 166-169. McNamara maps the growth of urban middle class attitudes in Limerick by focusing on the ethos behind their commercial, educational and associational culture and values which shared very little with their rural equivalent by mid-century.

²⁴ Matthew Potter claims that some 750 towns/villages underwent planning or rebuilding by the 1840s, of which a large proportion took place in the western half of the country, which fits Lee's middle belt theory of a moving frontier of economic improvement which lent itself to a moving frontier of outrage.

²⁵ *Pigots Directory* 1824 listed 150 merchants, tradesmen and professionals in Ennis, while the same source listed 340 merchants, tradesmen and professionals in Clonmel that same year.

²⁶ Reilly, 'Land agents', p. 186.

²⁷ For more see distribution of magistrates in Chapter 1 and maps in the index.

building or restoring ‘the big house’ to reinforce their stature in rural society.²⁸ For instance, in King’s County, the Parsons spent five years carrying out improvements to Birr Castle, between 1840-1845,²⁹ the O’Briens restored Dromoland Castle in Clare in 1837 installing running hot water and a boiler and the Mahons of Strokestown Park, Roscommon restored their estate including a hydraulic turbine.³⁰ Thus, in this vein, much associational culture subscribed to by the gentry outside cities was unchanged insofar as it was more concerned with preserving the aristocratic social structure of rural life. Hunting clubs are a prime example of this. Thomas Hunt has noted the centrality of hunting to the gentry lifestyle, and central to this activity was the ability to maintain and ride horses, so that, in the words of nineteenth century classical scholar, J. P. Hanaffey, ‘not to hunt was ‘the certain sign of a fool or an ass.’³¹ The *Freeman’s Journal* went further and accused local magistrates of a lack of interest in dispensing justice in Ireland, alleging that they were too busy partaking in gentlemanly pursuits such as hunting, shooting or racing while the peasant was at the local assizes waiting upon the administration of justice.³² An article abridged from the *Limerick Chronicle* outlined similar grievances when attacking the government’s appointment of Stipendiary Magistrates for Limerick, and singled out Nicholas J. French of Rahasane, Galway, for particular scorn, stating he had previously been a Justice of the Peace ‘more partial to the sports of the field than to the uneasy duties of special justice.’³³ Historians of the hunt and eighteenth century association have remarked on the function of hunting clubs and the hunt as a tool in ‘shoring up Protestant dominance’ due to the prominent role of land and landowners in the hunt. Powell claimed that hunting contributed to a peaceful countryside in England while in contrast, in Ireland, it led to belligerence as some hunting clubs participated in policing the terrain against poachers and Whiteboys.³⁴ In discussing the transition from earlier landlord led hunts to newer subscription based club hunts, Powell referenced a Limerick Hunt Club as an example of one of the earliest subscription hunts in Ireland and notes the prominent families of Massey and Blennerhassett as instrumental in setting the club up in 1734. Over one hundred years later, Gerald Blennerhassett Senior, JP, of Riddlestown, was the master of hounds for the Limerick County hunt club and such continuity gives some

²⁸ See Terence Dooley, *The big houses and landed estates of Ireland* (Dublin, 2007).

²⁹ Reilly, p. 30.

³⁰ Charles Carson, *Technology and the big house in Ireland, 1800- 1900* (New York, 2009), p. 3.

³¹ Thomas Hunt, ‘The development of sport in County Westmeath, 1850-1905’ (PhD thesis, De Montfort University, 2005), p. 19.

³² *Freeman’s Journal*, 9 December 1841.

³³ *Roscommon and Leitrim Gazette*, 20 August 1836.

³⁴ Martyn J. Powell, ‘Hunting clubs and societies’ in James Kelly and Martyn J. Powell (eds.), *Clubs and societies in eighteenth-century Ireland* (Dublin, 2010), p. 404.

weight to Powell's assertion that 'the hunt club did not function as a means of promoting social integration or social advancement necessarily' but instead acted as an arena in which social equals could dominate in a semi-oligarchical domain, much like the magistracy itself.³⁵ However, while prominent families and even peers remained at the helm of many hunting clubs, members of the lesser and middling gentry can be found in hunt clubs in the 1830s and 1840s, nevertheless, this was as far down the social ladder as the membership extended in the pre-Famine decades since hunts remained exclusive to the gentry. Even in the post-Famine period when members of the professions were beginning to appear within the ranks of hunting clubs, magistrates and the gentry still make up the bulk of the membership. In Queen's County, for example, some thirty-three magistrates and twenty-seven Grand Jurors were part of the county hunting club in 1875, which clearly demonstrates the exclusivity of the pursuit, but also highlights the cross-over between civil society and leisure at this time.³⁶ In Westmeath the number of magistrates and Grand Jurors who were members of the Westmeath Hunt Club almost doubled between 1854 and 1900, from forty-eight to ninety-one members, which shows the growth of associational culture post-Famine but also the overall stock placed in hunting as a communal activity and social networking tool by the magistracy.³⁷ In 1840, the *New Sporting Magazine* indicates that not every county in Ireland had a hunting club.³⁸ For instance only twenty-six counties are listed as having such clubs in 1838, which was up six from 1836 when only twenty counties were so listed.³⁹ Moreover, certain counties may not have had a hunting club and partook in hunts run by clubs in neighbouring counties, in the same way that magistrates sat at petty sessions in a neighbouring county. Hunting helped forge links outside the local environs also, as evident in an article by *The New Sporting Magazine* which reported on a hunt in its 1840 addition, which took place in Faha, County Limerick, in 1820 and was said to have attracted huntsmen from various counties and as far as England. The journal often carried fanciful stories,

³⁵ *ibid.*, p. 408.

³⁶ Hunt, 'The development of sport in County Westmeath, 1850-1905', p. 33. Hunt lists a number of professionals, including a doctor, bank manager and veterinarian taking part in a West-Meath hunt in 1887.

³⁷ Thomas Hunt, 'The development of sport in County Westmeath', p. 37.

³⁸ *The New Sporting Magazine* (1792-1870) was one of the first English speaking sports journals that predominately reported on equestrian based activities but touched on all gentlemanly pursuits such as hunting, fishing and cricket.

³⁹ There is a number of reasons why this could have been; the magazine may have demanded a fee to list clubs which the Master of Hounds et al would not pay, or the club members may have simply failed to inform the magazine of their existence. Roscommon is one such county not mentioned yet as John Mathias Ryan's doctoral thesis on Killarney deer hunting points out, there was considerable deer and fox hunting carried out in the county, particularly in French Park, home of the Baron (French) Frayne's. Ryan also conveys that the deer parks in Killarney were replenished with Roscommon deer. John Mathias Ryan, 'Deer forests, game shooting and landed estates in the South-West of Ireland, 1840-1970' (PhD thesis, University College Cork, 2001).

ostensibly quoting word for word, about events or characters from some years previously which, even to contemporary readers, must have seemed farfetched. Nevertheless, they give the historian a sense of time through the language, mannerisms and social profiling used in the retelling of these anecdotes. One such story indicative of the closed nature of hunts at this period featured the Masseys of Limerick prominently, paying homage to their long standing links with hunting, while the Fosberrys and Tuthills were also included, all three being leading families in the county.⁴⁰ Hugh Massy and George Fosberry, both magistrates for Limerick, feature heavily in the story with Massey described as the ‘darling of the county’ which no doubt was a reference to his unmarried status and the importance of his family. Two other counties that continually featured in the list of counties with hunting clubs were King’s and Queen’s County. Wyndam-Quin cites King’s County as the oldest hunting club in the country while naming Queen’s County as one of the most respected hunting clubs.⁴¹ The names of the Queen’s County members and masters of hounds reads like the *Who’s Who* of the leading landed families in the county, again including many magistrates, such as the Earls of Portarlington and Chareville, William Despard and Joshua Kemmis.⁴² Notices in the *Freeman’s Journal* and *Nenagh Guardian* regularly mentioned the Tipperary Fox Hounds in the 1840s but rarely mentioned patrons of the club, instead listing the meeting place and time of hunts, which were usually set to meet on the estate of local landlords such as the Bennetts of Eastwood house, Templemore, or the Lloyds of Mount Fresco, Roscrea who were all members of the magistracy.⁴³ However, Bracken has identified forty-four separate hunt packs in Tipperary between 1839-1880, eleven of which were active pre-Famine, meeting some six hundred times in the five year period between 1839-1844 which demonstrates a particularly high volume of hunting meets when it is considered that at this period hunts generally took place during winter and spring.⁴⁴

There was more hunting activity in and around the border regions of counties, particularly in the midlands, once more highlighting the cross-regional associational value of hunting at this time.⁴⁵ In 1839 one such cross-over hunt led to a minor dispute between the Ossory

⁴⁰ *The New Sporting Magazine*, Vol. XVIII, No.108, April 1840, pp 217-225.

⁴¹ W. H. Wyndham-Quin, *The Foxhound in County in Limerick* (Dublin, 1919).

⁴² *The New Sporting Magazine*, Vol. XIV, No. 81, 1838, pp 19-21. *Leinster Express*, 18 April 1846.

⁴³ *Nenagh Guardian*, 2 March, 12 April 1842, 14 January 1843; *Dublin Morning Register*, 25 February 1842.

⁴⁴ Patrick Bracken, ‘The growth and development of sport in Co. Tipperary, 1840-1880’, (PhD thesis, De Montfort University Leicester, 2014), pp 124-127.

⁴⁵ As with the magistracy in the area, North Tipperary and South King’s County hunt clubs interacted regularly. Queen’s County and Kilkenny, Tipperary and Kilkenny and Queen’s County and Tipperary hunt clubs all crossed over and hunted regularly.

foxhounds of Queen's County and the Kilkenny Club over coverts and earths at Durrow Woods. Sir Wheeler Cuffe, patron of the Kilkenny club, was urged by his own members to settle the dispute with Michael H. Drought (JP) who was Master of Hounds for Ossory. On the surface the exchange seemed amicable, yet the words of Drought show that both were Masters for their respective clubs, and Drought, a minor gentleman⁴⁶ himself, was well aware of his position and the social implications in such dealings:

I am very sorry to find there should be any misunderstanding between the Committee the Kilkenny Hunt and myself respecting the coverts, or rather the earths, in Durrow woods, and by their resolutions I find they have deputed you to confer with me on the subject. I shall most willingly submit to any decision you may come to, which I am sure will be consistent with our mutual good sport. I have had no other object. Assuring you there is no person to whom I would so cheerfully submit a proposition of the kind, or, indeed, any other... Believe me, my dear Sir Wheeler.⁴⁷

In the end Sir Wheeler decided that the coverts were out of bounds from October to March, which perhaps was the cause of the dispute in the first place as the Ossory hunt wanted to hunt and the Kilkenny club wanted the foxes and coverts to replenish. The author recalled another meeting of the two clubs that same year when the Kilkenny club granted the Ossory hounds limited use of hunting grounds within their lands. Present for the Ossory club once again was Drought, acting as master, accompanied by the Hon. Henry Walker, JP, of Castle Durrow. Walker's motives for attending could have been many, it could have merely been on social grounds, out of a real interest in the club or he may have been asked to attend by Drought to even up the scales socially, particularly as the Earl of Desart, amongst others, was present for the Kilkenny club. Therefore, the aristocratic standing of these clubs is evident, even when they became more subscription based, as the cost of keeping a stable of horses and a pack of hounds for a season ran into thousands of pounds, which was outside the means of most gentry.⁴⁸ Yet as evidenced by the meetings of the Ossory and Kilkenny clubs, away from the duties of the magistracy and Grand Jury hunting developed cross-border associational ties and brought members of the middling and lesser gentry, such as Drought, into the same social sphere, as a number of peers and honorifics. Thus, if Powell's assertion that hunting clubs caused resentment in the Irish country side is true, then such resentment

⁴⁶ Drought was educated at TCD and resided at a small residence in Haristown, Queen's County which Samuel Lewis named as one of the principal seats in the parish of Rathdowney. Drought held a small quantity of land in four townlands within the parish of Rathdowney.

⁴⁷ Author unknown, *Memoir of the Kilkenny hunt* (Dublin, 1897), pp 102-103. The author lists a number of hunts in which the club partook during first decades of the nineteenth-century, many of them taking place in Tipperary, Wexford, Wicklow and Queen's County

⁴⁸ Shipley, 'The Leicester gentry', pp 171-172. Although primarily discussing post-Famine hunting clubs, Bracken states that the average cost of maintaining a club ran between £400-£700 per annum.

remained largely under the surface throughout the eighteenth and nineteenth centuries as there is no evidence of anger throughout the pre-Famine period. Post-Famine, Hunt notes that resentment against hunting by the lower orders resulted in many hunting clubs being culled during the Land League campaign in the 1880s; likewise, McEvoy discusses the United Irish League's influence in disrupting hunting during the early years of the twentieth-century.⁴⁹ It could be argued that this was because the mechanisms were not in place for the peasantry to challenge the dominance of the landed élite and their pursuits in the pre-Famine, particularly as most of the gentry involved in hunts were Justices of the Peace⁵⁰ who controlled the land, the means of production and who policed the countryside. When these social structures began to breakdown in the post-Famine decades it was only then that landlords and hunting could be challenged, through the Land League, but even then, the challenge was highly politicized and the paternal like relationship that existed between landlord and the peasantry in the pre-Famine had dissolved by the 1880s and it is not fair to take the attitude of the latter as a fair assessment that pursuits such as hunting were resented in the pre-Famine.⁵¹ Indeed, Bracken notes that hunting enjoyed its most success in Tipperary during the immediate years before Land League agitation began with almost 1,800 meetings during the five year period prior to the commencement of land agitation suggesting that this was evidence to show that opposition to the hunt was non-existent up to the 1880s.⁵² However, throughout the eighteenth and nineteenth centuries, at the centre of these clubs and this culture were local Justices of the Peace who used such clubs to cement their social bonds in rural society, and by studying hunt club membership it is possible to gauge active participation in the dominant culture on the part of individual magistrates and landed élites.

Magistrates, and the gentry as a whole, took leading roles in a number of other sports during the pre-Famine period, with cricket and horse racing being two of the main choices. In

⁴⁹ John Noel McEvoy, 'A study of the United Irish League in King's County, 1899-1918' (PhD thesis, St. Patrick's College Maynooth, 1992), pp 56-79.

⁵⁰ The exact figures for magistrates who took part in hunts during this period proved hard to estimate as members of hunt clubs were not always named. For the middle belt counties I found fifteen magistrates who were members in hunting clubs, five in Clare, nine in King's County, eight in Queen's County, sixteen in Tipperary, four in Roscommon and three in Leitrim.

⁵¹ See L. P. Curtis Jnr., 'Stopping the hunt, 1881-1882: An aspect of the Irish Land War', in Charles H. E. Philpin (ed.) *Nationalism and popular protest in Ireland* (Cambridge, 2002) pp 349-402.

⁵² Bracken, 'Development of sport in Tipperary', p. 126. Further to this, McEvoy demonstrates that a sections of rural society depended on hunting for their livelihood and a whole industry emerged by the end of the nineteenth-century to supply hunts with saddlery, clothing and equipment, further to horse groomers, trainers and labourers who all profited from hunting. McEvoy, 'A study of the United Irish League in King's County', p.72.

England cricket was played by every section of society but it was led by the landed classes.⁵³ In Ireland the game was wholly dependent on the aristocracy, and later the wealthy professional classes, as it was never embraced by the general population in the same way it was in England.⁵⁴ Because of its close connection to hunting, most early racing meets were run by local hunt clubs and prize money was put up by the local gentry.⁵⁵ While Queen's County and Limerick feature were strongholds of both cricket and horse racing, cricket was confined to only twelve counties in the pre-Famine decades while nearly every county had at least one race course.⁵⁶ Hayes asserts that; 'in the second half of the nineteenth century, sport was gentrified and made responsible, respectable and resplendent' however, it is clear that this process was well underway fifty years previously.⁵⁷ In 1843 the *Nenagh Guardian* reported on a game of cricket that took place in Currachase, the seat of the magistrate Sir Aubrey De Vere, between the members of the Limerick cricket club and the paper reported that the proprietor of the grounds provided suitable entertainment and noting W. Fosberry, C. Fosberry, Aubrey De Vere and Bolton Waller jun. as some of the gentlemen that distinguished themselves.⁵⁸ While these were all from leading landed families, they were all junior members, whose fathers were Grand Jurors, magistrates and Deputy Lieutenants, thus, suggesting that while the gentry encouraged their sons to enter civil positions to learn responsibility, the bonds of class and the benefits of associational culture were also fostered early through the medium of sport.

Another gentleman who stood out at the 1843 cricket game was Henry Wm Egan, who along with young De Vere was listed as being of Trinity College, which further suggests the ties forged through education but it also touches on the role university played in both codifying and popularizing sport in the second half of the century.⁵⁹ The Limerick cricket club travelled to and defeated the Killaloe club twice in 1841, with the second game being a 'well contested game' which was reportedly watched by a large crowd.⁶⁰ In the previous report about the

⁵³ Shipley, 'The Leicester gentry', p. 173.

⁵⁴ Hunt, 'The development of sport in County Westmeath', p. 186. In contrast, Hayes argues that cricket did enjoy large participation across a number of counties and was embraced by the middle-class by the 1880s, but concedes that it never captured the interest of the general population.

⁵⁵ Tom Hunt, *Sport and society in Victorian Ireland: the case of Westmeath* (Cork, 2007), pp 50-52.

⁵⁶ In the middle belt there were courses in Ennis, Thurles, Nenagh, Newcastle West, Rathkeale, Boyle, Tullamore, Maryborough (Portlaoise). The only county not to host a race in the pre-Famine is Leitrim. James Kelly, *Sport in Ireland 1600-1840* (Dublin, 2014), p. 29.

⁵⁷ Hayes, 'Sport in North-Munster', p. 10.

⁵⁸ *Nenagh Guardian*, 9 September 1843.

⁵⁹ Trinity College and another landed student from Limerick, Charles Burton Barrington, who was central to founding the trinity rugby team and in bringing the sport to Limerick.

⁶⁰ *Cork Examiner*, 27 September 1841.

game in Currachase the reporter also stated that the spectators numbered somewhere in the hundreds, and while the accuracy of both claims is dubious the reports nevertheless point to the growth and traction sports were gaining under the patronage of the gentry and magistrates in the first half of the century. At Killaloe, the spectators were entertained by the musical academy, whether local, or from Limerick is unclear, painting a picture of a festival of culture being shared and enjoyed across two counties and several social strata rather than in an arena closed to those not partaking in the game. This is especially relevant to the history of sport. Hayes states that ‘one of the first questions asked of sport by most researchers is its contribution to, and relationships with, the different forms of Irish identities in the late nineteenth and twentieth centuries’ whereas it is clear that such identities were well forged before this period.⁶¹

If this thesis has used Lee’s analogy of a moving frontier of agrarianism as a starting point, it can also be said that through leisurely pursuits magistrates contributed largely to a moving frontier of associational culture in the pre-Famine era.⁶² An indication of why the game of cricket never caught on amongst the masses as other sports did was perhaps down to the opposition most local cricket clubs faced. Hunt reports that only twelve inter-county clubs played against each other before the famine, most of them based in the mid-Shannon region. More often than not local clubs faced off against the local garrison, even the game in Killaloe 1841 was held on a ground adjoining the local army barracks. Reports of the games between the Queen’s County Club or Stradbally Club and the local garrison regularly appeared in the press during the 1830s and 1840s. Once more, the names of prominent gentry magistrates, such as Matthew Cassan, Sheffield House, Portlaoise, John Baldwin of Castlecauffe near the Slievebloom Mountains and Sir Edmund Walsh Hunt, Ballykilcavan, appear on the lists of players throughout these reports.⁶³ Indeed, as far back as 1833 one of these games against the local garrison is recorded with a notice underneath reminding patrons that the Queen’s County club would ‘hold their weekly meeting on Tuesday next’ which depicts a highly organised body rather than a casual grouping that played games and met infrequently.⁶⁴ By 1835 the *Leinster Express* gave notice as to which of the Queen’s County club members had paid the £1 subscription fee, with the magistrate families of Baldwins, Moores and Cassan all

⁶¹ Thomas Hayes, ‘Sport in North-Munster’, p. 13.

⁶² Paul Langford, *Public life and the propertied Englishman, 1689-1798* (Oxford, 1999), pp 383-384. Langford discusses the mobility of the English county community in the eighteenth-century and how distance did not hamper their sense of local power while in another community.

⁶³ *Dublin Evening Packet*, 26 July 1834; *Leinster Express*, 15 August 1835, 25 September 1841.

⁶⁴ *Leinster Express*, 15 June 1833.

paid up and heavily involved.⁶⁵ A number of district clubs also sprang up in the county during the 1830s and 1840s, including the Ossory, Huntington and Maryborough clubs, which reduced the dependence on garrison teams, though the practice of playing such teams continued throughout the century.⁶⁶ Clubs in Tullamore, Cahir, Belfast, Wexford, but particularly in South-Leinster, emerged by the 1840s and began to interact locally and on an inter-provincial stage.⁶⁷ Therefore, though the attention of scholars has so far focused on the second half of the century, as formal sporting structures were first put in place in Ireland, more attention needs to be paid to the first half of the century as it is evident that these structures clearly existed as early as the 1830s. Given the large number of magistrates and Grand Jurors heavily involved in these sporting events, who had practical day-to-day experience in county administering it makes sense that these sports would be highly regulated. However, the focus of the early nineteenth century gentry clubs was exclusively for the benefit of likeminded individuals who used these associations to share their values and mingle with their peers on a social level, and ‘seemed less bound up with the outcome of games as winning and losing sides were equally rewarded by the social whirl surrounding games.’⁶⁸ A newspaper report celebrating the first game of the then newly formed Tullamore Club captures the ethos of these occasions wonderfully:

The match being ended at half-past four o’clock, the players, with the gentlemen assembled, to the number of fifty or sixty, retired to where tents and marquees were tastefully pitched; and an elegant dinner, comprising all the delicacies of the season, with the best wines, was provided.⁶⁹

In England the popularity of cricket brought the landed gentry and the urban middle-classes together as the industrial revolution and urbanization eroded the social dominance of the gentry and organized sport put both cultures on a collision course.⁷⁰ In contrast, the Irish gentry remained aloof from urban élites and if anything such sporting occasions strengthened displays of gentry paternalism. This paternalism is evident in the second half of the newspaper report on the Tullamore club, which captures precisely the patronage and

⁶⁵ *The Leinster Express*, 6 June 1835. All three families were landowners and appeared as magistrates, Grand Jurors and Deputy Lieutenants for Queen’s County

⁶⁶ Hunt, quoting Trevor West, insists that for this very reason cricket is the only sport that can be accurately called a garrison game: ‘Development of sport in Westmeath’, p. 181.

⁶⁷ Kelly, *Sport in Ireland*, pp 328-330.

⁶⁸ Hayes, ‘Sport in north Munster’, p. 153. The exclusive nature of these clubs shows that patrons were not interested in expanding the club, or the body, in the same way as organizations were in the late 1880s when sporting organizations like the GAA became primarily concerned with growing the main body and the politicization of these organizations.

⁶⁹ *The Leinster Express*, 6 May 1849.

⁷⁰ Eric Dunning and Kenneth Sheard, ‘The bifurcation of rugby union and rugby league: a case study of organizational conflict and change’ in Eric Dunning and Kenneth Sheard (eds.) *Sport: critical concept in sociology* (London, 2003), pp 241-241.

associational value of such sporting events for the gentry. The writer noted ‘after dinner a subscription was got up, and several steeple chases on foot, which afforded great amusement, came off between the peasantry, who attended in large numbers, and who were plentifully regaled with cold meat and ale.’⁷¹ Thus, similar to the cricket match in Killaloe, the writer describes a festival of culture but through the separation of class the writer also paints the gentry as custodians of this culture, while the tenantry served as to reinforce their natural positions as leaders in society. In Ireland, even post-Famine, the only professionals to mix in the landed social sphere were those who were integrated into rural life, such as the local doctor or bank manager. This was also the case in the earlier periods, as evident in a letter to the *Nenagh Guardian*, written by ‘Old Whip’, in reference to hunting ‘grocers, taylors [sic], etc’ and other business people in Nenagh ‘have more sense than to lose their time in such idle pursuits; all the persons I could see at the hunt that day...have sufficient property to support them independently.’⁷²

Hayes’ research into sport and identity in the mid-west shows that the *Limerick Chronicle’s* coverage of sport did not become extensive until the post-Famine decades.⁷³ At the same time, it is clear that by the 1840s a distinct sports section had been formulated in Irish newspapers, and instead of slotting sports news between local current events, papers dedicated a column to a numbers of sports. Thus, where there was a report on a cricket game, this was nearly always followed or preceded by a report on horse racing. As established Horses were generally owned by the local patron of a hunting club, who was also typically one of the greater gentry or one of those who could afford the £75-£400 for a good hunter⁷⁴ and thankfully for the modern scholar, horses were nearly always named in reference to their owners, i.e. Mr Finnuacane’s ‘Giraffe’ or Mr Studdert’s ‘Chestnut-Filly’. Thus, in one swoop it is possible to trace huntsmen and those that attended race meetings. The two horses named were taken from a report on the Ennis races in 1835 and belonged to two landed families from Clare who were magistrates and Grand Jurors.⁷⁵ Not only did these gentlemen enter horses into races but they often doubled up as stewards for the meeting; Mr Armstrong (JP) acted as steward at the Queen’s County races in July 1843 while his horse, ‘Star of Erin’ ran

⁷¹ *The Leinster Express*, 6 May 1849.

⁷² *Nenagh Guardian*, 30 March 1844.

⁷³ Hayes, ‘Sport in North Munster, 1850–1890’, p. 6.

⁷⁴ Bracken states that the price of a horse for hunting ranged from £75 to £400. While horses at the higher end of this valuation were used for horse racing, prices for racing stock often exceeded £400.

⁷⁵ *Freeman’s Journal*, 3 August 1835.

in the first race. Other stewards that day were Major Dunne and S. Cassan, both magistrates for the county, possibly a natural position for magistrates to fill.⁷⁶

From a random selection of ten race meetings across the seven middle-belt counties during the years 1839-1842 over forty magistrates were identified as being spectator at the race meeting or having horses involved.⁷⁷ The names given to horses by their owners could also reveal the owner's personal sympathies or simply the political issues of the day; as in Roscommon in 1843 when Dr Blake's horse, 'Daniel O'Connell', and Mr Kelly's horse, 'Repealer', lined out in a four horse races that October.⁷⁸ Such trends were repeated up and down the country, 'Dan O'Connell' again appearing for a different owner in Westmeath in 1844 with Mr. Blake's 'Father Mathew' running at Ballinrobe in 1844, while names like 'Agitator', 'Radical' 'Patriot' were also common, as well as a handful of horses with anti-repealer names.⁷⁹ However, as with cricket and hunting, horse racing provided the setting in which to cement social bonds and keep abreast of local, regional and national news, especially given that many races were followed by a dinner later that evening.⁸⁰ The Quarter Sessions and the County Assizes in the spring and summer months, which were occasions of great social importance in themselves, were gradually aligned with other social and sporting occasions. In April 1845, the *Leinster Express* reported that the business of the Queen's County Quarter Sessions was so light, a number of gentle left for the Lismacrorry races.⁸¹ The *Kerry Examiner* recorded the excitement in the lead up to the Killarney races in June 1844 when it stated 'that never before were public amusements got up here more spiritedly, nor in a manner more likely to give general satisfaction than the approaching races.'⁸² The real significance of why the race was set for this date appeared in the article immediately underneath, which reported on the Quarter Session which had been in progress for two days and the Grand Jury sworn in: thus, the magistracy and gentlemen of the county gathered to carry out legal business, could cross over in to the social realm when sessions were closed

⁷⁶ *Leinster Express*, 19 July 1843. An examination of the various steward positions involved in racing today is more than a tentative nod towards magistrate involvement in the growth of the sport in Britain and Ireland: the positions include stipendiary steward, chief stipe, clerk of scales, clerk of the course and a judge. Taken from the www.turfclub.ie official rules; such roles and names for each position differ in various countries but they all retain similar origins and reference to magisterial duties.

⁷⁷ See *Waterford Mail*, 2 October 1939; *Limerick Reporter*; 23 March 1841; *Dublin Evening Packet and Correspondent*, 25 June 1839.

⁷⁸ *Freeman's Journal*, 18 October 1843.

⁷⁹ *Freeman's Journal*, 3 October 1844.

⁸⁰ The Earl of Clare, Lord Guillamore, Hon. G. E. Massey, Sir David Roche and the Knight of Glin, all magistrates for Limerick, attended the Limerick races and accompanying dinner in 1839. *Waterford Mail*, 2 October 1839.

⁸¹ *Leinster Express*, 5 April 1845.

⁸² *Kerry Examiner*, 28 June 1844.

and the racing began. As a result, from the 1840s many notices of impending petty sessions, assizes or reports on their conclusion, shared space with reports on horse racing, for example, The *Nenagh Guardian* finished up a report on the local Quarter Sessions in 1843 with a brief notice on the upcoming Limerick races.⁸³ Naturally, spring and summer were the seasons for outdoor pursuits and it makes sense that such events, particularly the larger ones, took place when the gentry were gathered in the same location and their calendars were clear. On occasion these sporting events sometimes got in the way of magisterial duties as evident in the returns made by the clerk of the petty sessions, Joseph Guilfoyle, for Borrisokane, Tipperary, who informed the government that no petty sessions were held in the town on 20 April 1842 due the ‘races of Lismacrody going on.’ Kelly also notes how the Mayo Grand Jury room, which was the centre of local administration, was used for a ball in the wake of the Maiden Hill races in 1828.⁸⁴ Such displays suggest that civil duties came second to their personal pursuits.⁸⁵ Nonetheless, it is clear that magistrates were heavily involved in driving organised sport in the pre-Famine period.

Determining to what clubs or societies specific magistrates belonged proved easier for some counties rather than others, largely depended on the level of detail in the newspaper reports provided. For example, when reporting on hunting, cricket and racing, local newspapers often just referred to the individual, i.e. Mr Kelly of Roscommon, making it difficult to ascertain if this was a magistrate and if so, which one, as there were five magistrates in Roscommon with the surname Kelly.⁸⁶ In other instances first names or initials were used which made the task easier. One club whose membership proved far easier to trace was the Royal Western Yacht Club in which thirty-seven magistrates were identified as members during the period under examination. In fact thirteen of the original twenty-seven founding committee were magistrates, which again suggests the prominent role magistrates played in establishing clubs. Because of the nature of this club it naturally falls that most if its members lived near the ocean or lake, thus most of the magistrates concerned were from Limerick and Clare⁸⁷ but

⁸³ *Nenagh Guardian*, 8 April 1843.

⁸⁴ Kelly, *Sport in Ireland*, pp 122-123.

⁸⁵ *Petty sessions (Ireland). Return of the petty sessions held in Ireland during 1842*, H.C (543), LI.181, p. 106.

⁸⁶ The magistrates were, Denis Kelly, Daniel Kelly, Armstrong Kelly, Edward Kelly and William Kelly (DL).

⁸⁷ Shannon Estuary/Limerick based: Sixty members with eighteen yachts of various sizes. Kerry based: Ten members with four yachts. Cork based: Fourteen members with seven yachts. Westport Co Mayo based: Four members with two yachts. Galway based: three members with two yachts. Dublin based: Ten members with six yachts.

other coastal and land locked counties provided members also.⁸⁸ One interesting member is the Land Agent for the Devonshire estate in Newcastle-West, Alfred Furlong. Furlong owned about five-hundred acres of land, which when added to his salary as agent marked him out as a lower to middle rank member of the gentry, who, as a club member could socialize with persons of a far higher social status. How active he was or who proposed him as member is unclear, but as a land agent residing in the centre of West-Limerick he stands out as an unlikely member of a yacht club. However, Furlong had been a magistrate and member of the Grand Jury for a number of years and consequently accustomed to dealing regularly with members of the peerage and the upper gentry and within two years of joining the yacht club Furlong was elected as Chairman of the Board of Guardians for Newcastle-West.⁸⁹ Generally, this was a position held by members of the peerage and large landed magnates, and though he is listed as a member of the gentry Furlong just about qualified in financial terms, so his appointment may have been achieved through networking in bodies like the yacht club. By 1847 the club had four-hundred members and with seventy-four yachts, had the third highest number of yachts out of eleven Royal Yacht Clubs registered in Britain and Ireland,⁹⁰ and growth of the club in such a short term was driven by the endeavours of individuals involved in the local magistracy.⁹¹

Other clubs to which magistrates belonged were again those frequented by the more élite members of society. The original gentlemen's clubs such as the Carlton Club, White's, Travellers, United Services and the Reform Club were all patronised by the upper gentry. The fact that one needed a home in London or Dublin to regularly visit these clubs put them out of bounds for the lesser gentry.⁹² The calibre of men from the middle belt counties who were patrons of these clubs gives an indication as to their elite status; Samuel Dickson, Deputy

⁸⁸ www.westernyachtclub.com/cms provides a history of the foundation of the club and yacht clubs in general during this period. The website also provides a list of all 204 founding members which was predominately made up of landed aristocracy and middle to upper gentry.

⁸⁹ Kelly, 'The Newcastle-West workhouse', pp 151-152; *Limerick Reporter*, 20 October 1846. The magistrates of Limerick issued a memorial to Furlong on his retirement from the commission in 1846 via the local press in Limerick. In the memorial it was noted that Furlong's spent twenty-five years as a magistrate and was central to restoring the Courtney estates to tranquillity after the Rockite insurrection in the locality in 1822-25.

⁹⁰ *The New Sporting Magazine*, Vol. XIV, No. 80, August 1847, pp 134-142.

⁹¹ Some of the nobles that were members of the club included the Earl of Mulgrave, Viscount Lorton, Earl of Devon and the Duke of Devonshire.

⁹² Lewis, *A topographical dictionary of Ireland*, vol. 1, p. 541. These clubs were born in London, transforming from small meetings in coffee houses in the seventeenth century into private clubs for the wealthy. By the 1820s Dublin had replicated this scene and a number of clubs were well established in the city, the most well-known being the Kildare Street Club which by 1822 had 687 members. Lewis also noted that there was 400 members in the Sackville Street Club, 700 members in the military dominated The Hibernian United Service Club and references a number of other societies operating at the time.

Lieutenant for Limerick, was a member of Carlton, Whites and Army & Navy clubs in London, Crofton M. Vandeleur, Deputy Lieutenant for Clare (R.D.S, Royal Yacht, Agriculture society of Ireland), Thomas Bernard, owner of 15,579 acres in King's County (Carlton), Sir Charles Coote, Queen's County (Carlton), Henry Denis Kelly, Deputy Lieutenant for Roscommon (R.D.S),⁹³ London clubs also offered members the opportunity to associate with a network of élites from the British colonies and were concerned with matters of the Empire and colonial politics rather than matters of local interest pursued by the lower gentry.⁹⁴ From a cultural viewpoint, the Royal Dublin Society provided an outlet for those interested in the arts, agriculture and science. Again, predominately patronized by the peerage and upper gentry, it was the one society that had members from all seven counties central to this study. At a local level, county clubs and agricultural clubs sprang up to address the needs of the middle to lower gentry. However, these clubs still continued to be dominated by the upper strata of society who perhaps brought the latest trends in from more élite societies, like the RDS, back to the local sphere. An example of a patron who brought advances from the Royal Society back to his locality was Lord Crofton, JP for Roscommon and member of the RDS, who was chair of the Roscommon Union Farming Society in 1844 and held a meeting that December with the aim of introducing flax into his district.⁹⁵ In the 1830s the counties of Limerick, Clare and Tipperary came together to form an agricultural society with the aim of improving agricultural practices in their counties and sharing new techniques of farming.⁹⁶ By 1840 the three residing presidents of this society were Lord Dunraven of Limerick, Sir Lucius O'Brien (DL) Clare and Lord Bloomfield of Tipperary, three Justices of the Peace for their respective counties; a further twenty-four of the thirty-five man committee were also Justices of the Peace.⁹⁷

Such endeavours give credence to Huggin's assertion of the paradoxical nature of magistrates at this time, insofar as they practiced paternalism when it came to law and order, yet were progressive when it came to farming and the economy.⁹⁸ Such societies also served to improve the local economy and not just advance the individual, though there were obvious financial benefits for landed persons behind such improvements. In 1835 a number of magistrates in Clare formed a club in Ennis for the rate payers of the county with the

⁹³ Burke, *A genealogical and heraldic dictionary*; Walford, *The County Families of the United Kingdom*; www.rds.ie; www.westernyachtclub.com/cms.

⁹⁴ Amy Milne-Smith, *Imperial club life in London*, www.victorianweb.org (accessed on 10 August 2015).

⁹⁵ *Belfast Newsletter*, 3 December 1844.

⁹⁶ *The Farmer's Magazine*, Vol. 1 (London, 1840), p. 9.

⁹⁷ *The Farmer's Magazine*, Vol. 1 (London, 1840), p. 9.

⁹⁸ Huggins, *Pre-Famine Roscommon*, p. 58.

intention of checking over taxation and abuse of county cess by the Grand Jury. Given that the Grand Jury included members of the gentry, this move highlights the internal fragmentation within the landed élite, especially as the members listed in the newspaper article were moderate to middle sized landholders, suggesting that the club was a challenge to the dominance of larger landowners within the county.⁹⁹ The introduction of steam travel and especially the railway in the 1840s highlighted the double edged nature of the some of these élites who improved out of a combination of improving and self-serving motives. Hundreds of peers, barons, DLs and magistrates across the country were instrumental in setting up local committees in order to have the railway pass through their neighbourhood. The memories of the engineers who built the first railways in Britain and Ireland were recorded. One engineer in particular spoke about the promotion of employment and the circulation of money being the dominant attitude towards the coming of the railway in most parts of the United Kingdom:

It was not so regarded in the West of Ireland. At least, if there were any who did so regard it, they were few. The Lord Lieutenants of the country and his accomplished son; the county Magistrate, who thought it not unbecoming to the lustre of an old historic name to enter the service of his country as the chairman of a railway company...seemed to exhaust the list of those who regarded the opening up of the country by railway communication, in any other light than as a possible occasion for the gratification of individual greediness.¹⁰⁰

The press at the time regularly published these lists and those of the shareholders involved in the project, lists again dominated by local JPs.¹⁰¹ One such committee set up in 1844 to join Limerick and Cork by rail through the towns of Mallow and Charleville had fifteen magistrates on the organising committee.¹⁰² The proposed Thurles to Carrick-on-Suir railway committee consisted of thirteen local magistrates out of a total twenty-six committee members.¹⁰³ The Limerick to Ennis line extension to Ennistymon also elected a committee in

⁹⁹ *Limerick Chronicle*, 2 May 1835. Pierce Carrick, William Butler and Hug O'Loughlen were three of the founding members.

¹⁰⁰ Frances Roubiliac Conder, *Personal recollections of English engineers; the introduction of the railway system into the United Kingdom* (London, 1868), pp 350-351. Conder claimed to record the information some years previously but put the work on hold due to another project he carried out on the continent. He himself was a civil engineer and of the recollections in the book he claimed they were 'almost exclusively original and personal.' The book is of its time insofar as it carries a lot of anti-Irish sentiment but in the case highlighted it was directed at the gentry and ruling classes and offers an insight into the attitudes of DLs and magistrates and how their office was viewed from the outside. Economic ventures of this nature by landed élites is certainly a topic that needs further research¹⁰¹ *Nenagh Guardian*, 26 October 1844.

¹⁰¹ *Nenagh Guardian*, 26 October 1844.

¹⁰² *Limerick Chronicle*, 7 September 1844.

¹⁰³ J. Francis, *Railway Chronicle*, Vol. 1, 1845, p. 675.

1844 and of the sixteen man committee, six were local magistrates.¹⁰⁴ Similarly, the public thanks of the magistracy and gentry of Kilrush for the Dublin Steam Company's endeavours to promote steam activity in the Lower Shannon region expressed the desire for more commercial opportunities in which to invest and from which to profit from.¹⁰⁵ However, whether regional railways or local ventures, these commercial enterprises brought magistrates and the gentry together to network on a separate scale to civil society or leisurely pursuits.

Of course, religion acted as a contentious aspect of associational culture in the shape of the Orange Order and Brunswick Clubs. Many magistrates were considered members of the Order throughout the first half of the nineteenth century and beyond and Curran notes how 'membership of the yeomanry and Orange Order ensured that many magistrates displayed blatant bias towards Orangemen when dealing with Protestant infringements of the law' which roused the resentment of many Catholics who felt the system of law and order was biased against them.¹⁰⁶ Where the Order differed from other clubs or societies was that all classes, from peasantry to landed, could join a local lodge, thus it claimed much support from the Protestant lower classes who through their local lodge could combine their religious separatism with a chance to share the associational culture of the elite. Curran notes that the rules of the organization compelled all members to attend their lodges, which resulted in magistrates being 'grounded at a local level because of their involvement with the Order.'¹⁰⁷ However, Curran's study is almost wholly focused on the Ulster counties, which was not a true reflection of Orange activity in the rest of the Island. For instance there were only three local lodges in Limerick, Clare had none, both Tipperary and King's County had one Grand Lodge and two minor lodges each while Roscommon had just one Grand Lodge.¹⁰⁸ Perhaps somewhat surprisingly, Leitrim was reported to have twenty-nine local lodges which was a proportionately large number for a small county.¹⁰⁹ Queen's County had a grand county lodge and seven minor lodges, which was a high return for a county with no major urban centre and far distant from the stronghold of the Orange Order in North East of the country. While there

¹⁰⁴ *ibid.*, p. 708.

¹⁰⁵ *Limerick Chronicle*, 14 January 1835.

¹⁰⁶ Curran, *The Protestant community in Ulster, 1825-45*, p. 88.

¹⁰⁷ Curran, 'Protestant community in Tyrone', p. 80.

¹⁰⁸ [First] report from the select committee appointed to inquire into the nature, character, extent and tendency of Orange Lodges, associations or societies in Ireland, H. C. 1835 (337) xv, (Appendix), pp 35- 69.

¹⁰⁹ **Leitrim** had a population of 155,000 in 1841, or 98 people for every kilometre squared. **King's County** 147,000, 73 people per km squared, **Queen's County** 154,000, 90 per km squared, **Limerick** 330,029, 123 per km squared, **Tipperary** 435,553, 101 per km squared, Roscommon 253,591, 100 per km squared and Clare 286,394, 91 per km squared. See W.E. Vaughan and A.J. Fitzpatrick (eds) *Irish Historical Studies: population 1821-1971* (Dublin, 1978).

was no census of membership taken, the 1835 commission into the Orange Order in Ireland provides the names of Grand Masters, chaplains and treasurers along with the names of masters of some minor lodges and relays the names of thirteen-magistrates involved in the hierarchy of local or county lodges in the seven middle-belt counties.¹¹⁰ Of the middle belt magistrates identified as members of the Order, William Ponsby, D.L for Tipperary, Simon Armstrong, High Sheriff for Leitrim, Chidley Coote, brother of the Earl of Mountrath, and Edmund Staples & Jonathan Chetwood had served as Sheriff for Queen's County. These men could all be considered members of the upper-gentry given the financial costs of their civil positions or family connections. Barker Thacker, grand treasurer for the Queen's County lodge, was a level below these and can be classed of the middle-gentry. He owned and resided on an estate of roughly one-thousand acres which he sold for £3,600 in 1856.¹¹¹ He also leased over seven hundred acres in Queen's County in the town-lands of Shanbo and Derrinsallagh, and leased a further 208 acres in Wicklow.¹¹² William Birch, a JP for Queen's County, who resided near Roscrea in Tipperary, was a grand master of a lodge in Queen's County. The son of a distiller, Birch had also sought a position as a Stipendiary Magistrate through the patronage of Lord Norbury in 1821, thus, with his family's merchant background and his eagerness to become a professional man himself, suggest that Birch was a member of the under-gentry.¹¹³ Similarly, Guy Atkinson was a grand master of a lodge in King's County and though his family were landed, Atkinson regularly acted as the Shinrone town clerk in the 1840s which was a legal position used by minor gentry to supplement their landed income.¹¹⁴ Thus, as minor gentry, both Birch and Atkinson used Orange Order membership to elevate themselves on an associational level and perhaps the reason why these men were bestowed patronage from the local nobility when pursuing positions such as police magistrate and town clerk.

Pre 1800, Fleming has shown that such loyal societies were common throughout Ireland in the eighteenth-century also, and flared up around Protestant fears of invasion or of a Catholic

¹¹⁰ Middle-belt magistrates in the Orange Order were as follows; (**Queen's County**) Chidley Coote – Grand Master, Jonathan Chetwoode – Master of Lodge 881, Rev. Hunt Johnson – Grand Chaplin, Thomas Ryan – Master of Lodge 781, Barker Thacker- Grand Treasurer, Edmund Staples, Robert Belton- Master of Lodge 1540 (**Tipperary**) William Birch –Deputy Grand Master, William Ponsby – Master of Lodge 806, T. B. Willington – Grand Treasurer; (**Roscommon**) Henry Fry – Grand Master and Grand Treasurer; (**Leitrim**) Simon Armstrong; (**King's County**) Guy Atkinson – Grand Master.

¹¹¹ Eswyn Ellinor-Lyster, *Lyster pioneers of lower Canada and the west: The story of the Lysters of the old Queen's County, Ireland, who settled in Canada early in the nineteenth century* (Qualicum Beach, 1984), p. 92.

¹¹² *Leinster Express*, 29 May 1852, 9 April 1870.

¹¹³ Lord Norbury, King's County, to William Gregory, Dublin Castle, 30 January 1821, Chief Secretary's Office, Registered Papers 1821: 1899.

¹¹⁴ Hartigan, 'Fabricated crime and religious tension in pre-Famine Offaly, pp 8-18.

rising, thus, though such associationalism was wrought with fears and sectarian sentiment, it reinforced a wider sense of identity amongst Protestants outside of smaller élite homogenous groupings.¹¹⁵ However, membership of all oath bound societies was banned by order of the government throughout the 1820s and 1830s,¹¹⁶ thus to see such magistrates boldly affiliating with illegal organizations suggests these men were willing to challenge the government and break the law they were supposed to be implementing to retain what they considered their cultural identity.¹¹⁷ However, a large proportion of Orange Order members did leave because it was outlawed, possibly including magistrates, and as such the identity of many of these gentlemen is unknown. In 1828 this latter group were able to side step such clandestine activity and a wave of Brunswick Clubs formed in opposition to Catholic Emancipation.¹¹⁸ Some two-hundred clubs sprang up in a relatively short period claiming some 150,000 members across the county, but the movement's life was short lived as the Catholic Relief Act was passed a year later.¹¹⁹ What Brunswick Clubs did, however, was to flush out those who had been members of an Orange Lodge previously or those who were anti-Catholic, for instance Phylan lists thirty-nine prominent members of Limerick society that attended Brunswick meetings in that city, thirteen of whom were magistrates.¹²⁰ Orange dinners highlight both the associational value of the Order and also the reluctance of successive governments to fully clamp down on the Order despite it being outlawed. In 1836, one of these dinners was held in Limerick which had over one hundred prominent members of the order from across the country in attendance, individuals who would not normally visit the region. Sir Hugh Massy was the highest profile local magistrate in attendance.¹²¹ Thus, Loyalism played a significant part in maintaining social hierarchies, particularly in times of crisis, which many members of the Ascendancy felt post- Emancipation Ireland was as official positions were being diluted by Catholics.¹²² The Order and magistrates with Orange

¹¹⁵ See David A. Fleming, 'Clubs and societies in eighteenth century Munster' in Kelly and Powell, *Clubs and societies*.

¹¹⁶ In July 1823 the Unlawful Oaths Act was passed banning all oath bound societies including the Orange Order, following a reconstitution, the Order was banned again under the 1825 Unlawful Association Bill. The Order never disappeared however and continued to have a strong political influence throughout the Island, particularly in the North of the Island.

¹¹⁷ Curran, pp 246-48.

¹¹⁸ Blackstock, *Loyalism in Ireland, 1789-1829*, pp 239- 240.

¹¹⁹ Alan Phylan, 'The Brunswick Clubs: rise, contradictions and abyss' in *The Old Limerick Journal*, Vol. 40, 2004, pp 25-34.

¹²⁰ John Blennerhasset, William Massey and Bolton Waller were three such magistrates.

¹²¹ *Limerick Chronicle*, 9 March 1836. The Massy family as a whole were all members of the Orange Order, see also *Limerick Chronicle*, 28 January 1839.

¹²² Frank O'Gorman and Allan Blackstock, 'Loyalism and the British world: overviews, themes and linakage' in Frank O'Gorman and Allan Blackstock (eds.) *Loyalism and the Formation of the British World, 1775-1914* (Suffolk, 2014), p. 3.

sympathies remained a constant headache for the administration throughout the nineteenth-century.

Marriage and Education

If clubs and societies were used to harness a shared culture and identity as a means of personal gain then marriage and education remained the bedrock of such networks. In 1804 Lady Leitrim, writing to her son, Lord Leitrim, informed him of her displeasure with the actions of Henry Clements, a cousin residing in Cootehill, Co. Cavan, who had sold a family residence from which she had hoped her other son would profit. Lady Leitrim may have been cleverly scolding Clements through her son, Lord Leitrim, a magistrate for County Leitrim, expressing the expectations up to which gentlemen were expected to live: ‘His education has been totally neglected, and I doubt if he was ever taught to reflect on the difference between right and wrong. This, added to a natural, weak understanding, he has imbibed [since?] the ambition and low cunning of those he has associated with, though with a good temper and not a bad heart.’¹²³ Thus, for the landed élite, the education of their sons was not about scholarly achievement per se, but about building character, discipline and forming lifelong networks.¹²⁴ Lady Leitrim, as the matriarch of the family, was all too aware of this and pointed it out as missing in Henry Clements’ development.

While sons of the gentry were encouraged to go to university, a large proportion never finished their study and instead it was cut short by their father in order to give them a more informal education in estate management.¹²⁵ Others, such as aspiring clergymen and barristers, generally finished their studies but in the latter case it was often at the Inns of Court in London and not their original place of study.¹²⁶ However, in the nineteenth century ‘the most prestigious education available... was to be found outside Ireland’ and only élite families could afford to send their children to the public schools in England.¹²⁷ The educational preferences of the magistracy in the pre-Famine decades are surprisingly difficult to trace, particularly those of the middle to lower gentry who were educated by private tutors

¹²³ NLI Killadoon Papers, Ms. 3603/2, Lady Leitrim to Lord Leitrim 13 [?] 1812.

¹²⁴ Philip Jenkins, *The making of a ruling class: the Glamorgan gentry* (Cambridge, 2002), p 217.

¹²⁵ Andrew Timothy Balchin, ‘Justice of the Peace Yorkshire, 1782-1836’, p. 98.

¹²⁶ Balchin, ‘Justice of the Peace Yorkshire’, p. 97.

¹²⁷ Ciaran O’Neill, ‘Rule Etonia: educating the Irish Catholic elite 1850-1900’, (PhD Thesis, University of Liverpool, 2010), p. 1.

or local academies.¹²⁸ Harrow and Eton were usually the schools of choice for the parents of the upper gentry and those in the peerage as their curriculum focused on a classical and religious education rather than a scientific one, which appealed to the conservative outlook of the gentry and supported old values of elitism.¹²⁹ Eton, the main choice for the sons of gentry in England, seems also to have been the top choice for the Irish nobility who sent their children to English schools, with eighteen individuals recorded between the late 1780s and mid-1820s. The O'Grady and Gubbins families from Limerick, the Stackpooles of Clare, Cootes and Rochforts from Queen's County, Caulfields in Roscommon, Bartons and Moore families in Tipperary, all sent their sons here, sons who would later become magistrates for their respective counties.¹³⁰ As extensive land owners within their counties this also shows the pedigree of those going to Eton.¹³¹ There does not appear to have been any student from King's County in Eton during 1780-1820, while in Leitrim Rev. George De La Poer Beresford was the only magistrate for the county educated here, though the Tottenham family, also magistrates for Leitrim, had started to send their children to Eton by the 1840s. In comparison, only eight magistrates had gone to Harrow, though the school register used for this study did not begin until 1800 and it is more than likely that a number of magistrates were educated there previous to this date. The Earls of Kingston, the Vandeluers of Clare, De Vere's of Limerick, Fitzgibbons, Earls of Clare, and another branch of the Barton family of Tipperary all sent their sons to Harrow in the late eighteenth and into the nineteenth century and they all later became magistrates. John Robert Godley, DL and Sheriff for Leitrim in the 1830s, and believed to be the founder of Canterbury in New Zealand, was also educated at Harrow.¹³² Rugby and Winchester were the other English schools at which some of the middle-belt magistrates received their education but did not appear to be held in the same high regard by the gentry in Ireland as Eaton and Harrow.

Some élites did receive their education at home in Ireland also, a number of magistrates had attended the Royal School of Armagh, including three from Roscommon and Leitrim, the most northern of the counties examined, while the O'Gorman Mahon attended Clongowes

¹²⁸ *Irish Times*, 21 October 2014.

¹²⁹ Shipley, 'The Leicestershire gentry', p. 184.

¹³⁰ E. P Williams, *The Eton school lists, 1791-1850* (London, 1872). Middle belt magistrates who attended Eaton included; The Earl of Kingston, Joseph Gubbins, Guillamore O'Grady (Limerick) Richard Stackpoole (Clare) Thomas Cosby, Viscount De Vesci (Queen's County) George Caulfield, Baron Robert Clonbrock (Roscommon) Samuel Barton, Henry Briscoe, Viscount Harwarden (Tipperary) George De La Poer (Leitrim)

¹³¹ The O'Gradys owned over 10,000 acres in Limerick, the Cootes owned over 50,000 acres across Queen's County, King's County and Tipperary,

¹³² M. G. Daughlish and P. K Stephenson, *The Harrow school register, 1800- 1911* (London, 1911).

Wood College, which opened its doors in 1815.¹³³ A number of Royal Schools were established in Ulster by James I in the seventeenth century which were free to attend.¹³⁴ By the early nineteenth century two further Royal Schools were opened in Banagher, King's County, and at Carysfort, Wicklow. However, by 1791 these schools had gone into decline and there were only just over two-hundred students attending the six Royal Schools in Ireland, an indication of the value parents of the gentry and nobility placed on sending their sons to be educated in England.¹³⁵ Some 165 magistrates studied received a university education, with the overwhelming majority attending Trinity College Dublin.¹³⁶ The range of those who attend Dublin's Trinity College extended from middle gentry right through to upper gentry and the sons of a peers. The Armstrongs in King's County, the Massey family with properties right across Limerick, Clare and Tipperary, and the Lloyds and French families of Roscommon were all magistrates who sent their sons to the College. Many of the sons of the upper gentry and honorifics that were initially educated at public schools in England continued their education at either Cambridge or Oxford, each of which continued to see an inflow of Irish students. In contrast, many of the lay magistrates, which included minor-gentry or sometimes the second or third sons of wealthy élites who were not in line for succession and had to make their own fortunes, received an education in the army, navy or in the administration of an estate which were all regarded as equal in value to a formal education.¹³⁷ However, whether these men built networks to the same degree as those sent to private schools is questionable.

While magistrates did not require any formal legal training for their role, by the 1830s the government only appointed Stipendiary Magistrates from the ranks of solicitors and barristers, an issue which will be addressed in Chapter 5. But an understanding of the law aided the gentry when it came to estate management, as such, a number of gentry sons studied at the Inns of Court, London, with the two more popular Inns for Irish students being the Middle Temple and Gray's Inn, though Gray's was originally the choice of Welsh students but had

¹³³ Ciaran O'Neill's study shows the growth of such Catholic schools like Clongowes and elite Catholic education in Ireland and England during the nineteenth century. Timothy Corcran, *The Clongowes record: 1814-1932* Dublin, 1932).

¹³⁴ Desmond Keenan, *Ireland 1603-1702, society and history* (2013), p. 367.

¹³⁵ Gerald Newman, *Britain in the Hanoverian age, 1714-1837* (London, 1997), p. 364.

¹³⁶ *Alumni Dublinenses: a register of the students, graduates, professors and provosts of Trinity College in the University of Dublin (1593-1860)*.

¹³⁷ Balchin, 'Justice of the Peace Yorkshire, 1782-1836', p. 98.

become the preference of Irish students by the early decades of the nineteenth-century.¹³⁸ Indeed, speaking about the prestige of studying at the Inns of Court a barrister informed the 1846 committee ‘that many gentlemen of property...who wish not to allow their sons to spend a perfectly idle life send them to the Inns of Court’.¹³⁹ Nevertheless, many Irish students, regardless of the Inn at which they studied, socialized in the same public houses and rubbed shoulders daily. Twenty-four middle belt magistrates who studied at the these two Inns have been identified in this study and many of them were pursuing their studies over the same years, which suggests they had to make acquaintances, which in some instances were sure to last throughout life. Figure 5 below lists the names of these middle belt magistrates who studied at the Inns, and of the seven counties studied magistrates from Limerick, Tipperary and Clare made up the bulk of these with twenty-one magistrates out of a total twenty-four attending the Inns from these counties between 1783 and 1835. It was through such bonds that cultural capital, such as sporting events discussed earlier, and political capital used to seek public positions were deployed later in life.

Middle Temple	Edward O’Brien 1785 - Clare
Thomas Monsell 1783 - Limerick	Thomas Mahon 1808 - Clare
John Lloyd 1783 – Limerick	Samuel Bindon jun 1835 - Clare
Joseph Gabbett – 1788 - Limerick	William Pennefather 1784 - Tipperary
John Dickson 1789 – Limerick	Fredrick Thompson 1785 – King’s County
Stephen Dickson 1791 - Limerick	Hugh Stafford 1819 - Roscommon
John Colploys 1785 – Clare	Robert Johnson 1788 - Leitrim

Gray’s Inn	John Scott Vandeleur 1811 - Clare
John Creaghe 1791 – Limerick	Thomas Crowe 1828 - Clare
Richard Bourke 1796 - Limerick	Joshua Mennet 1798 - Tipperary
William Monsell 1799 - Limerick	Charles Cambie 1819 - Tipperary
Standish O’Grady 1810 - Limerick	Samuel W. Barton 1825 - Tipperary
Edward Blakeny 1810 – Clare	William Roe 1835 – Tipperary

*Figure 5. Middle belt magistrates who studied at the Inns, 1783-1835.*¹⁴⁰

¹³⁸ Craig Bailey, ‘Metropole and colony: Irish networks and patronage in the eighteenth-century Empire’ in Enda Delany and Donald M. MacRaild (eds.), *Irish migrations, networks and ethnic identities since 1750* (London, 2007), pp 18-38.

¹³⁹ McEntee, ‘Gentlemen practisers’: solicitors as elites in mid-nineteenth-century Irish landed society’, p. 102.

¹⁴⁰ Sir Henry F. MacGeagh, *Register of admissions to the honourable society of Middle Temple, vol. II 1782 to 1909* (London, 1944). Joseph Foster, *Register of admissions to Gray’s Inn, 1521-1889* (London, 1889).

Trinity College Dublin was the main university by far for the sons of the gentry and of the 167 magistrates recorded as attending there, some fifty-one later served on grand juries across the seven counties under examination. Those educated at Oxford or Cambridge served on grand juries too, but TCD appears to have been at the centre of networking for magistrates in their formative years. The classical curriculum taught at these universities was one of the main reasons the gentry sent their sons to these colleges as it reinforced the value and belief of their superiority over the rest of society. More importantly, by mixing with the sons of élites from all over the United Kingdom, university offered the younger gentry to experience and take part in a national framework ‘which moulded the culture, ethics and outlook of not just a local but a national and imperial elite.’¹⁴¹ Therefore, through their curriculum and their social interactions with their peers, a natural sense of governance was developed in the young elite and this is reflected in the numbers of those from the middle belt who were educated at university and later took part in public life. For instance, thirty-one middle belt magistrates with a university education also served as Deputy Lieutenant or High Sheriff. This is also evident in the educational background of MPs in the first half of the nineteenth century, as sixty per cent of MPs in 1820 had been educated at an elite university, which further highlights that elite education fostered a responsibility to take part in public life in its students.¹⁴²

If a stint at university was seen as one of the major steps in finishing a young gentleman and preparing him for later life, then marriage was the final step. It was here that the gentleman faced up to his responsibilities and started down the path of safeguarding the dynastic line and family fortune if he was the eldest son and heir, while second and third sons hoped to use marriage as a base to make their own fortune. Many gentry married quite young by modern standards, generally between eighteen and twenty-one years of age. Sir Aubrey De Vere, the magistrate from Currachase, Limerick, had just turned nineteen when he married Mary Spring Rice, the sister of Thomas Spring Rice MP, and received a congratulatory note stating that ‘those who married when boys were sure to remain boyish all their lives.’¹⁴³ Choosing the correct wife was extremely important for the prosperity of the family and the individual themselves and by the nineteenth century landed families were forging national networks through marriage to help them maintain their status and power. Trollope’s *The Kellys and the O’Kellys*, published in 1848, narrates an account of aristocratic life and the pursuit of the

¹⁴¹ Shipley, ‘Leicestershire gentry’, p. 184.

¹⁴² Joseph S. Melsel, *Public speech and the culture of public life in the age of Gladstone* (Columbia, 2012), p. 65.

¹⁴³ Limerick Archives, Hunt and De Vere Papers P22 268, Mr Dawes to Aubrey De Vere, 9 November 1807.

heiress as a means of social climbing among the gentry.¹⁴⁴ In 1829 Lord Charlemont wrote to Lord Leitrim about John Burges, the suitor for Leitrim's daughter and while he described Burges as being unimpeachable in character and temper he noted that his financial situation was dire, as debts left by his father reducing his yearly income of £2400 from his landed estates in Tyrone, to just £400 after the interest was paid. This essentially was the crux of gentry marriage, while Charlemont pointed to the possibility of Burges earning his fortune through the death of an aunt he urged Leitrim's daughter, who was unaware of Burge's financial position, against the marriage and thus urged Leitrim against his consent, though this did not stop Caroline from getting engaged to Burges in any case.¹⁴⁵ While he may have been assured money from his aunt in her will there is no doubt that Burges saw a golden egg in the daughter of a member of the peerage and a land owner with over 80,000 acres of land in a number of counties.¹⁴⁶ Malcomson provides an in-depth analysis of aristocratic marriages in Ireland during the period 1740-1840 and of the hunt for a marriage alliance to help restore the fortunes of declining estate owners or those gentry looking to move up the social ladder.¹⁴⁷ Of the middle belt magistrates, one such family that gained from marrying up was the Coopers in Sligo through the wedding of Arthur Brooke Cooper, JP for Leitrim, to Jane Frances O'Hara who was sister to Major Charles King O'Hara JP, of Annaghmore, Co. Sligo.¹⁴⁸ The Coopers were small scale land owners and verging on middle gentry at best but had run into financial difficulties in the 1780s due to overstretching their budget on house-building.¹⁴⁹ The O'Hara family, in contrast, were large land owners and were one of the few Gaelic landowning families to retain their lands throughout the seventeenth century and had representing Sligo numerous times at Westminster on the strength of these estates. Charles King O'Hara died without an heir, and the large estate passed to his nephew, Arthur Cooper's son, on the condition he took the O'Hara name, which he did, so although the O'Haras appeared to be marrying down, the Coopers were of old Anglo-Irish stock and the union

¹⁴⁴ Malcomson's 2006 study, *The pursuit of the heiress*, stresses the importance of the heiress in aristocratic marriages in Ireland during the eighteenth and nineteenth centuries; Trollope, *The Kellys and the O'Kellys* (London, 1848) This novel can be constructed as an attack on the pursuit of money for the sake of it by Trollope which is a constant theme in his novels and commentary on élites during this period.

¹⁴⁵ NLI Killadoon Papers, Ms. 36,032/14, Charlemont to Lord Leitrim, 18 January 1829- 9 November 1832.

¹⁴⁶ A. P. W. Malcomson, *The Clements archive* (Irish manuscripts commission) (Dublin, 2010), p. vii.

¹⁴⁷ A. P. W. Malcomson, *The pursuit of the heiress* (Belfast, 2006).

¹⁴⁸ Edward Walford, *County families of the United Kingdom* (London, 1869), p. 142. Though the Cullen family sold some lands through the encumbered estates courts in the 1850s and 1860s, in 1870 the family still owned over 5000 acres in the county.

¹⁴⁹ PRONI, *An introduction to the Coopershill papers* (Belfast, 2007), p. 5.

‘symbolized the integration of the O’Hara’s into the Anglo-Irish élite in Sligo’ and the family increased their land holding through the marriage and strategic land purchases.¹⁵⁰

Other marriages of Leitrim magistrates included Cairncross T. Cullen (High Sheriff/Deputy Lieutenant) to Jane Eleanor Palmer, daughter of Henry Palmer (High Sheriff), Leitrim, another union which cemented each family’s local fortunes within the county.¹⁵¹ Charles Henry Tottenham, JP Leitrim, married the daughter and heir of George Crowe, Kilrush, Co. Clare in 1814.¹⁵² His son, Nicholas Loftus Tottenham (DL/High Sheriff) married Anna-Maria eldest daughter of Sir Francis Hopkins, MP Westmeath, and upon the death of his son, Sir Francis Hopkins 2nd Bart, the Westmeath Rochfort estate, which Hopkins had bought in the Landed Estates Court, passed to Anna-Maria and thus the Tottenhams who changed the name of the estate to Tudenham Park.¹⁵³ The growth of the Tottenham family through inter-county marriage links was certainly becoming more typical of gentry marriage trends in the nineteenth-century but the importance of marrying locally to strengthen local status remained the foundation of marriage networks for many gentry. Marriage trends in Limerick are a prime example of this as a number of those identified involved alignment to families on the fringes of the county. The Blennerhassetts of Riddlestown, Rathkeale, Limerick, were a prominent landed family of magistrates that had lost some of its financial means by the nineteenth century, married into the Massey and Knight of Glin families.¹⁵⁴ Richard Bourke, JP, married Anne O’Grady in 1844, the daughter of the magistrate Lord Standish O’Grady, a large landowner of Bruff. Thomas Browning, JP, a relatively small land owner, married Emily Gubbins in 1846, the daughter of fellow magistrate and Deputy Lieutenant, Joseph Gubbins. Browning’s brother married into the landed Roche family in Limerick, and while he himself was not a magistrate, his son later became a DL for the county in the second half of the century.¹⁵⁵

These local county marriages all helped strengthen the fortunes of the magistrates entering these marriages, nevertheless, the father of the bride was no less as calculating when deciding the future of his daughter, even when the marriage was to someone not of the same social or financial standing. A strategic marriage of a daughter into a family who had over stretched their finances could potentially lead to this estate falling into the hands of the maternal line,

¹⁵⁰ NLI O’Hara Papers MSS: family and estate papers, 16th-20th century, see introduction.

¹⁵¹ Sir Bernard Burke, *Landed gentry*, p. 308.

¹⁵² Sir Bernard Burke, *Landed families*, p. 1524.

¹⁵³ Walford, *County Families*, p. 961.

¹⁵⁴ www.theblennerhassettfamilytree.com (accessed on 13/4/2015)

¹⁵⁵ John Burke, *History of the commoners of Great Britain and Ireland* (London, 1838), p. 212.

therefore adding to the estate of the more prominent élite who consented to his daughter marrying beneath her station. This exact scenario happened with the Blennerhassetts whose Riddlestown estate became part of the Knight of Glin's property in 1904 and the Blennerhassett line died out. Thus it was through very clever family networking that estates were expanded but such scenarios further demonstrate that landed élites were not part of a homogenous group and while they served together as magistrates, shared a sense of identity through such institutions of marriage and leisure, they were also competing with each other within this sphere. County Clare, like Leitrim, was a county with a limited amount of prime farming land. Here a small population of gentry vied for marriages, competition which led many landed gentry to look more and more outside the county to forge a marriage union. The O'Briens, Vandeleurs and Bloods, three of the bigger landed magistrate families in Clare, all married into Irish families from outside their own county. The magistrate and Deputy Lieutenant, Bindon Blood, Corofin, married three times, firstly to his cousin Anne Burton, of Cliffden, County Clare, in 1796, secondly to Harriet Bagot, Kildare, daughter of magistrate Christopher Bagot, in 1809, thirdly, to Maria Hinkley, Kent, England.¹⁵⁶ Edward O'Brien, Dromoland, third son of Edward O'Brien, married Louisa Dawson in 1839, daughter of James Dawson, Ballynacourte, Tipperary.¹⁵⁷ The Ballynacourte estate passed to the Massey family from Limerick through the marriage of James' eldest daughter and heiress, Mary, to 1st Baron Hugh Massey, Creating the Massey-Dawson line who were magistrates, Grand Jurors and M.Ps for Tipperary.¹⁵⁸ Dennis Canny, magistrate from Clonmony, Clare, married Eliza Fetherson from Bruree, Limerick. She was a catholic and daughter of a Limerick magistrate, Robert Fetherson of Bruree House.¹⁵⁹ Other prominent Clare JPs, John Armstrong (DL, Sheriff) and James Molony (DL), both married into English families, which suggests that a wider net was being cast by members of the Irish gentry in the pre-Famine era. King's County followed the same pattern as Clare and Leitrim with a number of bachelors looking outside the county for a wife. Sir Andrew Armstrong, D.L, sheriff and M.P for King's County, married Frances Fullerton, the daughter of George Alexander Fullerton (Downing), a large landowner in Antrim. Fullerton took this surname in 1794 as a condition upon inheriting his grand-uncle's fortune, Alexander Fullerton of Ballintoy Castle, Antrim.¹⁶⁰ His paternal line was Downing, an ancient family who were descended from Henry III and who lent their

¹⁵⁶ Bio of Bindon Blood, www.RDS.ie (accessed on 18 April 2016).

¹⁵⁷ Bio of Edward O'Brien, www.RDS.ie (accessed on 18 April 2016).

¹⁵⁸ Frank Tracy, *Story of an Ascendancy family*, pp 20-23; NUIG Landed Estates.

¹⁵⁹ *Limerick Chronicle*, 25 July 1835.

¹⁶⁰ Burke, *A genealogical and heraldic history*, p. 298.

name to Downing Street in London. His mother was heiress to the Fullerton fortune, thus, his own parent's wedding was a strategic one which saw the Downings inherit the Fullerton fortune but at the cost of losing the family name.¹⁶¹ The magistrates of Queen's County and Tipperary tended to marry within the county which again suggests the importance of strengthening local power but also the availability of daughters of élite landowners and good land in these counties. Barker Thacker, of Ballymellish east Queen's County, magistrate and Orange Order member, married the daughter of fellow magistrate, Charles White of Leixleip, Deputy Lieutenant and Grand Juror.¹⁶² Thomas Trench, Ballybrittas, member of the RDS, married the daughter of Walter Weldon, M.P for Queen's County 1786. Some examples of local marriages in Tipperary; William Barton, Grove house outside Clonmel, married Catherine Perry, daughter of Samuel Perry, Woodroffe House, Clonmel. Both the Bartons and Perrys were extensive landholders in the county, and both produced Deputy Lieutenants and High Sheriffs, thus it was a union sustaining each family's social standing in society.¹⁶³ Henry Prittie, brother and heir to Hon. Aldborough Francis Pritte, Roscrea, married the daughter of Viscount O'Callaghan Lismore, Anna Maria Louisa O'Callaghan.¹⁶⁴ Once more, this was a marriage sustaining each family's social standing in society as both were members of the nobility. Henry Trench, Ballingarry, also a second son, married the daughter of Lord Bloomfield, Georgina Mary Emilia Bloomfield, in 1836.¹⁶⁵ Trench's uncle was Lord Ashtown of Moate, Co. Galway who was succeeded by Henry's brother, Francis. Thus, these last two marriages of Henry Prittie and Henry Trench also highlight how second sons of the gentry made their fortune through marriage, and by the 1870s Trench had inherited over 12,000 acres across the middle-belt counties from the Bloomfields.¹⁶⁶

Therefore, the marriages of middle belt magistrates were no different to what was happening among the gentry in the rest of Great Britain up to the Famine. Marriages in many cases were protective insofar as they secured a family's wealth and social status. A marriage also forged alliances with families of similar wealth and status and as has been highlighted quite often these links were made nationally or with landed families in England. Everitt argues that such marriages hastened the end of the traditional county community as one of its 'sustaining characteristics was marriage between local gentry families' suggesting that Irish landed

¹⁶¹ *The Gentleman's magazine*, Vol. 30, 1848, p. 208.

¹⁶² Burke, *Landed Gentry*, p. 772.

¹⁶³ William Hayes and Art Kavanagh, *The Tipperary gentry*, vol. 2 (Dublin, 2005), p. 20; David J. Butler, *South Tipperary, 1570-1841: religion, land and rivalry* (Dublin, 2006), pp 107-158.

¹⁶⁴ Murphy, *Two Tipperarys*, p. 79.

¹⁶⁵ *The Gentleman's Magazine*, Vol. 26, 1846, p. 423.

¹⁶⁶ NUIG Landed Estates.

society was evolving from a purely local outlook to a much broader horizon.¹⁶⁷ Connolly argues that in the late seventeenth century rural prominent Protestant gentlemen were drawn into 'powerful local networks of personal and family connections' with their Gaelic neighbours. While such networks were partly for security reasons and to protect isolated Protestant gentry, nevertheless, Connolly suggests that they were an obstacle to law and order as Protestant magistrates were less inclined to bring their Gaelic transgressors, or those under their patronage, to order.¹⁶⁸ However, by the pre-Famine decades the Gaelic elite had long been absorbed into Anglo alliances or had been reduced to under-gentry or large farmers.¹⁶⁹ Yet the need for security and elite networks was no different during the 1830s and 1840s than it was in the late seventeenth century and families like the Masseys in Limerick continued to strengthen their local position by marrying into other local prominent families, indicating that local ties remained equally important at this period.

While the landed magistracy shared aspects of cultural identity they were not one homogeneous group. Positions of county governance, whether that of Justice of the Peace or Grand Juror, were sought and held along family lines for personal gain and influence and channels of patronage were sought and opened to this end. The limits as to how far one could rise were generally linked to the amount of land owned, but as highlighted in the case of the land agent Alfred Furlong, networking allowed members of the lower gentry to gain access to positions of influence previously reserved for the upper gentry. While sport and leisure promoted associational culture and cemented cultural ties amongst the magistracy across county boundaries, however lesser gentry were still reliant on upper gentry patronage to partake in these pursuits. Educational networks were also instrumental to a gentry lifestyle yet, as highlighted, the élite members of the Irish magistracy were sent to the prestigious English schools of Eton and Harrow while the magistrates from the rank of lesser gentry were educated in local academies, once more highlighting the divergence of the gentry. These same gentry that were privately schooled in England were also members of élite political clubs in London and Dublin. Yet, university, such as Trinity College Dublin, often brought future magistrates from the ranks of the middling and upper gentry together and as evidenced by the numbers of the university educated that went on to serve on the Grand Jury, it was at such places of learning, which instilled a belief that the gentry were superior to the rest of

¹⁶⁷ A. Everitt, 'Dynasty and community since the seventeenth century', in A. Everitt (ed), *Landscape and community in England*, pp 311-321; Shipley, Leicestershire gentry, p. 204.

¹⁶⁸ Connolly, *Religion, law, and power*, p. 211.

¹⁶⁹ Kevin Whelan, 'An underground gentry? Catholic middlemen in eighteenth century Ireland' in *Eighteenth Century Ireland*, Vol. 10, 1995, pp 7-68.

society, that the protocols and social etiquette they required for their later roles in county life were learned. However, marriages perhaps give the clearest indication of networking and separation between the different layers of the gentry and magistrates in the pre-Famine decades.

Chapter 4: Judicial Process: Petty Sessions courts and the character of the magistracy.

Although Ireland had a number of superior courts by the end of the eighteenth-century, for the greater part of the country justice was a local or community concept and in that regard Petty Sessions were the lowest tier of county courts administered by the local Justice of the Peace. Petty sessions generally dealt with less serious crimes and misdemeanours and took place regularly, at least once a month. The more serious crimes were dealt with four times a year at Quarter Sessions, which had a chairman, usually another Justice of the Peace, co-acting with two other local magistrates.¹ The assizes, which was a twice yearly court, dealt with the most serious crimes such as murder or treason and was presided over by a circuit judge who was generally a judge from the superior courts in Dublin who travelled on circuit to county assizes to hear criminal trials.² It was quite possible that a suspect in a serious crime could appear before all three courts before their case was heard, thus, a person arrested for murder was brought before a magistrate at petty sessions to be committed for trial, which was usually at which ever of the two higher courts was pending and it was not uncommon for the suspect to be bounced from Quarter Sessions to the assizes.³ The liberal *Tipperary Free Press* accused magistrates and judges of inflating the numbers of case by abusing this system. It first noted how magistrates inflated crimes so that a single case of murder against an individual was often turned into three separate charges – murder, robbery and arson. Next, the paper claimed that these three cases were postponed at one assizes only to appear at the following one, with the result that when the figures were calculated at the end of the year, six separate cases were listed instead of the original one.⁴

The petty sessions were courts of first instance where minor crimes could be tried without a jury. Although petty sessions were subject to the appellate jurisdiction of Quarter Sessions, meaning that decisions at petty sessions could be appealed and overruled at Quarter Sessions, generally petty sessions enjoyed a considerable degree of independence providing a context

¹ See Niamh Howlin, 'The terror of their lives: Irish jurors experience's in *Law and History Review*, Vol. 29, No. 3, 2011, pp 703-761.

² For more on the Irish justice system see Niamh Howlin, 'Nineteenth-Century Criminal Justice: Uniquely Irish or Simply "not English"?' in *Irish Journal of Legal Studies* 67, vol. 3, 2013, pp 67-89.

³ W.E. Vaughan, *Murder trials in Ireland 1836-1914* (Dublin, 2009), Chapter 3.

⁴ *Tipperary Free Press*, 30 May 1836.

in which local magistrates could exert their authority over the local community.⁵ The role of petty sessions as seats of local authority is still somewhat under-researched, particularly in the first half of the nineteenth-century. Unfortunately, due to the burning of the customs house 1922, many petty sessions' records from the pre-Famine decades no longer exist and many records begin from 1850 onwards, this is true for the middle-belt counties also. Two studies using surviving records for Mayo and Galway examined the effect of petty sessions from a local perspective. McCabe focused on the petty sessions in Mayo and used the numbers of persons attending local sessions to show how popular the courts were. The sessions themselves were set up on a national basis in 1823 and McCabe estimates to that by 1839 some 17,500 families in Mayo, with a total of 10,967 offences dealt with, passed through the courts that year.⁶ McMahon adopts McCabe's formula to show the acceptance of the petty sessions in Galway by the poorer classes, estimating that in 1839 magistrates dealt with 16,630 offences at local sessions, which translated to 28,191 families with members in the sessions that year.⁷ Interestingly, McMahon notes that East Galway saw a higher proportion of business carried out at local sessions, with Ballinasloe being the busiest in the east riding, which fits into Lee's middle-belt theory of modernizing factors as a force behind crime as east Galway was moving away from a traditional way of life and towns like Tuam and Ballinasloe were post towns, market towns, held petty sessions, quarter sessions, had a jail and police barracks.⁸ Bordering three of the middle belt counties, east Galway was also experiencing land clearances and agrarian crime to similar levels as these middle belt counties.⁹

The present chapter examines the character of magistrates as exposed during petty sessions' and to a lesser degree at Quarter Sessions, to suggest that local petty sessions were an expression of magisterial power and a milieu in which to maintain control over the tenantry. This section also explores the challenges to magistrates' authority and in doing so touches on the growth of the rural middle classes and places the petty sessions at the centre of rising tensions between the gentry and these middle-classes. The chapter outlines the distribution of petty sessions, noting trends of magistrates' attendance and the workings of petty sessions in

⁵ Balchin, 'The Justice of the Peace and county government', p. 201.

⁶ D. J. McCabe, 'Law, conflict and social order: County Mayo, 1820-45' (PhD, UCD, 1991), P. 459.

⁷ Richard McMahon, 'The courts of petty sessions and society in pre-Famine Galway' in Raymond Gillespie (ed) *The remaking of modern Ireland 1750-1950* (Dublin, 2004), p. 102.

⁸ Lewis, *Topographical dictionary of Ireland, 1837*, Vol.2, pp 646-648.

⁹ For example, Galway experienced the fourth highest rate of outrages countrywide in 1842. See *A return of outrages specially reported to the constabulary office in Ireland, during each of the years 1842, 1843, 1844, and 1845* (H.C), 1846 (217).

general, and examining some of the challenges to the authority of the magistracy in disposing justices at petty sessions.

Distribution

Although petty session records do not exist for the middle-belt counties prior to 1850 when sessions became more formalised, the 1835 and 1842 returns on the petty sessions those years, ordered by the House of Commons, indicate the distribution of petty sessions within each of the seven middle belt counties. In Clare there were seventeen petty session courts in 1835 with only five in the west of the county. Likewise, in Limerick the distribution followed the same pattern with seven of nineteen petty sessions appearing in the west of the county and the majority appearing in the east. This reflects the findings in Chapter 1 and the discussion around the distribution of magistrates which was much higher in the east of both counties, partly due to terrain and partly because of the numbers in the Commission of the Peace in certain districts. However, in Queen's County there was an area of approximately 188 square miles in the southeast of the county without petty sessions despite some twenty-eight magistrates being in residence in this portion of the county, which raises questions about the uneven manner in which central government introduced petty sessions into individual counties.¹⁰ While it made sense to hold petty sessions in centralised centres or small towns in a county, in the absence of such centres, in villages and small towns like Doonass, Glin, Castlconnell and Derryowen, petty sessions were held in areas in which the seats of large landed magistrates were situated, showing that in many instances petty sessions were held on the property of a member of the local élite. This in turn highlights the fact that the administration needed Justices of the Peace to implement a centralized system of law and order: Doonass, County Clare, was the seat of Sir Hugh Dillon Massey, there was a manor court in this parish on the grounds of the Westropp estate which was leased to Westropp by Massey.¹¹ In fact, the 1827 Act for the better Administration of Justice at Petty Sessions let magistrates decide where and when petty sessions were held at a county and district level.¹²

¹⁰ *Returns of Petty Sessions in Ireland, 1835*, H.C. (415) xlii, 463; *Petty Sessions (Ireland). Return of the petty sessions held in Ireland during 1842*, H.C 1843 (543), li.181.

¹¹ Lewis, *A topographical dictionary of Ireland*, vol. 2, p. 269. Manor courts were the precursor to petty sessions in Ireland and were set up on the grounds of a local landlord. Richard McMahon describes their inefficiency by insisting they were total chaos; See Richard McMahon, 'Manor courts in the west of Ireland before the famine' in D. S. Greer and N. M. Dawson (eds.), *Mysteries and solutions in Irish legal history* (Dublin, 2001).

¹² 7&8 GEO. IV. CH. 67. Act for the better administration of justice at the holding of petty sessions, by Justice of the Peace in Ireland, section 1, 1827.

Thus, magisterial control over petty sessions was an assertion of power and local authority, not only in relation to the general population, but also to fellow members of the landed élite. An examination of the distribution of petty sessions in the other middle-belt counties is equally revealing: in Tipperary there were ten petty sessions courts in the south riding and only seven in the north riding which in the immediate pre-Famine decades experienced far more crime than south Tipperary again highlighting the uneven distribution of petty sessions and how they were linked to élite members of society in the pre-Famine as south Tipperary had been the administrative centre for Tipperary before the county was split into two separate ridings in 1836.¹³ Using Strokestown as the centre point of County Roscommon, twelve petty sessions appear in the north, the residence of the more notable members of the gentry of the county, compared to just six in the south. Queen's County, as mentioned, showed an uneven distribution of petty sessions in favour of the northern half of the county, while there was an even split of six sessions in the east and six in the west of the county, yet a number of these were in smaller villages such as Fahy and Philipstown, rather than larger towns such as Abbeyleix or Durrow. Both Leitrim and King's County had the lowest number of petty session courts with eleven each.¹⁴ As with the distribution of magistrates in King's County there were large tracts of the land between petty session houses with just six in the east of the county and five in the west. In Leitrim five of the eleven sessions were within a twenty-three mile triangle of each other, stretching from Carrick-on-Shannon to Mohill, Drumod and Drumsha, while another three were also in the south of the county, leaving just three to service the north.¹⁵

Thus, while the distribution of local courts largely followed the distribution of magistrates in each county there were a number of uneven distributions among the counties and even in counties where the distribution of petty sessions was more even, there were still large tracts of land without a magistrate or petty sessions. Balanced against each county's population this meant that for every 15,000 people there was one petty session's court. The average per county was Leitrim and King's County 1:13,000, Roscommon 1:14,000, Limerick 1:16,000, Clare 1:17,500 and Tipperary 1:20,000.¹⁶ While these figures may appear unbalanced most petty sessions met at least twice a month though there are many reports stating the sessions

¹³ *Returns of Petty Sessions in Ireland, 1835*, H.C. (415) xlii, 463; *Petty Sessions (Ireland). Return of the petty sessions held in Ireland during 1842*, H.C 1843 (543), li.181.

¹⁴ *Returns of Petty Sessions, 1835; Return of Petty Sessions, 1842*.

¹⁵ *Returns of Petty Sessions, 1835; Return of Petty Sessions, 1842*.

¹⁶ These figures are a rough estimation rounded up to the nearest thousand and adjudged from the 1831 census figures for each county, I allowed a little leeway for population growth in the four year period to 1835.

often rumbled on for hours at a time such was the volume of cases.¹⁷ One reason for their popularity was their low cost which ranged from six pence to one shilling depending on the purpose of the individual's use of the court.¹⁸ In comparison, courts founded by charter, whether municipal or manor courts, were extremely expensive, which led one commentator to note that in cases held in these courts gentlemen often had to pay ten shillings and six pence just to recover one shilling and a penny, so that 'contrasted with the cheapness and expedition of the courts of petty sessions, the latter are almost universally resorted to, and held in very high esteem.'¹⁹ McCabe states that there were 550 such petty sessions nationwide in the early 1830s, and working off eight million as the national population that gives an average of 1:14,500 on a national scale.²⁰

One of the biggest changes made to the petty sessions after their initial few years was the necessity to have two or more magistrates on the bench.²¹ This was introduced to create transparency and to combat allegations of corruption and individual partisanship. The direction of an executive was instead favoured, though the Irish administration had to place government-paid Stipendiary Magistrates on the bench from 1836 on to fully ensure that impartiality was upheld. Because it proved difficult to find (east Limerick for instance being well supplied while the west of the county was almost bereft of magistrates) the availability of magistrates to serve on the bench was uneven.²² The 1842 petty sessions' returns are disappointing. They largely only provide the reader with a set of dates that petty sessions were held or cancelled within each county and do not include the names of individual magistrates who either attended or were absent from petty sessions. Thus, an examination of the 1835 returns of petty sessions is far more informative; it does name the individual attendees of each petty sessions and reveals a number of trends and issues in relation to magistrates' attendance. If the number of individual magistrates attending any petty sessions within their county and is cross referenced with the number of magistrate listed in the government magistrate returns of 1836 a county level of participation can be gauged. The

¹⁷ John Stauton Rochfort, magistrate from Clogheen, Queen's County noted how a single case could sometimes take up to two hours. In the same report the assistant barrister for Leitrim, Theophilus Jones, notes in an extreme example, there was one sessions in the county that marked to process 600 trials in the one sessions, in the end only 257 cases were tried but this demonstrates the volume a petty sessions could reach. *Evidence taken before the select committee into the state of Ireland*, 1824 (H.L.), 1825 (200) vii.501.

¹⁸ *Leinster Express*, 13 July 1839. The article outlined the payments liable to the clerk of petty sessions which were; Summons 6d, Warrant 6d, Information 1s, Recognizes 1s.

¹⁹ O'Donoghue, *The summary jurisdiction of magistrates*, pp xv-xvi.

²⁰ Desmond McCabe, 'Open court: law and the expansion of magisterial jurisdiction at petty sessions in nineteenth-century Ireland' in N. M. Dawson (ed) *Reflections on law and history* (Dublin, 2006), p. 126.

²¹ *The Irish Law Recorder*, Vol. XXIII, 1828, p. 460.

²² Balchin, 'Justice of the Peace Yorkshire', p.203.

figures are as follows; Tipperary 115 magistrates attended petty sessions from a total 174 (66 per cent), Roscommon sixty-nine magistrates from ninety-three (74 per cent) Queen's County fifty magistrates from a total of 121 (41 per cent) Leitrim 27 magistrates from a total of 62 (43 per cent) Limerick fifty-seven magistrates from a total 140 (40 per cent), King's County forty-two magistrates from a total 118 (35 per cent) and Clare with sixty-six magistrates in attendance from a total 120 (55 per cent). Thus, the rate of attendance varied unduly across the seven counties, with a particularly large discrepancy between King's County and Roscommon. In 1835, Thomas Drummond described the lax attitude towards petty sessions as a great evil and stated that an effort to shame magistrates into attendance was made from 1836 onwards by printing quarterly returns with names and numbers of magistrate attendance, which, he claimed, worked to a degree.²³

But a closer examination of the 1835 records shows that the figures above are also somewhat distorted as some members of the magistracy made scant appearances, such as Edward Shawe in King's County who only attended one session that year, while others, such as Valentine Bennett and John Head Drought, also of King's County, together presided over every session at the Kinnetty petty sessions.²⁴ The 1835 returns also show when and where magistrates were acting singly, though this practice was against petty session protocol which insisted that two magistrates must preside over a sitting and where a magistrate insisted on acting alone his actions had to be put before a judge at assizes or a fellow justice at quarter sessions.²⁵ Perhaps not wanting to be placed under the power or opinion of a fellow magistrate, a number of magistrates declined to act alone, judging from the evidence of the 1835 returns. Tipperary recorded nine instances of petty sessions being adjourned due to fewer than two or more magistrates attending, with eight of these cases being recorded in Carrick-on-Suir. The reasons for this reluctance are unknown other than a general reluctance to attend petty sessions on the part of the local magistrates. No magistrates showed at all for the first three sittings of the year on 6 January, 20 January and 3 February, 1835, while only one magistrate, Thomas Edmund Lalor, showed for the next three sessions on 17 February, 24 February and 10 March. The first sitting of the year therefore, did not occur until 4 April when Lalor was joined by a Stipendiary Magistrate, Hill W. Rowan.²⁶ Yet the accompanying clerk's memo with the official yearly returns to Dublin Castle noted that a large number of summonses

²³ Evidence of Thomas Drummond, *The state of Ireland since 1835, in respect of crime and outrage, which have rendered life and property insecure in that part of the Empire*, H.C. 1839 (486) xi, p.1005.

²⁴ *Returns of Petty Sessions in Ireland, 1835*, H.C. (415) xlii, 463.

²⁵ *Bill for the better administration of Justice at Petty Sessions in Ireland 1826-1827*, H.C. (366) I. 569.

²⁶ *Returns of Petty Sessions in Ireland, 1835*, p. 196.

were issued over the course of the months in which the magistrates did not show up, summonses which ordered members of the local community to present themselves at sessions.²⁷ This raises a number of questions about the attitudes of magistrates to their duty, to the community and also to their fellow magistrates. McMahon notes that magistrates did get sick, bad weather did hamper travel arrangements and more importantly, that magistrates also had other functions and duties to perform, yet such blatant disregard for their duty must surely have had a negative effect on the government's efforts to introduce a more centralized administration into the country.²⁸ In 1835 Sligo magistrate, Colonel John Irwin, stated to a committee investigating the state of Ireland that in certain districts in that county there were only one or two magistrates resident which made holding regular petty sessions difficult and noted that 'if they were more general, it would be for the advantage of the county.'²⁹

Where and how did the poorer classes avail of justice in the face of such apparent disregard on the part of those in charge of the proper channels of authority? The notion of communal justice was very much adhered to by the small farmers and tenantry in pre-Famine Ireland. Thus, if McMahon and McCabe interpret the large numbers using petty sessions in the west of the country as the ordinary person accepting petty sessions, then the high level of daily crimes recorded, many being acts of retribution or retaliation, were rooted in a concept of moral economy, particularly in the counties Tipperary and Limerick, where crime was distorted, largely by grievances concerning landholding or employment.³⁰ This suggests that the community placed as much, if not greater, stock in their own form of communal justice, often violent, which must have increased where magistrates displayed such disregard for the process of law and order by shirking their responsibilities.³¹ Thus, the 1830s and 1840s was a period where a duality existed between the modernizing factors of centralized state law and the remnants of a traditional community based law and many rural inhabitants had to exist under the shadow of both. Bridgeman argues as much and suggests that where the system of private prosecution came face-to-face with agrarian outrage, the system of private prosecution collapsed due to threats of violence against both prosecutors and witnesses.³²

²⁷ *Returns of Petty Sessions in Ireland, 1835*, p. 197.

²⁸ Richard McMahon, 'The courts of petty sessions and society in pre-Famine Galway' (M.A. thesis, NUIG, 1999), p. 91.

²⁹ Evidence of Colonel John Irwin, *Select committee into the state of Ireland, 1835* (H.C) 1836 (129) viii, p. 706.

³⁰ See evidence of Major Warburton, *The state of Ireland since 1835, in respect of crime and outrage, which have rendered life and property insecure in that part of the Empire*, H.C. 1839 (486) xi, p.103.

³¹ Andres Eiriksson, 'Crime and popular protest in County Clare, 1815-1852', p. 198.

³² Ian Bridgeman, 'The constabulary and the criminal justice system in nineteenth century Ireland' in Ian O'Donnell and Finbar McAuley (eds.), *Criminal Justice History: themes and controversies from pre-independence Ireland* (Dublin, 2003), pp 113-141.

Serjeant Torrens, chairman of Dublin Quarter Sessions, who had been a special commissioner under the Insurrection Act in Limerick 1822, warned from the outset of the establishment of petty sessions that if magistrates did not adhere to the proper proceedings and regulations laid out for petty sessions it would lead to the peasantry turning to crime:

And what will the uneducated and therefore the distrustful and suspicious mind of the peasant of this county assign as to the motive of that magistrate who takes upon himself to throw off that communion of responsibility which his brethren were willing to share with him, and to segregate himself from their councils and their acts.³³

In contrast to the local circumstance in Carrick-On- Suir, a number of magistrates presided at petty sessions alone and presumably submitted their judgements to the proper authorities afterwards. The most notable of these magistrates was Jonas Studdert at Dough petty sessions, County Clare, who sat through thirty-one out of a total of thirty-three petty sessions for that year. These two cases alone suggest a system of law and order that was totally arbitrary, varying not just county by county, nor district by district but differing from magistrate to magistrate.

Attendance

Attendance at petty sessions provides another means of gauging how power was exploited and used by a small minority of active magistrates in the pre-Famine decades as this thesis has suggested. Monopolizing power in this fashion does not necessarily imply a negative sentiment on the part of all magistrates, but the petty sessions forced landed élites to rethink their stance as gentlemen, their belief in paternalism and also their relationship with the poor, but as agents of the state rather than as landlords. Throughout the middle-belt counties there was a number of families that dominated single petty sessions or others who dominated petty sessions at a county-wide level. The Massey family in Limerick had family members who presided over five of Limerick's seventeen petty sessions; Ballingarry and Patrickswell (both in mid-Limerick), Castleconnell (north-east Limerick), Galbally (south-east Limerick) and Rathkeale (west Limerick).³⁴ In Tipperary branches of the Pennefather family presided at Newport petty sessions in the north riding and Fethard, Cashel and Clonaulty petty sessions in the south riding. In Roscommon the Kelly family presided at Roscommon, Lecarrow, Mount Talbot and Tulsk which were in the south, centre and north of the county, while the Lloyds, also in Roscommon, presided at Croghan, Elphin, Kilmore, Ruskey, Boyle and

³³ *Freeman's Journal*, 20 December 1822.

³⁴ *Returns of Petty Sessions in Ireland, 1835*, pp 126-135.

Aughrim petty sessions in Roscommon.³⁵ Families like the Butlers (Derryowen and Crusheen in North Clare) and the Scotts, (Quin in the east and Kildysart in the west) dominated the bench at two separate petty sessions in Clare but the Studderts had family members who presided over Sixmilebridge, Kilrush, Knock and Dough petty sessions – all spread all across the county.³⁶

Most of these families were very large land owners (Denis Kelly held 10,000 acres, the Butlers had 10,000+ acres and Masseys had in excess of 30,000 acres)³⁷ and, with the exception of the Kellys, were descendants of individuals granted lands after the Cromwellian conquest of the country. The Masseys had a history of public service in Limerick and provided the county with High Sheriffs, Members of Parliament, officers in the local militia, countless magistrates and also men of rank in the military and navy which suggests the family had always used public service as a means of establishing power and that presiding over petty sessions was just another way of re-establishing this power.³⁸ Similar to the Masseys, the Studdert family in Clare were highly active in public life in that county, providing fourteen High Sheriffs between the years 1727 and 1915, twenty magistrates and Deputy Lieutenants and naval officers. The power base of the Pennefathers in Tipperary was the south riding of the county and from here they provided six High Sheriffs and a number of MPs for the county.³⁹ In fact, by the 1830s the family dominated Cashel parliamentary borough and all seventeen alderman of the borough were Pennefathers or had marriage connections with the family, leading the *Freeman's Journal* to call the Cashel Corporation 'a family party.'⁴⁰ Therefore, in the case of the Pennefathers there was an obvious pursuit of power underlying their public service. No families dominated the petty sessions in the same way in counties Leitrim, King's County, and Queen's County but a number of individuals across all seven counties showed a determination to attend a number of petty sessions throughout the year 1835. George Wheeler Bennett, a small landowner from Bosentown, Kilfinane, County Limerick, regularly attended the three local petty sessions of Kilfinane, Kilmallock and Galbally which were all within the Kilmallock Union in south-east Limerick,

³⁵ *ibid.*, pp 180-188.

³⁶ *ibid.*, pp 30-38.

³⁷ *Devon Commission*; www.clarelibrary.ie; Tracy, *If these trees could talk* (Dublin, 2005).

³⁸ Frank Tracy, *If those trees could speak: the story of an Ascendancy family in Ireland* (Dublin, 2005). The first Massey to be awarded High Sheriff for County Limerick was Hugh Massey, 1674. His son Hugh Jnr took the position in 1711, while his son, Hugh was awarded the role in 1754. This third generation Hugh Massey also represented Limerick at parliament 1759-1768 and his son Hon. Hugh Massey was MP for the county in 1783.

³⁹ Butler, *South Tipperary, 1570-1841*, pp 123-124.

⁴⁰ *Freeman's Journal*, 2 November 1833.

a district of nineteen square miles. Bennett was almost always present at the Kilfinane sessions, which of the three sessions was the nearest to his residence and along with Thomas T. Adams, a small landholder from nearby Ballylanders, who only missed one sitting at the session. The pair dominated the Kilfinane petty sessions as larger land owning magistrates, such as Eyre Evans and Hugh Massey, only sporadically frequented these sessions.⁴¹

In contrast to the county-wide control exerted by elite families portrayed earlier, Bennett illustrates an individual effort to monopolize power at a local level. In Galbally, a seat of the Massey family, Bennett and Adams presided regularly with both William and Hugh Massey, while at Kilmallock sessions, Bennett sat with the large landowners Joseph Gubbins and Eyre Evans Senior and Eyre Evans Junior. It is very noticeable of the five appearances Bennett made at the Kilmallock petty sessions coincided with the occasions that Eyre Evans also sat on the bench.⁴² A link between Bennett and Evans, whether as political opponents or allies, cannot be established but it certainly seems more than a coincidence that Bennett's five appearances in Kilmallock should coincide with Evans'. As younger men in 1801 Bennett was coroner for county Limerick while Evans was High-Constable for the liberties of Kilmallock before becoming a magistrate.⁴³ It is more than plausible that both men interacted through their official capacities and any friendship or animosities could have been forged at this earlier period but Evans, who was related to the large landowning Coote family, received a sum of £6000 in a will from an aunt in 1805 and thereafter became highly involved in the Grand Jury.⁴⁴ He acquired land and by the 1830s had commenced building a large mansion, named Ash-hill, on the grounds of what had formerly been a Coote residence.⁴⁵ However, Bennett remained a small land owner throughout the period. This again shows how the network of Justices of the Peace sitting at petty sessions was a combination of different groups which included large and small landowners and the position offering each group the chance to harness local or county-wide power to implement its own concept of paternalistic hegemony over the tenantry.

The contemporary view of Trollope on justice in Ireland and the magistrates that represent law and order can be gauged during Thady's trial in *The McDermotts*. The first magistrate depicted, Jonas Brown, is described as an 'irritable, overbearing magistrate and a greedy

⁴¹ *Return of Petty Sessions, 1835*.

⁴² *Return of Petty Sessions, 1835*.

⁴³ Mainchín Seoige, *The story of Kilmallock* (Cork, 1995), p. 168.

⁴⁴ *Limerick General Advertiser*, 10 December 1805.

⁴⁵ Seoige, *The story of Kilmallock*, pp168-169.

landlord' while the second, Sir Michael Gibson is merely described as ineffectual and almost subservient to Brown.⁴⁶ This last representation is revealing insofar as many honorifics were accused of taking on the role of magistrate solely because of a shortage of candidates in a specific district to fill the role and perhaps Trollope's depiction of the honorific's meekness is an allusion to this. The figure of Brown is the archetypal magistrate of which the poor regularly complained, a matter touched on throughout this thesis.

The categories of land-holdings of other single magistrates who attended multiple petty sessions across the middle-belt counties included Thomas Dunne, small land-holder of nine hundred acres in Leitrim,⁴⁷ who presided at the Drumsna, Mohill, Carrick, and Dromond petty sessions during the course of 1835. John Head Drought, who came from a large land holding family in King's County and held over 1500 acres himself,⁴⁸ attended every session in both Thomastown and the Kinnetty petty sessions as did Valentine Bennett another large landholding magistrate in the County. The attendance at these particular petty sessions is interesting as the venues were thirty-seven miles apart and were separated by Tullamore which had its own petty sessions at which eight other magistrates attended for the year 1835, yet only one of these magistrates appeared at Kinnetty petty sessions and none appeared at Thomastown. Once more this intimates that magistrates were selective about where they presided and with whom at petty sessions. This was especially true in the case of William Nugent Briscoe, of Mount Briscoe, who resided only nine miles from Thomastown yet never appeared at these petty sessions and instead made the longer trip to Tullamore petty sessions regularly. The landholdings of William Taafe of Strokestown, Roscommon, could not be traced, but the branch of the family to which he belonged were small landowners. Other branches of the family county and throughout Ireland were large landowners and thus, there were was no shortage of patronage for which he could apply, yet Taafe seems to have pursued a career in the military, as a captain of the 60th rifles, concurrent to his being a magistrate for the county. Nevertheless, he was able to carry out his magisterial functions in three separate petty sessions in 1835 in Strokestown, Farmile House and Roscommon while magistrates with larger landed interests did not attend any petty sessions suggesting that members of the gentry, by becoming a magistrate and engaging with their responsibilities, could reinvent their role in society. In County Clare, the large landholding Butler family

⁴⁶ Trollope, *The Macdermots of Ballycloran*(London, 1866), p. 453.

⁴⁷ *Irish Times*, 26 May 1869.

⁴⁸ This figure is taken from Griffith's Valuation of Ireland cannot be taken as indicative of the situation in the pre-Famine period but the fact that Drought also had a land agent under his employment it is fair to say Drought was an extensive land holder.

dominated the petty sessions of Crusheen and Derryowen, the O'Connor's, large landholders in Roscommon presided over Belanegore petty sessions with the head of the family, the O'Connor Don, also attending Castlerea and brother Patrick presiding over Ballintubber.⁴⁹

Thus, these trends both on an individual and family basis were apparent, not only in the middle-belt counties, but across the country.⁵⁰ Therefore, local governance, as reflected in the petty sessions, has to be understood in the pre-Famine decades as being shaped by central government's attempts to destabilize landed magistrates' domination of local life, particularly by introducing Stipendiary Magistrates. In this regard petty sessions became a permanently shifting and conflicting power base, as it appears that some magistrates refused to engage with central government's encroachment on their local autonomy and patriarchal rule, such as that highlighted in the case of the Nenagh magistrates refusing to work with the Stipendiary, Thomas O'Brien. In the 1842 petty sessions returns for Ennis, the clerk noted that there were no petty sessions held in the town on the 10 June as the magistrates would not work with the Stipendiary Laurence Cruise Smith after an affray in the town.⁵¹ To apply this pressure to landed magistrates, the Castle outlined how seriously they took the attendance of government-paid magistrates at petty sessions when questioning the Limerick Stipendiary, Tracy, about his diary:

The lords gathered desire me to observe this is a good diary, but their Excellencies do not feel that you had attended as many petty sessions as they should have expected. They must emphasise on every magistrate the necessity of attending every fair and petty sessions in his district and as far as his time will admit.⁵²

Similar remarks on the diaries of three separate Stipendiary Magistrates for King's County, Cavan and Mayo respectively, give an insight into the suspicion with which Dublin Castle viewed local magistrates and how petty sessions were used as a tool reduce by government to reduce the gentry's local autonomy. In all three instances the Stipendiary was asked to inform the Castle which local magistrates did not attend their local petty sessions and to provide the reason for their absence. This basically equated to spying and setting one magistrate against the other, and such friction must have had an effect on the course of justice, however, in one communication the Castle did ask how non-attendance by local magistrates could be

⁴⁹ *Returns of Petty Sessions in Ireland, 1835.*

⁵⁰ *Returns of Petty Sessions in Ireland, 1835.*

⁵¹ *Return of Petty Sessions, 1842.*

⁵² Dublin Castle to William Tracy, Limerick, 18 May 1838. Chief Secretary's Office, Registered Papers Private Index 1832: 2065 98.

remedied which was an admission that the Castle still required local magistrates, despite their shortcomings, to implement law and order.⁵³

One of the main tools employed by landed élites to retain a power base within a local or a county setting seems to have been retention of these positions along hereditary or family lines. This was evident at petty sessions also. At both the Crusheen and Derryowen petty sessions in North County Clare, Walter Butler Senior and Junior presided together on the bench. Likewise, Eyre Evans senior and Eyre Evans Junior were the only magistrates to preside over five consecutive petty sessions at Kilmallock, Co. Limerick, between 24 February and 10 April 1835, as well as appearing together at the sessions on other dates that year.⁵⁴ In Roscommon, another father and son, Daniel Kelly Senior and junior both presided over the petty sessions at Tulsk in 1835.⁵⁵ Thus, all three of the families in these instances were large landowners within their respective counties, presiding at petty sessions in this manner must have further cemented their dominance in their localities in both the minds of the local peasantry and these particular families themselves. But such instances also capture the essence of competition among the landed élite and the importance of landed and administrative dynasties evolving and being carried on by the next generation. However, this local hegemony was all the time challenged by a centralizing trend; ‘the courts of petty sessions can be seen as part of a process of greater regularization and centralisation of the system of law and order by the state in pre-Famine Ireland.’⁵⁶

Thus, while landed élites used positions of local governance to strengthen their local seats of power, in the long run they hastened their own displacement as their focus primarily remained local and their governance represented paternal and landed interests, increasingly out of touch with the times. Nonetheless, the petty sessions are a perfect example of how landed men of lesser status in Ireland could attain local authority during the pre-Famine era. This was another challenge to established patterns of gentry authority and perhaps aware of this last point and wanting to retain a degree of local autonomy, Viscount Clements, a Justice of the Peace for Leitrim residing in London, requested that the County Police-Inspector in Leitrim forward abstracts from the local petty sessions records to his home in London, which

⁵³ Dublin Castle to John Dopping, Rathangan, 18 April 1839. Chief Secretary’s Office, Registered Papers Private Index 1839: 3635/98; Dublin Castle to James Little, Cavan, 14 August 1839. Chief Secretary’s Office, Registered Papers Private Index 1839: 7074/98; Dublin Castle to Daniel J. Cruice, August 1839. Chief Secretary’s Office, Registered Papers Private Index 1839: 7147/98.

⁵⁴ *Returns of Petty Sessions in Ireland, 1835.*

⁵⁵ *Returns of Petty Sessions in Ireland, 1835.*

⁵⁶ McMahon, ‘The courts of petty sessions and society’, p. 73.

was strictly against petty sessions protocol as only the petty sessions clerk and those magistrates that presided at petty sessions could examine the abstracts.⁵⁷ However, it highlights the eagerness of some members of the gentry to be kept abreast of the workings of the petty sessions, which indicates the importance of these local courts as seats of authority, as it is evident Clements was checking up on the locals attending the sessions than on the local magistrates presiding over them.

One accusation labelled at the landed magnates and honorifics in the mid-1840s is that they took a Commission of the Peace as an honorary position and regularly failed to carry out their magisterial duties.⁵⁸ While this remained true for the majority of such men, the petty sessions also show that some honorifics took their role as Justices seriously. If the 1835 records are an indication of such patterns throughout this period, then the aristocracy and titled magistrates of Tipperary were far more active in their magisterial role in comparison to those in other middle-belt counties. The Nenagh petty sessions returned the names of five of the local aristocracy active on the bench in 1835; Lord Bloomfield, Lord Henry Dunalley, Sir Edmund Waller, Sir Amyrald Dancer and Hon. Francis A. Prittie, brother of Lord Dunalley. The Nenagh Petty Sessions was also regularly attended by Count Peter Dalton, whose Catholic family had received its title from the Austrian Emperor in recognition of military services rendered during the eighteenth century.⁵⁹ The Nenagh Petty Sessions was by far the most diligently attended sessions within the middle-belt counties with twenty-seven separate magistrates from a total of 174 presiding over it throughout 1835, just one magistrate less than appeared for the whole of Leitrim during that same year.

As stated in Chapter 3, petty and Quarter Sessions were often social occasions where members of the gentry could catch up with more distant neighbours but of the aristocratic magistrates listed above there were agendas at play other, agendas that were political and more than mere socializing. Both Lord Dunalley and Lord Bloomfield had been instrumental in fighting for an assizes and Grand Jury for the north of the Tipperary and separating the county into two ridings. As part of this campaign both Dunalley and Bloomfield enlisted the support of the local gentry of Nenagh and its surrounding towns, including the Holmes, Baylys and Rivers families who were all also regularly present at the petty sessions of

⁵⁷ Dublin Castle to Viscount Clements, London. Chief Secretary's Office, Registered Papers Outrage Reports 1845: 5633/16.

⁵⁸ Crossman, *Local government in nineteenth-century Ireland*, p. 15. Curran, *The Protestant community in Ulster, 1825-45*, p. 81.

⁵⁹ William Hayes and Art Kavanagh, *The Tipperary gentry*, vol. 1 (Dublin, 2003), p. 200.

Nenagh in 1835.⁶⁰ Thus, having fought to introduce their own local decision making arena in the shape of the Grand Jury, these same families were obliged to be seen carrying out the functions that came with local governance. The Prittie family, especially Lord Dunalley, had also been advocates of Catholic Emancipation and had a long-standing close relationship with the Catholic Dalton family.⁶¹ The Pritties were also married into the Holmes and Bayly families and their political alliances forged during the campaign to make Nenagh an assizes town were made largely with liberal families including the Gasons, Stoneys and Phillips, which suggests that the magistrates and élite families in Nenagh were using public service to introduce a piecemeal style of local governance. These liberal links were also extended to the peers and honorifics sitting at the neighbouring petty sessions in the north of the county, Sir Henry R. Carden, who presided over the Templemore Petty Sessions, had campaigned with Dunalley on the campaign to have an assizes in the north of the county and was known as an even handed landlord who employed improving farming and cultivation techniques on his estate.⁶² In Newport, the liberal landlords Sir Edmund Waller, committee member for the National Irish Relief Association,⁶³ and Richard E. Phillips both presided over the sessions regularly while Roscrea was another seat of the Prittie family.⁶⁴

Thus, it was through such family ties, political patronage and local governance through petty sessions and the Grand Jury that certain sections of the gentry were able to create a cohesive local administration with its own identity in much the same way as the liberal Shannon estuary group, liberal large land owners predominately in Limerick and Clare who believed that land carried its duty as well as its rights.⁶⁵ Such groups displayed an aspect of what Newby has termed the ‘deferential dialectic’ insofar as the pluralist élite need not be homogenous, but can contain opposing views in many regions, and must be able to regenerate itself by adding new members or even sub-groups from a wide socio-economic base. In this regard the Nenagh group was a mixture of large and medium land holders, some of whom belonged to older established élite families while some were only forging their identity and position. However, Potter argues this was a natural phenomenon that sustained

⁶⁰ Donal A. Murphy, *The two Tipperarys: the national and local politics- devolution and self-determination- of the unique 1838 division into two ridings, and the aftermath* (Nenagh, 1994).

⁶¹ William Hayes and Art Kavanagh, *The Tipperary gentry*, vol. 1, pp 2001-201.

⁶² Bruce S. Eliot, *Irish migrants in the Canadas: a new approach* (Quebec, 1988), pp 28-32.

⁶³ *Belfast Newsletter*, 27 October 1846. Waller’s expenditure in order to provide relief work for his tenants during the famine led to his eventual bankruptcy, see Daniel Grace, *The great Famine in Nenagh poor law union Co. Tipperary* (Nenagh, 2000), p. 83.

⁶⁴ *Returns of Petty Sessions in Ireland, 1835.*

⁶⁵ Matthew Potter, ‘William Monsell, first Baron Emly of Tervoe’ in *The Old Limerick Journal*, Vol. 32, 1995, pp 58-63.

élite authority as failure to recruit new members could mean ‘violent displacement of the old élite by the new.’⁶⁶

Out of the twelve honorifics in the Tipperary magistracy in 1835, nine were present at petty sessions that year. In contrast, only two of ten honorifics in Roscommon appeared at petty sessions, Lord Edward Crofton and Baron Robert Clonbrock.⁶⁷ In Limerick five of twelve honorifics attended petty sessions, two of whom belonged to the Massey family and two who were non-resident, Hon. Robert King (Mitchelstown) and Sir Edmund Waller (Newport). In Clare three of four honorifics attended petty sessions in 1835, while of the sixteen honorifics listed as magistrates for Queen’s County only three sat at petty sessions, in King’s County from ten honorifics in 1835 only the Earl of Charleville took his place at petty sessions while in Leitrim only Lord Robert Clements made an appearance at petty sessions from among eight honorifics listed for the county.⁶⁸ While a number of these men were absentees from the counties for which they were listed as magistrates, the greater proportion were resident and except for Tipperary they failed to carry out the duties of their position as magistrates leaving the way open for the introduction of Stipendiary Magistrates in their locality or other members of the gentry.⁶⁹

At the end of the eighteenth century a language of government evolved in Britain that embraced classical virtuous leadership ‘directed towards the common good and committed to upholding justice.’⁷⁰ Thompson believes that this model failed where there was corruption, factionalism and the pursuit of private over public interests, all motives behind many magistrates’ attendance at the petty sessions. Yet, as identified, in pockets of counties, such as Limerick and Tipperary, liberal magistrates were practising this classical ethos of governance. This suggests a conflict of identity among landed élites during the pre-Famine years. Ridden maintains that the differing factions that made up the landed gentry ultimately failed to either maintain their power or forge a what she describes as a legitimate claim to Irish identity during the nineteenth century something which eventually led to their downfall.

⁶⁶ Matthew Potter, ‘The Shannon Estuary Group’ in Ciaran O’Neil (ed) *Irish elites in the nineteenth century*, p. 115.

⁶⁷ *Returns of Petty Sessions, 1835*, p. 185.

⁶⁸ *Returns of Petty Sessions in Ireland, 1835*.

⁶⁹ Returns (Magistrates, Ireland) to House of Commons (HC), 1832 (531)xxxv.297; *A return of the names and residents of Deputy Lieutenants and Magistrates included in the Commission of the Peace in Ireland in Accounts and papers relating to courts of law, juries & elections, H.C 1836, (318) xxxviii.139.*

⁷⁰ James Thompson, ‘Good government’ in David Craig and James Thompson (eds) *Language of politics in nineteenth-century Britain* (Hampshire, 2013), pp 38- 39.

During the first half of the century, however, this battle was still very real and it is clear that local arenas of authority such as petty sessions played a vital role in this conflict.⁷¹

‘For the majority of the population the magistrate personified the law.’⁷² An examination of individual magistrates and their actions displays more accurately why the Justice of the Peace was distrusted by the rural lower orders and large elements within the population resented law enforcement as a whole due to the indiscretion of many of these magistrates. Not every magistrate abused or neglected his duties as many contemporary and modern writers claimed. Commentating on the Irish magistracy in 1833 the nineteenth-century the English travel and guide book writer, Esq. A. Atkinson, claimed that

in the corrupt state of our criminal laws, in the corrupt administration of justice by petty magistrates... It is a melancholy thing to think, that in the nineteenth century of Christianity, and in an age and country so eminently enlightened, that laws made by barbarians in a remote and bloody age, should be retained among the criminal statutes of a Christian country in an age of reason; and that under the authority of such statutes, corrupt magistrates and vile prostitutes may plunge the King's (otherwise peaceable and well conducted) subjects into the vaults of a prison.⁷³

Broeker insists that ‘the Irish magistracy was often corrupt, partisan, and incompetent.’⁷⁴ While these claims may be oversimplified generalizations about the characteristics of the Irish magistracy in the pre-Famine decades, the percentage that mistreated their position was substantial and enough to aggravate agrarian disorder in a particular area. As outlined, the unpaid Justice of the Peace was usually drawn from the landed (gentry) class, where a long established patriarchal system with his tenants was in place. However, in comparison to their English counter-parts many of the Irish gentry were classed as gentry in name only with many lacking high standards of education, finance or gentility. In many ways the English gentry were true agents of the state and carried out what Kathleen Murphy describes as a policy of ‘self-policing’ by providing paternal guidance to their tenants.⁷⁵ In Ireland, a lack of gentry interaction with the lower orders to the same degree as on the part of their English equivalents skewed relationships on many estates leading to tension. Again, it has been well

⁷¹ Ridden, ‘Making good citizens’, pp 3-4.

⁷² Ó Tuathaigh, ‘Thomas Drummond and the government of Ireland’, p. 10.

⁷³ A. Atkinson, *Ireland in the nineteenth-century: and seventh of England's dominion* (London, 1833), pp 49-383.

⁷⁴ Broeker, *Rural Disorder and police reform*, pp 39-40.

⁷⁵ Richard English, *Irish freedom; the history of Irish nationalism* (London, 2006) p. 131; Kathleen S. Murphy, ‘Judge, jury, magistrate and soldier: rethinking law and authority in late Eighteenth-Century Ireland’ in *The American Journal of Legal History Vol.44*, no. 3, July 2000, pp 231-256.

documented that not all landlords stood so aloof from their tenants, many landlords ran themselves into ruin trying to save their tenants from the horrors of the famine.⁷⁶ In fact, Jennifer Ridden develops this idea in her thesis on liberal élites in the pre-Famine decades and shows that where the landlord had a liberal outlook and was a member of the magistracy or local governing group, tenants responded in a more positive light during times of wide spread disorder.⁷⁷ The De Vere family of Currachase were prime examples of liberal landlord magistrates and were popular landlords as a result. During times of large scale outbreaks of disturbances in their neighbourhood the family often called for temperate measures to be introduced by their fellow magistrates when dealing with such outbreaks in this manner, in 1845 while being faced with a number of crimes in the neighbourhood of Askeaton, Aubrey De Vere told an assembly of magistrates gathered at the local petty sessions hall that it was

only by a firm and temperate [administration] of the law, by the progress of education, by the performance of their duties towards their respective families and servants by individuals of all classes and finally by the spread of temperance that such an alteration in the habits and character of the people as would produce permanent tranquillity.⁷⁸

In the height of the famine the De Veres assisted a number of their tenants in emigrating to North America and Aubrey's brother, Stephen, made the journey across the Atlantic with these tenants to chronicle the testing conditions faced by the poorer classes who made this journey.⁷⁹ Writing to Sir Matthew Barrington, another liberal landlord in Murroe, Co. Limerick, De Vere demonstrated his liberal views when he stated 'the "original sin" of Irish Society [was that,] treated kindly, or treated harshly, [Catholics] have but seldom been treated as fellow citizens.'⁸⁰ In contrast, the Vandeleurs of Kiltrush, Co. Clare, were outwardly benevolent and donated land and money towards building many improved facilities in the town, such as a Catholic Church and fever hospital in 1839, yet they were unrelenting

⁷⁶ Sir Robert and Lady Gore Booth, Lord Lurgan, Earl of Devon and Duke of Devonshire were all benevolent landlords during the famine. Booth was an improving landlord. Although the Goore-Booths were criticised for the state in which their tenantry arrived in Canada, the tenants availed of voluntary evictions and Goore-Booth paid for their passage to Canada, their lodgings and insured most of them had employment waiting for them when they arrived. The Duke of Devonshire donated £2000 for the relief of his tenants during the famine. See Thomas Kennedy, *Three famines: starvation and politics* (New York, 2010); Christine Kinealy, 'The widow's mite': private relief during the Great Famine' in *History Ireland*, issue 2, 2008, Vol. 16.

⁷⁷ Ridden, 'Making good citizens', pp 121-122.

⁷⁸ Limerick Archives, Hunt and De Vere Papers P22 268, Aubrey De Vere to Stephen De Vere [1845]. The De Vere's were also supporters of the temperance movement, and defended it against claims that it was a front for Ribbonism, see Chapter 5.

⁷⁹ Sir James Caird, *The plantation scheme, or, the West of Ireland as a field for investment* (London, 1850).

⁸⁰ Ridden, 'Making good citizens', p. 58.

towards their tenants during the famine and later Land War in the 1880s.⁸¹ As a result, a number of outrages were carried out on the Vandeleur estate during the pre-Famine decades, Vandeleur himself, a JP, was attacked by a mob in Kilrush town in 1841 and hit with a bottle on the head.⁸² Vandeleur's actions as a magistrate appear nondescript, he attended petty sessions and Grand Jury meetings regularly but he was described by a fellow magistrate as knowing 'every part of the county and almost every person in it' which suggests Vandeleur was zealous in his role as a magistrate.⁸³

However, rack renting and a land letting system that was unfair lent itself to an element of distrust amongst landholders and tenants that became more complicated in the event of an eviction where the evicting landlord was also a magistrate. The eviction of a number of small landholders and cottiers by land-holding magistrates in Queen's County was one cause of a sustained period of unrest in the county during 1831. The magistrates involved were Sidney Cosby, Matthew Cassan and John Roe who between them evicted hundreds of people from their lands and created the conditions that encouraged the Terry Alt disturbances troubling Clare in that same year to spread into Queen's County.⁸⁴ In the year previously Cosby's father, as Deputy Lieutenant, had been praised for his efforts to restore the county to a state of tranquillity but Sydney Cosby was only twenty-four and was not long a member of the magistracy, however an account of his attitude from the bench is unknown.⁸⁵ In contrast, Matthew Cassan was in his late seventies in 1831 and still regularly appeared on the bench, he had also served as a major in the Queen's County Militia throughout the 1790s and into the 1820s and what few reports he sent to Dublin Castle show him as active in the pursuit of suspected Whiteboys.⁸⁶ Once again, very little appears in the press that gives a sense of the third magistrate, John Roe, in his role as a magistrate other than of the three, he was the only one to sign his name to a petition seeking the introduction of the Insurrection Act in March the following year.⁸⁷ Therefore, the only real complaints against these men in their official capacity as magistrates were miniscule, prior to Cassan's evictions his father had arrested a

⁸¹ See *Clare Advertiser*, 25 July 1885; *Clare Journal*, 18 June 1887; *New York Times*, 18 July 1888.

⁸² *Leinster Express*, 17 July 1841. The mob were frenzied due to an ongoing election in the town, a time of very high passions, but nonetheless, such an attack on a wealthy land lord, JP and DL, demonstrated how the crowd felt about Vandeleur, his land agent, one of the Keanes was murdered in the attack.

⁸³ David Fitzpatrick, 'Famine, entitlements and seduction: Captain Edmond Wynne in Ireland, 1846-1851', *The English Historical Review*, Vol. 110, No. 437 (1995), pp 596-619.

⁸⁴ *Report from the select committee into the state of Ireland*, 6th June- 25th July, 1832, H. C. 1832, (667), xv1.1.

⁸⁵ *Dublin Evening Packet and Correspondent*, 13 May 1830.

⁸⁶ *The Gentleman's Magazine*, Vol. 162-163, 1837, p. 652; Cassan to Dublin Castle, 1821. Chief Secretary's Office, Registered Papers State of The Country Papers 1821: 350; 269.

⁸⁷ *Evidence before the select committee into the state of Ireland, 1832* (H.C) 1832 (677), xv1.1, Appendix pp 77-78.

number of labourers and Cassan had been an active member of the Militia and had a record of bringing rural agitators to justice.⁸⁸ However, the evidence of the local Catholic priest in Maryborough, Rev. Nicholas O'Connor, gives a different picture of Cassan as a landlord and individual. O'Connor informed the 1832 committee that Cassan evicted twenty-seven families for rental arrears, allegedly a consequence of Cassan maintaining pre- Napoleonic War rent levels which the tenants could not meet, while the incoming tenants were all Protestant and were set rents at a lower price than the Catholic tenants who had been evicted.⁸⁹ O'Connor finished by stating he knew the character of many of the families evicted and insisted a number of them had become Whitefeet as a result of being evicted and not for any grievances before this.⁹⁰ The *Dublin Monitor*, investigating the eruption of Whitefeet violence nine years later, laid the blame on the evictions by Cassan, Cosby and Roe, believing that the 174 families evicted from the Cosby estate was the starting point of the disturbances in the county.⁹¹ The Catholic magistrate for the county, Robert Cassidy, did not name any individuals in his evidence but reiterated that the trouble began because of evictions in the county and 'the oppressive conduct of the persons to whom the labouring classes had been subject.'⁹² Similarly, Curtain has calculated that ninety per cent of crimes relating to land occupation in pre-Famine west Limerick were motivated by evictions.⁹³

Therefore, as magistrates, these landlords should have been more aware of the social implications when the paternalistic relationship between landlord and tenant broke down. Although economic and religious resentments were more acute in Ireland than in England, it is clear that in this instance landlords that were also magistrates were clearly a cause of the violence that engulfed Queen's County in the early 1830s. Thus, many Irish landed magistrates did not, or could not fulfil the paternal role locally that their English equivalent enjoyed. In parts of Wales, particularly Carmarthen Town and Bay area, were deeply disturbed with riots and outrages in 1843, predominately because the lower orders felt they were being over taxed and burdened with unfair tithes and a general displeasure at the fluctuating prices of agricultural prices, all similar complaints to those expressed by the Irish peasantry. After numerous nights of agitation on the part of the local tenantry the local gentry

⁸⁸ *Hansard's Parliamentary Debates*, H.C Deb 11 March 1833 vol.16 cc488-528.

⁸⁹ The largest landowner in King's County, Lord Rosse, also encouraged leasing predominately to Protestant tenants over Catholics; see Graine C. Breen, 'Landlordism in King's County in the mid-nineteenth-century' in William Nolan and Timothy P. O'Neil (eds) *Offaly: history and society* (Dublin, 1998), p. 658.

⁹⁰ *Evidence before the select committee into the state of Ireland, 1832* (H.C) 1832 (677), xv1.1, pp 179-181.

⁹¹ *Dublin Monitor*, 17 October 1840.

⁹² *Evidence before the select committee into the state of Ireland, 1832* (H.C) 1832 (677), xv1.1, pp 386-397.

⁹³ Gerard Curtain, *West Limerick: crime, popular protest and society, 1820-1845* (Limerick, 2008), p. 99.

and magistrates sat down with the tenantry of the district and tried to redress the situation.⁹⁴ While such relations did exist on some estates in Ireland,⁹⁵ predominately where the great land owners were the immediate landlords, most of the country's estates were sub-leased to men of lower status. Thomas Drummond infuriated landed magistrates in a letter to Lord Donoughmore when he stated that 'Property has its duties as well as its rights, to the neglect of those duties in times past is mainly to be ascribed to the diseased State of Society in which crimes take their rise and it is not in the enactment or enforcement of statutes of extraordinary severity but in the better and more enlightened and humane exercise of those rights that a permanent remedy for such disorders is to be sought.'⁹⁶ O'Brien, Thomas Drummond's biographer, claimed that 'the Ascendancy never forgave Drummond for the letter to the Tipperary magistrates. They denounced him as the instigator of outrage, and vilified him as the defamer of the landed gentry of the country.'⁹⁷ Thus, with high rents, the threat of eviction and tithes payments to the Establish Church, the peasantry in rural Ireland 'were turning increasingly from support of the Ascendancy made law of the magistrates to support of a law of their own based upon the will of the peasant community.'⁹⁸ Furthermore, due to the extensive 'cost of higher courts being prohibitively expensive', for those that wanted to pursue the official law channels, they were for the most part forced into a 'hall door' form of justice at the residence of the local magistrate, whereupon hearing both sides of an argument the magistrate then made his judgement.

As Richard McMahon points out, this gave the magistrate considerable powers and allowed him to act outside the confines of the law which, in turn, gave rise to complaints of injustice and corruption.⁹⁹ Yet Garnham suggests that this practice was a regular occurrence in the eighteenth century when magistrates, offenders and those offended seemed to be able to apply a common sense approach to disputes and justice was almost symbolic.¹⁰⁰ But by the nineteenth century there seems to have been a negative shift in the attitudes of magistrates

⁹⁴ T. M. Ray, *Report on the Irish coercion bill: the causes of discontent in Ireland*, (Dublin, 1846) pp 207-9.

⁹⁵ Due to the bad management of his estate by his land-agent a number of tenants on the Downshire estate in Edenderry had either defaulted payment or had their lease expired. To redress the issue and alleviate fears, Downshire wrote directly to a number of his tenants that he felt were 'doing their best' to help the situation. Maguire described this as 'the most extraordinary instance of the landowner's acting as his own chief executive. See W. A. Maguire, *The Downshire estates in Ireland, 1801-1845: the management of Irish landed estates in the early nineteenth century* (Oxford, 1972), p. 212.

⁹⁶ Bonsall, *The Irish R.M.*, p. 41.

⁹⁷ Robert O'Brien, *Thomas Drummond: undersecretary for Ireland 1835-40, life and letters* (London, 1889), p. 288.

⁹⁸ Broeker, *Rural disorder*, p. 229.

⁹⁹ McMahon, 'The courts of petty sessions', p. 54.

¹⁰⁰ Neal Garnham, *The courts, criminal law*, pp 54-55.

dispensing hall door justice but also a shift in the expectations of those seeking justice, whether it was the growth of a more obstinate press or wider politicization, but restorative gestures of justice were no longer satisfactory. However, as Virginia Crossman points out, magistrates, before the implementation of reform in the 1830s, had little in the way of support mechanisms and as such were vulnerable to terror and reprisals and thus delivered a type of frontier justice essential to their own survival.¹⁰¹ Such fears led Isacc Ryall, Justice of the Peace residing at Fethard, Co. Tipperary, to repeatedly beg the administration not to reveal his identity after he sent a detailed account of the seditious actions of the inhabitants of the town. The general complaint was that men who he described as idlers were stirring up trouble at night by signing inflammatory ballads which, he claimed, was due to the want of a Resident Magistrate in the town as the local magistrates retired from the town come evening time.¹⁰² It is plausible that he wanted his name hidden from the other local magistrates who would surely resent his action in bringing a government magistrate down on top of them, but it is more likely that he feared reprisal from the 'idlers' of whom he complained, should they learn it was he who put a stop their nightly activity.¹⁰³ For whatever reason lay behind this suppressing of identity, it demonstrates the fear that dogged active magistrate during this period.

It was against both extremes of this – the heavy handed and the timid- dispensing of justice that Peel wanted to safeguard when introducing a more centralised and administrative form of law and order earlier in the century. He envisaged eliminating on the one hand the hall door system of judgement which bolstered the prominence and status of magistrates, and, on the other, the fear and intimidation which local magistrates faced when carrying out their duties. Peel expressed this sentiment to Lord Viscount Melbourne in 1835:

If the magistrate be not prejudiced, they [the peasantry] at least, think him so. Law administered by them, therefore, cannot produce all its beneficial influence. This is an evil which spreads widely through the country, but it more clearly exhibits itself with respect to clerical magistrates who are numerous. There should, undoubtedly, be a general substitution of Stipendiary Magistrates. This class of magistrates have almost uniformly worked well in Ireland, and should, therefore, be adopted in every county, while the corporate magistrates under the new bill, it may reasonably be hoped, will deserve and enjoy the confidence of that part of the public. With respect to both

¹⁰¹ Virginia Crossman, *Politics, law and order in nineteenth-century Ireland* (Michigan, 1996), p. 15.

¹⁰² For more on seditious ballads see Maura Cronin, 'By memory inspired: the past in popular song, 1798-1900', Terence Dooley (ed.), *Ireland's polemic past: views of Irish history in honour of R. V. Comerford* (Dublin, 2012), pp 32-50.

¹⁰³ Isaac Ryall, Tipperary, to Dublin Castle, 14 August 1832. Chief Secretary's Office, Registered Papers Private Index 1831: B/101.

classes of magistrates, corporate and stipendiary, the most unremitting attention should be paid to the impartiality and purity of their conduct, and every facility afforded to the lower orders for obtaining redress from partial and unjust decisions.¹⁰⁴

In 1842 the Lord Lieutenant had to ask a member of the Dublin Metropolitan Police force, James Mullins, to investigate a crime in King's County 'as there was no confidence in the impartiality of the county magistrates.'¹⁰⁵ While this was not the first time the Castle had to send members of the DMP to resolve issues where local magistrates could not. However, such a frank admission of the public's loss of confidence in the magistracy of a whole county must have led to the government devising further ways in which to increase its power within local society.¹⁰⁶

Yet fear of intimidation, which was sometimes expressed in to an abrupt attitude, or an overreaction like calling for the Insurrection Act, when dealing with minor crimes by the peasantry, does little to explain the extreme actions of some magistrates. Instead of protecting their place in society they gave the impression of arrogance and blindness to the reality of the world in which they lived. In fact, as evidenced in the Vandeleur case in the 1840s, extreme actions actually undermined their authority in some instances. The O'Driscolls, descendants of the Gaelic chieftains of the same name, were one such prominent land owning family in West Cork whose members held the position of magistrate along quasi-feudal lines. Both Alexander O'Driscoll Senior and Junior held the position concurrently up to 1830 when O'Driscoll Senior retired from service.¹⁰⁷ In 1843 O'Driscoll Junior stirred the emotions of both the local gentry and lower orders, while also infuriating the liberal press, when he savagely beat a young boy and stopped a tenant from reclaiming his own cow after O'Driscoll had impounded it for rent arrears. What outraged most critics was the fact that not only did O'Driscoll act as magistrate in the ensuing trial but he also found judgement in favour of himself.¹⁰⁸ *The Examiner* went so far as to say that

there has not been in the modern history of Irish magistracy, anything at all comparable to the career of Mr. Alexander O'Driscoll... The press of the United

¹⁰⁴ Thomas Wallace, *Three letters addressed to Lord Viscount Melbourne from Sir Robert Peel, 1835* (London, 1835) pp 44-98.

¹⁰⁵ Dublin Castle to James Mullins, Dublin, 1842. Chief Secretary's Office, Registered Papers Private Index 1842: 145/40.

¹⁰⁶ Elizabeth Malcolm, 'Investigating the "machinery of murder"', pp 73-91.

¹⁰⁷ *Returns of the number and names of magistracy 1830*, p. 15, H.C, 1831

¹⁰⁸ *Nation*, 20 July 1844; *Southern Reporter and Cork Courier*, 20 July 1844.

Kingdom, from the ultra-Tory down to the fiercest democrat, have joined in condemnation of this sample of a just magistrate.¹⁰⁹

Some English regional newspapers called it ‘convincing proof of the factious spirit which rules the executive in Ireland’ while the *Morning Post* bemoaned the amount of time this trivial case was taking up in both Houses of Parliament, stating that ‘this affair, does however, afford a handle for attacking the Irish Lord Chancellor’ which was another swipe at the administration’s handling of the affair.¹¹⁰ In fact, the case went much further: not content with beating the child and sending out a message to the local tenantry, O’Driscoll declared the west Cork was on the verge of an insurrection by the lower orders and called a meeting of the local magistrates to enact the Arms Bill.¹¹¹ Significantly, not one liberal magistrate attended the meeting, leaving their Tory counterparts to indulge O’Driscoll, all of whom signed a petition seeking this coercive act to quash the impending insurrection. The meeting put additional powers in the hands of local magistrates while subjecting the local labourers and small farmers to a curfew, therefore creating tension within the community of Bandon where the beating had taken place and the West Riding as a whole.

The issue did not end here however, once the truth of the episode reached the Lord Chancellor of Ireland, O’Driscoll was dismissed as a magistrate only for this decision to be over turned by the same Tory government some months later and he was reinstated. The government reneged on their original stance and reinstated O’Driscoll because senior members of the Tory party lobbied them in O’Driscoll’s favour, thus reinforcing the earlier statement commenting on the balancing act carried out by the government during this period of trying to cull inept magistrates on one hand yet requiring political favour from them on the other. Here again is a prime example of patronage at work, as O’Driscoll successfully used all his political power, generating a memorial in his favour signed by almost three thousand magistrates, members of the nobility, gentry and the Protestant clergy, to have his position as a magistrate restored.¹¹² Seemingly, the Earl of Bandon, Lord Lieutenant for Cork, backed the memorial supporting O’Driscoll, which was enough to change the Lord Chancellor’s

¹⁰⁹ *Cork Examiner*, 12 January 1844.

¹¹⁰ *Bury and Norwich Post*, 3 July 1844; *Morning Post*, 20 July 1844.

¹¹¹ The Arms Act was another coercive act designed to deny the inhabitants of an area certain freedoms while giving magistrates additional powers to end outbreaks of insurrection.

¹¹² *Freeman’s Journal*, 12 January, 26 July 1844; *Hansard’s Parliamentary Debates*, HL Deb 16 July 1844 vol. 76 cc878-906.

mind and have O'Driscoll reinstated.¹¹³ It was for a number of these reasons that the editor of the *Cork Mercantile Chronicle* stated that 'no part of Ireland is more infested by what are called firebrand magistrates than the County of Cork.'¹¹⁴

O'Driscoll was not the only magistrate to preside over a case that he himself had engineered during this period. Thomas Waller, a magistrate in North Tipperary, was the owner of a tract of land, just outside Borrisokane, which he leased to a man named Cleary. Mr Arthur French, a respectable gentleman and attorney, had acquired land adjoining to Cleary's and within a short time the issue of rights to a bog arose and a court case ensued. Waller, however, seems to have instigated the case, using Cleary against French as he did not want French having access to the bog. Waller acted as magistrate, and, during the proceedings, called French a liar for disclosing that it was Waller who was behind the whole affair and had tried to ruin French's reputation in the locality. A number of issues arise from this case. Firstly, this, apparently, was not the first such case between the parties and on two previous occasions Waller had also been on the bench. French found judgement in the first instance. Not happy with being over ruled by his fellow magistrates, Waller wanted to wait until he was sure that he had a solid case which would ensure French would be found guilty, hence the initiation of a third case. The similarities in the cases of O'Driscoll and Waller are striking: the sense of privilege and entitlement on the part of both magistrates, and their concern for property rather than impartial law, were central to each magistrate's thinking. In the Tipperary case, the liberal magistrates, and the local Stipendiary Magistrate Sampson Carter, did not indulge Waller, leading to his storming out of court, berating his fellow magistrates and crowning himself the 'poor man's friend' much to the delight of the public in attendance who seemed to enjoy the spectacle rather than harbouring any real support for Waller.¹¹⁵ In 1841, an editorial in favour of introducing more Stipendiary Magistrates, the *Freeman's Journal* insisted that such partisan and partial administration, as just outlined, was the greatest of all grievances felt by the peasantry. The article stated that the

grinding agent of the absentee landlord is always a magistrate. He knows the parties in, and enters into the animus of, many of their disputes. When his bailiffs or drivers are harsh, beyond the endurance of the most submissive, and on being brought before

¹¹³ *Freeman's Journal*, 19 July 1844. The paper published a full account of a debate on O'Driscoll's reinstatement which was carried out in the House of Lords. A number of Tory honorifics lent their support to O'Driscoll including Lord Wharncliffe, the Earl of Glengall and the Earl of Mountcashel on the grounds that he was a respectable gentleman and magistrate.

¹¹⁴ *Cork Mercantile Chronicle*, 9 October 1835.

¹¹⁵ *Warder and Dublin Weekly Mail; Dublin Weekly Register*, 31 January 1835.

the next bench of magistrates, then the agent sits to pass judgment upon his own creatures, acting, perhaps, in the spirit of his own orders... What justice in such cases...can the crushed and trodden expect from a court so constituted?¹¹⁶

It is impossible to fully estimate how frequent such cases were in the pre-Famine decades. Newspapers at this time were fraught with political and religious bias and accusations of improper conduct by a magistrate in one journal may turned to praise in another, while in many instances papers ignored the stories that reflected negatively on their political party of choice. Such was the case with many conservative journals, such as the *Limerick Chronicle*, that failed to report at all on the O'Driscoll affair while other conservative journals such as the *Kerry Evening Post* and the *Cork Constitution* paid little attention to the case and reported on the political fallout rather than the actions of O'Driscoll.¹¹⁷ Bending facts to suit a political outlook were less prevalent in cases where newspapers reported on a trial, however, as reporters generally relayed the words between the individuals within the court room. Such a case involved John French of Wexford who was awarded £1000 in damages after being assaulted, arrested and falsely imprisoned in New Ross by Martin Howlett, a JP for the county of Wexford who actually had no jurisdiction in the town of New Ross.¹¹⁸ However, strict provisions were laid down warning magistrates not to act as judges in their own cases for it was held that 'men are generally more foolish in their own concerns than in those of other people.'¹¹⁹ Thus, it was through such cases that certain magistrates betrayed their contempt for both the classes below them and confirms the contemporary liberal press' claims that certain members of the gentry used the position of magistrate for their own self-interest.

Acting as a magistrate in a case involving a personal interest displayed the contempt of many local magistrates for a centrally administrated form of law which they were increasingly pressurised to implement as the 1830s and 1840s passed. This contempt can be identified in magistrates' attitudes to the employment of barristers and legal assistance in the courthouse. At a sitting of the Frankford petty sessions, King's County, in 1833, Mr. Thomas L. Cooke, solicitor for a Mr. Holton, found himself prevented from performing his duties by two local magistrates who had banned solicitors and barristers from their courthouse. The magistrates in question, Captain Thomas Hobbs of Barnaboy, Frankford and Mr. Andrew Stoney of

¹¹⁶ *Freeman's Journal*, 2 December 1841.

¹¹⁷ *Kerry Evening Post*, 17 January 1844; *Cork Constitution*, 16 January 1844.

¹¹⁸ *Freeman's Journal*, 4 March 1844.

¹¹⁹ Richard Burn et al, *The Justice of the Peace and parish officer, volume 2* (London, 1831), p. 472.

Frankford, the latter also being a local landlord with a sizeable estate, felt that they knew what was best for the local tenantry. This was clearly a case of bringing landlord-tenant paternalism into the court house, the magistrates insisting that they would decide the outcome of a case to the best of their judgement to avoid the tendency of attorneys to influence their clients to lie or to entangle them in expenses they could not afford.¹²⁰ They said ‘the commission we hold is for the protection of the people; and we shall not allow them to be going to Birr and bringing attorneys here, at expense’.¹²¹ Clearly, there was an element on the part of the magistracy of not wanting outsiders coming in poking their noses into their business. Expressing similar sentiments, the tory *Dublin Evening Mail* claimed to speak for the magistracy in an 1842 article when it claimed that ‘many of our country barristers appear to forget that they are but assistants, not to the judges of assizes, but to the local bench of magistrates; and their limited duty is to advise and not to dictate.’¹²² Whether the paper was representative of general feelings of the magistracy is unclear, but it is evident that there was considerable resentment towards the legal professions on the part of at least some of the gentry. In the ensuing argument Cooke remonstrated that it was his client’s right to have representation, as it was a case of final judgement, which meant a verdict would be delivered that day, and the case would not be forwarded to be heard at Quarter Sessions, his clients needed assistance to get the best possible outcome in their favour. Cooke even offered to return to his lodgings to retrieve a law guide which would corroborate his claim and show the court that his clients were entitled to representation if they wanted it.¹²³ The magistrates made Cooke wait until the arrival of Mr. Nicholas Fitzsimon, local MP and JP, to plead his case, which he did, and Cooke pointed to a bill recently introduced in the House of Commons by Lord Oxmantown MP, Lord Lieutenant for the county, which stated what the common law was and outlined the right of parties to have legal defence in such cases. Fitzsimon sided with the local magistrates in the end, claiming that it looked ‘suspicious for persons to be bringing attorneys so far. The magistrates sitting in this court are fair, just and honourable men, and it appears like an imputation upon them to bring attorneys to question their proceedings.’¹²⁴

The actions of Fitzsimon, a known Repealer, are peculiar here insofar as he was a supporter of O’Connell and elected as member of his party.¹²⁵ His actions in siding with the local

¹²⁰ *Chutes Western Herald*, 16 December 1833.

¹²¹ *Freeman’s Journal*, 13 December 1833.

¹²² *Dublin Evening Mail*, 9 January 1842.

¹²³ *Freeman’s Journal*, 13 December 1833.

¹²⁴ *Freeman’s Journal*, 13 December 1833.

¹²⁵ *Southern Reporter and Cork Commercial Courier*, 16 September 1841.

magistrates appear at odds with his supposed political responsibilities as an elected representative of the county. But Fitzsimon himself was also a Justice of the Peace and perhaps it was a case of having to balance political loyalties with maintaining cordial relations with his peers. Ultimately, he had more in common with his fellow landed magistrates than with the lower orders and this suggests the bonds of class outweighed the bonds of justice. Fitzsimon and Oxmanton, as MPs and magistrates, also highlight how magistrates engaged with parliamentary decision making and that the relationship between parliament and local magistrates was not always antagonistic 'or reduced to a straightforward central/local dichotomy.'¹²⁶ Two years later Fitzsimon was one of the main voices, along with other local magistrates, in offering tribute to John Howley, the County Assistant Barrister, or Crown Solicitor, for the work he had carried out in this capacity for King's County and wished him well in his new position as Assistant Attorney and chairman of the Nenagh Quarter Sessions.¹²⁷ The position of county barrister was awarded by and its holder answerable to Dublin Castle through the office of Attorney General, as with most positions that were appointed at this period there was an element of patronage involved, and Howley most likely had an influential patron.¹²⁸ Therefore, Howley was employed by the Irish government, had the backing of an élite person with influence, and was the superior of local magistrates in a court setting.

The episode highlights the difference in attitudes towards people from a landed background and towards professionals during the 1830s and 1840s. Howley was a small landowner in Limerick with just over 600 acres,¹²⁹ his marriage into a landed family, the Roches of Lota Park, Glanmire, enhanced his access to gentry networking.¹³⁰ His daughter married into the Mansfield family, extensive landowners in Kildare, and therefore he was playing by the rules of élite culture and was treated accordingly. In contrast, Cooke, resident of the town of Birr, represented the emerging middle class from which the landed gentry had largely distanced themselves in larger urban areas. However, the rise of the rural bourgeoisie (the big farmer, the shopkeeper, the postmaster) were not something from which the landed gentry could so

¹²⁶ Peter King, *Crime and law in England, 1750-1840: Remaking justice from the margins* (Cambridge, 2006), p. 49.

¹²⁷ The position of assistant barrister for counties was created as far back as 1787 to help magistrates with the finer complexities of legal matters in the court house as the government pushed for a more centralized form of justice through the various systems of court and away from hall door justice.

¹²⁸ The evidence of Thomas Drummond, *The State of Ireland since 1835, in respect of crime and outrage, which have rendered life and property insecure in that part of the Empire*, p. 1004, H.C. 1839 [486] xx, III. Drummond repeatedly stated that the attorney general was responsible for appointing crown solicitors.

¹²⁹ *Griffith's Valuation of Ireland*.

¹³⁰ NUIG Landed Estates.

easily distance themselves as they began to control large aspects of rural life.¹³¹ Recent research on Irish élites has focused on aspects of middle class intrusion into rural élite life. But perhaps the growth and influence of this professional class and their civilizing virtues at the same time that paternalistic landed relations were breaking down indicates why many of the lower orders used the petty sessions. Whelan suggests that the loss of the Gaelic Aristocracy in the eighteenth century led to the erosion of Gaelic customs and left the peasantry rudderless with the result of much lawlessness and inter-familial factionalism. Thus, in many ways the middle-classes become the Catholic aristocracy and play as big a part in modernizing the state as the central administration.¹³²

Andrew Tierney discusses the growth of the material wealth of the middle classes throughout the nineteenth-century and how their emulation of the Big-House, which was an attempt at gentrification by the rising merchant class, increasingly began to dominate the rural landscape. McEntee's work on solicitors as élites in mid-nineteenth century Ireland discloses the social layers that existed between solicitors and barristers at this time. While the sons of many élite men were members of the bar or were educated at the Inns of Court, the profession of solicitor, the lowest branch of the legal profession, was viewed with disdain by the landed gentry as it became filled by professional men. This draws parallels with how some landed magistrates viewed Stipendiary Magistrates, a position that initially was filled by some lower gentry but became increasingly filled by the sons of large farmers and merchants. Whereas, barristers were deemed more respectable, largely due to the cost of acquiring the qualification which was anything between £1000 and £1500 which meant only the sons of élite members of society pursued this course.¹³³ In a twist of fate, Cooke was appointed as Howley's replacement as Crown solicitor for King's County on Howley's own recommendation, he had to work with the same magistrates that tried to stop him from carrying out his duties at petty sessions some two years previously.¹³⁴ Thus, the role of solicitor and other professions in the country side were largely dominated by a rising Catholic bloc set on challenging the status quo. Another example of this increasing prominence and new found confidence of the

¹³¹ Samuel Clark and James S. Donnelly Jnr (eds) *Irish peasants: violence and political unrest 1780-1914* (Dublin, 1983), pp 412-413. The middle classes controlled access to credit which the peasantry needed, whether it be rent, foods or materials and thus began to exert far more influence over the peasantry as the 1830s wore on.

¹³² See James Kelly, *That damn'd thing called honour', duelling in Ireland, 1570-1860* (Cork, 1995); David George Boyce, *Nineteenth century Ireland: the search for stability* (Dublin, 2005); Fergus O'Ferrall, 'The rise of the Catholic middle-class: O'Connellites in County Longford, 1820-1850' in Fintane Lane (ed) *Politics, society and the middle-class in modern Ireland* (Basingstoke, 2010), pp 48 -64.

¹³³ Joanne McEntee, 'Gentlemen practisers': solicitors as elites in mid-nineteenth-century Irish landed society' in Ciaran O'Neil (ed) *Irish elites in the nineteenth century*, pp 99-112.

¹³⁴ Michael Byrne, *Legal Offaly* (Tullamore, 2008), p. 258.

Catholic middle class is found in the evidence of John Cahill, Catholic Crown Solicitor for Tipperary, given before the select committee on crime and outrage in 1839. Cahill's family background and ascent to his position as Crown Solicitor typifies the web of patronage used by the middle: his uncle was a judge, his brother-in-law and both brothers were solicitors and both his sisters married members of the legal profession.¹³⁵ He revealed to the 1839 enquiry that he had acted as an election agent in 1829 for Hon. Francis Aldborough Prittie, JP, and John Hely Hutchinson who had been elected to parliament for Tipperary as a Whig in the previous 1826 election.¹³⁶ Yet, at the last minute he had jumped ship to support Thomas Wyse, a prominent supporter of Catholic Emancipation and member of the Catholic Association. Cahill explained that he was weary of noble families' monopoly on the representation of the county:

The principal reason for it was, a feeling which arose among the independent body of the county, the middle class, who felt themselves treated as nothing...and we felt that we had a right to have a member for the county who would be subject to our influence, and represent our wants and needs at parliament, and who would act in accordance with the wishes of those who sent him there.¹³⁷

Furthermore, the realm of law and order, particularly reflected in the actions and words of magistrates and solicitors, seems to have been at the forefront of this battleground. If petty sessions had been introduced as a check on landed magistrates while simultaneously civilizing the poorer classes, these courts were never envisaged as a challenge to Ascendancy authority.¹³⁸ As discussed, landed élites were divided rather than homogenous and the entrance of the middle classes into the competition for local hegemony challenged this divided gentry's self-identity as rulers of rural society, forcing élites to close ranks and to cling to landed marriages and landed estates for security. William Wellesley, Justice of the Peace for Queen's County, heaped on the middle classes much of the blame for the Whitefeet violence that gripped the county in the early 1830s, he stated 'up to 1828 there was a good understanding between the people and gentlemen – since then there was a great separation between the classes. Meetings held in 1828 where farmers gave speeches that incited the

¹³⁵ Murphy, *The two Tipperarys*, p. 92.

¹³⁶ www.Historyofparliament.org (accessed on 15/4/15) Prittie had also been elected an MP for Tipperary in 1820.

¹³⁷ The evidence of John Cahill, *The State of Ireland since 1835, in respect of crime and outrage, which have rendered life and property insecure in that part of the Empire*, p. 841, H.C. 1839 [486] XIX, II.

¹³⁸ Marilyn Silverman, 'Custom, Courts, and Class Formation: Constructing the Hegemonic Process through the Petty Sessions of a south-eastern Irish Parish, 1828-1884' in *American Ethnologist*, vol. 27, no. 2 (May, 2000), pp 400-430.

lower orders... [who were] harangued by other people after meetings.¹³⁹ Reid also alludes to such meetings and notes that politicized farmers, shopkeepers, brewers, solicitors and newspapers proprietors' played a large role in encouraging the lower orders to resist tithes.¹⁴⁰ Thus, this suggests that the paternalism of landed magistrates was challenged both directly in their role at petty sessions and indirectly through the middle classes' manipulation of the peasantry and lower orders generally.¹⁴¹

During his plea to be heard at Frankford Petty Sessions in 1833, Cooke referenced a similar case which had transpired at the Petty Sessions in Bruff, County Limerick three years earlier. During this trial, counsel for the plaintiff, Mr. Croke, had been dismissed by the presiding judge and magistrates who stated that they had made a rule not to hear from legal professional men in their courtroom. Naturally, and as with Cooke in 1833, Croke had challenged the magistrates about his right to represent his client, claiming that it was unconstitutional not to let him do so, again highlighting the resistance to modernity and state law by local magistrates. In this case the magistrate was Darby O'Grady, a local magistrate and a large landowner, and nephew to Standish O'Grady once attorney general and recipient of a peerage for services rendered.¹⁴² Irked by having his authority so publically challenged, it was O'Grady who contested Croke when the latter spoke about the constitution, asking him 'What signifies what you think, sir?' to which Croke retorted, with scant deference to O'Grady's position, 'It is as much consequence as to what you think, if you go to that' upon which O'Grady and his fellow magistrate, Mr. Bevan, simultaneously demanded that Croke be taken to the dock, such was their rage at being openly challenged in court.¹⁴³ O'Grady caused furore with the claim that Croke was drunk and had behaved threateningly in court, which Croke refuted, and the accusation led to a long drawn out scandal in the press.¹⁴⁴ It was also reported that when Croke was charged he was stood next to a man on trial for perjury, and O'Grady was allegedly said to remark that it was 'curious that a barrister and a perjurer should be stood next to each other' again portraying how some magistrates viewed the

¹³⁹ Evidence of William Wellesley, *Report from the select committee into the state of Ireland, 6th June- 25th July, 1832*, p. 36, H. C. 1832, (667), xv1, 1.

¹⁴⁰ Reid, 'The tithe war in Ireland, 1830-1838', pp 284-285.

¹⁴¹ Todd B. Quinlan, 'Big whigs in the mobilization of Irish peasants: an historical sociology of hegemony in pre-Famine Ireland (1750s-1840s) in *Sociological Forum*, vol. 13, no. 2, 1998, pp 247-264.

¹⁴² Dictionary of Irish biography: 'From the earliest times to the year 2002', James McGuire and James Quinn (eds.), Vol. 7. Here O'Grady is described as a popular yet one of the least dignified judges to sit on the bench. He was renowned for his sense of humour and liked to exaggerate his Limerick accent and pretended to regularly confuse the crown lawyers.

¹⁴³ *Limerick Chronicle*, 15 December 1830.

¹⁴⁴ *Saunders Newsletter*, 4 December 1830; *Southern Reporter and Cork Commercial Courier*, 9 December 1830; *Tipperary Free Press*, 11 December 1830.

growing influence of barristers in courts of law in the 1830s.¹⁴⁵ The fallout from this case led to a rebuke for Darby O'Grady from the Chancellor of Ireland, Sir Anthony Hart, with the result that all of the Bruff magistrates threatened to resign their commissions in protest. Highlighting how elite families used petty sessions as a seat of power, the *Freeman's* noted that the magistrates threatening to resign were all related and the case had become a feud between the O'Grady family and Croke but in reality it highlights the challenges to local magistrates from both the middle classes and a newer regulated system of law and order.¹⁴⁶ Standish O'Grady; his nephews, Decourcy O'Grady and Darby G. O'Grady; Darby's brother James O'Grady; and Decourcy's cousin, William Gubbins, were the magistrates in question. The claims that Croke was drunk were successfully proved false in a libel case against O'Grady but he continued to serve as a magistrate after being found to have behaved inappropriately on the bench. Douglas Hay shows that such contempt for barristers and solicitors on the part of the magistracy was also not uncommon in England at the start of the nineteenth-century but with the evolution of the King's Bench, one of three central courts of common law, such abuses of power by magistrates were expected to be curtailed. However, Day argues that reliance on the unpaid magistracy was such in the everyday running of English criminal law, that High Court judges were able to tolerate or ignore a substantial level of abuse of power. The separation between professional judges and magistrates was impossible to replicate to the same degree in Ireland, given the much more rigid class, political, and more importantly, religious structure of Ireland during the pre-Famine period.¹⁴⁷

The misuse of magisterial powers was not unusual in the middle-belt counties and another magistrate, Dominick Corr of French Park, Roscommon, abused his position by falsely imprisoning a gentleman and using foul language towards a another gentleman who had come to the aid of a local tenant whom Corr had imprisoned for rent owed. It was reported that Corr verbally abused this other gentleman whose only intention was to reason with Corr to let the tenant go. Corr was attacked in the press for his actions and as a consequence resigned from the magistracy.¹⁴⁸ Similarly, in 1845 the actions of a Limerick magistrate, Richard Phillips, caused national furore which led to a public spat between the Chancellor of Ireland and Smith O'Brien, Member of Parliament for Limerick. Phillips had allegedly shot another gentleman, Michael McCormack, as their gigs got entangled on the road when

¹⁴⁵ *Dublin Weekly Register*, 5 December 1829.

¹⁴⁶ *FJ*, 23 January 1830.

¹⁴⁷ Douglas Hay, 'Dread of the crown office: the English magistracy and King's Bench, 1740-1800' in Norma Landau (ed) *Law, Crime and English Society 1660-1800*, (Cambridge, 2004), pp 19-45.

¹⁴⁸ *Freeman's Journal*, 3 September 1841

Phillips tried to overtake McCormack near Annacotty, two miles outside Limerick, as the gentleman were returning home from the Murroe road sessions.¹⁴⁹ The jury took only five minutes to deliberate and found in favour of the magistrate even though he only had one witness, his own servant, to argue that McCormack had assaulted Phillips with a whip as the carriages were entangled. McCormack, on the other hand, had six passengers on board that day who challenged the evidence of Phillip's servant and laid all the blame at the magistrate's door.¹⁵⁰ It was during the lead-up to the retrial that O'Brien wrote a number of agitated letters to the Chancellor demanding the removal of Phillips from the Limerick magistracy. However, perhaps looking to drum up support for his demands, he first had the letters printed in the O'Connellite favoured *Limerick Reporter* newspaper, before forwarding them to the intended recipient. In response the Chancellor also had his reply made public and printed in various newspapers in which he was at pains to spell out that he could not act on hearsay and that justice must run its course through the proper channels.¹⁵¹ The fact that O'Brien, a long standing member of parliament and JP, wanted to bypass these proper channels laid out by government again highlights the epidemic problem of Irish attitudes towards law and order which seemed to be valued less than personal gain or party feelings.

It was not always necessarily a scandal that undermined trust in the process of law on the part of the tenantry and small famers during the pre-Famine decades. The case that unfolded after the murder of Hugh Grady of Garrycastle, King's County, captures the sense of public frustration at the erratic process of law and order and the court system at this time. Three brothers, Hugh, Michael and William Grady had been attending the funeral of a relative in Tipperary and on returning home after the burial were attacked by a large mob near Grange on the Tipperary side of the county bounds. In the process, Hugh Grady was savagely beaten, as were his brothers, but Hugh died of his wounds back at his family home some days later. After his death, the Garrycastle local magistrates Garreth O'Moore and John Armstrong visited the deceased's house and with the coroner absent called a jury and pronounced a verdict of wilful murder themselves at the Philipstown Assizes. At the inquest, the Grady family gave the magistrates the names of some of the men who carried out the attack and provided a list of other names of potential witnesses to corroborate the facts.¹⁵² However,

¹⁴⁹ *Tipperary Vindicator*, 19 November 1845.

¹⁵⁰ *Dublin Evening Post*, 31 March 1846.

¹⁵¹ *Freeman's Journal*, 29 January 1846.

¹⁵² Grady family, King's County, to Normanby, January 1836. Chief Secretary's Office, Registered Papers Private Index 1836 136/26, folder 1, p.1.

these magistrates had no jurisdiction to act in Tipperary so they transmitted the information and their warrant to the magistrate, Jonathan Walsh of Walsh Park, who was the magistrate living closest to site of the murder. What followed next highlights the fractured nature of cross-county law enforcement. In a memorial to the Lord Lieutenant, the Grady family revealed that the witnesses were never called at the Clonmel assizes and the perpetrators of the murder were given bail by Mr (Jonathan) Walsh. It transpired that Walsh, upon receiving word from the King's County magistrate, Garreth O'Moore, sent two persons suspected of being involved in the beating, John McNamara and Michael Hamilton, to trial at the Clonmel Assizes under the supervision of the Stipendiary Magistrate, Major Carter, both suspects being eventually acquitted. The case received very little attention in the press, only the *Tipperary Free Press* mentioned the death of Grady and the impending trial of McNamara and Hamilton and attributed Grady's death as another case of factionalism that then gripped the county.¹⁵³

In a letter to the Castle Walsh claimed that the other suspects in the affray had 'fled after arrest of one Michael Ryan.' However, Walsh also informed the Castle that when Ryan received bail these absconding suspects approached Walsh to declaring they wished to give themselves up. Walsh told them to do so at the next assizes at Borrisoleigh where he presided as a magistrate, as he did not want to act singly though, as he reminded the Castle, it was within the law to do so. The suspects turned up, and again bail was set by Walsh, Major Carter and Robert Stoney and the suspects were ordered to appear at the next Clonmel assizes. Walsh also defended himself against claims from the Grady family that he was not doing his duty and claimed that the memorialists levied several false charges against him as a magistrate:

these attacks on magistrates being now so frequent I trust His Excellency will deem it right to prosecute these persons who have thought proper to forward the memorial which contains falsehoods in the extreme to the injury of a magistrate in the executions of his duty and good order and which they and their advisories must have advised them at the time of forwarding the same.¹⁵⁴

In an example of how hard it was for the tenantry and small farmers to have their word taken over that of a magistrate, the remarks on the file by Castle officials reads 'This report is quite satisfactory.'¹⁵⁵ This discussion led to another memorial from the Grady family stating that

¹⁵³ *Tipperary Free Press*, 5 August 1835.

¹⁵⁴ Jonathan Walsh, Tipperary, to Lord Lieutenant Marquess of Normanby, January 1836. Chief Secretary's Office, Registered Papers Private Index 1836: 136/26, folder 2, pp 1-2.

¹⁵⁵ Chief Secretary's Office, Registered Papers Private Index 1836: 136/26.

their initial memorial ‘was not ill founded, frivolous, vindictive nor malicious.’¹⁵⁶ They were looking for the same impartial justice as was the right of every subject. When they gave the names of the persons who carried out the attack to the magistrate (O’Moore) they were told they could not bring them from another county, a sign of the localized nature of law at this period and the frustrations this caused. After seven weeks and no action, Michael Grady, Hugh’s brother, went to visit the magistrate, Walsh, to ask what was happening and why the persons charged had not been sent to Banagher (the nearest town to the Gradys) to be identified. Walsh informed him that as soon as they could be found they would be sent for trial by the magistrates of Banagher, which begs the question as to why Walsh did not do this the first time around. The fact that the suspects were from Walsh’s own neighbourhood suggests a level of paternalism and leniency and raises the question as to whether Walsh would have been so casual in his handling of this case had a member of the gentry been killed. At the end of their meeting Grady gave Walsh a list of witnesses whom he wanted sent from Tipperary to the assizes at Banagher on the day of the trial, making sure he did so in the presence of Police Constable Middleton so that he had a witness and neither Dublin Castle nor Walsh could later accuse him of telling lies.¹⁵⁷

It seems the Grady family’s desire for justice was not met: the case never made it to trial at the assizes as there is no report of it in local papers such as the *Tipperary Free Press* or *Tipperary Vindicator*, nor national contemporary newspapers such as the *Freeman's Journal*. Without such corroborative evidence it is hard to establish certain facts around the case as a whole but the severity of the beating the three brothers received suggests that they had broken the communal value system and the beating was a form of justice taken by the community. The Grady family’s recourse to the official law for justice is probably an indicator that they were not participants in violent acts of subversive law themselves, though this may not have been the case and the family may have felt that on this particular occasion the official law was the best way to exact revenge on such a large group. In the end the Gradys were let down by the actions of the magistracy and this particular episode highlights the complexity of localized law and order when it transcended county boundaries. The blurred nature of cross boundary law and order was also experienced by members of the magistracy too. The magistrates of Leitrim, Cavan and Longford recognized the haphazard nature of cross border

¹⁵⁶ Grady family, King’s County, to Normanby, January 1836. Chief Secretary’s Office, Registered Papers Private Index 1836 136/26, p. 5.

¹⁵⁷ Grady family, King’s County, to Normanby, January 1836. Chief Secretary’s Office, Registered Papers Private Index 1836 136/26, p. 8.

law and order in 1845 as a wave of Molly Maguire disturbances spread through Leitrim.¹⁵⁸ Among their complaints was the inadequacy of some of the police stationed on Leitrim's borders with the other two counties, and urged the government to employ more suitable men for service. Whether this attitude was still a throwback to 1836 when local magistrates were stripped of their power to appoint men to the constabulary and the magistrates were pointing the finger of blame at government is unclear. They certainly expressed a clear preference for the force over the military when pushed by the government for an explanation, as 'the military may overawe but detention and bringing offenders to justice depends upon the exertions of a vigilant police.' However, they never mentioned anything of their own shortcomings in the same report.¹⁵⁹

Thus, while the courts of petty sessions were introduced to address claims of partial justice and to give the government an input into the administration of these local courts through Stipendiary Magistrates, many petty sessions become arenas of power and theatres of defiance. Individual magistrates from the lower gentry used petty sessions to forge alliances and networks with members of the upper gentry or nobility while in a number of instances, whole families, such as the O'Gradys, used petty sessions to legitimize their power in a locality, a county or across a region. Though they were introduced to replace the older manor courts, the distribution of petty sessions in the 1830s and 1840s still reflected the seats of noble families or large landowning magistrates across the middle belt counties. Thus, the petty sessions soon became an extension of local paternal power but with the added difference that the lower gentry could now espouse the use of this local court where once they were overshadowed by the upper gentry or the party nominated by these same elites. In this regard petty sessions were used as a way for some landed magistrates to reinvent themselves at a local level. However, the failure of local government to fully control these local courts meant that they were often disorganized, intermittent and at the discretion of local magistrates. While they did begin to become the focus for challenges to the local autonomy of the gentry by centralized government and the rising middle-classes the local gentry largely resisted these advances in the pre-Famine period.

¹⁵⁸ Kevin Kenny, *Making sense of the Molly Maguires* (Oxford, 1998), p. 15.

¹⁵⁹ Leitrim magistrates to Dublin Castle, May 1845. Chief Secretary's Office, Registered Papers Outrage Report 1845: 11089/16.

Chapter 5: Justice of the Peace vs. Stipendiary Magistrates

‘If you once pay my countrymen for doing their duty they will never do their duty without being paid.’¹⁶⁰

The decision to increase the number of Stipendiary Magistrates as a permanent fixture in law enforcement as members of the newly formed Irish Constabulary in 1836 resulted in a wave of hostility from local Justices of the Peace towards government. Stipendiary Magistrates were only appointed on a temporary basis in the late eighteenth-century to help restore order when the country or certain districts were experiencing wide scale disturbances, and could then be stepped down when the state of the country was more tranquil.¹⁶¹ From 1814 the role of Stipendiary Magistrate did expand after Robert Peel introduced policing reforms and consolidated the position of Stipendiary Magistrate so that the Lord Lieutenant had the power to send Stipendiaries to disturbed districts as the need arose. However, Justices of the Peace still dominated local law enforcement and from 1822, and after further reforms, these local magistrates were given the power to request Stipendiary Magistrates should the state of their district require them, though the fact that they were subordinate to Stipendiary Magistrates led to resistance on the part of some of these local magistrates who did not want to be dictated to within in their own locality by an outsider and possibly someone below them in terms of social class.¹⁶² Both Crossman and McCabe insist that independence from state

¹⁶⁰ Bonsall, *The Irish RMs: the resident magistrates in the British administration in Ireland*, p. 18.

¹⁶¹ Crossman, *Local government in nineteenth-century Ireland*, p.2.

¹⁶² Gearóid Ó Tuathaigh, *Ireland before the famine, 1798-1848* (Dublin, 1972), pp 87-88. Diana Paton, *No bound but the law; punishment, race and gender in Jamaican state formation, 1780-1870* (North Carolina, 2004), p. 64. Neal Garnham, ‘Crime, policing and the law, 1600-1900’, in Liam Kennedy and Philip Ollerenshaw (eds), *Ulster since 1600: politics, economy and society* (Oxford, 2013), p. 102.

control was a source of pride and of political importance for rural magistrates.¹⁶³ Yet, as Eiriksson notes, after 1836 ‘the only power remaining with the local magistrates was the right to require reinforcement of the constabulary in their county.’¹⁶⁴ He further argues that Constabulary Act was designed to limit the powers of the local magistracy which signifies the strained relations between the central administration and the magistracy by the late 1830s.

One of the main reasons for this was that Justices of the Peace were traditionally drawn from the gentry, but as established in the previous chapters, unlike the situation in England, a shortage of such men sometimes led to men much lower in class taking this role. Nevertheless, the notion still prevailed amongst the majority of justices, who had a landed background, that the position of magistrate should be undertaken in an almost paternal fashion and not for money, for it was argued men of trade were often ‘lacking in a sense of duty or concern for the public good.’¹⁶⁵ Penny Bonsall points out that the Dublin Administration were always wary of county justices and aware of their personal motives and short-comings yet the Tory party also relied heavily upon gentry support in Ireland far more so than the Whig party did, making the Tories more sensitive to the concerns of justices when their magisterial position was threatened. As pointed out, the greatest threat to their position came in the shape of Stipendiary Magistrates (later called Resident Magistrates) and while there have been some references to some of the conflicts involving the two groups, an in-depth study focusing on the interactions between both is still lacking in the historiography of crime and law and order in the pre-Famine period.

In his post-famine work, Trollope turned to Stipendiary Magistrates as the object of his ire, characterising them as overzealous, reckless and hated by the rural tenantry, with the result that all magistrates, even the Stipendiaries, had to be heavily guarded by police officers. In the pre-Famine decades, however, the position of Stipendiary Magistrate was still very new and while the majority of the men that filled this position were extremely conscientious in their adherence to the regulations laid down by Dublin Castle, there were also those who brought the position into disrepute. Arguably the most notorious of these Stipendiary Magistrates was Samuel Vignoles who was eventually stripped of his position following a string of complaints across a number of counties in which he served. His actions during the

¹⁶³ Crossman, *Local government*, pp 15-24; Desmond McCabe, ‘Open court: law and the expansion of magisterial jurisdiction at petty sessions in nineteenth century Ireland’ in N. M. Dawson (ed) *Reflections of law and history* (Dublin, 2006), pp 126-162.

¹⁶⁴ Andres Eiriksson, ‘Crime and popular protest in County Clare, 1815-1852’ (Unpublished Ph.D. Thesis, Trinity College Dublin, 1991), p. 23.

¹⁶⁵ Bonsall, *The Irish RMs*, p. 11.

Carlow election in 1838 were among his most notorious, as he publically beat a number of people on the street on the day of the election, including two innocent men who merely tried to remonstrate with Vignoles that he was being too severe in his actions before they were rounded on themselves.¹⁶⁶

The present chapter focuses exactly on this subject, using two particular episodes as case studies involving the magistracy of Clare (Tomkins Brew and D.J Wilson) and the magistracy of Limerick (Henry Redmond and J. E. Langford) to evaluate the relationship between the unpaid magistrates and the government paid Stipendiary Magistrates to determine if the introduction of the latter had any effect on administration of justice. In examining the introduction of Stipendiary Magistrates into a locality this chapter also investigates the reluctance on the part of the local Justices to relinquish local autonomy to central government, and further considers the elements that relaxed the attitude of Justice of the Peace in relation to this incursion into their local hegemony over rural life.

Complaints against local magistrates as outlined throughout this thesis, particularly the issue of hall door justice, petty session/assizes abuse and a general feeling that local justices were lacking a sense of duty and were motivated by self-interest, were common occurrences during this period and a wider study lies outside the frame of this thesis.¹⁶⁷ However, once again the work of Trollope displays the prevalence of community justice in Irish society during the nineteenth century in *The Kellys and the O'Kellys* example of hall door justice being dispensed by the local magistrate instead of through proper channels of law and order.¹⁶⁸ A real life example of this custom involved Col. Madden, Justice of the Peace for Monaghan: he was twice visited by a small farmer named Philip Murray, who was looking for protection against attacks on his house by local Orange men, attacks which Murray felt he could not bring to the petty sessions as the local justices were Orange sympathizers. In this instance, however, Murray had put too much faith in the impartiality of Madden who himself had Orange sympathies and threatened to have Murray killed if he did not get off his property. Such incidents led successive governments to introduce policy and procedures to end this practice, such as the establishment of petty sessions and the appointment of government paid magistrates but through Trollope's work it is clear that issue of hall door justice was still a

¹⁶⁶ *FJ*, 24 February 1837; *Dublin Evening Packet and Correspondent*, 15 August 1837; *London Evening Standard*, 26 October 1837.

¹⁶⁷ Bonsall, *The Irish RMs*, p. 11.

¹⁶⁸ Trollope, *The Kellys and the O'Kellys*, pp 350-352. In this scene the local magistrate and Protestant rector confront a member of the protestant community guilty of a number of crimes and give him the option to leave the community for good or face trial for his crimes.

part of Irish life in the post-Famine decades given that his works were based on contemporary events.¹⁶⁹ The *Tipperary Free Press*, though an extremely anti-landlord and anti-Tory newspaper, printed an article in 1836 which blamed all the country's problems on the Justice of the Peace and insisted that they were 'the man least fit for administrating justice or preserving the peace.'¹⁷⁰

However, in response to these grievances successive governments, starting with Peel, gradually introduced measures to reduce the power of local justices by establishing a full time state trained police force and more importantly, salaried magistrates (Stipendiary Magistrates) which office he was determined to keep free from local or political patronage. He expressed fears about such patronage in 1813 in a letter to William Saurin, stating that 'if the present or any other government make a job of it, they will most grossly betray the confidence which parliament has placed in them...and shamefully sacrifice the best interests of the country to the worst.'¹⁷¹ By and large the position of Stipendiary Magistrate did stay free from such interference and the position was largely filled by experienced military and militia men as well as long serving members of the police force. Fourteen Stipendiary Magistrates out of the twenty-six that were based in the middle-belt counties in 1835 had previously served in the constabulary, these were men that had previously been subordinate to local Justices in their new role as police officers but were now at the very least deemed equals within their role as magistrates.¹⁷² Five other Stipendiary Magistrates from the total twenty-six had served in the military, though two of these, Samson Carter and George Mears Drought, had also served in the police force and were included among the fourteen Stipendiaries with a police background. Hill Wilson Rowan, serving in Co. Clare, had previously been Governor of the general penitentiary in Dublin while John Carroll, also serving in Clare, was a qualified solicitor. Bonsall states that prior to 1836 the Administration only recruited barristers to the position of Stipendiary Magistrate but a great many were in fact promoted from within the constabulary or had military experience.¹⁷³ The social calibre of officers in the police force in this period was much higher than it was following the 1836 reorganization and the second or third sons of the upper to middle category gentry often filled the position.

Matthew Barrington, Crown Solicitor for the Munster circuit, alluded to the social class of police officers in his evidence before the 1833 inquiry. While advocating the employment of

¹⁶⁹ Trollope, *The Kellys and the O'Kellys*, p. 377.

¹⁷⁰ *Tipperary Free Press*, 20 August 1836.

¹⁷¹ Norman Gash, *Mr. Secretary Peel: the life of Sir Robert Peel to 1830* (London, 1960), Chapter 14.

¹⁷² Penny Bonsall, *The Irish RMs*, p. 13.

¹⁷³ *Returns (Resident Magistrates, Ireland) to House of Commons* (HC), 1852-53 (107), iv.615.

Stipendiary Magistrates in each county in Ireland he stated that a reduction in the class of police officers was also needed as many country gentry did not like to ask officers to patrol the neighbourhood after they had dined in the gentleman's home.¹⁷⁴ Further to this, new Stipendiary Magistrates had to pay the sizeable sum of £25 stamp duty upon receiving their commission or, as James Little was reminded by the Lord Lieutenant's office, 'the commission would be declined.'¹⁷⁵ Thus, it was these same men that provided the bulk of the initial wave of Stipendiary Magistrates between 1814 and 1836 and what Barrington's evidence indicates is a dilution of the social barriers between élite landed society and professional men. As mentioned, the acceleration of the industrial revolution in England led to a large number of merchants and professional men entering the ranks of the magistracy in that country,¹⁷⁶ but the lack of industry in Ireland meant that, in contrast to England, the newly restructured police-force became a viable career option for many men from landed backgrounds. Landed men from the 1833 list of Stipendiary Magistrates included George Meares Drought who held a small estate in Wicklow which he inherited from his grand-uncle, Major Fairbrother, while his family had held a large estate in King's County.¹⁷⁷ Daniel Toler Osbourne was the son of Sir Henry Osbourne of Nenagh, Co. Tipperary, who was an extensive land owner in Tipperary and Waterford. Tomkins Brew, Corofin, Co. Clare, came from a family of small land-holders, with Brew himself leasing from the Blood family who were JPs and grand jurors within the county.¹⁷⁸ Bonsall notes that from 1836 no particular qualification was needed to fill the position of Stipendiary Magistrates: the doors were opened wide and men were drawn from all the upper landed classes down to the professional middle classes. However, there was a noticeable continuity in the background of many pre-1836 Stipendiaries that continued throughout the rest of the nineteenth century – the majority were former Justices of the Peace.¹⁷⁹

For the most part, these men were the sons of minor gentry, like John Gore Jones of Drumcliff, Co. Sligo whose residence was described as small by Lewis in 1837 – something that, along with his post famine landholdings of 650 acres, suggests he needed an income

¹⁷⁴ Evidence of Matthew Barrington, *Report from the select committee into the state of Ireland*, 6th June- 25th July, 1832, p. 11, H. C. 1832, (667), xv1, 1.

¹⁷⁵ Dublin Castle to James Little, 1836. Chief Secretary's Office, Registered Papers Official Papers 1836: 136.

¹⁷⁶ Balchin, 'Justice of the Peace Yorkshire', p. 413; P. Joyce, *Visions of the people: Industrial England and the question of class, 1840-1914* (Cambridge, 1991).

¹⁷⁷ Jim Herlihy, *Royal Irish constabulary officers, 1816-1922* (Dublin, 2005), p. 120; Sir Charles Coote, *Statistical survey of King's County* (Dublin, 1801) p. 99. Coote noted that George's father, John Drought, paid £600 a year in labour which suggests he was earning significantly more than this from his estate placing him in the middle to upper rank gentry.

¹⁷⁸ NUIG Landed Estates Database, Moore Institute.

¹⁷⁹ Bonsall, *The Irish RMs*, p. 16.

other than his landed interests to support him.¹⁸⁰ Lord Rosse typified the Ascendancy's attitude towards the men that filled the position of Stipendiary Magistrate when he called them 'elderly roués with broken fortunes and damaged reputations.'¹⁸¹ From the 1852 Government inquiry into the Stipendiary Magistrates employed in Ireland, some twenty-eight out of seventy-one Stipendiary Magistrates had held a commission of the peace and eighteen of that twenty-eight had been Justices of the Peace before 1836.¹⁸² This is a further example of the dilution of landed society and Justices of the Peace in the lead-up to the Famine but also emphasizes the lack of commercial opportunities for the investment of capital during this period, forcing many sons of landed gentry to enter the civil service and employment that was deemed acceptable for men of their rank. Chapter 1 looked at the different types of income that helped determine the social position of the gentry and magistrates with £1000 per year were deemed the equivalent of minor gentlemen. In comparison, Stipendiary Magistrates up to 1820 were paid £646 with another £184 in allowances.¹⁸³ While this figure was extraordinary high compared to the income of the peasant who only received a few pence for a day's work, usually 6d-8d a day, this figure was well short of the income needed to live a gentry lifestyle, particularly if these Magistrates wanted a lavish home or to host social occasions such as dinner parties which were central to élite lifestyles and networking.¹⁸⁴

The introduction of Stipendiary Magistrates was not plain sailing, however, and it was met with much hostility at a local level from Justices of the Peace and Grand Jury members. One of the first major backlashes came in 1826 from the magistrates of Waterford. During a House of Commons debate in March 1827, and in reaction to a Stipendiary Magistrate being appointed to Kilmacthomas, Waterford, Henry Villiers-Stuart presented a four-hundred strong petition in opposition to the appointment and accused the government of being unconstitutional in its actions in introducing the system. The reason for the appointment was to combat the frenzy in both county and country in response to the by-election that took place in Waterford in 1826, which, resulting in the defeat of the powerful Beresford family, was the first major success of O'Connell and the Catholic Association. Villiers Stuart, a liberal Protestant on the Waterford Grand Jury, stood as the Catholic Association candidate and saw the introduction of a government magistrate, and an increased military force, as a move by

¹⁸⁰ Lewis, *A topographical dictionary of Ireland*, Vol. 1, p. 567; NUIG Landed Estates Database, Moore Institute.

¹⁸¹ K. T. Hoppen, *Elections, politics, and society in Ireland 1832-1885* (Oxford, 1984), pp 408-409.

¹⁸² *Returns (Resident Magistrates, Ireland) to House of Commons.* (HC), 1852-53 (107), iv.615.

¹⁸³ *Returns (Stipendiary Magistrates, Ireland) to House of Commons.* (HC) 1831 (360) xxxiii.561.

¹⁸⁴ Curran, 'Protestant community in Tyrone, 1825-45', p. 77.

government to support Beresford and block his claims for a seat in parliament.¹⁸⁵ Eventually he conceded the necessity for their presence but not until after a number of meetings and rallies were organized by both his supporters and local magistrates against the decision to send a Stipendiary to the county.

In the House of Commons debate, and in response to Stuart, then Chief Secretary of Ireland, pointed out that it was the county magistrates of Waterford who had asked for the appointment at the previous Quarter Sessions and it was not something forced on the county, but rather a preventive measure since those same magistrates gathered at Quarter Sessions could not even sit in the same room such were their strong feelings in relation to the election and the opposing candidates. In doing so, Goulburn raised the issue of political support and serving arbitrary justice in Ireland during this period, especially in this instance when the purveyors of justice were so hostile towards each other and towards political opponents.¹⁸⁶ The greater objection however, seemed to stem from the negative connotations associated with having a Stipendiary sent to a county, for it was basically a statement to the rest of the country that the magistrates and gentry of a county could were not in full control of their own affairs and their own peasantry – an affront many of the gentry in Waterford were not willing to endure. In April that year two opposing memorials were sent to the Lord Lieutenant, Richard Wellesley, to petition his office both for and against sending a Stipendiary Magistrate to the county. Eighteen local Justices requested the appointment of a Stipendiary Magistrate to the town of Kilmacthomas on the grounds of there not being a magistrate resident in the town. In response to this memorial fifteen other local justices for Waterford stated that they were against a Stipendiary Magistrate being sent to the county on the grounds that it would be a burden to the county which had been free of any insurrectionary spirit.¹⁸⁷ In November that same year the *Freeman's Journal* printed a report of a meeting held in Dungarvan which was attended by the magistracy and gentry of the county to discuss removing the Stipendiary Magistrate from their county. Villiers Stuart, now a Member of Parliament, was one of the first to speak and stated that sending a Stipendiary Magistrate among them was most unjust while others in attendance claimed it was unconstitutional, and

¹⁸⁵ The Journal of the House of Commons, Vol. 82, from 25 July 1826 to 22 January 1828, p. 21. Beresford is recorded as accusing Stuart of creating freeholders for his own benefit in the lead up to the election and also claimed that the Catholic clergy threatened members of their community into voting for Stuart.

¹⁸⁶ *Hansard's Parliamentary Debates*, H.C debate 16 March 1827 vol. 16 cc 1247-58.

¹⁸⁷ This latter group also pointed to the fact that several magistrates resided within a few miles of the town (four lived within ten miles) and petty sessions had been held every two weeks without fail. County of Waterford Stipendiary Magistrate (Ireland), *A copy of the certificate of Magistrates petitioning for, and of the memorial against, the appointment of a resident Stipendiary Magistrate for the district of Kilmac-Thomas*, (H.C.) 1827 (205) xx.195 .

demanded an inquiry into the appointment.¹⁸⁸ Henry Grattan, Member of Parliament, also felt that the introduction of Stipendiary Magistrates in Ireland was unconstitutional and felt that their introduction was a result of failure on the part of the then Tory government that had neglected to promote the tranquillity of Ireland.¹⁸⁹ During the House of Commons debate Goulbourn denied claims that the appointment of a Stipendiary Magistrate was an indicator of impartiality on the part of the Waterford Justices and instead insisted that they had such a personal interest in the election he was concerned that the general public might conclude that the magistracy were impartial, such was their zeal, and he wanted to remedy this and ensure that the public could still have faith in the process of law and order.¹⁹⁰ The episode highlights the administration's resolve to introduce government magistrates and centralized law and order in Ireland during the pre-Famine decades, yet it also presents some of the challenges met while trying to implement this change to society.

The divided opinion in relation to the appointment of Stipendiary Magistrates continued right through to the 1840s, and even then local magistrates continued to be critical of the office itself though they adopted a new tactic of trying to influence appointments and dismissals. But as with the events outlined in Co. Clare,¹⁹¹ it was a clear indication of the need, from a government perspective, to persist with the appointment of Stipendiary Magistrates. With the local magistrates of Clare going to ground as Terry Alt violence in 1831 spiralled out of control, it was the Stipendiary Magistrates, along with the police, who eventually contained the disorder.¹⁹² A major fear on the part of the administration was of such an outbreak of violence spreading into neighbouring counties. The events of 1798 were always in the minds of the Protestant Ascendancy,¹⁹³ particularly in the middle belt counties, especially Limerick and Tipperary, throughout the first half of the century were perpetually placed under coercive acts by magistrates and the military.¹⁹⁴

These fears can be gauged in the words of the Limerick magistrate, Eyre Evans, when a copy of a seditious ballad, 'Young Boney's Freedom', was brought to his attention in 1831 by a local policeman who purchased it in the town of Kilmallock. Writing to Dublin Castle Evans stated that the ballad was 'squallied out in several fairs and markets in the country and

¹⁸⁸ *Freeman's Journal*, 20 November 1826.

¹⁸⁹ *Hansard's Parliamentary Debates*, H.C debate 16 March 1827 vol. 16 cc 1247-58.

¹⁹⁰ *ibid.*, H.C debate 16 March 1827 vol. 16 cc 1247-58.

¹⁹¹ See Chapter 2.

¹⁹² Andres Eiriksson, 'Crime and popular protest in County Clare, 1815-1852', p. 81.

¹⁹³ A.U., *Reflections on the state of Ireland in the nineteenth century* (London, 1822), p. 41.

¹⁹⁴ George Cornwell Lewis, *On local disturbances in Ireland, and the Irish church question* (London, 1836), pp 245- 246.

certainly not tending to further peace or loyalty....[and] must be stopped or will cause trouble.’¹⁹⁵ Similarly, in 1831 the local magistrate in Thurles, Fitzgerald, informed the Castle ‘during the last week about 100 young ash trees have been cut down in the plantations near Littleton, and it is supposed they are intended for pike handles.’¹⁹⁶ The Rockite violence of 1822-25 which spread from Limerick right across Munster and into South Leinster was the most serious such outbreak faced by the administration post-Union which threatened to unite the labourer and small farmers across these southern counties due to a mix of anti-tithe sentiment, hostility to evangelicalism, belief in the Pastorini prophecies foretelling the imminent destruction of Protestantism, and a fear of famine following the poor harvest of 1821.¹⁹⁷ Beames touches briefly on the subject of magistrates’ inadequacies in suppressing the continued outrages as one cause of widespread disturbance within a county and also a cause of its spreading into neighbouring counties.¹⁹⁸ This was supposedly the case in 1831 when the Terry Alt outbreak in Clare threatened to spill over into Limerick, and T. P Vokes, a member of the newer Castle- controlled magistrates, rode out one night to face down a marauding gang and in doing so successfully ensured that Limerick did not witness any large scale outbreak similar to those in Co. Clare and the Midlands.¹⁹⁹

Vokes had actually been a Justice of the Peace in Limerick during the Rockite insurrection of the previous decade and according to the *Freeman’s Journal*, it was for his bravery and efforts to put an end to the insurrection while other magistrates were paralysed, that government officials persuaded him to take up the position of Stipendiary for the County of Limerick.²⁰⁰ Vokes epitomized the type of character that Peel envisaged in the role of Stipendiary: he had the respect of the peasantry and gentry alike, spoke Irish which allowed him communicate with the peasantry in the more rural parts of the county but which also marked him out as different to most members of the Ascendancy, he aligned himself to no political party though the Observer attributed Tory patronage as a factor in his joining the constabulary while also noting that his opponents labelled him an O’Connellite. The paper asserted that the latter tag was assigned to him for his willingness to defend the peasantry

¹⁹⁵ Eyre Evans Kilmallock, to Dublin Castle, 9 November 1831. Chief Secretary’s Office, Registered Papers Private Index 1831 B/101.

¹⁹⁶ G. Fitzgerald, Thurles, to Dublin Castle, 2 March 1831. Chief Secretary’s Office, Registered Papers Private Index 1831 T/18.

¹⁹⁷ For more see James S. Donnelly, *Captain Rock: the Irish agrarian rebellion of 1821-1824* (Wisconsin, 2009).

¹⁹⁸ Beames, *Peasants and power*, pp 139-140.

¹⁹⁹ Evidence of Matthew Barrington, *Report from the select committee into the state of Ireland*, 6th June- 25th July, 1832, p. 11, H. C. 1832, (667), xv1, 1.

²⁰⁰ *Freeman’s Journal*, 18 October 1837; *Observer*, 15 October 1837.

where and when he felt they were innocent of charges laid on them by the local magistracy.²⁰¹

This last point once again highlights the inseparable nature of politics, political support and law and order during the pre-Famine decade:, in this case the Stipendiary, Vokes did exactly what he was employed to do and carried out his responsibilities without bias, which was enough to cause a backlash from sections of the local magistracy who were also supposed to be impartial.²⁰² Upon Vokes' death in 1852, the *Illustrated London News* recognised his achievements during his long service, particularly in facing down the Rockites in 1822, claiming that 'when magistrates shrunk in natural terror, well knowing the fatal consequences of activity... Thomas Phillips Vokes boldly stepped forward to put down crime.'²⁰³ This story was also conveyed by Matthew Barrington, Justice of the Peace for Limerick, who insisted that the 'Terry-Alts tried to come into Limerick but Mr Vokes stopped them and arrested them and Limerick did not see the same disturbed state as Clare did.'²⁰⁴ As such, Vokes draws comparisons with Henry Charles Sirr, the Castle employed magistrate in Dublin who was notorious for smashing a host of United Irishmen rings in the capital in the late 1790s and for also taking an even-handed approach to apprehending suspects.²⁰⁵ Such was Sirr's stature he was held in high regard by Peel who also later praised Vokes. Did Vokes and other Stipendiary Magistrates use Sirr as a template in their own positions and did they set about emulating him in their own actions as Stipendiaries.²⁰⁶ If the threat of disturbance was prevented from entering Limerick due to the efforts of Vokes, it spread east and into the midlands precisely because of the absence of a Stipendiary Magistrate in those areas and the lingering mistrust of the position on the part of the resident gentry. In a letter to Edward Littleton, Chief-Secretary of Ireland 1833-34, Lord Oxmantown, County Lieutenant for King's County, described large parts of that county as being in a state of emergency due to the levels of outrage, concluding that 'combination established surpasses [sic] the law in vigour, promptitude and efficacy, and that it was more safe to violate the law than to obey it.'²⁰⁷ These disturbances had been almost constant since 1831, after the disturbance first spread

²⁰¹ *Dublin Evening Post*, 19 October, 1837.

²⁰² *Observer*, 15 October 1837.

²⁰³ Addison, *Recollections of an Irish police magistrate*, p. 9.

²⁰⁴ Evidence of Matthew Barrington, *Report from the select committee into the state of Ireland, 6th June- 25th July, 1832*, p. 11, H. C. 1832, (667), xv1, 1.

²⁰⁵ *The Dublin Magazine*, Vol. 1, part. 1, 1842, pp 241-243.

²⁰⁶ Sylvie Kleinman, 'Sirr, Henry Charles', in James McGuire and James Quinn (ed), *Dictionary of Irish Biography*. (Cambridge, 2009).

²⁰⁷ Extract from a dispatch from Wellseley to Melbourne, *Report from the inquiry into the state of Ireland*, 15 April 1834, p. 5, H.C. 1834, (459).

from Clare, and further into his report Oxmanton did little to defend the local magistrates: though he did say they had met numerous times to discuss how to tackle the problem, he had to be aware that most had gone to ground or were too afraid to face the perpetrators of such crimes. However, he also admitted that he refused to request the services of a Stipendiary Magistrate as he did not have faith in an institution that paid for information and clearly indicates that his own personal prejudices were more important than the instrument of law and order.

Elaborating on his mistrust, Oxmanton said that ‘there cannot indeed be a doubt but that in many cases where the local magistrates has failed altogether, the Stipendiary Magistrate, who has the means of purchasing information, will obtain it; but from everything I have heard I have always viewed with very serious alarm the practice of purchasing private information.’²⁰⁸ Some ten years later Oxmanton’s fears about paying for information were validated when a scandal involving the local Shinrone police and a paid informer received national attention after it emerged that the police had used an informant to fabricate crime for sectarian and financial motives.²⁰⁹ Attitudes towards these Stipendiary Magistrates who paid for information were exemplified after the murder of Robert Charles Walsh, JP for Waterford. Walsh was beaten to death on his way home from Dungarvan Petty Sessions to his estate at Gelnard, and as a result a meeting of the magistrates was called some days later to discuss how best to obtain information about the killers. After a number of the magistrates had proposed a substantial reward, the Stipendiary Magistrate, Dr Fitzgerald, advised that the reward be kept to a minimum as a large reward would encourage fabrications and innocent persons being accused, and instead asked that he be allowed use some of the money to get information privately. Fitzgerald was reminded by a number of magistrates that he had £80 of government money already to spend for this purpose and Fitzgerald drew particular ire from one local JP, Robert Uniacke, who stated that ‘a Stipendiary Magistrate was by no means the fittest person, and that he would be the most unlikely to get information from the country people.’²¹⁰ Thus, Uniacke indicated the distrust many local magistrates harboured towards stipendiaries but also revealed the confidence of landed JPs in their paternal relationship with the peasantry, a relationship that would return more results than the government’s money.

Between January 1836 and December 1838 there were 462 rewards issued across the island, with 185 of those being for the seven middle-belt counties –over a third of all rewards issued

²⁰⁸ Oxmanton to Gosset, *Report from the inquiry into the state of Ireland*, 17 March 1834, p. 16, H.C. 1834, (459).

²⁰⁹ Hartigan, ‘Fabricated crime and religious tension in pre-Famine Offaly’, pp 8-18.

²¹⁰ *Freeman’s Journal*, 21 November 1841.

during this two year period.²¹¹ While the payment of rewards in pre-Famine Ireland deserves more attention outside this study, the evidence given here suggests that not only was it a factor in leading to additional crimes but it caused a division in the application of law and order between the local landed magistracy and the Castle-appointed Stipendiary Magistrates – something that must have affected the course of justice. Indeed, in 1839 Sub-Inspector Daly of the Roscommon constabulary wrote to the Castle on the merits of government rewards as opposed to local rewards issued by placard, stating that ‘persons do not place relevance in the latter.’ When the Castle questioned him as to the grounds for his opinion and asked him to recall instances of bad faith with respect to reward by placard, he informed them that ‘more faith is placed in reward issued by proclamation from government’ and stated that a Resident Magistrate told him of cases where people brought him information on suspects years after the reward had been offered by proclamation, but never by placard.²¹² Again, this suggests that the real issue occurring from rewards was the further advances made by central government into the local autonomy of the county magistracy.

In King’s County, Oxmanton also noted that he did not want to dent the pride of the gentry by applying for a government-paid magistrate, which suggests that by mid-1830s the local magistracy was extremely limited in its effectiveness in facing large scale disturbances. Yet just ten years later the same magistrates, led by Oxmanton, had been urging the government to send Stipendiary Magistrates and troops to protect them after a number of gentleman and a local magistrate, Mr. Biddulph, were shot at while dining at Biddulph’s own home in Rathrobin, King’s County.²¹³ In a petition calling for such reinforcements they went so far as to say: ‘Were we to consult our own wishes, were we to yield to the pride we naturally feel in the character of our country [sic] we might be tempted to conceal her crimes and disgraces; but we well know that to conceal crime is to encourage it.’²¹⁴ Yet this is exactly what they had been doing in 1831 and again in 1841 that the violence grew a level where a number of the gentry were attacked and Lord Norbury murdered. In contrast to the King’s County situation, the magistrates of the neighbouring Queen’s County had no such reluctance to install a Stipendiary, such was the level of disturbance and Whitefeet violence in the county

²¹¹ *Return of Rewards offered by Proclamation of Lord Lieutenant, and Crimes and Outrages reported by Stipendiary Magistrates and Police in Ireland* 1837, H.C. 1838 (157), xlv.427.

²¹² Sub-Inspector Daly, Roscommon, to Dublin Castle, 1839. Chief Secretary’s Office, Registered Papers Outrage Reports 1839: 9743/25.

²¹³ *Nenagh Guardian*, 11 August 1841.

²¹⁴ Memorial from Justices of King’s County to Lord Justices, *The Sessional Papers: Miscellaneous Subjects (Ireland)*, H.L. 1841, Vol. XVIII, p. 381.

during 1831.²¹⁵ Colonel Ralph Johnson, a local magistrate in Queen's County, informed a government inquiry into the state of Ireland in 1834 that they would even have welcomed a second Stipendiary, so high was the level of disturbance in the county, 171 reported instances of crime, including three murders, between January and June of that year.²¹⁶

The work of Hartigan and of Williams suggest that the accuracy of police records from this period are questionable as a reliable source, and even the number of arrests themselves do not relay a true sense of disorder in the 1830s and 1840s.²¹⁷ However, as Hartigan suggests when discussing the fabrication of crime by police officers in King's County, they were able to successfully carry out such acts as the conditions existed that made their actions believable. Thus, police records do offer some barometer of the state of the middle belt counties in relation to crime in the pre-Famine. With this in mind, and to gauge if the officials of King's County had over-reacted in calling for large scale reinforcements, a simple comparisons of crime stats with the other middle-belt counties for April and May 1834 show that the county seemed to be experienced far greater levels of crime than the other six counties. Roscommon and Tipperary had the largest number of reported crimes for the two months while Limerick reported the fewest: however, when these crimes are measured against head of population per county King's County reported almost double the rate of crime compared to the next nearest county, Queen's County and almost thirty-four times more than the county with the least number of crimes reported, Limerick.²¹⁸ Thus, in terms of crimes reported, the rest of the middle-belt counties – apart from Limerick –were experiencing the same rate of crime, if not a slightly higher rate than King's County in Roscommon and Tipperary. Yet, per head of population King's County was experiencing at least double the crime rate of the other middle-belt counties during this period.²¹⁹ However, this was not an indication of the feelings of the gentry of other counties in relation to introducing a

²¹⁵ Whitefeet and Blackfeet were the names given to the movements of agrarian disorder that troubled the midlands during 1831-34, but were a continuation of past movements such as the Whiteboys, Rockites and Terry Alts. Initially both groups were in opposition to each other with the Whitefeet being mainly composed of labourers and small farmers while the Blackfeet were composed of larger farmer. The opposition to tithes in the early 1830s helped reduce tension between both parties and forged a new alliance; *Report from the Select Committee of the House of Commons on the State of Ireland, H.C. 1831-32* (667), xvi, 1, p. 348; NAI: CSORP, Private Index: Daniel O'Donoghue to Edward G. Stanley, 2 January 1831, Outrage Paper 01.

²¹⁶ *Report from the inquiry into the state of Ireland*, 1834, p. 31, H.C. 1834, (459).

²¹⁷ Hartigan, 'Fabricated crime', *Offaly Journal*; Chris A. Williams, 'Counting crimes or counting people: some implications of mid-nineteenth century British police returns' in *Crime, History & Societies*, Vol. 4, No. 2 (2000).

²¹⁸ *Report from the inquiry into the state of Ireland*, 1834, pp 71- 92, H.C. 1834, (459). Police records in the pre-Famine were fraught with inaccuracies, bias, duplication and quite often contained hearsay over facts.

²¹⁹ Limerick experienced one crime for every 30,000 people during these months, in Tipperary the ratio was 1:2800, in Roscommon it was 1:1818, Leitrim was 1:3555, Clare was 1:2762, in Queen's County 1:1648 while King's County was 1: 877.

Stipendiary. Earlier in his evidence Johnson divulged how, at the onset of violence, the local magistrates of Queen's County held a series of meetings about how best to tackle the problem, which led in turn to a host of more meetings but no action. Eventually when some of the local magistrates tried to tackle the problem by bringing suspected perpetrators to trial the level of unrest had engulfed the whole county and the disorder was so prevalent that the peasantry openly threatened the local magistrates, including Johnson's brother who was also a magistrate. It was only then, when the personal safety of the local magistrates was threatened, that government were applied to for troops and a Stipendiary Magistrate.²²⁰ Conversely, the swift actions of the Roscommon local magistrate James Lyster in arresting a party of agrarian agitators who had attacked a house in his neighbourhood the night previously was presented as an example to all other magistrates in the county: 'By the timely apprehension of this gang the county will, we trust, be preserved from outrage, and the magistrates of the neighbourhood be taught a useful lesson of the value of a prompt attention to the preservation of the peace.'²²¹

However, as noted, the magistracy's usual response was to offer rewards for information, as when a gentleman, Chaworth Lyster, was shot and injured near his own home in Grenane, less than five miles from Tipperary Town, and a £300 reward was raised and contributed to by a large number of the local magistracy.²²² A House of Commons debate in May 1832 discussing the disturbances in Queen's County further divulged the thoughts of the local magistracy from that county and reported a feeling on their part of abandonment by the government. Henry Parnell, MP and Justice of the Peace for Queen's County, stated that 'he was satisfied that every Gentleman in that House felt as great an anxiety as he could possibly feel, in rescuing the county from the foul disgrace which these outrages had unfortunately entailed on it... that a Select Committee be appointed to inquire into the general efficiency of, the law in Ireland for repressing outrages and disturbance.'²²³ Parnell also informed the house of the initial meeting held by thirty-seven magistrates of the county in Phillipstown to stop the disturbances. After much deliberation, the magistracy decided to form an armed association 'in whose ranks all classes of the people were to be enrolled.'²²⁴ However, this armed association was intended for Protestants only and the administration refused to send

²²⁰ Evidence of Colonel Ralph Johnson, *Report from the select committee into the state of Ireland*, 6th June- 25th July, 1832, p. 60, H. C. 1832, (667), xv1, 1.

²²¹ *Freeman's Journal*, 21 May 1828.

²²² *Leinster Express*, 26 November 1831.

²²³ *Hansard Parliamentary Debates*, H.C. Debate 23 May 1832 vol. 12 cc1416-28.

²²⁴ *Hansard Parliamentary Debates*, H.C. debate 23 May 1832 vol. 12 cc1416-28.

the arms requested by the magistracy to fund a Protestant army,²²⁵ contributing to the magistracy's sense of having been abandoned. They pushed for an inquiry almost out of petulance, but their words and actions highlight a real sense of fear and distrust of the Catholic tenantry in the county. The next Member of Parliament to speak after Parnell was Sir Charles Coote, who was also a Justice of the Peace and large landowner in the county. Defending his fellow magistrates, Coote argued that it must have been obvious to parliament that the disturbances were not as a result of inaction on the part of the magistracy; yet neither he nor other speakers in the debate saw the irony in the partisan actions of the magistrates wanting to arm one section of the community to police the other.²²⁶

The other tool which the Queen's County magistrates wished to employ to counter the spread of these outrages was the Insurrection Act, a coercive act designed to strip the small farmers and labouring poor of certain freedoms by placing a nightly curfew on them. Warning that such measures caused a severe backlash, Thomas Spring Rice, Member of Parliament for Limerick, insisted that the Insurrection Act had been counterproductive when introduced in Limerick during the Rockite troubles in the early 1820s, intensifying disturbances in the county and spreading them into neighbouring counties also. Instead Rice advised the magistrates and gentry of the county to face the trouble head-on, since this was how the magistrates and police of Limerick crushed the Rockite disturbances and restored the county to tranquillity.²²⁷ However, the magistrates in Queen's County continued to be inactive and seemed happy to let the government magistrate deal with the situation while they complained about the inadequate job he was doing and demanded a police station for the town of Donore.²²⁸ By August that same year the Magistracy and gentry of Queen's County had issued a memorial to the Lord Lieutenant, Anglesey, stating their allegiance and 'unfeigned loyalty and attachment to our glorious sovereign' in what was almost a grovelling apology for their petulance throughout the period the county was disturbed and they had returned to acting cordially since tranquillity had been restored largely by the Stipendiary Magistrates and police. This suggests that the local magistrates wanted to retain local autonomy when it suited them, exploiting sectarian tension if necessary, while they also expected the administration to facilitate their demands based solely on the fact that they were magistrates.

²²⁵ This is reminiscent of the Irish protestant yeomanry which was first raised in 1796 due to fears of a French invasion and United Irishmen violence. This part-time force continued to play a role in local law and order up to 1834 when it was disbanded due to years of complaints of sectarian intimidation and violence from the Catholic population. For more see Allan Blackstock, *An Ascendancy army: the Irish yeomanry 1796-1834* (Dublin, 1998).

²²⁶ *Hansard Parliamentary Debates*, H.C. debate 23 May 1832 vol. 12 cc1416-28.

²²⁷ *Belfast Newsletter*, 6 April 1832.

²²⁸ *Leinster Express*, 25 February 1832.

A similar pattern emerged in Tipperary during 1842 when the north of the county saw a surge in agrarian outrages and the magistrates of the county called for more police, military and the Insurrection Act. Writing to the Chief Secretary's office, a local magistrate, William Markham, from Clonmel,²²⁹ noted that the actions of the Stipendiary Magistrates were ineffective and that the peasantry were aware of the workings of the police and planned their attacks in the mountainous region of the county. He claimed that Stipendiary Magistrates did nothing but investigate and give orders, thus he maintained the system of paid magistrates quietly spying was ineffective and that force was required to quash the disturbances.²³⁰

Spying, a term frequently used by the Castle, and the need to gather credible information about crimes and suspected individuals involved in disturbances, had a twofold purpose in the eyes of Dublin Castle. Firstly, getting members of a community, particularly the small farmer and labouring classes, to come forward and offer information on crime in their locality proved difficult due to fear of reprisals.²³¹ Secondly, the Castle urged Stipendiary Magistrates to spy on suspected agitators by night, but was extremely wary of alarming these gangs of suspected Whiteboys or Ribbonmen and preferred to arrest them during the day when they were more likely to be alone. In Leitrim the Stipendiary Magistrate, George Peyton, wrote to the Chief Secretary's office in 1842 to inform the Castle that he had been spying on nightly meetings of a large body of men of whose ringleaders he had the names, and asked the Castle for direction. He was urged to keep watching, not to engage with those involved and to exercise extreme caution so as not to be detected. Peyton was later attacked by an unknown gang, an issue that will be dealt with later, and was knocked unconscious by a blow of a stone. Thus, he was not so successful in remaining undetected and the gang he was spying on were aware of his movements.²³² Spying was further urged by the Castle when land-related disputes escalated in Tipperary in 1842: nightly attacks upon homes and a number of murders led to a militarisation of the North Riding that placed more power in the hands of government magistrates.²³³ Once more the inaction of local magistrates continued where agrarian disorder grew: in Nenagh a meeting of magistrates held in May that year, with the aim of putting in place a plan to protect life and property, resulted in nothing more than a memorial asking the

²²⁹ Markham owned a house on Anne Street, Clonmel, valued at £20 in 1837.

²³⁰ William Markham, Tipperary, to Dublin Castle, 1842. Chief Secretary's Office, Registered Papers Outrage Report 1842: 259/27.

²³¹ Beames, *Peasants and power*, p. 72; See Jennifer Kelly, 'An outward looking community?: Ribbonism and popular mobilisation in Co. Leitrim 1836-46' (PhD thesis, University of Limerick, 2005).

²³² George Peyton, Leitrim, to Dublin Castle, 1842. Chief Secretary's Office, Registered Papers Outrage Reports 1842: 4758/16; 20435/16.

²³³ *Irish Examiner*, 30 May 1842.

administration for the Insurrection Act to be invoked.²³⁴ Following this memorial, John Bayly, the High Sheriff for Tipperary, wrote a private letter stressing that ‘the current system was inadequate’ as crime was continuing to rise and that more troops, police and coercive acts were required.²³⁵ However, Bayly’s words must also be weighed against the fact that he himself, as a landlord, had received in the post a threatening letter threatening him with death after he had evicted a family suspected of killing another tenant in a dispute over lands. No report of this incident appeared in the press so the finer details are unclear.²³⁶ Richard U. Bayly, John Bayly’s son and a JP for Tipperary, was also sent a threatening notice that year over a dispute about land. It is possible that the two were connected as the dispute was long running, stretching back to 1839 when the Boland family were ejected for non-payment of rent, in favour of Michael Gaynor.²³⁷ Following the threatening notice Bayly’s steward, James Roberts, was shot, which according to the *Nenagh Guardian*, was in consequence of renting the disputed potato ground from which the previous tenant, Michael Gaynor, had also been driven through the murder of his son.²³⁸ In April the same paper printed the threatening notice Bayly had received warning him to settle with the tenants that had leased the land previous to Gaynor, therefore it was clear to all that the Boland family were behind the violence and notices, but their ability to carry out such crimes and then be absorbed back into the community as if unnoticed was central to Whiteboy activity. Such crimes, particularly concerning land, family squabbles and local grievances, were especially typical of Tipperary, Clare and Limerick. In contrast, while Leitrim and Roscommon suffered from similar crimes, there was also evidence of more politicised crimes being carried out by networks of Ribbonism, a residue of Defendersim, the Catholic secret society that allied with the United Irishmen in the 1790s and existed in the northern half of the island.²³⁹

This Ribbon-driven agitation never materialized in the other middle-belt counties. Nevertheless, the inaction of both the magistrates and High Sheriff of North Tipperary again suggest that they were willing to give up their local autonomy when they or their property was threatened. Inaction on the part of magistrates further led the parish priest in Roscrea, Fr.

²³⁴ Tipperary magistrates to Dublin Castle, May 1842. Chief Secretary’s Office, Registered Papers Outrage Report 1842: 8525/27; *Freeman’s Journal*, 16 May 1842.

²³⁵ John Bayly, Tipperary, to Dublin Castle, 1842. Chief Secretary’s Office, Registered Papers Outrage Reports 1842: 8119/27.

²³⁶ *ibid.*

²³⁷ P. S. O’Hegarty, Robert J. Stoney and Thomas G. Stoney, Magistrate of the county (Ireland), *The Present State of Tipperary, As Regards Agrarian Outrages: Their Nature, Origin, and Increase, Considered, With Suggestions for Remedial Measures; Respectfully Submitted to the Right Hon. Lord Eliot* (Dublin, 1842).

²³⁸ *Nenagh Guardian*, 7 May 1842.

²³⁹ See Jennifer Kelly, ‘An outward looking community?’, pp 2-10.

Blake, to write to Dublin Castle to ask for more police or military aid due to the excessive level of faction fighting in the town. But the Lord Lieutenant did not respond directly to Fr Blake and instead forwarded the letter to the Justices of the Peace in Nenagh directing them ‘to work closely with the local magistrates [Roscrea] to determine why the peace was so distracted.’²⁴⁰ If the level of faction fighting was as out of control as Blake claimed, why did the local magistracy not write to Dublin about it? Because faction fighting occurred among rival groups, who were small farmers and labourers, with no threat to the landed gentry, there is a clear suggestion that the local magistracy were not bothered by such outbursts of violence as it did not directly affect the landed classes. The continued pressure put on Dublin Castle by the local magistracy throughout 1842 resulted in a large body of extra military and policemen being sent to Tipperary, under the command of two Stipendiary Magistrates with military backgrounds, Joseph Tabuteau and Major Priestly. In the House of Commons the Tory MP, Lord Wharncliffe, assured the house that the government and local authorities had made every preparation to guard against any breach of the peace. The strength of the police force in that district had been increased from 800 to 900 men...there were 1,700 regular troops...and no less than seven Stipendiary Magistrates’ which he regarded as sufficient to guard against further outbreaks of agitation.²⁴¹

But just over four weeks later murders were still being committed in the county, which led the editor of the *Tuam Herald* to question the labours of the local JPs in ordering coercive measures and his conclusion was that they could continue to hang every person guilty of a crime. Moreover, such crimes would continue until the government was willing to deal with the land question and provide security in tenure which, the editor felt, was the true cause of the outbreak of disorder in the county.²⁴²

A similar pattern emerged in every county gripped with agrarian outrage during this period, in that the local magistracy hit the panic button when and only when they or the gentry were directly threatened by disturbances and up until then had scant concern for the small farmer or labouring classes. Even in the case of King’s County in 1831, the local magistrates resisted seeking help from government as a matter of pride rather than consideration for the poorer

²⁴⁰ Fr. Blake, Roscrea, to Dublin Castle, 1842. Chief Secretary’s Office, Registered Papers Outrage Reports 1842: 6599/27.

²⁴¹ *Irish Examiner*, 30 May 1842.

²⁴² *Tuam Herald*, 9 July 1842. Richard Kelly, editor of the *Tuam Herald*, was a Catholic and supporter of Daniel O’Connell though he was descended from the Ouseley family who were large land owners in Dumore, Co. Galway, through his paternal line. Kelly, who inherited some of the Ouseley estate, was also a magistrate and poor law guardian for the county.

classes who were affected by both the disorder and the coercive measure implemented by magistrates. A contemporary Scottish writer, reporting on the state of Ireland, noted that even in cases where Stipendiaries had been applied for, as soon as order had been restored ‘the recall of the Stipendiary Magistrates is [sic] petitioned for, as if their continuation were dangerous to the disorders of Ireland.’²⁴³ In Queen’s County the petition of the JPs to government asking them to arm protestant large farmers who could then repel nightly attacks themselves, would most likely have intensified such incidents as a high percentage of such nightly attacks were raids for arms by smaller farmers.²⁴⁴

Nevertheless, it demonstrates the contempt with which local magistrates held the lower orders in that they openly labelled them all in the same bracket. This raises the question, as to whether magistrates wanted to use these (presumably middle size) farmers as a buffer to protect themselves and the gentry by exploiting the fraught class relations in Munster and south Leinster that initially had been played out in Shanavest and Caravat violence between 1809 and 1812. The same tension, Roberts claims, continued up to the middle of the century under the guise of faction fighting between the ‘three year olds’ and ‘four year olds’ gangs.²⁴⁵ Initial resistance to seeking a government appointed magistrate was due of this appointment to the county seeking this service, an annual cost which amounted up to £800 pounds in the earliest part of the century – an exorbitant amount which Broeker insists was levied on purpose to force magistrates to deal with local issues themselves. However, such were the complaints about the cost to individual counties that government by 1822 had begun to take on half of the financial burden.²⁴⁶ These were the conditions faced by the administration in its desire to centralize law and order and make it accessible to all members of a community. Nevertheless, local magistrates were unwilling to relinquish their control of rural society, particularly to an outsider, but while they managed to hold onto many of their powers in the pre-Famine period, these began to erode slowly from 1836, many being largely superseded and transferred to the police. But the tide had turned, a more politically aware peasantry and vocal Catholic clergy were further reasons as to why the administration introduced a centralized form of law and order. Jennifer Kelly, in her research on Ribbonism

²⁴³ *Dublin University Magazine*, vol. 10, 1837, pp 692-704.

²⁴⁴ Evidence of William Wellesley, *Report from the select committee into the state of Ireland*, 6th June- 25th July, 1832, p. 36, H. C. 1832, (667), xv1, 1.

²⁴⁵ Paul E. Roberts ‘Caravats and Shanavests: Whiteboyism and faction fighting in East Munster 1802-11’ in Samuel Clark and James S. Donnelly, Jr. (eds.), *Irish peasants: violence and political unrest 1780-1914* (Manchester, 1983), pp. 64-101.

²⁴⁶ Broeker, *Rural disorder*, p. 231.

in Leitrim, demonstrates how the lower orders regarded local magistrates with suspicion and welcomed the introduction of government appointed magistrates ‘whom they perceived to be more even-handed in their treatment of disputes in local communities.’²⁴⁷

Kelly also captured the Castle administrations’ keenness to develop the role of the magistrate when citing Drummond’s hatred of the party bias held by local magistrates ‘grossly...have the local magistrates abused their power in very many instances; but their wings are clipped, and I hope and believe that there is some chance of justice being administered soon, and ultimately of being well administered.’²⁴⁸ The *Freeman’s Journal*, writing about the possibility of the withdrawal of Stipendiary Magistrates in 1841, echoed these sentiments in stating:

It is well known that the mode in which the local magistrates of Ireland administered the law was become almost intolerable, when the government saw that the only remedy was the appointment of Stipendiaries. Free from local influences and prejudices, they had no incentives to put the law corruptly into operation, and being men of information and intelligence, they were in all ordinary circumstance capable of deciding justly.²⁴⁹

Thus, Crossman argues, the deployment of Stipendiaries, originally a temporary measure, became a more permanent means of tackling crime, and took place ‘as part of the efforts of Whig ministers to establish a legal bureaucracy which was not vitiated by sectarian division.’²⁵⁰ It was the failure of the county justices to maintain law and order during periods of widespread unrest that led to the rise of the Stipendiary, later Resident, Magistrate.²⁵¹ Relations between local and Stipendiary Magistrates in the years immediately after 1836 were mixed. Liberal local magistrates seemed to welcome or accept stipendiaries initially, conservative magistrates – usually Tory and strongly protestant – were not so accepting of the reduction of their local power.

One of the first complaints local magistrates made in relation to the 1836 Constabulary Act was against the provision that stripped them of their ability to appoint individuals as Constables. Peel had threatened to do this earlier in 1822 but the clamour made by the local

²⁴⁷ Kelly, ‘*An outward looking community?*’, p. 55.

²⁴⁸ *ibid.*, p. 56.

²⁴⁹ *Freeman’s Journal*, 9 December 1841.

²⁵⁰ Crossman, *Local government in nineteenth-century Ireland*, p. 22.

²⁵¹ Bonsall, *The Irish RMs.* p. 11.

justices through parliament blocked his motion.²⁵² A number of objections arose to the proposals of the 1822 Constabulary Act as it was believed to be unconstitutional for the Castle to appoint members to the police-force (which gave it direct control over this armed force), and to levy counties for the cost of the new force. The measure had also increased government patronage at local level while depriving local magistrates of the same.²⁵³

Essentially the Act looked to challenge the Ascendancy's authority at a local level, something the landed élite was not ready to relinquish.²⁵⁴ In 1836 all such appointments 'were put under the control of central government' in order to ensure 'the impartiality of the police in dealing with the citizenry.'²⁵⁵ Again, this was seen by the local gentry as an intrusion by the state into local affairs, as the magistracy had always appointed to the police force persons whom they trusted, and as a result of such patronage expected police loyalty to themselves, not to the state or code of law. One of the other provisions of the Constabulary Act 1836 led to many senior police officers being raised to the position of Stipendiary Magistrate, a role initially filled by men with an established military or legal background. In some cases, this led to the elevation to the position of magistrate of a class of men whom local magistrates considered beneath them in social status but would henceforth be superior to them in rank and in the eyes of Dublin castle. Two such instances that led to clashes between local magistrates and Stipendiary Magistrates is examined below through a series of correspondence through the Chief Secretary's office. The magistrates involved in the first case were Tomkins Brew, Stipendiary for Clare, who came from a landed background, and D. J Wilson, JP for Clare, an improving landlord from Sixmilebridge. The second case involved J. E Langford, JP for Limerick and small landholder, and H. T. Redmond, Stipendiary for Limerick.

In 1840 in Pallaskenry, Co. Limerick, the local landlord and Justice of the Peace, John E. Langford, carried out arms searches with an out-of-date warrant, an action which drew the ire of the Stipendiary Magistrate, Redmond, and Dublin Castle alike.²⁵⁶ In 1837 in Clare the local Justice of the Peace, Wilson, who was also a local landlord near Sixmilebridge, was pleading for compensation on behalf of a seriously assaulted man, Moloney, but was continuously ignored and fobbed off by Dublin Castle. Initially the offenders in this latter case were convicted and sentenced to transportation, but government carried out a separate investigation through the Stipendiary Magistrate, Brew, and reduced the sentence to one

²⁵² Palmer, *Police and protest*, pp 240-245.

²⁵³ Broeker, *Rural disorder*, p. 144.

²⁵⁴ Palmer, *Police and protest*, p.241.

²⁵⁵ Broeker, *Rural disorder*, p. 238.

²⁵⁶ *Dublin Evening Mail*, 5 August 1840.

year's imprisonment in response to a memorial raised by Brew on behalf of the convicted men.²⁵⁷ However, the Castle neglected to tell the defendants or Wilson about this decision for many months even though both parties sent a series of letters asking what was happening with the case. In the end the Castle casually informed Wilson of their decision by stating that 'Lord Morpeth now begs to inform Mr. Wilson, that the sentence on Brown and M'Mahon was commuted to one year's imprisonment, after a full enquiry into the facts, and upon a memorial upon the prisoners' behalf, respectably and numerously signed.'²⁵⁸ An obvious bias towards the words of Stipendiaries was displayed in both cases. In Clare, some of the most respected gentlemen in the county, many also being Justices themselves, supported Wilson and Molony in their efforts, yet a petition raised on behalf of the accused men, Browne and McMahan, insisting they were of good character and submitted by the Stipendiary Brew, was taken at face value by Government as it was signed by over twenty gentlemen, clergy and others described as local magistrates. Wilson easily exposed the weakness of the petition after scrutinizing the signatures of those who defended the character of the accused. It turned out that hardly any of the signatories knew the accused men personally and a number of them lived in Limerick City or over twenty miles from Sixmilebridge, the home of both Browne and McMahan, and Wilson suggested that they signed with no knowledge of the case and did so because Brew had asked them to.²⁵⁹ To enforce his point, Wilson supplied the Castle with the names of twenty-one JPs and clergy men who lived in the immediate area who knew the accused men, yet Brew never asked them to sign the memorial. It is also interesting to note that in the pre-Famine decades the judge presiding over the case was usually referred to once a memorial for clemency had been presented to the Lord Lieutenant, yet there was no mention of a judge throughout the case – just the word of Brew over that of Wilson and Molony.²⁶⁰

Further evidence of Brew's slack reporting to the Castle can be gauged in an 1836 case involving the disruption of Sunday service at the Church of Ireland church in Ennis. Rev. William Adamson reported directly to the Lord Lieutenant's office that his service was disrupted by a large group of men playing music outside the church door, a number of whom

²⁵⁷ D. J. Wilson, *Justice in Ireland: Correspondence between the Irish Government and David John Wilson esq* (Ennis, 1838), pp 1-49.

²⁵⁸ D. J. Wilson, *Justice in Ireland: Correspondence between the Irish Government and David John Wilson esq* (Ennis, 1838), pp 1-49.

²⁵⁹ *ibid.* In Brew's memorial there were only three JPs yet four Catholic clergy. Though McMahan points out that petitions often contained both Protestant and Catholic signees (see below).

²⁶⁰ Richard McMahan, 'Let the law take its course' in Michael Brown and Sean Patrick Donlan (eds) *The laws and other legalities of Ireland, 1869-1850* (Surrey, 2011), pp 133-164.

yelled and banged on the door. Having investigated the matter Brew informed the Castle that it was merely a few boys and that six, presumably off-duty, policemen were at the service but never left the church to investigate, but he informed the Castle he would put a ban on such music. A week later Adamson wrote to the Castle again with a scathing attack on Brew's investigation, claiming that it was not a group of mere boys but rather over one-hundred grown men who harassed him again at his home despite the supposed ban. While the case was not reported in the local press it is hard to believe that a group of boys would be enough to deter six off-duty policemen and the other parishioners gathered in the church from attempting to quash the racket. The Castle questioned Brew in relation to the inaction of the policemen, but no answer was given – the entire case suggesting that Brew was working from his own hidden agenda rather than fully informing the Castle of what actually transpired.²⁶¹

Events that predated such incidents may well have been as significant as the incidents themselves in shaping the reaction of both Stipendiaries and more long-established justices. As the Sixmilebridge case unfolded it became known that Molony, the supposed victim, had been involved in an attempted abduction of a young female relative some years previously, but charges were never pressed by the girl's mother, who was Molony's cousin, and Brew, the arresting magistrate, seems to have held some resentment against Molony since the event. Similarly, it was a grudge held by the local magistrate, Langford, which was largely behind the Limerick case. After carrying out a search for arms with an out-of-date warrant, Langford reported finding a blunderbuss in the home of Michael Madigan and a threatening notice in the house of Michael Whelan. It transpired that Whelan's sons were involved in some outrages, namely attacking the houses of local gentry in the neighbourhood, and as a result Langford harassed their father at all hours of the night, possibly in the hope of provoking them to behaviour that might make it easier to arrest them.²⁶² Both cases echo the findings of Fitzpatrick and Miller in relation to rural outrage, suggesting that patterns of rural unrest were driven by changes in family structure and a quest for revenge among kinfolk: in both cases the incidents took place against a background where gangs of young men, generally siblings or cousins, roamed the countryside, carrying out violent acts, while the attempted abduction by Molony of a female relative was often a tool used to gain a woman's dowry and access to

²⁶¹ Rev. William Adamson and Tomkins Brew, Ennis, to Dublin Castle, 16 January 1836. Chief Secretary's Office, Registered Papers Private Index 1836: 160/36. Although this case predates Father Mathew's temperance movement, many temperance bands were recorded playing outside Protestant churches or meeting halls to antagonize the local protestant community.

²⁶² *The Sessional Papers: on Accounts and Papers* (Ireland) H.L 1841 Vol. xviii, pp 306- 332.

a farm.²⁶³ In Clare, it seems that Stipendiary Brew had also arrested the local magistrate, Wilson, for a case of misconduct some years previously, though both parties claimed that they harboured no hostile feelings towards each other. Recalling that particular event, Wilson – though he did not go into detail as to why he was arrested – admitted that Brew was very professional and courteous during the ordeal and acknowledged that he was only performing his duty. Nevertheless, during the Molony affair Brew consistently denied having any knowledge of the case, despite Wilson’s repeated quizzing both in person and by letter, though Brew had clearly been in constant communication with Dublin Castle throughout the inquest led by Wilson and was aware at all times of the administration’s thoughts on the case.²⁶⁴

In the Limerick case, the Stipendiary Magistrate, Redmond, complained to Dublin Castle that Langford’s brash tactics had given to those who had concealed guns the opportunity to move them, and he insisted that if he had first communicated with Redmond they could have worked on a plan together and brought to justice those that were carrying out nightly attacks upon houses and their inhabitants. The *Leinster Express* noted there were twenty-two such outrages carried out in this district of Limerick in May 1840, but only two of these were brought before the court and these, the *Express* claimed, was thanks to the efforts of the magistrate, Langford.²⁶⁵ The two cases together give a clear indication of two different types of law enforcement at work in Ireland during this period. Stipendiary Magistrates were introduced to break-up the monopoly that JPs held over local law and order and to stop accusations of the administration of partisan justice, yet the Stipendiary Brew could easily be accused of this very same partisanship. While the JP Langford indeed engaged in the very behaviour of which local magistrates were being accused, it is clear in both cases that the administration valued the words of Stipendiaries over local justices – an approach which created miscommunication, mistrust and the carrying out of personal agendas which ensured a dysfunction of law enforcement.

The style and type of language used in both cases offers an insight into contemporary notions of authority and privilege. When Dublin Castle and Stipendiaries were in communication the letters were very informal and direct, yet communication between Dublin castle and Justices

²⁶³ See David Fitzpatrick, ‘Class, family and rural unrest in nineteenth-century Ireland’ in P. J. Drudy (ed.), *Ireland: land, politics and people* (Cambridge, 1982), pp. 37-75; Kerby A. Miller, *Irish Popular Culture 1650-1850* (Dublin, 1998); Thomas P. Power, *Forcibly without her consent: abductions in Ireland, 1700-1850* (Bloomington, 2010), p. 4.

²⁶⁴ Wilson, *Justice in Ireland*, pp 1-49.

²⁶⁵ *Leinster Express*, 23 May 1840.

of the Peace was quite formal – at times long-winded – and at all times proper etiquette and titles were used. This highlights the esteem in which local magistrates held themselves, something which is captured in an exchange between Langford, the Limerick Justice of the Peace, and Redmond, the Stipendiary Magistrate. When Redmond omitted the usual formalities and niceties in addressing Langford and instead asked him point blank to forward on a copy of an alleged Ribbon document he found at the home of the suspected ribbon men’s father, Langford acknowledged the letter but refused to answer Redmond’s demands and instead wrote to Dublin Castle, demanding of McDonald in the Lord Lieutenants’ office, that he ‘be informed whether such should be the character of communication from the Stipendiary Magistrate to one holding the commission of the peace’, essentially reminding him of his station in society and implying that he would not bear demands from someone below him in class.²⁶⁶ Langford’s emphasis on his position as a Justice of the Peace is a reminder to both Dublin Castle and Redmond that he was a member of the gentry and Redmond’s actions were a challenge to gentry privileges. Earlier that same month the *Nenagh Guardian* had accused Redmond of showing a similar lack of respect for Bolton Waller at the Pallaskenry petty sessions by acting with an impertinence ‘that no gentleman could submit to.’²⁶⁷ Redmond was accused of disrupting Waller twice in the one sitting by removing from the stand witnesses that Waller was still questioning. The interesting point is that once again the Justice of the Peace was presented as having a higher status than the Stipendiary, despite their both being magistrates.

Some four years after the case in question Langford had some crops and farm tools seized and auctioned off by his landlord, Solomon Baldwin, for non-payment of rent for his lands at Cartown, Pallaskenry, near the Shannon estuary. The irony of this situation cannot be underestimated, since one of the leading causes of agrarian unrest in the pre-Famine period was landlords distraining goods for rent arrears and enforcing evictions when such arrears continued. For a landlord to have to resort to such tactics against a Justice of the Peace one can only assume he did so after exploring all other avenues. Langford’s violent actions following the confiscation of his goods confirm this and suggest Baldwin was left with no other option. The liberal press, the *Freeman’s Journal*, *Limerick Reporter* and *Cork Examiner* all ran with the headline ‘An extraordinary riot at Cartown – an example to the peasantry’ and in the attached article described how Langford raised a mob and fought off both those hosting the auction and those attempting to buy goods, yet the conservative

²⁶⁶ *The Sessional Papers: on Accounts and Papers* (Ireland) H.L 1841 Vol. xviii, pp 306- 332.

²⁶⁷ *Nenagh Guardian*, 5 May 1840.

journals paid no attention to the story.²⁶⁸ The articles challenged the actions of a magistrate in not only openly defying the law, but for violently opposing it in a manner which so many fellow magistrates would have turned to Dublin Castle for had the peasantry committed something similar, demanding the introduction of insurrectionary measures. The action of Langford's tenants in fighting on his behalf gives an insight into landlord/tenant relations at this period and suggests that a high level of paternalism and reciprocity as long as the landlord provided the means of subsistence, further highlighting the resistance to modernity in the middle belt counties and a continuation of pre-free market economic values.²⁶⁹ The articles finished by publishing a letter from an unnamed eye witness on the day who had accompanied the landlord's sub-agent and bailiff, Mr. Hanrahan, to the auction. This letter described Langford's violent actions and how he continued to break the law by using force after another magistrate, Bolton Waller, had been called to restore peace and arrested five armed members of Langford's mob. The author of the piece concluded by asking how magistrates like Langford and Alexander O'Driscoll in Cork could be retained and restored while such men as Smith O'Brien were forced to resign due to political support for O'Connell and the repeal movement.²⁷⁰

One common denominator between Langford and O'Driscoll was that they were tory, or conservative, supporters. During an inquest held to investigate the actions of Langford, an inquest chaired by Aubery de Vere, liberal magistrate and landlord, Lord Clarina and Eyre Massey, the nine magistrates assigned to decide on the case eventually split into two groups when giving that decision. The dividing line ran very noticeably along political lines. Langford himself (though his actions were under scrutiny) was actually one of the nine magistrates involved in the investigation, presumably selected by either De Vere or Clarina. He put his position to good use, and when pressurised to give evidence, proceeded to kick up a fuss that a man of his status should have to do so, again stressing his position as a Justice of the Peace and one of the gentry. However, the Langford's were only small landowners, originally from Kerry, who had a number of small estates in West Limerick; indeed, Langford's family home before he moved to Cartown was on the estate of Waller, one of his

²⁶⁸ *Limerick Reporter*, 4 September 1844; *Freeman's Journal*, 5 September 1844; *Cork Examiner*, 6 September 1844.

²⁶⁹ Noel Thompson, *The market and Its critics: socialist political economy in nineteenth century Britain* (Routledge, 2014). Thompson noted that a paternalistic political economy disappeared where the economic stance of Adam Smith and others was employed: when food was treated as another commodity left to find its place on the market.

²⁷⁰ *Freeman's Journal*, 5 September 1844.

fellow magistrates on the inquiry.²⁷¹ Such intricacies within landed relationships were typical of this period and the knock-on effect in public life, particularly on the operation of the magistracy, raises further questions regarding the impartiality of magistrates who were clients or tenants of other magistrates. Redmond put forward a motion of his own, stating that there was not enough evidence to suggest that the threatening notice was authentic, nor proof of any links between the temperance society and Ribbonism as suggested by the notice. After a vote, Langford, along with three other conservative magistrates, including Waller, voted against the motion put forward by the liberal magistrates, Aubery De Vere, Caleb Powell, Carroll Naish and the Stipendiary Magistrate, Henry Redmond.

The magistrates had originally been asked to investigate whether there was any links between the temperance society and Ribbon society which the note found by Langford in Whelan's home had claimed there was. Trying to draw such links between the temperance movement, which essentially became a Catholic movement, and Ribbonism, a Catholic secret society, was not unique to this event in Limerick. In the Shinrone case involving corrupt police men outlined earlier in this chapter there was also a side issue involving local Orangemen and a Catholic Stipendiary Magistrate, Lynar, who used the *Nenagh Guardian* newspaper to notify both Dublin Castle and the wider population that the local Orangemen were still in possession of a number of government-issued guns and ammunition from some years previously. In response to this article on the Shinrone Orangemen, Michael Kennedy, local Orangeman and Clerk of the Peace in Shinrone, County Offaly, wrote to the editor of the paper informing him that it was Protestant community's right to have the guns to protect the loyal protestant community in the neighbourhood from the temperance movement which, he claimed, was a front for Ribbonism.²⁷² Similarly, at a public temperance meeting held in County Limerick in 1840, O'Connell, who was the main speaker at the meeting, repeatedly asked those in attendance not to shelter or to support men who took up violent ways. Referring to a local disturbance carried out by a group of men at night, O'Connell reminded the crowd that harbouring such men would give credence to certain magistrates' belief in a Catholic plot. A member of the crowd called out the name of Langford, highlighting both his notoriety amongst the lower orders and also the popular perception of his character as a magistrate,

²⁷¹ Landed Estates Database (Moore Institute) National University of Galway www.landedestates.nuigalway.ie (accessed on 13/2/15)

²⁷² Hartigan, 'Fabricated crime and religious tension in pre-Famine', pp 8-18.

suggesting that he and many other Justices of the Peace, aided in exacerbating tension in the pre-Famine period rather than reducing it.²⁷³

In contrast to Langford, the Clare Justice of the Peace, Wilson, generally seemed to want to uphold law and order out of a sense of duty towards the public at large. Throughout his dialogue with Dublin Castle in relation to the Molony case, his primary concern was that Molony should be compensated for the vicious attack he suffered, and that Molony's willingness to give testimony in the face of multiple threats should be accommodated. While Wilson accused both Brew and the Castle of flouting the proper process of law and order by so frivolously reducing the sentence in the case of the accused men, a further look at Wilson's character, suggests that he was not himself whiter than white. He made reference to his arrest by Mr. Brew but dismissed it as a nothing case.²⁷⁴ However, at a weekly meeting of the Loyal National Repeal Association held in Conciliation Hall, Dublin 1836, a second arrest carried out by Wilson was cited as an example of some landlords' tyranny over their tenants: it was said that he forced his way into the home of one of his tenants and – but without going into detail – that he made the tenants' life hell.²⁷⁵ Therefore, his being arrested twice, while himself being a magistrate, once more highlights the partisan attitudes on the part of the Justices of the Peace and their reluctance to comply fully with a centralised form of law and order.

However, it is also possible that Wilson's passion to see justice done was behind both his arrests: in his many replies to Dublin Castle his sense of honour and his anxiety to see justice prevail stand out. Such honour was further displayed over a decade later in 1852 during what became known as the Sixmilebridge Massacre, which started off as a day of voting and ended with seven members of the general public dead and many more injured after members of the 31st regiment opened fire on a crowd of unarmed inhabitants of the town who were caught up in the excitement of an election in the town.²⁷⁶ On that day Wilson was one of the few who tried to rein in the troops and went so far as to put his own life in danger when he stood in front of one soldier's gun as he aimed it at the crowd. Wilson was also instrumental in setting up a relief fund for the families of the victims after the event while also being vocal both in court and in the press about the events of the day in question, seeking redress for the families

²⁷³ *Freeman's Journal*, 9 September 1840.

²⁷⁴ Wilson, *Justice in Ireland*, pp 1-49.

²⁷⁵ Wilson, *Justice in Ireland*, pp 1-49.

²⁷⁶ *Belfast Newsletter*, 6 August 1852.

of the dead in what developed into a cover-up on the part of the military and government.²⁷⁷ Thus, at face value Wilson seems to have had the pursuit of justice at heart. On the other hand, both local magistrates highlighted here displayed the weaknesses in a system that relied on untrained men to enforce law and order, particularly when both parties were landlords who were part of a complicated set of loyalties and relationships, something that prevented their wholehearted enforcement of a system in which they were servants of a centralized administration.

Opposing both local magistrates in the above cases were government-appointed and government-paid Stipendiary Magistrates. Redmond in Limerick was one of the new breed of stipendiaries introduced after the 1836 Constabulary Act and had no connection with the police force prior to his appointment. A liberal Catholic from Wicklow and an attorney by profession, like so many of those who initially took up the position of Stipendiary Magistrate, he had actually applied for the commission of the peace in his native Wicklow some years previously only to be turned down by Lord Plunkett due to his position as an attorney, but was given a commission shortly after and appears on the government returns of 1832 as a Justice of the Peace for Wicklow.²⁷⁸ In fact, Redmond served on the Wicklow Grand Jury right up to his appointment as a Stipendiary Magistrate,²⁷⁹ which suggests he was a man with access to some level of political patronage but by 1834 he seems to have relinquished the position of Justice as the Peace, again giving credence to the earlier point that unpaid magisterial positions were sought as a stepping stone on the career paths of ambitious individuals.

However, Redmond's move from JP to membership of the Grand Jury (still a predominantly Protestant body) and then to the position of Stipendiary Magistrate highlights the rise of the Catholic middle and professional classes in Ireland during this period.²⁸⁰ In Clare, Tomkins Brew had been a Stipendiary Magistrate for almost six years by the time the Constabulary Act was introduced and had been a chief constable of police for over six years prior to that. He was therefore well versed in the matter of reporting to superiors about the actions of his peers or other agents of law enforcement – a growing requirement of those involved in the enforcement of law and order in Ireland during the pre-Famine era.²⁸¹ In the 1831 House of

²⁷⁷ *Freeman's Journal*, 26 July 1852; *Belfast Newsletter*; 9 August 1852; *Irish Examiner*; 16 August 1852.

²⁷⁸ *Freeman's Journal*, 28 August 1836; *Returns of the number and names of the magistracy 1832*, p. 15, H.C (531) xxxv.297.

²⁷⁹ *Freeman's Journal*, 22 September 1836.

²⁸⁰ Crossman, *Local government in nineteenth-century Ireland*, p. 26.

²⁸¹ *Returns of the names and stations of Stipendiary Magistrates &c Ireland 1837*, H.C 1837 (254) xlvi.

Commons debate involving O'Connell and the magistrates of Clare, Brew was accused of acting as a magistrate in one county, while also being employed as a chief constable and carrying out police duties of such in another county.²⁸² The controversy surrounding this boiled down to Brew's allegedly using his magisterial powers in Galway, the county in which he was employed as a policeman, and where he had no right to act as a magistrate. This situation was used by O'Connell and his supporters in parliament to emphasize their lack of confidence in the magistracy during the outbreak of disorder in Clare during 1830-31. The oppositional minister, Edward Stanley (later Prime Minister), refuted this claim, and the reality of the situation seems to have been that Tomkins had been a Justice of the Peace from 1809 to 1824 and then joined the police force before becoming a Stipendiary Magistrate in 1831.²⁸³ It must be assumed that the Clerk for County Clare struck him off the list of JPs and informed the administration once he became a police officer.²⁸⁴ On the other hand, his operating simultaneously in both positions is certainly a possibility, particularly since he had previously been a member of both the Yeomanry and the Orange Order, as well as being an extensive landlord. Here we have a man used to an authoritative position over the catholic peasantry, for whom the position of policeman must have been a step backwards. Perhaps the temptation to hold onto his position of influence in the commission of the peace may have proved too much for him to relinquish.

However, the claim by Maurice O'Connell that Brew 'conveniently combined the two characters...seized the wretched peasant as a police constable—as a Magistrate he committed him to prison' have proven hard to prove as the story does not seem to have made it into the local or national press, and must remain speculative.²⁸⁵ Nonetheless, a familiar pattern has emerged here again and Brew, like the other magistrates examined, had extensive landed roots, so to give up the position of Justice of the Peace for membership of the police force was to cut cultural ties with fellow members of the landed élite and to surrender the hegemony over rural society that landed élites enjoyed. In contrast to Redmond, however, Brew's fortunes, like those of many landed Protestants in the years leading up to mid-century, seemed to be on the wane as he traded the life of a large landed magistrate for that of salaried policeman and then police magistrate, a position some of his landed peers felt was beneath their station. Thus, as highlighted in Chapter 3, this is yet another example of the

²⁸² See Chapter 2.

²⁸³ Quoted in Barrow (ed.) *The mirror of parliament*, vol. 2, pp 1366-1379, 13 April 1831.

²⁸⁴ The clerk of the county was not always reliable when it came to recording and transmitting records at this period. See Chapter 4.

²⁸⁵ Quoted Barrow (ed.) *The mirror of parliament*, vol. 2, pp 1366-1379, 13 April 1831.

deterioration of Protestant Ascendancy in Ireland during this period. Although the Ascendancy would retain their hold on rural society for much of the century, it is clear that the seeds of their fall were sown in the pre-Famine years and as so many members of the Ascendancy were involved in the administration of the countryside through the position of magistrate this fall is especially evident through the study of the magistracy and law and order during this time.

Of the two different cases analysed, there is far more material on Redmond and more scope to scrutinize his actions, nevertheless, the inclusion of official responses from Dublin Castle by Wilson in his personal recollections provide enough information to create a clear picture of the actions of Brew also. From the start he undermined Wilson's efforts by organising a memorial in favour of Browne and McMahan, who were accused of savagely beating Molony, a memorial which was signed by a number of respectable men and even clergy who had no connection with the accused, but yet, it seemed enough to appease Dublin Castle. Brew also attached a note to the memorial informing Castle officials of the youth of those accused of the crimes and of their families' reliance on their financial support. Such tugging at the heart strings of the administration, a tactic particularly used by family members in the pre-Famine decades in petitioning the Lord Lieutenant for clemency for their family members, was used equally by those who administered the law at local level.²⁸⁶ The note also carried out a character assassination of Molony and his brother as Tomkins revealed he had arrested them both under suspicion of outrage in the past but could not prove their guilt, therefore almost negating all of Wilson's work before he even began to plead on behalf of Molony while, at the same time, showing how innocence and guilt were very difficult to prove in the pre-Famine context. Similarly, in the Limerick case, though the Stipendiary, Redmond, had initially hoped to work with the local Justice of the Peace, Langford, his intention was sabotaged by local animosities – in this case Langford's personal (and apparently justified) vendetta against the sons of Whelan – which led to his emotions ruling rather than to his applying the letter of the law. While both local magistrates and Stipendiary Magistrates can be accused of partisan attitudes to law and order in both cases again it must be remembered that Brew was a strange hybrid: he belonged simultaneously to the Stipendiary magistracy and the old landed/Justice of the Peace stock was an example, like others of his kind, of old

²⁸⁶ Blathnaid Nolan, 'Crime and punishment in Dundalk. The transportation of Irish women in 19th century Ireland: A case study' in *Women & Gender Studies Series*, Vol. 12(2) Dublin, 2012.

habits dying hard. However, Stipendiary Magistrates employed after 1836 were incorporated into a newer professional structure under stricter scrutiny from Dublin Castle.²⁸⁷

Riots and Retribution.

The topic of riots and violent assemblies has been much discussed within the historiography of nineteenth century crime and outrage as figures show it as one of the constant sources of tension and fatalities in the 1830s and 1840s. In the majority of cases the focus has been on the social, economic or political driving force of popular disturbance and grievance. Food riots, election riots and violent outbreaks at fairs and markets have all been well documented. However, largely missing from these investigations is an analysis of the response to such outbreaks by local authorities such as the police force, under the command of local magistrates, particularly in the pre-Famine period. One recent publication on riotous behaviour in Ireland, brings together a number of essays focusing on violent outbreaks nationwide from the sixteenth-century to modern day Ireland. The primary focus here once again is mainly on those that rioted and the conditions that led to riot. While the present study is concerned with events in the pre-Famine decades, it dovetails with one of the chapters in that book – that by Ealáir Ní Dhorchaigh and Laurence Cox on the legitimacy of police violence in tackling crowd disorder in twentieth and twenty-first century Ireland. While community, social values and attitudes towards law enforcement in modern Ireland are very different to those under examination here in pre-Famine Ireland, responsibility for crowd safety and loss of life were still a matter for state authorities dealing with the major concerns of agrarian or sectarian disorder dominating the pre-Famine period.²⁸⁸ Modern law enforcement agents are obviously much better equipped to deal with crowd disturbances than were their nineteenth-century counterparts, who were usually made up of a small detachment of police and/or military support all under the direction of a magistrate. In this context, the role of the magistrate was vital, and Cronin addresses this topic when talking about violence and spontaneous crowds and maintained two conditions were essential to prevent the eruption of violence when excitable crowds assembled in the pre-Famine era, namely the intervention of an élite (usually a magistrate) and the conciliatory manner in which that élite approached the situation. Cronin's argument uses two examples with opposing outcomes: the Rathcormac

²⁸⁷ Bonsall, *The Irish RM*, p. 13.

²⁸⁸ Ealáir Ní Dhorchaigh and Laurence Cox, 'When is an assembly riotous, and who decides?', in William Sheehand and Maura Cronin (eds.), *Riotous assemblies; Rebels, riots and revolts in Ireland*, pp 242-262.

tithe massacre December, 1834, which lacked a measured élite intervention and resulted in a number of the peasantry dying at the hands of the military, and the anti-poor rate protest in Ahane, Co. Limerick, in 1846 where successful intervention ensured that there was no loss of life.²⁸⁹ While Cronin stretches her definition of élite in such a situation to include members of the clergy, gentry and others with local influence, the magistrate was the key figure in most of these situations. However, as demonstrated in earlier chapters the word 'élite' when used to describe the Irish magistracy did not always fit the individual at hand since the Irish magistracy was staffed by men who came from a wide spectrum of social class, education and with their own personal motives for taking the position. It is therefore important to examine the role magistrates played when dealing with mobs, riots and flash violence.

In this regard, North Munster in particular was a hotbed of riots and faction fighting and villages such as Doon and Ballingarry in Co. Limerick witnessed continuous riots in the 1840s between rival gangs, the Three Year Olds and Four Year Olds, who may have been a continuation of the class strife that had erupted amongst the farming community during the Shanavest and Caravat confrontations from 1809 to 1815. The contemporary travel writer, Johann George Kohl, noted on his visit to Ireland in 1839 that there were 3,409 accounts of riot in that year, with some 685 taking place in Tipperary, and this at a time when the newly restructured police force were said to have greatly reduced the incidence of such crimes.²⁹⁰ Here we are at the mercy of the different definitions of riot used by contemporaries. When cross referencing constabulary official records Kohl's figures do seem high, but police reporting at this time was becoming more efficient and violent clashes were being recorded under different sub headings such as riots, faction fights, resisting processors or resisting police.²⁹¹ Kohl seems to have described all forms of breaches of the public peace as riot, including incidents of levelling, robbery and attacking houses which are distinctly different crimes. As an example of this in the three years between 1842 and 1845, riots and affrays numbered just seventy-eight, seventy-three, 108, and ninety-two respectively, houses attacks averaged between two hundred and four hundred for each year, and 'resistance to legal process' averaged between sixty and 150. Thus, while the Castle and the police were trying to

²⁸⁹ Maura Cronin, 'O'Connellite crowds in the 1830s and 1840s', in Peter Jupp and Eoin Magennis (eds.), *Crowds in Ireland 1720-1920*, pp 139-172.

²⁹⁰ Johann George Kohl, *Travels in Ireland* (London, 1844), p. 168.

²⁹¹ *Outrages (Ireland) Return of outrages reported by the constabulary in Ireland 1836-1842*, H.C 1843 (460) li. 149.

become more efficient in reporting crime by categorising offences into smaller sub-sections, violent crime was still significantly high when these figures are merged.²⁹²

In Ballyvarna, modern day Annacotty, a distance of eight miles north of Limerick City, a massive assembly of the peasantry took place to challenge process servers on the estates of George Molyneux, an absentee landlord holding the position of magistrate in Armagh, who wanted to clear his estates of tenantry. The man charged with issuing the eviction notices was a tenant and bailiff to Molyneux, Edmond Ryan. Ryan, afraid for his life, turned to the nearest magistrate, Mr. Howly, a local landlord, for assistance and police protection on the day the notices were to be served. Howly directed him to contact William Tracy, the Stipendiary Magistrate, based in nearby Castleconnell, who informed Ryan that the law did not allow the use of police to issue eviction notices and that he should contact Molyneux's agents, Messers Sherrard of Dublin, to let them take charge or offer protection. Throughout this short period of a few days, while Ryan was seeking help, a crowd began to gather on the lands of Ballyvarna under the pretence of playing hurling and eventually clashed with the police and military under the command of Tracy and though reports circulated that two protestors were killed by police, the even handed approach by Tracy ensured that there was no loss of life and many of the ring leaders were arrested.²⁹³ In Ennis an 1842 spontaneous food riot saw practically a different outcome to Ballyvara as a number of rioters died as a consequence of police shooting. Ennis, with a population of over nine thousand in 1842, was surrounded by prime farming land from which displaced smallholders and cottiers had moved to thatched cots or cabins that were built up for a half mile around the town.²⁹⁴ Thus, Ennis was particularly sensitive to agrarian issues and the price of potatoes and lack of employment for the labourers of the town were together a major cause of unrest. This was the case in a disturbance that took place in the town in 1840 when a number of hungry townspeople tried to break into Russell's flour store but were stopped by the local magistracy and police from gaining entry and the riot ended with minor injuries inflicted and no deaths.²⁹⁵

In 1842, however, the over-reaction of the magistracy was central to the events that transpired when a large group of labouring poor attacked the flour mills of James Bannatyne, a Scottish flour miller in the town, and proceeded to divide out three bags of flour which they had taken

²⁹² *A return of outrages specially reported to the constabulary office in Ireland, during each of the years 1842, 1843, 1844, and 1845* (H.C), 1846 (217).

²⁹³ *A copy "of all communications received by her Majesty's Government relative to the disturbances which took place at Knockentry"* (H.C) 1846 (172).

²⁹⁴ 'The family of Thomas Clancy (c 1816-1869) of Ennis', www.clarelibrary.com, (accessed on 7 August 2015).

²⁹⁵ *Freeman's Journal*, 6 June 1840.

from Bannatyne's store.²⁹⁶ In the account of the ensuing struggle between the crowd and some workers from the store who tried to recover the bags of flour, there seems to be some confusion over which magistrate arrived on the scene first, the local JP and ex-military man, Captain De Ruvynes, or Stipendiary Magistrate Smith. This became an issue in the inquiry after the event where it was established that it was the local JP who arrived on the scene first but Smith, the Stipendiary, had called out the police and was alleged to have been closest to them when the order to fire was called out by an unknown and never identified party. Both magistrates were initially suspended as a result of the affray. Smith, having called out the police, was obliged to read out the Riot Act to the crowd, which was a warning that if they did not disperse he had the right to order the police to fire. By not reading it, it was claimed that the magistrates had not given the rioters a fair chance to disperse and the resulting shots fired on the townspeople amounted essentially to murder. Smith himself claimed that he did call on the rioters to stop what they were doing but claimed that he was viciously assaulted with stones and ran for cover leaving De Ruvynes at the scene when the order to fire was given.²⁹⁷ Thus, both these affrays highlight a fractured law and order in operation and a complete lack of cohesion between Justices of the Peace and government-paid Stipendiary Magistrates. In the case at Ballyvarna, the JP Howley more or less ignored the situation leaving it to be dealt with the Stipendiary, Tracey. Tracey himself initially ignored the situation, claiming he was at the local assizes, but he could have had the police or another magistrate deal with it and instead left the crowd build to a dangerous size. Though his eventual arrival on the scene, and his astute handling of the situation meant there was no loss of life, the problem if initially dealt with could have been avoided if the JP and Stipendiary had acted together and earlier.

Likewise, in Clare, both the Stipendiary Magistrate and Justice of the Peace were seen almost as representing two different roles, particularly by the politically opposed press. The more conservative journals, the *Limerick Chronicle* and the *Clare Journal*, laid the blame firmly at the feet of the Stipendiary. In fact, the *Clare Journal* carried a report from the *Dublin Evening Mail* that local magistrates in Ennis refused to sit on the bench with Stipendiary Smith because of the evidence he gave against De Ruvynes at the inquest, which could almost be deemed as a revolt on the part of the local magistracy in Ennis.²⁹⁸ Although both parties had been suspended, the newspaper urged De Ruvynes to ignore this order and to

²⁹⁶ *Limerick Reporter*, 7 June 1842.

²⁹⁷ *Limerick Chronicle*, 6 June 1842.

²⁹⁸ *Freeman's Journal*, 25 June 1842.

continue in his duties which suggests that the *Clare Journal* was expressing its feeling and the feeling of the élite members of society in Clare who either read the journal itself or accessed the parallel report in the *Evening Mail*.²⁹⁹ It is also evident that when peasantry's subsistence was threatened then the agents of official law and order, or élites in Cronin's theory, were helpless in restraining agitated crowds without resorting to violence. An awareness of the need for magistrates to take notice of the concerns of the poor, whether through altruism or a concern for public order – was obvious in the actions of Redmond, the Stipendiary Magistrate in Limerick, who in 1839 averted a major riot in Askeaton by talking down the local farmers in the local market who were refusing to sell potatoes in small quantities to the poor, thereby trespassing against the local moral economy. Redmond urged the farmers to change their mind for their own safety and 'they were induced to sell at 4d. per stone, and thus averted the crisis.'³⁰⁰ Another display of the fractured nature of law and order – and the success of a more cautious approach – can be gauged by the communications to the Lord Lieutenant's office from the magistrates in King's County in 1844. The incident that led to these communications was the reaction of the Catholic populations of Shinrone and Moneygall to the arrest of Daniel O'Connell, which sparked a series of bonfires on the hills around both towns, along with shouting and wailing from women and children and damage to two houses of Protestant inhabitants.³⁰¹ This was enough for the local magistrate, John Minchin, to request military reinforcements from the Castle while denigrating the competence of the local police who, he insisted, did little to engage the crowd or stop the attacks. While Minchin did not state it outright in his letter, there is a sense that his main issue with the police was that there were Catholics within their ranks: he stated the police 'have become part of the people.' In response, the local police, Stipendiary Magistrate, William Lynar, and another local magistrate, Col. Lloyd, all insisted the police acted prudently by taking names and not engaging with the crowd directly and they urged the administration to take no notice of the matter, more or less intimating that the situation would dissolve on its own and that to engage with it would only aggravate matters.³⁰² This did not stop Minchin once again requesting troops to the area and, as an incentive to the Castle, indicating that Lord Bloomfield was willing to take the expense of housing any reinforcements sent. In the end the administration let the situation fizzle out and no loss of

²⁹⁹ *Clare Journal*, 27 June 1842.

³⁰⁰ *Limerick Chronicle*, 10 July 1839.

³⁰¹ John Minchin, King's County, to Dublin Castle, 14 February 1844. Chief Secretary's Office, Registered Papers Outrage Report 1844: 929/15.

³⁰² William Lynar, King's County, to Dublin Castle, 18 February 1844. Chief Secretary's Office, Registered Papers Outrage Reports 1844: 3757/15.

life materialized. Nevertheless, this incident highlights the disjointed nature of law enforcement in the pre-Famine decades but it also shows where a rational approach was taken to crowd disturbances a peaceful outcome prevailed but as the approach of Minchin suggests, the irrational stance was always a possibility.

Attacks and reprisals.

The murder of Lord Norbury in King's County in 1839 while he was walking around the gardens of his own home, was one of the most notorious crimes in the pre-Famine decades. The shockwaves from this murder reached all levels of society as debates ranged from Tullamore to the House of Commons and included an attack on the Melbourne administration and in particular the under secretary at Dublin Castle, Thomas Drummond. Lord Charleville chose to attack the under-secretary because of his infamous letter to the Tipperary magistrates,³⁰³ reminding them that property had its duties as well as its rights.³⁰⁴ Though no person was ever brought to justice for the murder, Reilly discusses the case in depth and suspects that the intended target of the assassination was George Garvey, Norbury's land agent, in reprisal for some land clearances carried out on the estate by Garvey the previous year. In fact, murders of members of the élites were rare during this period.³⁰⁵ Of the 120 murders in Ireland in 1842, just three were persons listed as respectable, one the wife of a gentleman, one a large farmer and one landlord in Tipperary, James Scully.³⁰⁶ In 1843 seven of the 120 murders recorded that year were carried out on persons regarded as respectable, two gentlemen, one each from Queen's and King's Counties, a doctor in Cork City, a respectable man in Roscommon and a lady in Tipperary.³⁰⁷ However, the two most notable of the seven murders that year were carried out on local the Justices of the Peace, John Gatchell, also a land agent from King's County and Thomas Waller, a landed proprietor in Tipperary.³⁰⁸ Similar to the circumstances surrounding the murder of Lord Norbury, both Waller and Gatchell had been involved in cases of ejection prior to their murder. Gatchell was murdered at Clonad, King's County while returning from the house of Rev. Ridgeways of Clonbullogue, and the press gave mixed reports on the cause of his death. The *Leinster*

³⁰³ See Chapter 4.

³⁰⁴ Reilly, 'Land agents and estate management in King's County', p. 93.

³⁰⁵ See Richrd McMahon, *Homicide in pre-Famine Ireland* (Liverpool, 2013).

³⁰⁶ For more on the murder of Scully see M. R. Beames, 'Rural conflict in pre-Famine Ireland: peasant assassinations in Tipperary 1837-1847', *Past and Present*, No. 81, 1978, pp 75-91.

³⁰⁷ Murders (Ireland) *A return of all murders that have been committed in Ireland since 1st day of January 1842*, *H.C 1846* (220).

³⁰⁸ See Chapter 3.

Express stated that his ribs were badly beaten in and his throat cut while also stating other witnesses heard gun shots.³⁰⁹ The *Evening Packet* reported that Gatchell's dead body was thrown from the gig in which he was travelling, where some country people found it the next morning. The murderer was also said to be lurking in the neighbourhood that day and the paper reported he was seen fleeing towards Portarlington.³¹⁰ The *Freemans Journal* reported that the killer was seen in the locality that day with a blunderbuss, pistol and blackened face and intimated both the cause of the crime and the suspects who carried it out by noting that Gatchell had been an agent to property where a family of the name of Carney had recently been evicted.³¹¹ Later that month Daniel O'Connell claimed in the House of Commons that Gatchell had been 'employed for some time past in turning out tenants from a property of which the management he was entrusted...one family in particular had been driven from their home in pitiless manner and had to take refuge under miserable sheeting.'³¹² The facts surrounding Waller's death are much clearer as he was attacked in his own home while dining with his family, including his sister-in-law, Mrs Vereker, who also died in the attack, and Waller's brother-in-law, John Braddell from Mallow, Co. Cork. Braddell was agent to the Bowen estate in Toomevara on which, the *Freeman* stated, there were at least a couple of murders perpetrated yearly.³¹³ The *Cork Examiner* described the murder scene in full, insisting that the attack began as soon as the first course had ended when a gang of men and a young boy entered the dining room and after a brief struggle savagely beat Waller, Braddell, their wives and the butler.³¹⁴ Waller originally bought his estate in 1821 after making his fortune in Limerick³¹⁵ and Beames notes that from the outset he often spent more money on improvements yearly than the estate was worth.³¹⁶ However, on the eve of his death Waller had accumulated a reputation as a 'clearing landlord' and had recently served ejectment notices on tenants which indicates that when the subsistence of small farmers and cottier class was threatened elite members of society were viable targets of retribution and the title of magistrate was not enough to deter these attacks. James Scully, Roman Catholic landlord and JP, was also shot after serving ejectments. While Beames covers his murder extensively, in the months previous to his death Scully had been threatened a number of times and on one

³⁰⁹ *Leinster Express*, 7 May 1843.

³¹⁰ *Dublin Evening Packet*, 8 May 1843.

³¹¹ *Freeman's Journal*, 8 May 1843.

³¹² Reilly, 'Land agents and estate management in King's County', p. 95.

³¹³ *Freeman's Journal*, 15 November 1843.

³¹⁴ *Cork Examiner*, 17 November 1843.

³¹⁵ In 1809 Waller was listed as a woollen draper and cloth merchant in Limerick, see *Holden's Triennial directory of Limerick*, 1809.

³¹⁶ Beames, 'Rural conflict in pre-Famine Ireland: peasant assassinations in Tipperary 1837-1847', pp 75-91.

occasion was chased by a large party of men near Mantle-hill and forced to take refuge in a nearby military barracks.³¹⁷ Again, this shows the blatant disregard for his position as a magistrate and suggests that in the pre-Famine decades an alternative system of law was subscribed to where a party was deemed to have transgressed rules of moral economy, a situation which was particularly true of Tipperary.³¹⁸ Differing accounts from the *Devon Commission* affirm this point. The evidence of Thomas Prendergast, tanner and small farmer, insisted that the greed of both landlords and the over-spending by incoming tenants were to blame for the dire circumstances in which local inhabitants found themselves. William Joshua Fennell, middleman and magistrate, attributed the blame to the tenant and was adamant that over-spending in purchasing land led to a system of sub-letting in order to ease financial burdens, stating that he had ‘known a great many instances where a man has given all his capital to get into a farm.’ Land agent and farmer, John Keefe, was essentially of the same opinion.³¹⁹

However, the three were in agreement in asserting that it was less the elite (magistrate, landlord or agent) than the incoming tenant, particularly those from outside the community, who faced the brunt of these outrages. Even in instances where there was no sympathy for an evicted party within the community, such was the competition for land that locals were determined to keep it inside their own community and took offence at outsiders coming in. Keefe insisted that the incoming tenant ‘may be in danger of his life on coming in’ thus illustrating the localised, non-political, nature of Tipperary outrages. By the end of the 1830s Tipperary was also regarded as the murder capital of Ireland with ‘an average of 20 murders a year being committed in the four baronies around Thurles alone.’³²⁰ In contrast, the two northern middle-belt counties, Leitrim and Roscommon, experienced high levels of Ribbon-linked crime, which was politically and religiously motivated, though like the rest of the country at this time they also experienced land squabbles and familial disputes. Two of the more notorious attacks upon magistrates in this region - George Booth and John McLeod – were as a result of their actively carrying out their duties to smash local Ribbon rings. George J. Bell-Booth, landed JP from Kilmore, Co. Cavan, was an active magistrate in and around the Cavan/Leitrim Border, a region greatly disturbed by Ribbon activity in the 1840s.

³¹⁷ *Nenagh Guardian*, 15 March 1839.

³¹⁸ Land was at the centre of most crimes in Tipperary in the first half of the nineteenth-century, further to Beames see Ray Fazakas, *In search of the Donnellys* (Indiana, 2012).

³¹⁹ Evidence of Thomas Prendergast, Evidence of William Joshua Fennell, Evidence of John Keefe, *Devon Commission*.

³²⁰ Palmer, *Police and protest in England and Ireland, 1750-1850*, p.373.

The attack upon Booth happened as he was returning from divine service when an unknown assailant shot him in front of his children. No clue was given as to the cause of his death officially but there was considerable ‘party feeling at his funeral’ and a local Ribbonman named (Pat) Dolan, listed as a suspect in the murder, was said to have been a deserter from the army and had made his way to America soon after Booth’s death.³²¹ To further address the unlawful state of the Leitrim/Cavan area the Stipendiary Magistrate at Enniskillen, John McLeod, a Scots man and landowner, was selected by the administration to reside in that area to restore order. The official report on McLeod’s death could not ascertain an exact cause behind the assassination but it was generally believed that his recent efforts in suppressing Ribbonism in the locality and jailing a number of men for Ribbon crimes, refusing them bail in the process, was behind his murder.³²² The particulars of the murder state that McLeod had been dining at the house of a local landed JP, William Percy, Garadice, Leitrim, and upon leaving the house later that night an armed man, who had locked the gate to ensure that McLeod would have to stop to open it, was stationed outside the gate house under the cover of some vegetation and shot McLeod straight through the heart with one shot as he sat in the back of his car. Local folklore has it that Pat Dolan, the same man suspected of killing the JP, George J. Bell-Booth, was also responsible for killing McLeod, which might explain the accuracy of the assailant’s shooting as Dolan did have a military background, but no official evidence connecting both murders appeared.³²³ The 1845 report gathered by the Stipendiary Magistrate, Walter Moloney, claimed that the murder was carried out by two brothers, Michael and Thomas Maxwell, as a result of McLeod jailing without bail Hugh Lynch, who was due to marry the Maxwells’ sister.³²⁴ While the suspects evaded capture by going to America the case highlights another factor in pre-Famine crime, i.e. family or marital links. The gate keeper of Garadice estate was also connected to the Maxwells through marriage and it was he who informed them that McLeod was dining with Percy and subsequently locked the gate to slow McLeod’s carriage down as it was leaving the estate; thus, the crime involved three separate families connected through marriage.³²⁵

³²¹ *Extracts made by Colonel McGregor from police reports stating the particulars of the principal homicides in Ireland in 1845 and 1846*, H.C., 1846 (179) xxxv.261.

³²² *ibid.*

³²³ The Cavan G.A.A yearly fanzine, *Breffini Blue*, printed an extensive recollection on the murder in its 2002 issue, giving a fanciful account of Pat Dolan and his movements after both murders.

³²⁴ Walter Moloney, Leitrim, to Dublin Castle, February 1845. Chief Secretary’s Office, Registered Papers Outrage Report 1845: 7909/16.

³²⁵ Kinship and neighbourhood ties have been identified as central aspects to agrarian outrage in the eighteenth and nineteenth centuries. See David Fitzpatrick, ‘Class, family and rural unrest in nineteenth-century Ireland’ in P. J. Drudy (ed.) *Ireland, land, politics and people* (Cambridge, 1982) pp 37-75.

Therefore, while Ribbonism largely existed in these more northern counties the same shared family and community values that existed in the southern middle-belt counties also existed and played out in this region. In Roscommon, in March 1845, Francis Byrne (O'Beirne) was shot at while leaving his residence in the company of three police officers. Being an active magistrate was the reason given for the attack: according to H. W. Wray, the Stipendiary Magistrate reporting to the Castle, Byrne had been sent a number of threatening notices in the lead-up to the attack, which resulted in a constant police guard around both his person and house, including on the day he was shot.³²⁶ The fact that members of the community were willing to attack a magistrate while he was in the company of armed police suggests a complete breakdown and failure of official law and order and considerable daring on the part of the assailants. In this respect, MacDonagh noted that agrarian agitators accepted civic and government restrictions in their communities as 'elements in a received social order' and it was only what was seen to be excessive or selective policing that was attacked.³²⁷

In Westmeath, that same year, Sir Francis Hopkins, a large land-owning magistrate who resided at his Rochfort estate, had been dining at the residence of another large landed proprietor, Col. Caulfield, when upon his return to his own residence two attackers fired up to fifteen shots at him but missed. In all instances the attackers seemed to be acutely aware of the movements of their intended victims, indicating their knowledge of local surroundings and their access to a wider network that aided them in pursuit of their goals. In the trial that followed the Hopkins attack, a tenant of his named Seery, whom he had recently removed from his estate, was found guilty and sentenced to death for the attack. However, some doubt remained about the guilt of the man as it emerged that Hopkins had rushed at his two attackers and a struggle ensued for a number of minutes before the men escaped. During the trial Hopkins had admitted that he knew the tenant well and had amicable dealings with him over the years yet when he was asked by police if he knew the identity of his attackers he denied it and it was not until the police presented Seery in front of him that Hopkins acknowledge it was he.³²⁸ Despite the flaws in the evidence, Seery was hanged the case demonstrating both the power of local élites and also the limitations on the power of their tenantry in such situations.

³²⁶ *Extracts made by Colonel McGregor from police reports stating the particulars of the principal homicides in Ireland in 1845 and 1846*, H.C, 1846 (179) xxxv.261.

³²⁷ Oliver MacDonagh, *States of mind: a study of Anglo-Irish conflict 1780-1980* (London, 1983), p. 40.

³²⁸ *Freeman's Journal*, 4 February 1846.

While attacks on landed élites and particularly magistrates were few, less than two per cent in the years between 1842 and 1846, nevertheless they were still viable targets of retribution if they transgressed community values or, as in many of the cases outlined, where there was a breakdown of the landlord-tenant paternal relationship. Attacks on estate workers, such as stewards, agents and rangers were far more prevalent than attacks on estate owners, with ninety recorded attacks between 1842 and 1846,³²⁹ though attacks of this nature can to some degree be considered retribution against the owners also, suggesting that attacks on élites were more frequent than the figures on their own indicate.³³⁰ McMahon has also noted that the killing of those gentry and their employees was often the end result of a sustained campaign of intimidation and violence. This cycle of intimidation and violence resulted in the death of the Clare Justice of the Peace and land agent, Pierce Carrick, in 1844 who received a number of death threats³³¹ through the post office before being murdered in 1846 for issuing ejectment orders.³³²

What the police returns for murders and attempted murders for 1842-1846 in the middle belt counties show is that life threatening attacks on labourers roughly stayed consistent, averaging about twenty a year. Attacks on farmers, which is assumed to mean middle to large farmers as the returns noted separately when a farmer was poor, grew from fifteen in 1842, to twenty-three in 1843, twenty-eight in 1844 and twenty-seven in 1845. However, of the 339 recorded murders or attempts of murder in the middle belt between 1842-1846 sixty-nine were on élites or the workers for élites, totalling twenty per cent of such attacks during the immediate pre-Famine years. In 1842 and 1843 fifteen of the total seventy-eight attacks were on élites and their workers. In 1844 this number rose to seventeen attacks from a total of eighty-nine. And in 1845 this number rose again to twenty-two from a total of eighty-eight.³³³ Thus, this evidence suggests that as the social conditions deteriorated in the lead up to the Famine, and élites failed to uphold their paternal duties, they and their workers were seen as legitimate targets of retribution.

³²⁹ *A return of all murders that have been committed in Ireland since the 1st day of January 1842, specifying the county and the barony of the county where such murder had been committed, the name and condition of the person so murdered*, H.C., 1846 (220) xxxv.293 .

³³⁰ McMahon states that one in five victims of murder in the pre-Famine were members of the gentry, their servants or their officials; McMahon, *Homicide*, p. 102.

³³¹ County Clare Constabulary to Dublin Castle, 15 December 1844. Chief Secretary's Office, Registered Papers Outrage Report 1844: 20333/5.

³³² County Clare Constabulary to Dublin Castle, 18 March 1846. Chief Secretary's Office, Registered Papers Outrage Reports 1846: 6997/5.

³³³ *A return of all murders that have been committed in Ireland since the 1st day of January 1842, specifying the county and the barony of the county where such murder had been committed, the name and condition of the person so murdered*, H.C., 1846 (220) xxxv.293 .

The most immediate threat to the autonomy of the local magistrates was the introduction of Stipendiary Magistrates. While most Justices of the Peace welcomed them into their county when local disturbances threatened their life or property, they were vexed that Stipendiaries outstayed the disturbances and had a say over local matters. Stipendiaries were sent into a neighbourhood because the local magistracy had failed to act and let crime escalate, and most early Stipendiaries were former Justices of the Peace and while there were some indications that relations on a social level were amicable, the local gentry were hostile to the incursions of central government into their paternal control of rural life through the appointment of Stipendiary Magistrates. However, when paternalism failed it was also not uncommon for the lower orders to take retribution into their own hands and many élites became targets of violent reprisal. While statistics show such attacks were relatively few in comparison to attacks on humbler elements within society, as the famine neared the social barriers that once prevented these attacks were crumbling and attacks on élites or workers connected to their estate began to increase.

Conclusion

This study has examined the role of magistrates as rulers of rural society in Ireland during the pre-Famine decades. By 1845 the landed gentry were clearly in difficulty. The economic downturn and in many cases the refusal of landlords to reduce their expenditure in the face of falling rents meant that many were on the verge of bankruptcy. ‘Even had the famine not intervened it is probable that by the late 1840s many of these landlords would have disappeared.’¹ However, landlordism did not decline with the famine as encumbered estates were merely absorbed into existing estates. The resulting emigration and death of many of the peasantry and small farmers, however, greatly reduced levels of agrarian crime, and tensions between landlords and tenants therefore subsided directly after the famine as a result of the vast reduction of the population. While the Irish administration had spent the first half of the century trying to reform the control of landed elites over rural affairs, successive governments failed to fully reduce their hegemony and the structures of agrarian society remained in place after the Famine. Though, as Huggins noted ‘land owning elites retained certain cultural hegemony, remaining as leaders of opinions despite the gradual replacement of the county oligarchy by a professional, centrally directed judicial and fiscal directed apparatus.’²

However, the post-famine gentry still largely maintained control of the local magistracy which, this thesis has argued, was a position of central importance to rural elites in pre-Famine Ireland. The aim of this thesis was to provide a comprehensive and systematic examination of the role of the magistrate in the pre-Famine decades, drawing, where appropriate, on case studies of various magistrates and their functions in both civil and public life. Because there has been no extensive study carried out on the pre-Famine magistracy in Ireland, Chapter One provided a precise definition of the role of Justice of the Peace in that period. Palmer maintains that the majority of ‘magistrates came from the lesser gentry, a level below the country elite.’ However, without concrete evidence of the landholdings of each magistrate any definitive statement on the class of the magistracy is debateable.³ However,

¹ Reily, ‘Land agents in King’s County’, p. 96.

² Huggins, *Social conflict in pre-Famine Ireland*, p. 60.

³ Palmer, *Police and protest*, p. 60.

this thesis has taken a more systematic approach to this question and argues that the split between lower, middle and upper gentry in the Commission of the Peace was deeper and wider than previously thought. This affirms what historians of the gentry and the magistracy in Britain have found, i.e. that magistrates were representative of a heterogeneous group bound together only by their belief in their right to exercise paternalistic rule over the countryside. The fact that these men were unpaid generally meant the government had no control over where, precisely, they operated within their respective counties. This resulted in a patchwork system, some parts of a county being over populated with magistrates such as East Limerick, and other parts, like West Limerick, experiencing the opposite effect and a severe shortage of magistrates. Both Garnham and Connolly note that the distribution of magistrates, or lack thereof, allowed criminality to flourish in eighteenth century Ireland and this thesis has suggested that this continued to be a factor in patterns of crime in rural nineteenth century Ireland, at least in the counties of the 'middle belt'. The natural landscape played a significant part in this and where better farming land existed, such as the area ranging from Castleconnell in Limerick to Newport in Tipperary, the numbers of magistrates was higher, but in the aftermath of the 1815 economic slump these same areas witnessed large-scale land clearances which often fuelled agrarian protest so that there often evolved a situation in which areas that were most manned by magistrates was also an area that recorded the largest number of crimes in a county. This was certainly the case in Queen's County in 1832 and highlights that in many instances it was the magistracy clearing their estates that off-set crime.

While this thesis has argued that the position of magistrate was central to the control of rural affairs, Chapter Two contends that the magistracy was often used less as a social control mechanism than as an individual's stepping stone to gain status and other influential positions in civil society. The use of government patronage to placate the gentry was a common practice throughout Britain in the eighteenth-century but was largely curtailed in England, Scotland and Wales by the nineteenth-century. However, well into the nineteenth century, Ireland remained governed by such practices which were, in fact, a major factor in securing the passage of the Act of Union and joining both islands together politically and economically. On a much more micro level, members of the gentry employed and sought local patronage as a way to gain positions such as those of Deputy Lieutenant or Sheriff of a county and once in these positions could appoint members of their family or friends to positions of authority within their county, more often than not to the magistracy. One

particular position that had a direct correlation with being a magistrate was sitting on the Grand Jury, which Crossman notes was the ‘most important local body in rural Ireland.’⁴ Besides its judicial responsibilities, the Grand Jury controlled the levying and administration of county cess, which was designated to be used for the implementation of improvements such as roads, bridges and public works and buildings. While many complaints of misuse of cess arose, the position afforded the gentry an opportunity to express their ‘natural’ paternalistic rule over rural society. In an agrarian society with very little opportunity for economic investment other than in land the chance for social advancement by landed elites was wholly dependent on their use of patronage, and this thesis argues that the position of magistrate was pivotal to any such advancement. As the personal finances of many landed individuals began to suffer due to estate mismanagement and lack of economic investment in an agrarian society, the position of Stipendiary Magistrate became a lucrative one for many landed individuals, particularly unpaid Justices of Peace who needed to supplement their income to maintain a gentry lifestyle. This thesis has suggested that the position of magistrate, like other such positions, was attained by extensive networking which was made far easier for those who first received a Commission of the Peace. Networking was also central to an elite way of life and social occasions like balls, banquets and leisurely pursuits such as hunting and cricket were all occasions that the gentry could use to build networks and retain social hierarchies. Some historians, like Curran, have touched on the practice of dining and balls as occasions to align families by arranging marriages: this thesis suggests that more sporting leisure pursuits such as cricket, hunting and horseracing performed a similar function. These pursuits, at the forefront of the gentry’s associational culture, owed much of their formulation and organisation to the local magistracy, so that many later sporting organizations owe their structures to the early efforts of magistrates in establishing local sporting clubs such as the Ossory Cricket Club. However, this thesis has also argued that the motivation behind the networking efforts of many individuals was to generate the right amount of cultural, political and social capital where economical capital was lacking. Thus, many middle to lower scale gentry who did not possess the same amount of economic wealth as the large landed gentry used cultural and social occasions to bridge this gap in order to aid social, political and civil advancement.

One of the major steps the administration in Ireland took to establish a more regulated form of law and order in the pre-Famine decades was the introduction of local courts of petty

⁴ Crossman, *Local government in nineteenth-century Ireland*, p. 25.

sessions. The insistence by government that Stipendiary Magistrates had to attend petty sessions regularly meant that the government had more regular updates regarding, and input into, local judicial practices which had previously been at the discretion of a local landed elite and more often than not also held on this individual's property. However, while the administration were making some inroads into the hegemony exercised by local landholders in pre-Famine Ireland, some of these same men were using the newly structured petty sessions to re-establish their dominance over their local domain. This was especially true for members of the middle and lower gentry across the middle-belt counties, particularly Limerick and Tipperary, who could now use petty sessions to exert and establish their own seat of authority over local rural affairs where previously they may have been denied this. Similarly, certain families, encompassing all levels of the gentry, also used petty sessions to either establish their local autonomy where previously it had not existed, or in the case of families such as the Masseys in Limerick, petty sessions offered a way to maintain a long standing tradition of civic service.⁵ Thus, while petty sessions were intended to offer the centralized government a window to undermine gentry power at local level, a large body of the gentry took advantage of the intervention of the central government to bolster their hegemony and identity at that same local level, since these courts ultimately reinforced the belief in their self-defined natural right to rule. What the magistracy and particularly the petty sessions really revealed was that the magistracy, as the ruling gentry, which were comprised of lower and upper gentry, with different political outlooks, was made up of a loose coalition of different fractions. Thus, a member of the lower gentry who was a Tory supporter could preside over a petty sessions with a large landed owning liberal and in the nineteenth-century these social and political differences set each individual very much at odds with each other as they represented completely different outlooks in life yet they were expected to work cohesively at petty sessions. Yet, as McCabe and McMahon have shown, petty session courts were used in large numbers during the 1830s and 1840s and have taken this as proof that the general population accepted the jurisdiction of petty sessions. Yet, this thesis has argued that throughout this period there was an equally high number of crimes of retribution and vengeance in nature, which suggests that while people may have viewed the petty sessions as a legitimate arena to seek justice in, communal values of justice still lingered and the pre-Famine was a period of dual codes of law and members of the rural public had to exist between both codes.

⁵ See Chapter 4.

The challenge to the paternalism of the landed magistracy was led by more than the central and increasingly centralising government. The continued rise of the middle classes, both economically and politically, also tested the gentry's traditional role in society. As the nature of landholding and the size of towns both began to change in the 1830 and 1840s, and as merchants and large farmers began to control credit, the middle-classes were able to exert some level of control over the lives of the peasantry and small farmers where traditionally this had been the role of the landed gentry only. This thesis has indicated how this tension also spilled over into the petty sessions and the paternalism of the magistracy was directly challenged by middle-class solicitors and attorneys representing the peasantry and local tenantry at quarter and petty sessions, in one such case it even led to the retirement from the bench of Standish O'Grady, a magistrate and judge from Limerick, who abused a solicitor who had challenged him at Quarter sessions. This, the introduction of Stipendiary Magistrates, many of whom were Catholic, and the further introduction of Catholic barristers and Crown Solicitors challenged the authority of the Ascendancy within these courts, they also gave the lower orders the confidence to choose the petty sessions to seek justice at a time when landlord/peasant paternalism was collapsing.

The historical analysis of the magistracy in pre-Famine Ireland to date has been scant but where the topic has been addressed the commentary has been largely negative and focused on the magistrates' failure to tackle agrarian outrage. This thesis suggests that it is important to go beyond that narrative to place the magistracy in their role as members of a wider community rather than just within their role as members of law enforcement. However, throughout this study and by examining the social, political and cultural lives of the magistracy the reoccurring themes suggests that the actions of the magistracy in many instances exacerbated the level and intensity of agrarian crime. Many historians, such as Lee and Eirikson, have used the economic model to explain the causes of agrarian unrest in the pre-Famine. Though the government largely recognized the failures of the magistracy, by not fully overhauling the position the government were also implicit in stoking agrarian disorder (or at least in not preventing it) and thus, the magistracy and the state were as culpable for agrarian crime as economic factors, or other such factors, were in the pre-Famine decades.

Appendix.

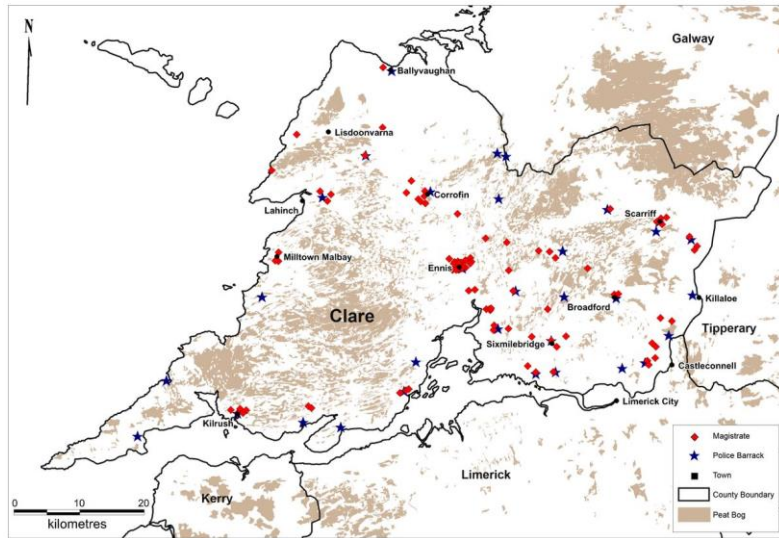


Figure 5: Distribution of magistrates in Clare.

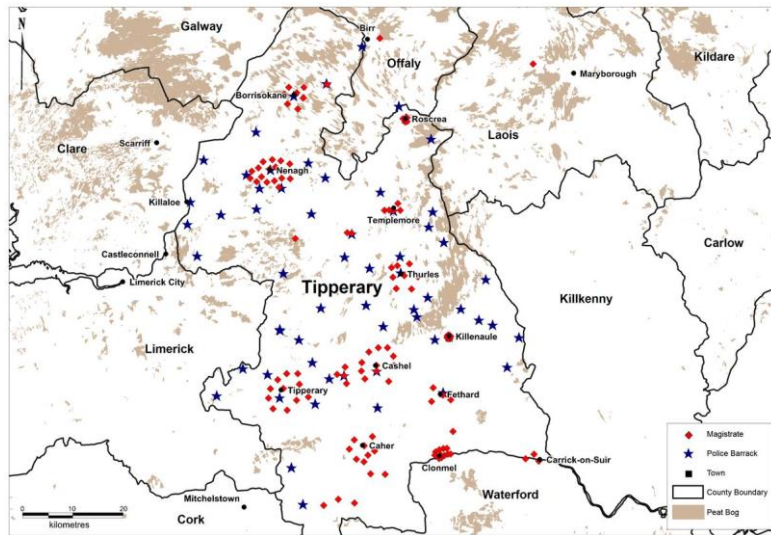


Figure 6: Distribution of magistrates in Tipperary.

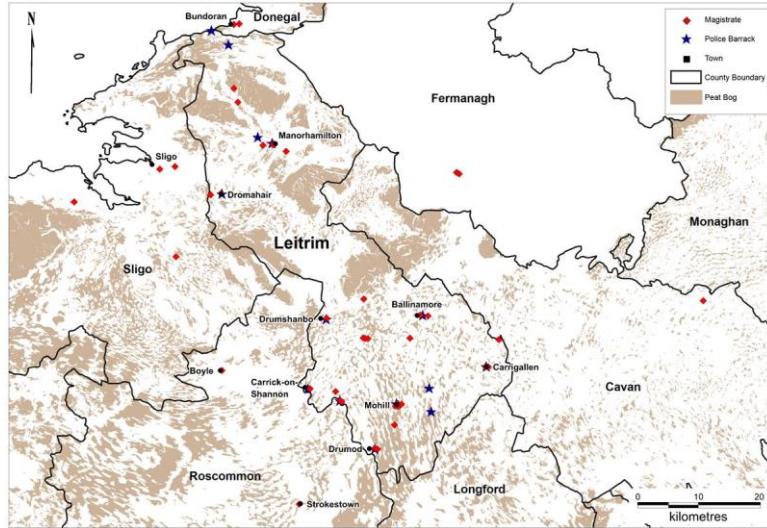


Figure 7: Distribution of magistrates in Leitrim.

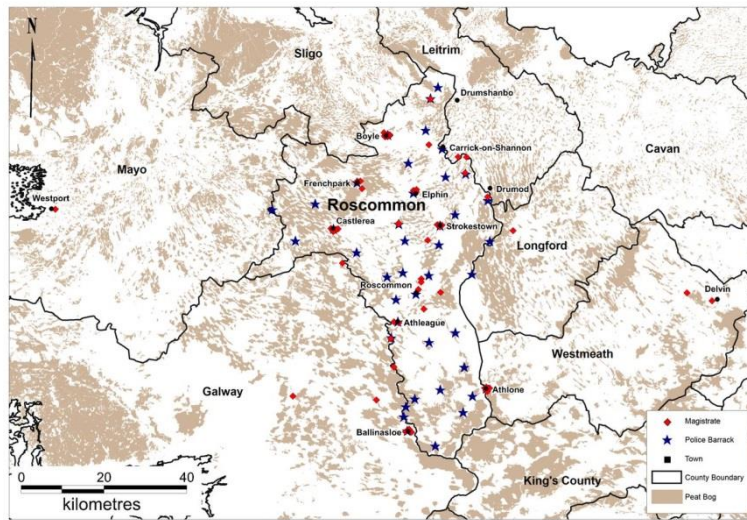


Figure 8: Distribution of magistrates in Roscommon.

Clare	King's County	Leitrim	Limerick	Queen's County	Roscommon	Tipperary
Sir Edward O'Brien	Arthur Marquis of Downshire	George Earl of Kingston	Lawrence Earl of Rosse	James Marquis of Ormonde	Marquis of W. Meath	George Earl of Kingston
Sir Hugh Dillon Massey	Lawrence Earl of Rosse	John Willoughby Earl of Enniskillen	John Earl of Clare	John Earl of Portarlington	George Earl of Kingston	Stephen Earl of Mountcashel
Lieut-Gen Sir Aug. Fitzgerald	Charles Earl of Charleville	Nathaniel Earl of Leitrim	Windham Earl of Dunraven	John Viscount de Vesce	Henry Viscount Dillon	Francis Earl of Llanduff
Maj-Gen Sir Edward Blakeney	Warner William Baron Rossmore	George John Viscount Forbes	George Earl of Kingston	Hon. Francis Aldborough Prittie	Robert Ed. Viscount Lorton	Richard Earl of Glengall
Maj-Gen Sir Thos. Arbuthnot	Viscount Oxmanton (Parsons)	Viscount Clements	Hayes Viscount Doneraile	Hon. Rev. Arthur Vesey	Viscount Forbes	Cornelius Viscount Lismore
	Lord Tullamore (C W Bury)	Hon. Rev. George Da La Poer Beresford	Cornelius Viscount Lismore	Sir Henry Parnell	Viscount Dunlo	Cornelius Viscount Hawarden
	Hon. Richard Westenra	Hon. Henry Howard	Henry Viscount Glentworth	Sir Walter Dixon Burrowe	Thomas Baron Hartland	Henry Baron Dunally
	Hon. Francis Aldborough Prittie	Sir Hugh Crofton	Hugh Baron Massey	Sir Robert Staples, bart.	George Baron Mountsandford	Hon. Francis Aldborough Prittie
	Sir William Cox		Eyre Baron Clarina	Sir John Harvey	Robert Baron Clonbrack	Hon. George Massey
	Sir John Harvey, knts.		Earl. Richard Fitzgibbon	Sir John Allen Johnson Walsh	Hon. Rev. Charles L P French	Hon Rev. T Cavendish
	Maj-Gen Sir Thos. Arbuthnot		Hon. Robert King	Hon. Lionel Dawson	Hon. Gonville French	Hon. Robert King
			Hon. George Massey	Sir Charles Coote	Lord Edward Crofton	Sir John Judkin Fitzgerald
			Hon. George William Massey	Hon. Lionel Prittie		Sir William Jackson Homan
			Lord Standish O'Grady	Hon. Henry Walker		Sir Henry Robert Carden, barts
			Hon. Willaim O'Grady			Sir Hugh Gaugh
			Sir Hugh Dillon Massey			Maj-Gen Sir Willaim Carroll
			Sir Edmund Waller			Peter Count Dalton
			Sir David Roche.			Sir Edmund Waller
			Sir De Vere Aubry,			

Figure 9: Peers, Baron and Honorifics holding a Commission of the Peace 1832.

Middle Temple	Edward O'Brien 1785 - Clare
Thomas Monsell 1783 - Limerick	Thomas Mahon 1808 - Clare
John Lloyd 1783 - Limerick	Samuel Bindon jun 1835 - Clare
Joseph Gabbett – 1788 - Limerick	William Pennefather 1784 - Tipperary
John Dickson 1789 - Limerick	Fredrick Thompson 1785 – King's County
Stephen Dickson 1791 - Limerick	Hugh Stafford 1819 - Roscommon
John Colploys 1785 - Clare	Robert Johnson 1788 - Leitrim

Gray's Inn	John Scott Vandeleur 1811 - Clare
John Creaghe 1791 – Limerick	Thomas Crowe 1828 - Clare
Richard Bourke 1796 - Limerick	Joshua Mennet 1798 - Tipperary
William Monsell 1799 - Limerick	Charles Cambie 1819 - Tipperary
Standish O'Grady 1810 - Limerick	Samuel W. Barton 1825 - Tipperary
Edward Blakeny 1810 - Clare	William Roe 1835 – Tipperary

Figure 10: Magistrates educated at the Inns of Court, London.

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Morning Post
Nation
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Nenagh Guardian
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Observer
Pilot
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