At Every Bloody Level: A Magistrate, a Framework-Knitter, and the Law

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In November 1806, Nottinghamshire magistrate Sir Gervase Clifton was visited at his house by one of his poorer neighbours, "a pauper of the village of Wilford." (Wilford is about three miles from Clifton village and Clifton Hall.) William Kirwin was attempting to sort out complicated domestic arrangements within the framework of the law that governed his family's life. He told the magistrate about his mother-in-law, a widow, currently living in Tollerton. "She is in a very distressed state," he said; he and his wife wanted her to come and live with them, "so that she may be better taken care of & kept from want." He had asked the Wilford overseer for permission to take her in but had been refused. The family had tried to help after her husband died: her son (with wife and children) had moved into her cottage on the understanding that "they would take care of her during her Life & allow her good victuals drinks firing & good cloathing." Something had evidently gone wrong with that arrangement, but we are not to know what, or how, as the entry in Clifton's notebook breaks off here (as is the case with many pieces of magisterial business he recorded). Kirwin was aware of local ratepayers and tensions between parishes in regard to their financial responsibilities under the old Poor Law: what he proposed would keep his mother-in-law from "troubling the … parish of Wilford," he said. She was financially independent, or at least on marriage

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she had "brought a many good with her & such as a beds & other goods." He knew that a justice of the peace was a point of appeal in the vast, complex edifice of ancient statutory law (poor and settlement law) that dictated the way he lived his life. We can discern something of William Kirwin's understanding of these matters from the fragmentary, incomplete account of what he said, and the strategies he used in telling his story; we can discern some of Sir Gervase's from the action he did not take in this case, and what he did not have his clerk record.[1]

Meanwhile, a few hundred yards from the Clifton Hall justicing room, the framework knitter Joseph Woolley wrote about a life lived in relation to law, in much greater detail and at greater length than the magistrate ever did.[2] What follows here is based on the fortuitous survival of two sets of documents concerning the same time and place, produced by two men from very different social circumstances. It is concerned with the legal understanding of a magistrate, of a working man such as Joseph Woolley, and of a pauper such as William Kirwin (and in the case of the poorer sort, such as Woolley and Kirwin, with the legal understanding of women too). Taken together—made to speak to each other as documents—the justicing notebooks and the framework knitter's diaries allow some understanding of how the law operated in everyday life at the turn of the English nineteenth century. Reading them together—a typical justice's notebook, and (in their survival) the less-typical working man's diaries—can serve to shift the focus of recent accounts of eighteenth-century law, and the preoccupation of its historians with the expansion of statute law and the criminalization of the poor. The larger project introduced here is to understand Joseph Woolley's understanding of his own life. Ideas of friendship and sociability were among his interpretive devices, for example. He took much from the novels and newspapers he read. The social historian can imagine disinterring his way of thinking under the structural headings of "work and labor," "sex and gender," "religion and society." But above all else, the law (as idea and practice) appears to have framed the way he knew himself and the society he inhabited; it certainly framed the way he wrote about himself and his neighbours.

Edward P. Thompson once reported that during his time as a historian of the English eighteenth century, he had encountered the law *everywhere*. "The law did not keep politely to a 'level' but was at *every* bloody

1. Nottinghamshire Archives (hereafter NA), Notebooks of Sir Gervase Clifton JP, M8050 (1772–1812), M8051 (1805–1810). Undated entries are referred to by the cataloguer's pagination. For the William Kirwin entry, M8050, November 17, 1806.

2. NA, DD 311/1-6, Diaries of Joseph Woolley, framework knitter, for 1801, 1803, 1804, 1809, 1813, 1815.

level," he said.[3] "The law" made up the self-identity of high court judges, and of the crowd at Tyburn cavorting below the hanging tree; it framed the animadversions of clergymen and magistrates watching the spectacle. Above all, the law "afforded an arena for class struggle;" in that struggle "notions of law were fought out." Here we can expand Thompson's version of "level" and "everywhere" to encompass not only the productive, and property, and affective relations he alluded to, not only the criminal law that the Tyburn crowd evoked, but also legal philosophy and the many ways that philosophy was interpreted for use in everyday life.

With *at every bloody level* Thompson employed a colloquial intensifier. He could have written "at every sodding level," which would have been ruder, and inflected his observation with some kind of demotic humour.[4] But *bloody* did the serious work of evoking the awful edifice of English law, the hanging tree, and the Bloody Code itself (the vastly increased number of offenses that came to carry the death penalty during the eighteenth century, including stealing horses, sheep, and rabbits, cutting down trees, forgery, arson, concealing the birth of a stillborn bastard child . . . and more). Thompson's words have done a lot of work in the world over the last 30 years; they underpin the different research agendas of social and legal historians and their sometimes conflicting accounts of law and society. Social historians have used *every bloody level* as a guide to understanding the experience of law in seventeenth- and eighteenth-century communities; historians of the law regret that social historians have made so many of their inquiries under the heading of "crime." They also note that whereas social historians have placed much emphasis on law as a central ideological component of eighteenth-century social and political life, they have frequently ignored everyday experiences of the law.[5] They speculate that this may be because the "pre-eminent . . . inspirational sources" for social history research remain "the classic studies of the 'Warwick school,' dating from the 1970s, which emphasized oppressive

3. E. P. Thompson, *The Poverty of Theory and Other Essays* (London: Merlin, 1978), 288–89.

4. Using "bloody level" may have been an aspect of his self-presentation (indeed, self-parody) as a doughty, down-to-earth Englishman, speaking truth (on this occasion) to the power of Continental Theory. The idea of "level" ridiculed in these passages was part of Thompson's attack on the structural Marxism of Louis Althusser. Bryan D. Palmer, *E. P. Thompson. Objections and Oppositions* (London: Verso, 1994), 118; Louis Althusser, *Pour Marx* (Paris: François Maspero, 1965); and *For Marx*, orig. pub. 1969 (London: Verso, 2005), 254–56. Also Jonathan Rée, "A Theatre of Arrogance," *The Times Higher Education Supplement* June 2, 1995.

5. Christopher Brooks, "Litigation, Participation and Agency in Eighteenth-Century England," in *The British and their Laws in the Eighteenth Century*, ed. David Lemmings (Woodbridge: Boydell Press, 2005), 177.

features of the administration of justice."[6] The classic texts referred to—*Albion's Fatal Tree, Whigs and Hunters*, Linebaugh's *The London Hanged*—were generated in the Warwick Centre for Social History, where Thompson spent his brief career as a university-based historian.[7] "Warwick school" history did not ignore popular "experience" of the law, although in its writing "experience" often meant *what was done to* those at law's sharp end rather than the legal historian's category of men and women who went voluntarily to law (and whose litigious activity may have declined in the first half of the eighteenth century). The subjects of the classic texts were those who were *interpellated* by the law. What happened to the poorer sort, in consideration of capital offenses, and the ordinary misdemeanors of everyday life for which they were brought into a magistrate's parlor on grounds of the Poor Law, or the law of master and servant, is what many social historians investigated as "crime" (or deviance). At the same time, social historians documented the resistance and rebellion of those people against the law, or their use of "law" against their masters.

Legal historians have been less interested in the criminalization of the poor; they have been (and still are) puzzled by what has been called "the great litigation decline" from the seventeenth to the eighteenth century. In the Tudor/Stuart period all sorts and degrees appear to have had "first-hand knowledge of legal processes and concepts."[8] Social historians argue that this kind of experience of the law led to a sense of community (local and national) and high expectations of good governance.[9] Personal experience of litigation gained in the sixteenth and seventeenth centuries may have empowered some participants by creating expectations that government was bounded by law and might be held to account if it failed to act accordingly.[10] But that experience declined among eighteenth-century

6. David Lemmings, "Introduction," in Lemmings, *British and their Laws*, 3–5; David Lemmings, *Professors of Law. Barristers and English Legal Culture in the Eighteenth Century* (Oxford: Oxford University Press, 2000), 1–9.

7. John Rule, "Edward Palmer Thompson (1924–1993)," in *Oxford Dictionary of National Biography* (Oxford: University Press, 2004); Doug Hay, Peter Linebaugh, John G. Rule, E.P. Thompson, Cal Winslow, *Albion's Fatal Tree. Crime and Society in Eighteenth-Century England* (Harmondsworth: Penguin, 1975); E. P. Thomson, *Whigs and Hunters* (Harmondsworth: Penguin, 1977); and Peter Linebaugh, *The London Hanged. Crime and Civil Society in the Eighteenth Century* (London: Penguin, 1991).

8. Lemmings, "Introduction," 8.

9. See, for example, Steve Hindle, *The State and Social Change in Early Modern England* (Basingstoke: Macmillan, 2000), 236–37; James Sharpe, "The People and the Law," in *Popular Culture in Seventeenth-Century England*, ed. Barry Reay (London: Routledge, 1988), 89.

10. Brooks, "Litigation, Participation and Agency," 155–81.

people; they, it appears, were far less willing to "go to law"—to defend their reputation, their local social and political standing, their property interests—than their ancestors had been.[11] Perhaps new forms of association in the new century, new kinds of self-disciplined social subjects, and newly available knowledge of the law spread by the print industry, can account for the "decline" in litigation. There were newer and cheaper ways now, of settling family, community, and employment disputes.[12] And far from declining, some forms of litigation actually increased in the eighteenth century, notably in property purchase and transfer, credit and debt, and tenant and landlord right.[13]

A small and discrete battle is waged in the interstices of recent social and legal history about the importance of statute law for historical reconstruction. Some suggest that it was in the ascendant during the eighteenth century, with efforts by the national authorities to impose uniformity on magistrates' administration of the law accelerating in the 1790s.[14] It is argued that by the end of the century, statute law was the dominant form of regulation. What magistrates did was exercise "low-law"—delegated parliamentary authority—over the laboring poor: "English magistrates were certainly instruments of a statutory regime," says David Lemmings.[15] Doug Hay has suggested that magistrates' low law was "entirely statutory."[16] There are accounts of eighteenth-century magistrates as agents of the central state. Some social historians have accepted that magisterial activity in this period was "local government at parliament's command."[17] Sir Gervase Clifton's notebooks and Joseph Woolley's dairies allow us to test out some of these modern propositions about the importance of statute law in

11. Wilfrid Prest, "The Experience of Litigation in Eighteenth-century England," in *British and their Laws*, 133–54; Brooks, "Litigation, Participation and Agency," in idem, 155–81; and W. A. Champion, "Recourse to the Law and the Meaning of the Great Litigation Decline, 1650–1750. Some Clues from the Shrewsbury Local Courts," in *Communities and Courts in Britain, 1150–1900*, ed. Christopher Brooks and Michael Lobban (London: Hambledon, 1997), 179–98.

12. Craig Muldrew, "From a 'Light Cloak' to an 'Iron Cage': Historical Changes in the Relation between Community and Individualism," in *Communities in Early Modern England*, ed. Alexandra Shepard and Phil Withington (Manchester: Manchester University Press, 2000), 156–79.

13. Brooks, "Litigation, Participation and Agency," 175–76.

14. Simon Devereux, "The Promulgation of the Statutes in late Hanoverian Britain," in *British and their Laws*, 80–101.

15. Lemmings, "Introduction," 2, 12, 16.

16. Doug Hay, "Legislation, Magistrates, and Judges. High Law and Low Law in England and the Empire," in *British and their Laws*, 63.

17. Gwenda Morgan and Peter Rushton, "The Magistrate, the Community and the Maintenance of an Orderly Society in Eighteenth-Century England," *Historical Research* 76 (2003): 75–76.

the working life of a provincial magistrate, and in the way one of his poorer neighbors experienced his administration of justice.

Contested views of eighteenth-century English law have necessitated new definition of terms. There has been much discussion of what "law" and "litigation" meant to contemporaries, and what those categories should mean to us, as historians. For a start, our modern categories of "civil law" and "criminal law" can have but little purchase on eighteenth-century experience, says Wilfrid Prest.[18] There have been strenuous attempts to distinguish "high law" from "low law," common law from criminal law, and to adumbrate the bewildering variety of courts in eighteenth-century England in which "law," whatever "law" was, might be found.[19] We have a set of distinctions between varieties of law (though as they overlap and partly obscure each other, it is difficult to use them in order to describe *experience* of the law in the past). "High law" was also "common law" (in legal historians' language). Common law principles and precepts such as trial by jury and the right of habeas corpus were promulgated by the judges in the high courts; therefore, in these typologies, common law was different from the "low law" used, sometimes with great uncertainty, by local magistrates in their provincial justicing rooms.[20] Discussing the statutory powers of magistrates in regard to vagrants, paupers, small-time thieves, and those breaking contract (workers reneging on employment agreements for the main part) Lemmings underlines Hay's argument that this kind of "low law" was "entirely statutory." It was law made by Parliament; it conferred jurisdiction on magistrates. Some of it was very recent (eighteenth-century) legislation; some of it had been enacted in remote medieval times. It has been said that the office of magistrate itself was inaugurated to put into effect the Statute of Labourers of 1349.[21] Five centuries' worth of parliamentary law was "enacted to make criminal, and punish summarily, acts which were not crimes at common law," says Hay. In this way "low law" was as ancient as the "high law," or common law, used in the central courts by the royal judges.[22] Common law was elaborated, reworked and administered by judges and professional lawyers at Westminster. The chief justice and his fellow judges had little to do with the low law that governed the lives of so many of the general population.[23]

18. Prest, "Experience of Litigation," 136.

19. We still do not know how many courts (borough courts of record, county courts, hundreds courts, manorial courts) were active. Prest, "Experience of Litigation," 138.

20. Carolyn Steedman, *Labours Lost. Domestic Service and the Making of Modern England* (Cambridge: Cambridge University Press, 2009), 172–98.

21. Hay, "Legislation, Magistrates, and Judges," 72.

22. Ibid., 64–65.

23. Lemmings, "Introduction," 14; Prest, "Experience of Litigation," 176; Doug Hay, "Dread of the Crown Office. The English Magistracy and King's Bench, 1740–1800," in

When they encountered low law (in Poor Law appeal cases forwarded from disputing parishes via a county court of quarter sessions, for example; or in the flood of appeals against the decision of local commissioners to tax the employment of a horse or a maidservant or the use of a powdered wig) the judges frequently took the opportunity to lambaste provincial magistrates for their want of legal knowledge. In the view of one chief justice, magistrates were incapable of proceeding with general legal principle in regard to the local cases before them.[24]

Eighteenth-century people complained about the law's obfuscating language and its inaccessibility almost as much as they complained about what it cost to go to law at any level, high or low. Therefore, we should not be surprised that in valiant modern attempts at definition and distinction, terms merge and categories combine into anterior ones. Perhaps it is a question of language: the language we use for understanding the past. Some closer attention to what eighteenth-century men and women meant by "law" (and "crime") is called for. We can move outside the parlors, justicing and court rooms, prisons and market-square hanging places, where historians have articulated people's experience of the law. We can do "the work that needs to be done, on the dissemination, reception and appropriation of legal thought" among high and low.[25] In this effort, we may have to refine our own language: use "experience" to mean something more than the social historian's deduction of it from a narrative of things that happened to long-dead people in relation to law. But we will not stray very far from a justicing room in respect of Sir Gervase Clifton, Bart (1744–1815), the Nottinghamshire magistrate previously mentioned. Several magistrates' notebooks from this period have been transcribed and analyzed. All of them cover much shorter periods of activity than Clifton's, but they have been deemed worthy of publication for their detail of procedure and determination.[26] Like Clifton's, they very rarely contain

Law, Crime, and English Society, 1660–1830, ed. Norma Landau (Cambridge: Cambridge University Press, 2002), 19–45.

24. Carolyn Steedman, "Lord Mansfield's Women," *Past and Present* 176 (2002): 105–43.

25. Prest, "Experience of Litigation," 177.

26. *Samuel Whitbread's Notebooks, 1810–11, 1813–14*, ed. Alan F. Cirket (Ampthill: Bedfordshire Historical Record Society, 1971); *The Deposition Book of Richard Wyatt, JP, 1767–1776*, ed. Elizabeth Silverthorne (Guildford: Surrey Record Society, 1978); *The Justicing Notebook of William Hunt, 1744–1749*, ed. Elizabeth Crittall (Devizes: Wiltshire Record Society, 1982); *The King's Peace. The Justice's Notebook of Thomas Horner, of Mells, 1770–1777*, ed. Michael McGarvie (Frome: Frome Society for Local Study, 1997); "The Justicing Notebook (1750–64) of Edmund Tew, Rector of Boldon," in *Publications of the Surtees Society*, Vol. 205, ed. Gwenda Morgan and Peter Rushton (Woodbridge: Boydell Press, 2000).

abstract cogitation on the law, for they were practical records, kept for administrative purposes.[27] Joseph Woolley's watching of the magistrate make Clifton's notebooks a more valuable source than they might be considered in isolation.

Woolley's dairies were also kept for practical purposes, to maintain accounts of his income and expenditure over several years; but the law—legal thought and language—entered Woolley's consciousness and conversation, and inscribed some part of his identity. This is to be expected perhaps, of a man who grew up and worked in a Midlands stocking-making community. Nottinghamshire framework knitters were highly conscious of the legitimacy of their trade—"recognized and chartered by a king and empowered to regulate itself"—and throughout the eighteenth century conducted labor and wage negotiations with hosiers and manufacturers in reference to the provisions of a 1663 charter of incorporation, to statute law, and to equity.[28] During the Nottinghamshire Luddite disturbances of 1811–1812, many local framework knitters wrote their anonymous letters, petitions, posters, and pamphlets in language that evoked legal writs and magistrates' warrants.[29] Woolley left no record of the extraordinary year 1811–1812, but in ordinary times he was deeply interested what went on in Gervase Clifton's parlor on justicing days, often reported on it, and frequently provided a detailed backstory not available from the magistrate's brief notes. When Woolley worked his frame in his home village of Clifton, the two men wrote in very close proximity: Clifton Hall stood next to the parish church at the west end of the village, which itself lay approximately half an hour's walk from the city of Nottingham. Woolley may have spent time in Sir Gervase's justicing room, as spectator, or accompanying neighbors and

27. See Anon., "The Journal of a Gloucestershire Justice, A. D. 1715–1756. Journal of the Rev. Francis Welles, Vicar of Presbury, Gloucestershire, and Justice of the Peace for the County of Gloucester, A. D. 1715 to 1756. Folio. MS," *The Law Magazine and Law Review or Quarterly Journal of Jurisprudence* 11 (1861): 125–42; 12 (1861): 99–126; 13 (1862): 247–91. Welles used his journal to think through points of law encountered at quarter session. The justicing notebooks of Thomas Parker, kept between 1805 and 1840, contain just one note of his legal thinking in the 653 items of magisterial business he recorded. Shrewsbury, Shropshire Archives, 1060/168–71, Justicing Notebooks of Thos. N. Parker, 1805–40. See discussion of Welles and Parker (and Clifton) in Steedman, *Labours Lost*, 172–98.

28. The Worshipful Company of Framework Knitters was incorporated in 1657. It was reincorporated and its privileges extended to the provinces in 1663 as "The Master, Wardens, Assistants and Society of the Art or Mystery of Framework Knitters of the Cities of London and Westminster and the Kingdom of England and the Dominion of Wales." Kevin Binfield, ed., *Writings of the Luddites* (Baltimore: Johns Hopkins University Press, 2004), 20–32.

29. Ibid., 47, 65–69, 71, 133.

friends, but he was never subjected to the law the magistrate represented, nor did he act as witness in any proceedings he or Clifton recorded. He was not at the sharp end of this law. But he took law into himself, and talked and thought about it. In the approximately 100,000 words he wrote in the six surviving diaries from 1801 to 1815, he used the word "crime" only once: about a local woman, a Dissenter, about whom the gossip was that she had aborted her child. In the course of a long tirade against all "meetingers or baptists" who cloaked hypocrisy with self-righteous religiosity, he was clear that he did not really know if she had taken "aney medeson to cause abdortion," but he was certain that Church of England people could not have gotten away with it: "then such a one as she would be the first that would Cry shame and say they was shore to go to hell for it was an unpardonable Crime but it is a verey Comon case for the kettle to Call the fryeing pan Black . . . which is Generely so with such Saints."[30] "Crime" (in the modern historian's meaning) did not have much salience for Joseph Woolley.[31]

Neither did the magistrate use the term "crime." Between 1772 and 1812, Sir Gervase Clifton recorded approximately 250 pieces of magisterial business, that is to say, as a justice of the peace, he itemized this number of incidents inquired into or dealt with, in some way or other. The majority of them were not "cases" (in the judicial sense, brought by one party against another); therefore, it is simplest to call them "incidents." It is not possible to be certain about the total of 250, as in the two notebooks, which were probably bound out of smaller ones and loose-leaf sheets, there are approximately twenty fragments of incidents—notes of names, for example—that do not fit with any of the longer entries. Somewhere, once, was possibly a much more detailed record in now-lost, unbound pages; records that reach the end of narratives that appear broken off *in media res* (such as William Kirwin's). Perhaps in his clerk's notes, there was once a complete account of what actually happened in regard to the 250 incidents, in documents signed and issued, and orders made. But this is speculation.[32] The notebooks were Clifton's own: he used them

30. NA, DD 311/5, March 1813.

31. Prest, "Experience of Litigation," 136.

32. Clifton's notebooks are unusual in not detailing the action he took. There are many deposits like his in the county record offices of England that have so far not been thought worthy of publication. But all of them, no matter how short, partial, and fragmented, detail what the magistrate *did* in the majority of cases. Berkshire County Record Office, D/ED 031, Papers of Robert Lee and William Trumbull as justices (the former acting in Surrey as well as Berks), 1735–1739; Lincoln's Inn Library, Misc. Ms.592. Manuscript Diary of Philip Ward of Stoke Doyle, Northamptonshire, 1748–1751; Warwickshire County Record Office, CRO CR300/36 Notebook ("Memorandum") containing brief entries of an unnamed Justice of the Peace in North East Warwickshire, 1761–1766; Wiltshire Record Office, 383:955, "Justice Book" kept by R.C. Hoare as a justice, 1785–1815; East Sussex

to make the occasional personal entry, or a note about the management and transfer of his own lands and estate. A careful copying out of the correct form of words to be used for "Deputation or Appointment of a Game keeper" was for his own purposes, "within my said manor of Clifton." The volumes also contain entries that were to do with his office as justice and the system he maintained, as when he copied out (or had someone else copy out) the Constables' Oath, the oath to be declared by one "who craves the Peace against another" (many Clifton people did crave the peace in this way, as we shall see), pro forma directions to the Land Tax collectors, and lists of tax surveyors. This kind of administrative material is located at the beginning and end of the two volumes, suggesting that in addition to cut-out and pasted-in sets of blank precedent forms showing eighty forms of procedure, and a list of warrants that might be executed by the constables, there was some attempt made at indexing. But it appears a haphazard record, made by different hands, odd sheets and pages from one notebook bound in the other, with random, incomplete entries, and many undated ones (this last probably is a function of separate bundles of papers having been bound after he the event).

Gervase Clifton came into the Clifton estate in 1766. He returned home from London with a wife, and to appointment as sheriff of Nottingham. (Much later, in 1793, he became deputy lieutenant of the county.[33]) Entered onto the Commission of the Peace, he attended his first meeting of quarter sessions in January 1770.[34] This was 2 years before he started recording his business as a single justice in the parish of Clifton. He attended twenty-four meetings of quarter sessions between 1770 and 1781, twenty-three of them before the death of his wife and one of his sons in 1779.[35] Similarly to most magistrates, he spent much more of his official life sitting as a single magistrate than he did in sessions. He was absent from the Clifton estate for the larger part of most years after 1779; therefore justice, or the opportunity for a good moan about the neighbors, had to be sought elsewhere by the aggrieved of Clifton,

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County Record Office, AMA 6192/1, Notebook of Richard Stileman of Winchelsea, JP, 1819–1827.

33. *Whitehall Evening Post*, November 29, 1796.

34. "Nottingham May 21," *St James's Chronicle & British Evening Post*, May 22, 1766; "Thursday, May 1," *London Chronicle*, April 29, 1766–May 1, 1766; "Wednesday," *Gazetteer & New Daily Advertiser*, February 16, 1766; and NA, QSM 1/29, Quarter Sessions Minute Books, Mich. 1767–Mids. 1773 (January 8, 1770).

35. "Deaths," *Lloyd's Evening Post*, September 10, 1779; NA, QSM 1/31, Quarter Sessions Minute Books, Mids. 1778–Epiph. 1782 (January 21, 1781).

Ruddington, Wilford, Glapton, and the wider district.[36] Clifton's last dated note in 1812 was a personal one. His notebooks suggest that his last sitting as a justice of the peace was in November 1810, although Joseph Woolley's dairies show him to have been active in February 1815, seven months before his death.[37]

This is far from a complete record of magisterial activity, but in its omissions and apparent confusions, it indicates something of Sir Gervase's thinking about the law he administered. The apparent unreliability of date order is possibly because of his (or his clerk's) attempt to group types of cases together for reference purposes; the pasted-in and handwritten indexes in both volumes suggest their function as portable reference books. He did carry them around with him: attending "the Norton Licence Meeting for Victuallers Sep 5th 8th 12th and 15th (1772)" he made a little doodle, but recorded none of the licensing business.[38] He had a pretty clear idea of what his records were for, and his stray personal jottings were very few in number.[39] The largest category of items dealt with his management of the Poor Law system. He recorded thirty-three settlement examinations over the years, always using the correct formula as in "The Examination of Joseph Fletcher Joiner touching his Settlement taken upon Oath before me Sir Gervas Clifton Bart one of his Majesties Justices of the peace in and for the County of Nottingham this 10th day of September 1772" (he did not always record the date).[40] Together with his general involvement with local overseers' maintenance of their parish poor (eighteen entries), unmarried pregnant women naming the father before him at the behest of parish officials, and men complaining about parish officers no longer supporting the bastard child they had taken on at marriage (nine entries), the Poor Law business in its broadest sense accounted for approximately a quarter of the entries (not of his activity as

36. Clifton spent his absences in London and Bath. His arrival in Bath was noted by the London and Bath press in 1780, 1782 (twice), 1787, 1788 (twice), 1790, 1791, and 1793. Woolley and his friends believed that he had picked up his new "Lady or other wis his hore" in Bath—"the daughter of poor parents but a very fine woman I am very Credditable informed that She is the daughter of a man that Came with Six oxen that Sir Gerves bought in Summersetshire these Severel years a Go … this man was Sartenly the father to the Lady … for a inkeeper told it to mr Langford when he was at bath and Thomas told it to me and said that he thaught that it was So for the man Cold tell him all the perticerlars about it and hir parents." NA, DD 311/3, September 1804.

37. NA, M8050; DD 311/6.

38. NA, M8050, 176.

39. A one-line reference to George Jardine, professor of logic and philosophy at the University of Glasgow (1774 to 1826); a recipe for making what looks leather polish; and a note about someone being at Eton College on a particular day.

40. NA, M8050, 7.

magistrate; we simply do not know how much of that was omitted). In 1784 (*probably* 1784) "John Smith laid an Information against the overseers of the poor of the parish of Lambley." Smith told about "having married a widow Burch with one child and they promised how good they would be to him if he would marry her. he married her and the overseers went and told the Justices it was a Bastard Child and upon that they Granted him but one shilling per week. but when it was set right by her of Lambley That it was born in Wedlock they Justices allowed him one shilling & sixpence and they now refuse to give him anything." The lack of date is probably an indication that nothing happened in regard to John Smith's complaint; that Clifton restricted his activity to hearing the man out, and recording what he said.[41] With parishes and overseers closer to home, he was occasionally more active. In November 1772 he heard the complaint of Hannah White "against the Overseer of the poor of the parish of Costock for not finding her work or an Allowance where with all to find … herself the necessarys of Life." He further noted that "She has had a Bastard Child and was removed from the parish of Wilford," and that he had "made an order upon the parish of Costock of 2s 6d pr week so Long as the Woman remained unable to get her own Livelyhood." Four years later he returned to the page to add that "there is nothing proseding in Whites afayrs."[42] In 1777 he heard from Sarah Pagett of Barton in Fabris that she had applied to the Barton overseers to relieve herself and her child "but that they have refused the same." He "settled to allow the Woman & Ch 1s 6d[?] per week and a Ton of Coals," noting that "she in harvest time Earns 3s 9d per week if she works a whole week."[43] Relations with rate-conscious overseers were displayed in the notebook. Transcribing what they said (and probably being seen to do so) was an important part of Clifton's negotiation of local systems of authority and a display of his own public persona, as with "John Butler of Clifton overseer of the Poor & Benjamin Deverill & Richard Morris two of the church wardens of the said parish," sometime in 1807. They told him about "Widow Giles a poor person belonging to [Clifton] … but now living in Barford … and whome the said parish Clifton pay the sum of Eight shillings per week towards the maintenance of herself and four or five small children." The parish officers considered "themselves very much burdened by such large allowance [and] are of opinion that there might be some means found to relieve the said parish of part of such heavy payment and at the

41. NA, M8050, 86. Lambley is approximately 12 miles north east of Clifton, on the other side of Nottingham.

42. Costock is 6 miles south of Clifton. NA, M8050, August 10, 1772; July 22, 1776.

43. NA, M8050, July 31, 1777.

same Maintain the said Widow Giles in such an ample manner as she now is."[44] These are the overseer's and wardens' opinions about Mrs. Giles' lavish lifestyle, transcribed verbatim. The notebooks were simply not a place for the deposition of Sir Gervase's opinion on the matters before him. He did once scribble in pencil on the blotting paper that separated the bound sheets that someone (it is impossible to determine who) was a "Loose Idle & Disorderly fellow but a Dangerous profligate one & one whose Evidence will never stand Good in Law nor who will ever have an Oath Adm[itted] in the County of Nottingham."[45] The statutes (the poor and settlement laws) required the use of pejorative language such as this, as in the designation "loose Idle and Disorderly" person, when the magistrate made an order or recorded an information. It was also used by "John Duffy Overseer of the Poor of Sutton Bonnington … who Says John Rose Labourer … a Pauper is very able to work and maintain himself and familly but instead of lives a loose Idle and Disorderly Life constantly beating and illusing his Wife and familly and causing the same actualy to become Troublesome and seek relief of the said Parish owing to entirely to his said Idleness."[46] In the notebooks, people appear to speak law unto law, but in fact, most legal language was attributed to them regardless of whether or not they had actually spoken it. When a man and a woman were recorded as saying that they were "poor and impotent and not able to provide for themselves and their children a Boy and a Girl," the words of a statute were attributed to them, as with Sarah Paget, discussed earlier, whether or not those were their actual words.[47] Language use is an uncertain guide to the legal understanding of someone in the past; but Clifton's note-taking can provide some limited insight into the way the law was used and understood in Clifton district, between the 1770s and 1815.

After Poor Law business, employment disputes made up the second largest category of entries. Here too, Clifton operated with statute law, some of it more ancient than the legislation governing the relief, maintenance, and sexual lives of the poor.[48] Clifton noted twenty-eight of these incidents

44. NA, M8051, 26.

45. NA, M8050 (blotting paper between two pages dated 1773).

46. NA, M8050, April 22, 1773.

47. Carolyn Steedman, "Enforced Narratives. Stories of Another Self," in *Feminism and Autobiography. Texts, Theories, Methods*, ed. Tess Cosslett, Celia Lury and Penny Summerfield (London: Routledge, 2000), 25–39; Alannah Tomkins, "'I mak Bould to Wrigt': First Person Narratives in the History of Poverty in England, c.1750–1900," *History Compass*, 9/5 (2011): 365–73.

48. For legislation governing labor relations from the medieval period onwards, Douglas Hay, "England, 1562–1875. The Law and Its Uses," in *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955*, ed. Paul Craven and Douglas Hay (Chapel Hill: University of North Carolina Press, 2004), 59–116. For eighteenth-century "law of master

over the years. Taken together with employment relations (and their breakdown) managed under the apprenticeship system (seven incidents) they made up approximately fifteen percent of his records. On the second page of the shorter notebook covering the period 1805–1810, an anonymous father (only anonymous because of the way the pages are bound) was reported as having been to "Thos Redferns house very Drunk." The father said that he had come to return the earnest money because "his Daughter had altered her mind and would not come to her place;" but Redfern said he never offered money of earnest in the first place. Clifton then noted that the daughter paid Redfern's expenses "and Satisfied [him] & was sett at Liberty they parted by consent."[49] The young woman had evidently changed her mind about working—in all likelihood as a domestic servant—for Mr Redfern. All parties believed that she had entered into a legally enforceable hiring agreement with him. Under the statutes, Clifton had no jurisdiction in the case of a domestic servant (as opposed to a servant in husbandry) refusing to come to her hire. But as contemporaries frequently remarked, magistrates did intervene in the domestic service relationship—"they do it every day"—and had been doing so since the end of the seventeenth century.[50] Nineteenth-century legal commentators thought that most eighteenth-century magistrates had behaved like Clifton: assumed the legal fiction that all servants come before them were servants in husbandry over whom they had some jurisdiction.[51] (Or perhaps the young woman really had been hired to work on Mr Redfern's farm.)

Therefore, Clifton did act with statutory powers that gave him "very wide discretion to prosecute acts which could be construed as criminal, in . . . poor

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and servant," see Simon Deakin and Frank Wilkinson, *The Law of the Labour Market. Industrialization, Employment and Legal Evolution* (Oxford: Oxford University Press, 2005), 62–63. The first modern master and servant legislation was enacted in 1747—"modern" in the nineteenth- and twentieth-century use of "Master & Servant" to describe a complex of laws regulating the employment relationship, and providing criminal sanctions against workers (not against employers) for failing to perform what had been agreed at the hiring. An act of 1758 extended jurisdiction to servants in husbandry hired for less than a year (31 Geo. 2 c. 11). 1776 saw legislation making it an offence for a servant to quit before the end of an agreed term. In 1823, after Clifton's time, came new crimes: absconding from work; refusing to start work agreed between two parties (4 Geo. 4 c. 90).

49. NA, M805, "Taken and made upon Oath before me this day of May 1805."

50. Hay, "England, 1562–1875," 87.

51. James Barry Bird, *The Laws Respecting Masters and Servants, Articled Clerks, Apprentices, Manufacturers, Labourers and Journeymen* (London: W. Clarke, 1799), 3; Thomas Walter Williams, *The Whole Law Relative to the Duty and Office of a Justice of the Peace. Comprising also the Authority of Parish Officers*, 3rd ed., 4 vols (London: John Stockdale, 1812), 3:893.

laws, petty theft, poaching, or breach of contract."[52] But was the low law administered by Clifton "entirely statutory"? In the Redfern case Clifton acted under no law at all (statutory or otherwise). In the case of domestic service, custom and practice, not just in Nottinghamshire but across the country, had evolved a system of adjudication fit for the purposes of everyday life. Moreover, Poor Law and settlement legislation gave parishes and quarter sessions disputing their responsibilities for the poor the common-law right of appeal to King's Bench. Clifton returned to one settlement examination he had held in January 1773, with the news (bad news for poor Henry Wells, a 70-year-old Leicestershire man married to a local woman) that it had been "Determined in KB No settlement in Ruddington."[53] Wells had worked in Ruddington as schoolmaster for the previous 15 years.

The domestic service disputes heard by Clifton have been discussed elsewhere.[54] They were a small proportion of the total employment incidents he noted, perhaps five or six of the twenty-eight. In Clifton's notebooks it really is very difficult to determine who was a menial servant and who a farm worker, either because all parties had an interest in believing that all "servants" were servants in husbandry, or as is more likely, because the nature of women's paid work in a predominantly rural area such as central Nottinghamshire rendered meaningless the distinction between husbandry and household labor.[55] In a single-servant household a maid did all sorts of work, indoors and out (although anyone would have recognized Sir Gervase Clifton's housemaids as housemaids, and nothing else). But Clifton Hall represented a tiny proportion of servant-employing households across the country. A more typical dispute occurred in 1807, between John Lonsdale, a butcher of Ruddington, and the three laborers he had hired to hoe the seven acres he had put down to turnips ("for the sum of Forty Shillings and a Quart of Strong Beer with what small beer they chose to drink each day"). The men "entered upon the contract and agreement," and received part of their wages having done only half of the agreed job "& . . . not . . . in a good and workmanlike manner." They had left the work unfinished and said they would "not compleat the said contract and agreement." John Lonsdale wanted a warrant issued out against them "to make them fulfill the said hiring as according to Law." It was now August 31. Procedures were not noted; but in

52. Hay, "Legislation, Magistrates, and Judges," 63; Lemmings, "Introduction," 14.

53. NA, M8050, January 21, 1773.

54. Steedman, *Labours Lost*, 172–98.

55. Griggs of Kelvedon, *General View of the Agriculture of the County of Nottingham, with Observations on the Means of its Improvement. By Robert Lowe, Esq. Drawn up for the Consideration of the Board of Agriculture and Internal Improvement* (London: C. Clarke, 1794), 2–23.

September Clifton returned to the page to note that the three men had agreed to complete the job and pay all expenses (for issuing a warrant, and a constable delivering it).[56]

Petitioners and complainants before Sir Gervase appear to speak "Law" and "the law," as when in 1775 Mary Hardy complained that "John Hardy her Husband beats abuses her and her child without cause or provocation and contrary to Law," or in 1779, when Ann Stevenson of Barton in Fabris said that John Stevenson had "assaulted her and kicked her over her instep without cause or provocation and contrary Law," or when Mary Elliot complained that on Monday June 28, 1784 when she went into the yard of the farm where she worked, William Roulston "took and dragged her by the Arm out of the yard and damed her and … struck her and kicked her over the leg and head and otherwise much abused her, contrary to Law."[57] But this was probably not what any of these people actually said (any more than a woman declared herself "poor and impotent"). This was a legal statement of their narrative; it was the form of language to be used on a warrant or a summons. When Clifton wrote "according to Law," or "contrary to law" in his notebooks, more often than not he appeared to have common law in mind: case law, or precedent, as developed by the judges through decisions of the central courts.[58] The handbooks and manuals he was likely to have possessed told him very clearly what was case law and what was statutory law. They listed offenses alphabetically ("Assault, what") and referred to the judgements providing key rulings on the matter, some of them very ancient.[59] The plain-speaking Shaw's manual from the 1750s announced a discussion of statute and common law on its title page, which many editions of Richard Burn's

56. NA, M8051, August 31, 1807.

57. NA, M8050, February 1775; December 28, 1779; and June 28, 1784. The Hardys had been this way before. Noted later in the volume was "March 28th 1774 John Hardy Stockiner for Misbehaving him self against his Wife & Child paid the Constable for the Warrant." NA, M8058, March 28, 1774.

58. Paul D. Halliday, *Habeas Corpus. From England to Empire* (Cambridge, MA and London: Belknap Press of Harvard University Press, 2010) emphasises case law over the heroic, immemorial story of habeas corpus (as the fountain of liberty and aligned with the Magna Carta) discussed by earlier legal historians.

59. Richard Burn, *The Justice of the Peace, and Parish Officer. By Richard Burn, L.L.D. One of His Majesty's Justices of the Peace for the County of Westmorland*, 8th ed., 2 vols. (London: A. Millar, 1764), 1:76. For law literature "in which legal topics were arranged alphabetically, and in which cross-references were the height of systematisation," Jean Meiring, "Conversations in the Law: Sir William Jones's Singular Dialogue," in *The Concept and Practice of Conversation in the Long Eighteenth Century, 1688–1848* (Newcastle: Cambridge Scholars Publishing, 2008), 128–50, esp. 130–32.

best-selling *Justice of the Peace and Parish Officer* did not.[60] However, within Burn's pages the distinction was quite clear, and discussion of it was extensive. It is true that during the course of the eighteenth century many offenses at common law were reiterated in new statutes that also defined new offenses, and even more statutes were passed specifying new punishments for existing common law offenses; later editions of Burn's *Justice* provided useful appendices listing statutes passed in the last session of Parliament.[61] But that was not how these practical guides presented the common law/statute law distinction to magistrates. Clifton is likely to have owned the twelfth edition of Burn: it was published in the year he started to record his activity as a justice of the peace (1772), and the pasted-in indexes at the end of his notebooks suggest he had this edition to cut up. The 1772 edition repeated the advice of the first: that "statute … doth not take away the common law, and therefore [a] party may … take his remedy by the common law;" and that where an offense was "antecedently punishable by a common law proceedings, and a Statute prescribes a particular remedy by a summary proceeding; there either method may be pursued, and the prosecutor is at liberty to proceed either at common law or in the method prescribed by the statute."[62] (There was much more advice in addition to this.) If a magistrate used a manual like this, he knew something of the wide latitude within which he could act. But in considering Clifton's uses of the law as detailed in his notebooks, "proceed" or "act" are not very useful terms. We simply do not know how often he acted in the 250 items or thereabouts that he recorded (or started to record). Only infrequently did he detail the signing of a warrant, or the issuing of a summons. But if we subtract from the rough total of 250 entries all those to do with personal matters, the administration and execution of his own office, his management of the local school, his dealings with collectors of rates and church levy, and the

60. Joseph Shaw, *The Practical Justice of Peace: or, a Treatise shewing the present Power and Authority of that Officer, … Compiled from the Common and Statute law*, 5th ed., 2 vols. (London: Thomas Osborne and Edward Wicksteed, 1751), Vol. 1. The last edition of Shaw omitted comparison between common and statute law: *The Practical Justice of Peace, and Parish and Ward-officer: or, a Treatise shewing the present Power and Authority of these Officers, …. The sixth edition, corrected and very much enlarged* (London: James Hodges and Edward Wicksteed, 1756). But it proceeded as before.

61. Richard Burn, *The Justice of the Peace, and Parish Officer. By Richard Burn, LL.D. Chancellor of the Diocese of Carlisle, and one of his Majesty's Justices of the Peace for the Counties of Westmorland and Cumberland. The fourteenth edition: to which is added an Appendix, including the Statutes of the last Session of Parliament (20 G. 3.) and some adjudged Cases.* 4 vols. (London: T. Cadell, 1780).

62. Richard Burn, *The Justice of the Peace, and Parish Officer*. 12th ed., 4 vols. (London: T. Cadell, London, 1772), 1:24.

fragments it is impossible to allocate to any one category, then we are left with 209 items that he could, and probably did, deal with "at law," or in the light of the law. Sixty-five percent (135) of these could only have been dealt with by statute, the category being mainly made up of Poor Law, settlement, and master and servant issues. The other seventy-four were cases of assault and (what would now be called) sexual assault, theft, damage to property, and threatening behavior (including verbal behavior). This is twice as much use of statute law as of common law, but the common law was on Clifton's mind to a greater extent than we have been led to expect from recent historical discussion of the statute/common law distinction in the English eighteenth century. It is not particularly useful for understanding Clifton's legal imagination (in so far as this is reflected in his notebooks). This is not to say that the distinction is useless, to either legal or social history, for it allows us to describe something that really did happen, legally and socially, during the eighteenth century. But Clifton did not make his notes as an instrument of a statutory regime; if he understood the low law he administered to be "entirely statutory," that understanding did not signify to him in the same way as it does to his historians.[63]

The justices' manuals attempted to categorize what was, in practice, uncategorizable. A 200- or 400-year-old body of "parliamentary" or "positive" or "statute" law was simply "the law" in what Clifton recorded. He sometimes wrote that an activity was "contrary to law" (probably when he signed a warrant, issued a summons, or ordered his clerk to draw up a bill of indictment). But he used the term "contrary to law" on a mere nine occasions, over 40 years. For two of these incidents, he was clearly acting under statute law: there was no other way he could have proceeded, when in January 1773 the Rempstone overseer of the poor complained against William Roper about "his having behaved himself in a bad and unbecoming manner … on the 19th [when] at night he turned his Wife out of his house and left her to the parish when he was in a parish house—and moreover refused to employ himself in work being appointed thereunto by the Overseers of … Rempstone contrary to Law." The Ropers' life was entirely bound up in the poor laws: how and where they lived, and their relationship one with the other, was inscribed by seventeenth-century statute law. Had Mrs Roper not been one of the Rempstone poor, and had she complained before a magistrate about her husband's bad and unbecoming treatment of her, then Clifton could have

63. Lemmings, "Introduction," 2, 12, 16; Hay, "Legislation, Magistrates, and Judges," 63. In "England, 1562–1875," 71–77, Hay uses Clifton as case-study of magistrates using master and servant legislation in the period 1608–1871.

thought about her difficult life in terms of the common law. In 1775, when Mary Hardy complained that "John Hardy her Husband beats abuses her and her child without cause or provocation and contrary to Law" then (if this had gone anywhere; it is entirely unclear whether or not the law was put into action on behalf of Mrs Hardy; this is a "fragment") then he could only have moved matters forward by means of the common law.[64] The Ropers on the other hand, were parish poor, occupying a parish house, with work-task imposed on the husband under the poor laws; there was no other way of hearing their story except by reference to statute law.[65] Two service/employment incidents in which Sir Gervase used the phrase "contrary to law" also indicate the admixture of common and statute law with which he operated. In 1784, when Francis Willis of Barton in Fabris complained about Thomas Wilson "leaving … before the Expiration of his Term and contrary to Law," then Clifton could have proceeded under 5 Eliz. c. 4, had this been a servant hired under its terms; or if it were possible to conceive of Wilson as a servant in husbandry; or under new statute law from the reign of George II. Legislation of 1766 had attempted to clear up confusions in the Statute of Artificers and to apply its provisions to a wide variety of trades by making it an offense for "any … person contracting for any time or times whatsoever" to quit before the end of the agreed term.[66] But the one-line, undated fragment suggests that Clifton did nothing, issued no warrant as the legislation said he might, and did not commit Wilson for three months as it also provided. It is not clear that he ever saw Wilson; or maybe something happened between Willis and Wilson, which may well have been provoked in the magistrate's presence, but not by "the law."[67]

In 1776, when servant boy William Thomas complained that his master Matthew Hale had beaten him (with a cart whip) "in a cruel manner without cause or provocation and contrary to Law," the older male servant who had sent him on an errand to the blacksmith's shop where the assault took place, gave the information. The boy was very young. They had both traveled some distance to tell the story to Sir Gervase, because they all lived, and the assault had taken place, at Granby, a village 14 miles east of Nottingham and Clifton. Burn's *Justice* (should Clifton have consulted it) was discreet on the question of "How far the master is allowed to beat the servant," simply referring the reader to the "books of authority

64. NA, M8050, 24.

65. NA, M8050, January 20, 1773.

66. 6 Geo. 3 c. 25 (1766); Deakin and Wilkinson, *Law of the Labour Market*, 63; Burn, *Justice of the Peace* (1772), 4:139–40.

67. NA, M8050, 122.

concerning the office of a justice of the peace," in this instance Dalton's *Justice* ("published in the reign of king *James* the first," as Burn pointed out).[68] There was no statutory law for Clifton to proceed under in a complaint of assault by one individual against another.[69] Assault was a very broad category within common law, which included physical attacks on others using weapons, implements, fists or other parts of the body; or holding up something like a pitchfork "in an angry or threatening manner." Some guides to the law advised that if a complainant had been terrified by gestures or shouting, then that might also be considered as assault at common law, although that was not Dr Burn's opinion.[70]

What might have occupied Clifton's magisterial imagination when he recorded the other four incidents as "contrary to law"? In 1781, a Bradmore laborer was accused of milking "one red and white cow the property of … George Dickenson without his leave or knowledge and to his great Loss & detriment and contrary to Law."[71] This was common law theft. The other three actions so named were assaults, as when John Winfield of Ruddington stated that two fellow framework knitters, displeased "at his doing … two dozen and half of Hose in so short a Time and [for] so little money colered him threw him down upon the Ground and otherwise assaulted him contrary to Law."[72] On blotting paper, the magistrate worked out what money was owed to whom and scribbled "proved." The common law assault Winfield complained about was transmuted into wage negotiation. The outcome of the common law assault perpetrated by William Roulston, mentioned previously, was recorded by Clifton (another indication perhaps, that when *no* outcome was noted, nothing happened within "the law" either statutory or common). "Roulston paid the Constable" (for the time involved in fetching him before the magistrate) and also paid "the said mary Elliott for her days work and it was dismissed."[73] In 1785, a male servant from Normanton on the Wolds came to Sir Gervase to complain about an alehouse keeper in Plumptree (Plumtree) "assaulting him … knocking him down and otherwise much Abusing him without cause or provocation & contrary to Law."[74] The

68. NA, M8050, June 30, 1779; Burn, *Justice of the Peace* (1772), 1:xiii; 4:120.

69. There *was* an enactment of 1766 that made it a felony punishable by transportation to assault someone in the street with the intent of damaging (and actually damaging) their clothes. 6 Geo. 3 c. 23 s.11; Burn, *Justice of the Peace* (1772), 1:107.

70. Ibid., 106. "Not withstanding the many ancient opinions to the contrary, it seems agreed at this day that no words whatsoever can amount to an assault."

71. NA, M8050, May 4, 1781.

72. NA, M8050, May 26, 1779.

73. NA, M8050, June 28, 1784.

74. NA, M8050, June 8, 1785.

term was also used in recording a Monday night incident in Gotham in November 1793, when a framework knitter had his arm broken by a blow from a heavy stick wielded by a Ruddington man. The context was riotous assembly: "a number of People in a Riotous and unlawful manner assembled in … Gotham at an untimely hour of the night namely about twelve oclock to the terror of the … town." An "unlawful, riotous, and unlawful assembly of persons to the number of twelve or more," *could* have been proceeded upon by Sir Gervase under statute law (the Riot Act of 1715) had he known about the incident in Gotham, and had he been there. But 1 Geo.1 c.5 was not at issue here. Under common law, riot happened when three or more people assembled together to do something unlawful, and then did that unlawful thing. But neither common-law nor statutory-law understandings of riot were evoked here. Someone had been assaulted during a street brawl on a Saint Monday-night.[75]

How significant is this language use? Clifton used the term "contrary to law" (or had his clerk or amanuensis use it) when he was making reference to common law much more than he did when referring to statutory law (at a ratio of two to seven). But surely the point is that he used the term infrequently and that on some of the occasions detailed previously, he may have been recording the words of the overseers, "poor," framework knitters, farm servants, wives, husbands, and street brawlers standing before him? And the recorded words of these people—if that is what they were—are no certain guide to their own understanding of law, statutory or common. In the ten statements or thereabouts that Clifton heard about indecent assault, improper sexual behavior, and assault with an intent to commit a rape, he did not (in writing) evoke the law.[76] And Clifton did not use the phrase on the half dozen occasions or thereabouts when local people came before him to swear the peace against neighbors and workmates who had verbally assaulted them, as did Penelope Maltby of Gotham against Dorothy Smith and Ann Maltby for "calling her names and abusing her when she was going quietly about her business." Mrs Maltby said that she was "afraid … lest they should do her some injury."[77] In 1807 (*probably* 1807; this is in the short second notebook), when Clifton examined Elizabeth Hallam

75. Richard Burn, *The Justice of the Peace, and Parish Officer … Continued to the present Time by John Burn …* 18th ed., 4 vols. (London: B. Cadell, 1793), 4 (no pagination; "Riot, Rout &c"). Woolley described a similar incident in Dalby in June 1804 after being thrown out of the alehouse; the keeper and his wife "were Glad they Got shut of us." NA, DD 311/3, June 29, 1804.

76. Indecent offense was an offense (at common law) established during the eighteenth century. It was codified, and made a statutory offense in 1861 in the Offences against the Person Act.

77. NA, M8050, April 30, 1772.

and Ann Riley of Wilford about their claim that another woman had "called them both Names and will not let them live peacable & quiet in their Habitation and is of generally repute amongst her Neighbors of behaviour ill Towards the Inhabitants & particularly in behaving ill Towards [them]," not only did he not evoke "the law," but he also failed to name the woman in question—she is just "She"—a sign perhaps that he thought this a matter outside any legal framework.[78] (One magistrate, publishing yet another guide for his brethren in 1781, thought that most of the cases brought before them were "hardly reduced to, or determined, by any rule of law."[79])

Clifton used the word "statute" on only two occasions over the 40 years covered by his notebook. In 1773 he referred to game legislation from the reign of Charles II when he heard a complicated, and evidently delicate, case dealing with with rangers (one under Lord Chesterfield, one the gentleman ranger to Sir Charles Sedley), keepers, and their dogs. But even here, with new, modern game laws raining down thick and fast upon the magistrates of England, it was the common law that preoccupied the magistrate.[80] "Now" mused Clifton, "there are no particular Laws proper to a Chace alone for all offending in a Chase are punishable by the Common Law and not by the forest Law or any other Law proper only and peculiar to a Chace … A forrest in its nature is the Highest franchise of Princely pleasure and next to that is a Liberty of a free Chace … ."[81] The other mention of the statutes was in the same year, when a local husbandman had one of the geldings drawing his cart along the turnpike road seized and put into the charge of the Ruddington constable. The informant (a man from Derbyshire) claimed that under recent legislation, the horses were too many for the cart, and the cartwheels "greatly under the breadth and Gage of nine Inches contrary to the Statute." Under 7 Geo. 3 c. 42 "any person" could seize or distrain the horses and harness for their own use, if they noticed them and the illegal wheels.[82]

78. NA, M8051, 33.

79. Ralph Heathcote, *The Irenach: or, Justice of the Peace's Manual. II Miscellaneous Reflections upon Laws, Policy, Manners &etc &etc. In a Dedication to William Lord Mansfield. III An Assize Sermon Preached at Leicester, 12 Aug. 1756* (London, privately printed, 1781), 188. In what sense was an assize sermon equivalent to a justices' handbook as a guide to magistrates? Heathcote was a Leicestershire clerical magistrate; the *Irenach* was not a conventional handbook. All three items included in the volume offered a meditation on Christianity and the everyday operation of the law. His own, 20-odd year old assize sermon was equally dedicated to the guidance and Christian education of his fellow magistrates.

80. Burn, *Justice of the Peace* (1793), 2:256–345.

81. NA, M8050, 17–20. This is one of Clifton's more extended pieces of writing; he was personally involved in these questions.

82. NA, M8050, April 27, 1773. Henry Allcock of Doverridge, Derbyshire was certainly chancing it. Dr Burn greatly liked this 1767 statute. It repealed all highway and turnpike

There was "a clear and explicit effort by the authorities at the national centre to impose a significant degree of uniformity in the local administration of the law" by promulgation of the statutes, especially from the mid-1790s onwards.[83] But Clifton's notebooks suggest that the workaday records of a single justice like him are not a particularly good source for discovering a magistrate's consciousness of this development. Clifton *used* statute law to a high degree, because the incidents he recorded were subject of ancient poor and settlement laws and even older labor law. When not dealing with employers and employees, and poor and overseers, he mainly dealt in terms of the common law. The distinction between common and statute law is not very useful in disinterring this particular magistrate's legal imagination; indeed Clifton did not possess a legal imagination in the way that Joseph Woolley was forced to possess one, for Woolley was pressed by the exigencies of his own life and experience into imagining (thinking about, telling stories about) the law.

The Clifton framework knitter has much more to say on these matters, and his uses of the law—practical, imaginative, and linguistic—are much easier to discern, because of the kind of records his are, and the way in which Woolley wrote. Woolley's surviving diaries are from 1800, 1803, 1804, 1809, 1813, and 1815, although he often recorded events from the preceding year, and even earlier, in a new volume. "Joseph Woolley his book of memorandums for the year 1801" typically opened with notes on a drunken gathering, a funeral, much gambling (bets laid on men racing, or carrying heavy loads up the stairs of a local pub) and thefts from local barns and fields, all taking place in December 1800, and accounts of money owing Woolley, one debt stretching back to 1796.[84] He was probably close to 30 years old when the 1801 diary opens.[85] He may well have observed the everyday life of the law and Sir Gervase's long magisterial career in the last decade of the old century, but as it is, the two records coincide for a mere 6 years, during which Woolley made thirty-six entries concerning the magistrate. His diaries are particularly useful for tracking Sir Gervase's movements between London, Bath, and Clifton Hall. For example, there is no other way of knowing that in August 1801 "Sir Gervas Clifton Came from London to Clifton for the Shooting season," or that in the spring of 1804 "William quinton had a fall of Wood but

legislation "which was before greatly confused," and codified it anew very neatly. Burn, *Justice of the Peace* (1772), 2: 354, 378–79.

83. Devereux, "Promulgation of the Statutes," 81.

84. NA, DD 311/1, 1–4.

85. He was most likely Joseph, son of Samuel and Elizabeth Woolley, bap. Clifton, 7 March 1773. NA, PR 3847, Clifton Parish Registers, 1573–1944.

he did not fell it because Sir Gerves was so Long before he Came from London," or that in 1812–1813 Clifton was absent from his estate "verey near Eleven months."[86] The last three of Woolley's entries about Sir Gervase concern his final illness, death, and burial.[87] He recorded Clifton's activities as a land owner, landlord, and employer: his swearing in of tenants, his discharging of them, his sacking of servants.[88] Clifton people dreamed about Sir Gervase in his aspect as a landlord, as well they might.[89] There is an entry concerning the magistrate's personal and sexual life, as noted previously, and a series of detailed entries about the new rector of Clifton (also confusingly called "Clifton," although no relation to Sir Gervase's family). The Reverend William Clifton was "presented to the rectory by Sir Gervas Clifton barent of Clifton" in 1803, and very soon fell out with his patron (and every other inhabitant of Clifton, according to Woolley).[90] Woolley described several occasions on which Sir Gervase took the side of local people against him (or that is how Woolley interpreted what Clifton did).[91] In 1804, the magistrate made his way as negotiator between George Harpham, Wilford butcher (and one of his tenants), the Rector, and a Wilford gentleman, on the question of Sunday observance. He may have had statute law (from the reign of Charles I) in mind, and perhaps also ecclesiastical law. And there were common law considerations as well: statute law had been adjusted by a judgement of 1739, on the grounds that an indictment against a butcher exercising his trade on a Sunday had not been against the form of 3 C 1 c. 1, and that doing so "was no offence at common law." Or so Dr. Burn's *Ecclesiastical Law* would have informed him, had he possessed a copy.[92] According to Woolley, when the Rector ordered the butcher to

86. NA, DD 311/1, 144, August 31, 1801; DD 311/3, 118; DD 311/5, January 8, 1813.

87. NA, DD 311/6, April 17, September 26, October 4, 1815.

88. NA, DD 311/2, April 19, 1803; DD 311/3, 99. "Henerey Allin arived at Clifton from London he was turned away from is place for Being too free with the Cooke or as people say he was Caut with hir in such a place as was no Credit to them it had Been sospected that they was more kind to Each other than they aught to bee before they left Clifton but they was not Caught till they was in London and then Sir Ger Gave poor harey a Bill of shifts." DD 311/5, January 8, 1813.

89. NA, DD 311/3, January 1804: "a remarkable dream that was dreamt one night in Clifton John rue dreamt that Sir Ger Clifton would turn him out of his cottage."

90. NA, DD 311/2, September 17, 1803. "The Rector was in no way related to the family, for his patron met him by chance at an inn, and offered him the vacant living, partly no doubt on account of his name." Rosslyn Bruce, *The Clifton Book (Nottingham)* (Nottingham: Henry B. Saxton, 1906) III.

91. NA, DD 311/3, October 6, 1804, and 161.

92. Richard Burn LL.D., In *Ecclesiastical Law. By Richard Burn, LL. D. . . . The sixth edition; with notes and references by Simon Fraser, Esq. Barrister at Law*, 4 vols. (London: T. Cadell & W. Davies, 1797), 2:412–13; John Strange, Sir, *Reports of adjudged*

stop Sunday deliveries of meat to Clifton, Harpham responded that as long as "other butchers did he should;" moreover he had seen another butcher's lad "coming up to Clifton with meat on a Sunday morning and he asked him whear he was a Going with it and the boy told him that he was a Goin to parson Cliftons." Hypocrisy exposed, "the old parson [was] So angre that he Called him a Sorsey fellow and told him that he would tell Sir Gerves Clifton and So he did." Sir Gervase's first move was to go "owr to harphams and order … [him] not … kill aney more meat if he did he would turn him out of the farm." (It was Harpham's son who did the delivery run.) The intervention of Mr Deveral of Wilford may be what influenced the magistrate to give the butcher "Leive to Go on as he did before onley he must not Send meat to Clifton on a Sunday morning." As far as Woolley was concerned, the satisfying conclusion was that "the old parson Cold not have is will." We can add another category of law to Sir Gervase's armory, at the same time noting that he exercised neither statute, common, nor ecclesiastical law here, and that he was not in his justicing room when he did any of this. Perhaps he acted briefly as a magistrate when he ordered the Harphams to stop Sunday deliveries, and then withdrew the order. He acted out of local knowledge and a fine assessment of community and neighborly relations (and out of his growing dislike of the great interloper he had lodged at the Rectory). By some stretch of the social historian's imagination we could see Harpham's assertion that he was going to go on doing what he did as long as others did, as a statement of common right, or at least, custom and practice; but this was not a proclamation uttered to Sir Gervase (at least, not that we know of) and it was not what appears to have influenced him in his final decision to allow the butcher to go on as before; only not to bring the makings of Sunday dinner into Clifton before the end of morning service.

Joseph Woolley wrote about Sir Gervase operating in his justice room (or somewhere in Clifton Hall) on seven occasions. It is unlikely that the diarist was present: he wrote what had been told him by some third party. Only one of these events features in the magistrate's own notebooks, when in October 1804 Thomas Wooten of Clifton reported the loss of a £1 note "on or about Whitsunday," some four months before, saying that he suspected that it had been picked up by Gervas Aram Jr., also of Clifton.[93] Sir Gervase was told some of the backstory: he heard about a September conversation in the local pub and the Barton man who, in his cups, asserted

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Cases in the Courts of Chancery, King's Bench, Common Pleas and Exchequer, from Trinity term in the second year of King George I, to trinity term in the twenty-first year of King George II …, 2 vols. (Dublin: privately printed, 1756), 1: 702.

93. NA, M8050, October 8, 1804.

that Aram found and kept the note. But Woolley knew far more: about the three days of drinking at the Clifton feast that broke the secret of the missing bank note, Aram's wavering story about where he had found it ("Sir Ger questening him Several times over"), and how many pockets it had lodged in between June and October. "Sir Gerv Cold make nothing of them [all]," remarked Woolley, and "So it Ended."[94]

It would be helpful to know whether the magisterial matters noted by Woolley but not by Clifton were entirely at random. The natures of the two sets of notebooks make this very difficult to determine, not least because Clifton's entries were made contemporaneously with events (they were written "to the moment," to use eighteenth-century literary terminology), whereas Woolley appears to have written during gaps in his working year (he made up his accounts weekly, in a section set aside for that purpose).[95] As a writer, he remembered what had stood out for him over the past month, or past year; his own writing provided him with the means to reflect on events and he used the past tense. He used narrative form and storytelling devices, and often showed himself attempting the telling of a good tale.[96] The entries concerning the magistrate were remembered because they interested him, or he had heard a compelling story in the pub, or because he knew the people involved. Woolley started the missing bank note story dramatically, with "October the 8 there was a Justising match between thomas wootten … and Gerves aram juner about the finding of a pound note Some time this Spring." But this turned out not

94. NA, DD 311/3, October 8, 1804.

95. There are arguments to say that all self-writing (letters and diaries as well as autobiography) should be analyzed historically in the light of Samuel Richardson's discovery of the possibilities of epistolarity in the late 1740s. He claimed that in *Pamela* (1740) he had invented a new form of writing—"to the moment." Joe Bray, "An Historical Approach to Speech Presentation: Embedded Quotations in Eighteenth-Century Fictions," *Poetics, Linguistics and History: Discourses of War and Conflict. Proceedings of PALA XIX, Potchefstroom University, South Africa*, *March 1999*, Published for PALA by the Oxford Text Archive, 546–56, http://www.pala.ac.uk/resources/proceedings/199 Woolley had read Richardson: "I read the following books out of Suttons Libbery pamela or virtue rewarded." NA, DD 311/1, April 12, 1801.

96. Woolley read widely. He clubbed together with his friendly society to buy a weekly newspaper. He bought, borrowed (from Sutton's Library, Nottingham), and read, novels. Most of them were in the later established canon of English literature, including Richardson's *Pamela* (1740) and Fielding's *Tom Jones* (1749). He made a note of "Lackington and Co booksellers finsbury Square London" in the first extant diary. For Lackington and his bookshop, see Michael Mascuch, *Origins of the Individual Self. Autobiography and Self-Identity in England, 1591–1791* (Cambridge: Cambridge University Press, 1997). Woolley's raucous accounts of drinking, swearing, and (other men's) whoring remind *this* reader very powerfully of another "comic epic poem in prose," that of Henry Fielding. See Note 102.

to be the game that "match" suggests. Two days later Woolley recorded that on "the 10 of October Gerves aram received a discharge from Sir Gerves Clifton to turn out of is place if he did not turn is Son out on account of that note of Wootons."

In August 1804 Woolley reported on a gleaning dispute between Clifton women. It had come to a very high level of verbal abuse ("the other began to say that she was as big a lier as any in the town and agererv ated hir as much as possable till they began to Call one another anames and scrutinis Each others Carecters . . . [one] being very innoyed she Called . . . [another] a damd Stinking bitch wich the other thought was a Cant name for a hore . . ."). Martha Price went to Sir Gervase for a warrant "but he Granted her a Summons to Come in the next morning." They all arrived with the deputy constable and a full complement of witnesses. According to Woolley "Sir Gerves Clifton Examined first one and then a nother and he Cold make nothing of eney of them;" the constable was of the opinion that "one was just as bad as the other so he said he found that it was nothing but a field tattle." The magistrate determined that one of the women "was the agresser [and] Said that she must Give . . . [the constable] a Shilling for the Summonse wich she did." "[W]eather they were better friends than they were before I don't know," wrote Woolley; they were certainly told not to bother the magistrate again–"not to Come there on aney Such arend again." Clifton put the law into process; he acted as a magistrate on this occasion; but this incident was not recorded in his notebooks,[97] and we can discern the law occupying Martha Price's imagination: she wanted a warrant issued against Sall Page; she got a summons. On this occasion, the justices' manuals would not have been very helpful to either her or the magistrate. Dr Burn told magistrates that he did not find it "any where clearly settled, how far slander, or scandalous words are cognizable before justices of the peace;" in any event, this was clearly an example of the way in which "the common people are wont to call one another knaves, and rogues, and whores . . . I do not find it asserted by any good authority, that justices of the peace have any jurisdiction at all in such matter." He thought that a prosecution in the spiritual courts, or by an action upon the case at common law, might be appropriate.[98] Martha Price took matters as far as she could, and it cost her. It is highly likely that she knew what "slander" was, that she had suffered it, and that it was cognizable at law, although her reporter on this occasion did not use the term.

In the autumn of 1804 magisterial and village relations with the Reverend William Clifton reached their nadir. There was the Sunday

97. NA, DD 311/3, August 22, 1804.
98. Burn, *Justice of the Peace* (1772), 4:183–84

trading trouble. There was trouble with the Rector's gardener who, when he left service, had taken with him a clothes box provided by Mrs Clifton, believing it to be a gift. "[T]he old parson fetched a warrant for him and would have trans. Ported him if he Cold has done but he [the gardener] had too many friends … [the Rector] Could doe nothing."[99] This troubling affair "was settled before Sir Gerves Clifton." Woolley noted this; the magistrate did not. Then on October 6, "a parsel of the top of the town wimen and John oldham went to ask Sir Gerves Clifton to Let the rode that the old parson ordered to be to be stopt up to be opened again." Blocking the pathway had made travel time to fields and the main road much longer for Clifton people. They "told their tale" to the magistrate; he asked the old man "how Long he Cold remember it being a road and John told him that it had been a road for eighty years to his noledge and Sir Gerves said that it Should be a road still and ordered the old parson clifton" to have the contractor stop work. And therefore "the old parson was forst to unstop the road … he Cold not have is will in that but was Got over with a few old wimmen," wrote Woolley. He listed the women's names in a triumphal roll call.[100] The magistrate was active in the everyday life of Clifton during this month. He heard about an incident at Nottingham Goose Fair. After a day of slow sales at their cheese stall, Dolly Hoe sent her husband home to Clifton to do the milking while she stayed on. Taking a break, she found him down at Daykin's gingerbread stall treating a little crowd of Clifton women to plum pudding; "she called him all to peces and them an all and all the way home." There her husband knocked "hir down in the floor and beat hir well and made hir too black Eyes and abused hir in So bad a manor that She Lay by about a fortnite before she was able to doe aney thing." On this occasion no one went to Clifton Hall; rather "Sir Ger Clifton Got a hearing of it and Swore George about it and told him nobody beat their whives but tailors." Man-to-man, he called Hoe "a marey old rogues and rascal for obeying his Whife in such a manner and Georg to Excuse him Self said that he only did it for a bit of funn but the other Said that if he had a mind to have had a bit of funn with the wimmen he need not have beaten is whife in to the bargean": it made him look "Like a Coward." Woolley thought that "George cold not stop is wifes tongue without a good hiding beat and I believe he did not start it then So Georges bares it with patence." On this occasion extreme violence in everyday life was managed by the denigration of tailors (weak and unmanly men) and the cross-class knock-about comedy of marital relations, shared by Clifton, Hoe, and Woolley. And yet, the

99. NA, DD 311/3, September 29, 1804.
100. NA, DD 311/3, October 6, 1804.

magistrate did send for George and did intervene, according to Woolley.[101] The way in which Woolley told this story of domestic violence and Clifton's intervention, may suggest that he saw the law as a source of entertainment rather than a cultural construct. On the other hand, comedy *is* a form of social and cultural analysis. Woolley, for one, had the chilling hilarity of Henry Fielding's many scenes set in justicing rooms to guide his writing of this one. He had recently purchased *Tom Jones* (1749) and on the evidence of his storytelling style, actually read it.[102] And so too, perhaps, did Hoe and Clifton know both *Tom Jones* as well as the story of domestic abuse enacted in the Punch and Judy show.

From Woolley's account, we can surmise that Sir Gervase was more active as a magistrate than his own notebooks reveal; and that he managed community and domestic relationships in Clifton and environs in the interstices of common and statute law, and with assumptions about cultural and sexual norms shared with his poorer neighbours. His own official record of magisterial business appears to have been largely confined to poor and labor law business (statute law) and to questions of assault and theft in which his common law remit was clear. But according to Woolley, he did not record all his activity under statute law. "Sept the 29 [1803] thomas hardy was taken before Sir Ger Clifton," noted Woolley; "and he wrote his mittermus because he would not marry moll robbins but when he found he must Go to prison if he did not marry her he Confessed and he was taken to Langfords [the Coach and Horses public house] and he was guarded by William morley and henery holmes." Efforts to get a marriage licence from Nottingham failed "without hardy Going [himself] So hardy and his too Guards went in the afternoon and Got one."[103] In October 1805, Woolley described how Sarah Waldram of Gable Row, Clifton, swore a child to William Bradley. Sir Gervase gave the Clifton deputy constable a warrant, and he went over to Gotham where Bradley was working, "took him … and braught him to Clifton and kept him in hold at Langfords that day and night." In the morning Bradley was escorted into Nottingham in an attempt to get a licence (this was to be another knobstick wedding). Bradley was under age: the licence could not be granted without his father's consent. Woolley described in detail fetching the father, who at first refused to give his consent unless the parish paid for the licence; he saw his son "almost to the prison door before … [he] Gave is Consent … So they went and baught the Lisance and Come home and maried them on Satuarday the 1 after having him in hold for too days and too

101. NA, DD 311/3, October 2, 1804.
102. "pd for 3 vol of the history of tom jones." NA, DD 311/3, October 13, 1804.
103. NA, DD 311/2, September 29, 1803.

nights."[104] None of this is in Sir Gervase's notebook, perhaps because after he had issued the warrant, the affair went into another jurisdiction; perhaps because a page detailing it was lost, or not bound in the volume; or perhaps because there was never a record in the first place. Perhaps these incidents were not recorded by Clifton because he knew that he was not supposed to conduct settlement or bastardy examinations as a single justice, and about the scandal attaching to forced pauper marriages.[105] In *Tom Jones* the narrator remarks of an irregular bastardy examination with a forced marriage in prospect that "a lawyer may, perhaps, think Mr [magistrate] Allworthy exceeded his authority a little in this instance. And, to say the truth, I question, as there was no regular information before him, whether his conduct was strictly regular. However, as his intention was truly upright he ought to be excused … since many arbitrary acts are daily committed by magistrates, who have not … [his] excuse to plead for themselves." The magistrate-novelist Henry Fielding may thus have explained the absence of these two incidents from Clifton's pages, and the manner in which Woolley wrote about them.[106] However, that could not have been the reason for another incident mentioned by Woolley but absent from Clifton's notebooks. In 1815, he issued a warrant at the request of a local couple for the arrest of a gardener they suspected of poisoning their poultry. "Some time in feb Joseph Cartwright had some of his Hens and is Cock poisoned," wrote Woolley. "He laid it to a person that did Mr Lamberts Garden and the man Being Inecent He sent them a Lawyers Letter and the Cartwrights went to Sir Ger Clifton for to show

104. NA, DD 311/3, October 10, 1805; W. P. W. Phillimore and Thomas M. Blagg, *Nottinghamshire Parish Registers, Marriages* (London: Phillimore, 1905), VII:112, "Sarah Waldram m. William Bradwell October 12, 1805, Clifton, Nott."

105. Keith Snell, *The Parish and Belonging. Community, Identity and Welfare in England and Wales, 1700–1950* (Cambridge: Cambridge University Press, 2006), 136, 143–44 for settlement examinations before single justices, and men "cajoled into marriage by the parish."

106. See Note 102 for Woolley and *Tom Jones*. The examination of Moll Seagrim by Justice Allworthy occurs in the first volume (Book Four, ch. 11) of the edition that Woolley is most likely to have purchased: Henry Fielding, Esq., *The History of Tom Jones, a Foundling*, 3 vols, (London: T. Longman, B. Law & Son and 14 others, 1792), 1:156–57. Other magistrates were as pragmatic as Clifton appears to have been about statutory limitations on their powers. In April 1751 Northamptonshire JP Philip Ward heard the complaint of a local watchmaker that his apprentice had assaulted him. "I granted a Warrant agt the Apprentice to be brought before Me but it seemed to me upon second thoughts that I as a single Justice can neither punish him upon s. 21 of 5 Eliz c. 4 nor upon the 4 s. of 20 Geo.2 c. 19. but concealing my want of power I had the words of the Statute read over to him and he immediately desir'd he might be admitted to ask his Masters pardon upon promising never to offend more and so was forgiven." Lincoln's Inn Library, Misc. Ms. 592. Manuscript Diary of Philip Ward of Stoke Doyle, Northamptonshire, 1748–1751.

him the Letter and have his advice about it and Sir Gr Granted him a warrant to have him up." After the gardener had been committed, it "Come out" that the man "had Laid some posison for the rats and they had not Eat it and He swept it up and threw it upon the Dung hill and it being spread upon the Bread and butter the hens Eate it." The hens had been poisoned by accident. It was a serious business, as Woolley remarked: if the Cartwrights "Could have transported the man they would." As it was they "had all the Expences to pay … a deal of money and Sarved them Rite."[107] But the best explanation for Woolley's noting events that Clifton did not record, is that Clifton's volumes are made up of randomly collected, selectively bound notes from many years of magisterial activity. What is not in them, and is in Woolley's, is arbitrary and a matter of chance.

Woolley always knew what he thought about the operation of the law in his locality: its fairness of application, who won, who lost, who got their just deserts, and when a magistrate had behaved inappropriately. It was "a very Scandelous thing … to fetch a warrant for Such a trifling thing," he wrote in November 1801, at the end of an interminable story about a holiday fight that had gotten out of hand ("the day apointed for a hallarday and to be Commemorated by making … fires and Shooting we had one at Clifton").[108] Clifton's opinion on the law he exercised is, on the other hand, much more difficult to discern. Few magistrates keeping records like his described the reasoning behind the determinations they made, or stated why they had or had not issued a summons or a warrant, or sent someone to the house of correction; but doing so was not unknown.[109] Eighteenth-century legal philosophy provides some guide to Clifton's silence and Woolley's verbosity on matters of law. In 1769, the legal theorist John Taylor contemplated questions of character and identity in relation to public officials and private (ordinary) people. The "Persona … or Character, of a Magistrate, Guardian, etc." was different from that of father and son, for example. For the public official operating in social life, a persona was analogous to a stage performance—"a character to put on and off; a convenient Method of Considering, an useful Way of Conceiving, such or such a Citizen, in order to carry on the Business of the Public more advantageously." But that persona had nothing to do with, did "not enter into the Legal Notion of his Real Circumstances or Condition." On the other hand, being in the relationship of father and son, or master and servant, or landlord and tenant was "something intrinsic in regard to the Circumstance and

107. NA, DD 311/6, February 1815.
108. NA, DD 311/1, November 5, 1801.
109. See Note 27.

Operation of the Law."[110] The law shaped the relationships and identities of ordinary men and women, but the legal office of magistrate was something performed by Clifton. The "real" Sir Gervase, his character, feelings, convictions, and opinions, are not to be found in the performance, in life or in the writing of it. In role, he conducted the business of the law. Clifton functioned as a type of patrician, so that there is nothing much to say of his character or personality or life history when compared with Woolley's. Woolley *made* his identity, in writing of his own experience and that of his friends and neighbors. Experience of the law was part, but not all, of this process of self-fashioning. Clifton on the other hand, was already made, already fashioned.[111]

Woolley frequently wrote law's language; legal formulations and phraseology were used to record many happenings in and around Clifton, and far beyond that small world. Four pages into the first extant diary from 1801 he chronicled the previous year in this manner:

> December the 10—1800 mr hopwells barn was broken open and Stole … a sertain quantity of weat in the Chaff and Caried away by some persons or persons unknown it is suposed to be caried away With a horse … the said horse was tracked to the brook bridg which Sir G Cliftons Coach road goes over but no further as I understand mr hopwell bids five Guineas reward for aney one that will impeach and if too or more be Concerned and on[e] will impeach the other he shall have is pardon and the same reward and to Guines."[112]

He did not like to write what he was not certain of, and noted dodgy sources. Of a street brawl in February 1801 after the [night] watch had knocked a man down "and broak his head in a very Shocking manner," he wrote that "I am told that he blead 2q of blood but I don't believe my informer."[113] He used the formulation "by some person or persons unknown" throughout all six volumes; he frequently began a narrative with "as I am informed"/ "as I understand." He did not often reveal the

110. John Taylor, *Elements of the Civil Law*, 3rd ed. (London: Charles Bathurst, 1769), 407–8.

111. On the relationship of patrician "honour" to plebeian "honesty," see Michael McKeown, *The Origins of the English Novel, 1600–1740* (Baltimore: Johns Hopkins University Press, 1987), 131–75. For the modern idea of personality or character evolving in regard to the poorer sort's honesty as formulated by their employers in testimonials, or "characters," see Bruce Robbins, *The Servant's Hand. English Fiction from Below* (Durham, SC and London: Duke University Press, 1993), 27. For the self-narratives (autobiographies) demanded of the poor in magistrates' courts, see Steedman, "Enforced Narratives."

112. NA, DD 311/1, December 10, 1800.

113. NA, DD 311/1, February 7, 1810.

source of his information, and if he forgot where he had heard particular details, he said so. He used the wording of depositions and informations ("the Said Belton"); he wrote of proceedings before Clifton as someone at home with legal vocabulary and procedures, as when "Thomas hardy was taken before Sir Ger Clifton and he wrote his mittermus because he would not marry moll robbins but when he found he must Go to prison if he did not marry her he Confessed."[114] He knew what magistrates in quarter sessions could and could not do as well as he knew about Sir Gervase's remit in justicing room.[115] He thought frequently of local people's canny use of the law and the different magistrates they approached in the hope of having it work to their advantage, and their many disappointments in this regard.[116] Reading his long and convoluted accounts of fights and brawls and drunken trashing of ale houses, is often like reading the valiant attempts of Clifton to keep track of who said what to whom in a harvest field, who called whom "a dirty stinking bitch," and where, and whose wound had bled so copiously over the town street the night before. "The said Mary Merrin," and "on Tuesday last past at Wilford aforesaid" are the practical attempts of the magistrate (or clerk) to keep control of uncontrollable narratives. They were (and are) low-level techniques of writing universally practiced by legal personnel, to make narrative coherence out of inchoate reported experience; to keep track of who is doing what and saying what to whom, so that some intended audience (present or in prospect) can work out what is going on in the story. The interesting insight of Joseph Woolley's diaries is not that he may have learned this way of managing his writing from the experience of listening in the magistrate's parlor (that is not known), but rather that the long stories he heard while working at his frame, or walking with his hose into Nottingham, or drinking down the Coach and Horses, or in more dignified inebriation at the meeting of his friendly society, were structured in the way of all stories—including legal stories—in early nineteenth century Nottinghamshire. In his writing, and in the dialogic relationships of everyday life that his writing records, the law inflected what Woolley thought and said, and how he said it. This was not the way Sir Gervase Clifton wrote, either in his justice's notebooks, or in the vast

114. NA, DD 311/2, September 29, 1803.

115. NA, DD 311/4, May 1809.

116. NA, DD 311/5 records two Clifton women setting off to Nottingham one February Saturday to get a warrant against a man who had badmouthed one of them; perhaps Sir Gervase was not at home. They "thaught to have Got a deal of money" out of the man—at least two guineas and the price of a new gown—but Nottingham magistrates found the older woman's "Caracter … so bold … Caut … [her] in so maney lies that they would not believe aney thing she said." She "was disapointed," said Woolley; she saved face by saying that "they did not whant to hurt [the man]… onley to humble him."

archive of his management of land, profit, and family name.[117] And we have no letters (except for those signed menacingly, by his solicitors, "From Your Landlord"), or other private writing of his, to allow consideration of these two men on more equal terms. There were fewer levels, in, or about, Sir Gervase for the law to *be in*. In Woolley's life and writing, the law really was "at every bloody level."

In modern discussion of working people's legal consciousness, a wedge has been driven between the law as a pre-existent system of meanings, and law-consciousness as those people's patterns of language and action, derived from their own understanding of how the law works.[118] Legal-consciousness scholars have framed their enquiries (as have social historians) by the binaries of power and resistance, hegemony and counter-hegemony. But as Woolley's evidence suggests, there are other schemas to employ for the legal and social history of eighteenth-century England, so that law is not a pre-existing structure out of which subjectivities are made and stories told, but rather *is* the story itself. Social historians' binary categories of "statute law" and "common law," and their accounts of resistance to both by the poorer sort, have not been of much help in disinterring the meaning of law to Joseph Woolley. And unsurprisingly, the distinction which has helped so many of us retrieve the experience of life, labor, and law among the poorer sort of eighteenth-century England, provides no window onto the legal thinking of Gervase Clifton: there was no reason for him to note which type of law he was using in his brief and truncated notes, and for the main part he did not do so. Perhaps we must abandon the hard and fast distinction between types of law, and consider more how contemporaries understood the nature and provision of law in everyday life: consider "law" as a way of thinking.[119] That approach may well

117. Seventy-two boxes and forty-six volumes hold the Clifton family and estate papers—correspondence, deeds, manorial records, political papers, and accounts from the twelfth to twentieth century. University of Nottingham, Manuscripts and Special Collections, Clifton of Clifton. Cl A and Cl E are informative on Clifton's relationship with his tenants and the solicitors who managed them, for example Cl A 572/1–3; 572/2/1, "Solicitor's Accounts 1810–1812."

118. Jean Comaroff, *Body of Power, Spirit of Resistance. The Culture and History of a South African People* (Chicago: University of Chicago Press, 1985); Sally Engle Murray, *Getting Justice and Getting Even. Legal Consciousness among Working-Class Americans* (Chicago and London: University of Chicago Press, 1990); and I. Idit Kostiner, "Taking Legal Consciousness Seriously: Beyond Power and Resistance," paper presented at the annual meeting of The Law and Society Association, Chicago, May 2004, http://www.allacademic.com/meta/p116866_index.html

119. Halliday, *Habeas Corpus*, 90 discussing the distinction drawn for early modern England between equity and common law remarks that "equity, as away of thinking about the nature and provision of justice, infused common law."

retrieve much more of the "low" in eighteenth-century life than it does of the "high." But to complicate matters and to frame further investigation, we must add yet more categories of law to the account. Clifton's use of property law makes up his vast archive of estate management and consolidation; it spills out into his magistrate's notebooks, as observed previously. Employing at least two firms of solicitors, land agents, managers, and gamekeepers in this endeavor, *he* had no need of the handy contemporary guides to the law of landlord and tenant.[120] Joseph Woolley on the other hand, may well have found statements of law as it related to framework knitting very useful.[121] The Law of Framework Knitting was statute law, recently stated, and it underpinned every reckoning he made of the number of stocking shapes he knitted, what he paid for their seaming, the price he received for them, and outgoings on frame rent. The law of framework knitting was extensive; it governed each move Woolley made in his working life.[122] On the evidence of his notebooks, Sir Gervase had nothing to do with this law, only noting the distant echo of its transgression, in a knitter's broken arm, or a report of blood on the town street outside the Coach and Horses. Both men were silent in 1812, on the dramatic incursion of statute law into the everyday life of workaday Nottinghamshire. The Nottinghamshire Luddite Disturbances of 1811–1812, the twenty-nine stocking frames broken in Clifton and Ruddington one late January night, the full weight of statutory law marshalled against the rioters in the Framebreakers' Bill, do not feature in the writing of either man.[123] Sir Gervase was not at

120. John Paul, *The Laws relating to Landlords and Tenants … With considerable Additions and Improvements, from the Reports of Sayer, Burrow, Blackstone, Lofft, Douglas, and the Term Reports, both in the King's Bench and Common Pleas …*, 8th ed., (London: W. Richardson and G. G. and J. Robinson, 1795).

121. Burn, *Justice of the Peace* (18th ed., 1793), Vol. 2, no pagination, "Frame work Knitters;" Bird, *Laws*, 66–67; Williams, *Whole Law*, 3:280–81; William Toone, *The Magistrate's Manual; or, A Summary of the Duties and Powers of a Justice of the Peace. To which is added a copious Collection of Precedents of Summonses, Warrants, Convictions, &c* (London: J. Butterworth, 1813), 164–65; Gravenor Henson, *The Civil, Political and Mechanical History of the Framework Knitters in Europe and America* (Nottingham: Sutton, 1831), 257–425; and Stanley D. Chapman, *Hosiery and Knitwear. Four Centuries of Small-Scale Industry in Britain, c.1589–2000* (Oxford: Oxford University Press, 2002).

122. Binfield, *Writings of the Luddites*, 20–32.

123. Malcolm I. Thomis, "Luddism in Nottinghamshire," (London and Chichester: Thoroton Society Record Series, Vol. XXVI, 1972); and Christopher Weir, "The Nottinghamshire Luddites: 'Men Meagre with Famine, Sullen with Despair,'" *The Local Historian* 28 (1998): 24–35. The classic account of Luddism in Nottinghamshire and elsewhere remains E. P. Thompson, *The Making of the English Working Class*, orig. pub. 1963 (Harmondsworth: Penguin, 1968), 472–575. Also Binfield, *Writings of the Luddites*, 19–32, 69–166.

home, and therefore could not appear in the local press as he had during the great hunger of 1800 when there were also riots at Clifton, promoting the fixing of corn prices during the crisis.[124] Woolley's diary for 1812 (if he kept one that year) has not survived. To make the silence of 1811–1812 speak may be possible; it is a technical silence, to do with the absence of certain types of documentation for a short period of time. What we have learned from the absences in Clifton's and Woolley's commonplace writing may help disinter the uses of law in extraordinary times.

124. Corporation of Nottingham, "Corn Riots: Town Clerk's Correspondence," *Records of the Borough of Nottingham, Vol. VII, 1760–1800* (Nottingham: Thos. Forman, 1947), 394–404; "Letters from Nottingham," *Lloyd's Eve Post* and "Riots," *Morning Herald*, September 12, 1800; "Riots at Nottingham," *Morning Post and Gazette*, September 13, 1800; "Riots," *Bell's Weekly Messenger*, September 14, 1812.