

CENTRE FOR GENDER AND DEVELOPMENT STUDIES
The University of the West Indies
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**The Rite of Domination:
Tales From Domestic Violence Court**
© Mindie Lazarus-Black

Working Paper No. 7
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EDITORIAL NOTE

The Working Paper Series of the Centre for Gender and Development Studies attempts to encourage scholars and activists in the field of gender and development studies in publishing work in progress. While it naturally invites the work of established scholars, it is also geared for students who are beginning to write and formulate ideas and new areas of research in gender and development. In addition, the series also intends to maintain linkages between intellectual work and practical activities being carried out by women and men in gender related fields.

The Working Paper Series is a cross-campus initiative for the Centre for Gender and Development Studies, which has teaching and research units located on each of the campuses of the University of the West Indies.

The Rites of Domination: Tales from Domestic Violence Court

Abstract

The term “rites of domination” refers to events and processes that occur regularly in and around legal arenas and explains why everyday activities at the courthouse reproduce rather than eliminate hegemony. It also queries why reform of prevailing structures of domination is so difficult to achieve. My focus is the implementation of domestic violence legislation in British and British-inspired legal systems. While they may differ in detail, these laws aim to protect victims of abuse at low cost and in a timely fashion. Yet, researchers report that everywhere victims fall through the cracks of the system by failing to pursue their cases, actively withdrawing applications for protection, or going to trial but failing to win protection orders. My research seeks to understand why this is the case. It is based on my ethnographic work in the lower courts of Trinidad and Antigua and comparative ethnographic studies of the lower courts of England, the U.S., and Jamaica.

Introduction

Most broadly, my research addresses the following question: Why is it that, in spite of new legislation designed to help subordinated peoples obtain their rights - such as children in need of child support or victims of domestic violence - research reveals that in practice very little changes as a result of that legislation?¹

We are all familiar with the popular example of “dead-beat dads”, who avoid paying their child support, and mostly get away with it. Perhaps less familiar to you are the features of domestic violence. Four findings appear repeatedly in the scholarly literature. First, the number of applicants for protection orders is, in most known societies, impressive. Second, relatively few of those applications result in orders for extended protection. Third, the majority of applications are instead withdrawn or dismissed. Fourth, these cases take considerable time to be resolved. Scholars have yet to explain, however, why these same

findings appear in different jurisdictions. My discussion focuses on that question and is informed by my research in Caribbean courts.

To explain why domestic violence law often does not, in practice, accomplish its goal - which is to get fast protection at minimum cost to victims - I have developed an analytical model, which I call the "rites of domination." By "rite" I mean a repetitive, customary, formal, or ceremonial act or observance. Rites of domination describe events and processes that occur within and around legal arenas. As Max Weber states:

"domination" refers to a "situation in which the manifested will (command) of the ruler or rulers is meant to influence the conduct of one or more others (the ruled) in such a way that their conduct to a socially relevant degree occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake" (1978, 2:946).

In less encyclopedic language: rites of domination at court are secularly stylized events and processes that occur regularly in the legal processing and enforcement of court orders, and that preserve and promote class and gender hierarchies. Readers will recognize many of the rites of domination I define; they are identifiable in lower courts in contemporary Britain, the United States, and in the English-speaking Caribbean. This is not surprising. These societies share the British common law tradition, have comparable hierarchical organization of "lower" courts to contend with "petty" matters, and "higher" courts to hear "serious" matters, and are similar in their bureaucratic organization of courts, legal personnel, and legal discourse. To anticipate the argument I will be making, rites of domination include such practices as the intimidation, humiliation, and objectification of litigants. Individually, the rites are generated in the interactions between legal officials and ordinary citizens. I will demonstrate how they illuminate people's commonsense understanding of how class, family, gender, and justice, mediate activity at the courthouse. As a composite, the rites of domination model provides, firstly, a useful theoretical tool for making sense of how a

society's relations of domination and subordination are perpetuated in legal arenas. Secondly, it explains why certain legal reforms that potentially give subordinated people new rights are so difficult to implement. To my knowledge, mine is the first study to synthesize these practices and to demonstrate how, in combination, they alter dramatically the process and outcome of domestic violence cases.

My discussion will unfold in three parts. First, I introduce briefly the research setting, and my research methods and data. I'm writing a book that focuses on the history and implementation of Trinidad and Tobago's 1991 Domestic Violence Act.² Trinidad and Tobago was the first country in the English-speaking Caribbean to pass domestic violence legislation.³ Traditionally, such violence was perceived as "husband-wife business", and not appropriate business for the state.⁴ For centuries, men's ability to control their women as they liked, and parents' right to "mind" children as they saw fit, had been unquestioned, hegemonic. The Domestic Violence Act challenged those assumptions, defined new rights, and enabled the victims of abusive behavior to seek redress from the courts.

Second, I recount a case history of a couple I call "Alena" and "John." Alena's story portrays many of the common characteristics of abusive relationships and the characteristic responses to domestic violence by victims, family, and neighbors, as well as by officials of the criminal justice system. It is, in many respects, typical of the domestic violence case histories that I encountered during my fieldwork. For example, as in Alena's case, there are often no warning signs of potential abuse at the beginning of the romantic relationship. Almost without thinking, the woman leaves her family and friends in favor of her newfound romantic love. Family and friends respect the intimate partnership and refrain from "interfering" in any way. The abuser then further isolates his partner by denying her the right to work or even to use the phone. When the abuse begins, therefore, there is no one for the victim to turn to. Instead, the survivor spends her time trying not to anger the abusive partner. Emotionally and economically dependent, she sees no way out of her troubles and she blames herself for her own limitations as a partner, homemaker, and mother. People

become aware of the abuse, but they “mind their own business.” Alena’s story is unusual only insofar as she was younger than most of the litigants I observed in court and because she eventually separated from her abusive partner and returned to school and a caring, middle-class family. Otherwise her story reveals common patterns in abusive relationships, why women decide to go to court, and events and processes that characterize their legal case histories.

Finally, I use Alena’s case and other ethnographic research conducted in courts in the U.S., Great Britain, Jamaica, and Antigua, to define and give examples of the rites of domination that mark different moments in the legal process. Taken separately, each rite allows us to see the specific points at which the reforming legislators’ intentions have been thwarted (often unintentionally) by courthouse officials. Considered together, the rites offer a more comprehensive perspective on the making and advancement of hegemony in legal institutions. Elsewhere, and within the context of analyzing a case for child support, I have described how rites of domination can sometimes operate to the benefit of otherwise subordinated litigants (Lazarus-Black 1997). In earlier research in Antigua, for example, I demonstrated how a woman used the child support law to acquire her ex-husband’s signature on their baby’s passport so that she could go abroad on vacation. More commonly, as I demonstrate with Alena’s case, the rites of domination undermine the protective capacity of law.

The Research Setting, Methods, and Data

Trinidad’s first formal legal system was the product of its Spanish settlers. Once the British arrived in 1797, they began remodeling the judiciary according to the British system. Courts are arranged hierarchically. Magistrates hear a variety of civil and criminal matters considered “less serious” than other crimes, as well as preliminary inquires into serious offenses. More sober criminal acts are tried at the High Courts. Both the magistrates’ courts and the High Courts are courts of the first instance in the sense that appeals go directly to the nation’s Court of Appeal. One contrast between England and Trinidad is that in Trinidad

magistrates are professionally trained attorneys rather than interested members of the community.

The magistrate's court in which I spent most of my time is located in a town in northern Trinidad that I call "Pelau" after a popular local dish. A local dictionary explains that "pelau" consists of a "complete meal with various ingredients all cooked at the same time in the same pot" (Mendes 1986:107). It is a fitting name for the town because Pelau's people are especially diverse in terms of race, ethnicity, religion, and class - and yet they share the same government institutions and services. In that sense, they all "get cooked in the same pot."

Pelau is a market town for produce and a commercial and retail center. Its population was "in the vicinity of 20,000" in 1990 (Anthony 1997:580). The magistrates in Pelau attend to family cases such as requests for child and wife support, legal custody, access to children, adoption, and arrears of maintenance, as well as applications for protection.⁵ The men served by the court give their occupations as "construction," "mechanic," "security," "taxi driver," and the like, while the women describe themselves as "homemaker," "clerk," "sales," or "hairdresser."

I conducted fieldwork in Trinidad in two phases. The first phase began in August 1997, and continued through August 1998. I attended court in Pelau on a weekly basis for ten months and spent shorter periods in three other magistrates' courts. My study is limited to Trinidad's most urban areas, and does not account for how law functions in Tobago or in the rural, agricultural communities that comprise most of southern Trinidad. During phase one, I observed seven different magistrates adjudicating cases and conducted 62 taped interviews with legal professionals, litigants, and other men and women, some of whom had never been to court, but who had definite ideas about domestic violence and its legal redress. The legal professionals I interviewed included 22 attorneys (twelve men and ten women), eight magistrates (two men and six women), and seven probation officers (three men and four

women). Other persons interviewed included medical doctors, religious leaders, university students, clerks, homemakers, businessmen, a police officer, and an elementary school teacher. I interviewed at length twelve women who filed charges of domestic violence at court and four persons (two men and two women) who were defendants to such suits.

During the second phase of the project, June - July 1999, I increased the over-all sample of interviewees to 75 (30 men and 45 women) and re-located 13 of the 16 litigants involved in domestic violence cases whom I had previously interviewed. These interviews allowed me to discern the consequences some months later of having brought an application for a protection order to court. Most of the 16 interviewees had blue-collar occupations, such as restaurant worker, homemaker, or sales employee, and also included women employed in the civil service and a bank employee. Seven persons identified themselves as Afro-Caribbean and nine as East Indian. Of the 12 interviews with complainants, six won at least a temporary restraining order, four dropped their suits, and two did not receive the protection orders they requested. Of the three parties I could not re-locate in 1999, one had given me an incomplete address, a second had died of a long-term medical condition, and a third did not return my phone calls. In contrast, I spoke by telephone to "Alena," whose story follows, in December 2001. (I have, of course, changed the names of the parties and details of the case to preserve the anonymity of the respondents.)

Alena's Story

"Alena" met her future common-law husband, John, accidentally. They were both waiting to use a public telephone. She was in high school with a year to go before graduation and working part-time at a hotel. He was impressive in her eyes; he had a new, expensive motorcycle and a full-time job making deliveries. They began dating. Alena's mother, Pauline, disapproved of the relationship. She worried that John was too old for Alena, that he had little education, and that he was an unskilled laborer. Alena would not listen. She dropped out of school and went to live with John.

At first Alena was proud of the fact that John didn't want her to work. She busied herself with keeping their apartment clean, and cooking. John didn't seem to like any of her girlfriends, so she slowly let go of those relationships. But she grew worried when bill collectors began sending letters. She thought she ought to get a job. At first he agreed, although he insisted on driving her back and forth from the retail store where she had obtained work as a sales clerk. Just a month later, however, John announced that he had seen her interact "inappropriately" with a male customer and that he would not tolerate that from "his woman." He beat her for her "misconduct" and forced her to resign. That was the beginning of the abuse.

Living with John meant moving often. He would pay a deposit and the month's rent and then remain in an apartment until the landlord realized he would have to evict them through the courts. Then he lost his job, after which he was employed only intermittently. Sometimes there was food and sometimes Alena went to bed hungry. John was verbally, physically, and sexually abusive. He would not allow a phone in the apartment. Alena called her younger siblings on occasion from a public phone, but begged them not to tell their mother anything. She was ashamed of her situation. After their fourth eviction, the couple went to live with John's mother.

Alena was four months pregnant before she realized she was having a baby. She was thin and depressed. The news pleased John and he was excited when Alena delivered a baby boy who would be his namesake. But he was not happy when the baby woke him up at night. His abusive behavior escalated. John's mother would not comment or interfere with her son's behavior. When John would start to yell at and hit Alena, his mother would retreat to her bedroom and close the door.

Another four months passed. John was mostly unemployed and spent his time with his friends. One day, extremely depressed, Alena called her mother. She burst into tears when she heard Pauline's voice and hung up. Pauline was frightened. She questioned her other

children and got a phone number from which she traced Alena's whereabouts. Pauline contacted the police and with their assistance, she found her daughter. Pauline was shocked at Alena's appearance and at the fact that she was now a grandmother. She took her daughter and grandson home with her.

Alena slowly regained her physical and emotional health and returned to school. On occasion, however, John appeared outside the high school or at the baby's preschool. He would threaten her and demand to see their son. Alena told me she did not want her son to grow up without a father so initially she agreed to visitation. But John regularly abused the situation, failing to return the boy at the agreed time. One evening Alena met John by chance on the street. He was drunk. He followed her, forced her into an alley, cursed, and beat her. She decided to apply for a protection order.

On their first day in court the magistrate read the charges to John and inquired if he wanted an attorney. He said he did, so the magistrate adjourned the case for a week. Pauline had already secured an attorney on Alena's behalf. The next time the parties appeared John was alone and the magistrate inquired if he had obtained an attorney. He told her that he had been to see a lawyer, but the attorney wanted \$500, which he found "a little steep." He had decided to proceed on his own. Alena did not know why her attorney was not in court that day. She told the magistrate that John had come by her house that week and they had got into a fight. He complained that the fight was as much her fault as his. Alena said she wanted John to sign a paper to leave her alone. The magistrate advised John that she would not have him sign anything if he wanted an attorney present. John did not respond, complaining instead that Alena was not allowing him to see his son. The magistrate asked him if he had applied to the court for visitation rights. He had not. The magistrate turned to Alena and asked her if she wanted to proceed. Alena replied that she would prefer not to; she had paid her lawyer and she wanted him to be with her in court. She also told the court that John smoked weed, cursed her, and committed adultery. The magistrate ignored the first two of these three comments and informed Alena that John could not be accused of adultery since

they were not married. She suggested to John that he should keep away from Alena's residence, her school, and workplace as well as from the day care centre. At this point John suddenly said, "this was all too confusing and that he would sign the paper." The magistrate explained to him the nature of what is called an "undertaking" in Trinidadian law which allows a defendant to "undertake" to refrain from future violence without providing testimony to the court or suffering a formal, criminal record. She also informed him of the penalties should he breach the undertaking.⁶ The magistrate then turned to Alena and said that John was willing to sign the undertaking, but did she want her attorney present? Alena said she did. The case was adjourned again.

At the next hearing, three weeks later, Alena's attorney told the magistrate that "things were going very badly between the couple" and that he had "flogged" her the previous week. John was not in court when the case was called. The attorney asked the magistrate for a warrant for his arrest. The magistrate noted that John was usually in court. She put the case aside temporarily, but he did not appear before the noon recess. The magistrate then issued a warrant for his arrest. Around one o'clock that afternoon, while I was working on court records, I saw John at the back of the court. He had been under the impression that he was due in court at one o'clock. A clerk informed him that there was a warrant out for his arrest and he was advised to go to the police station. After that day, a mix-up in serving summons to the parties caused the case to be delayed another three weeks.

Both Alena and John appeared in court on what was to be the last day of Alena's attempt to win a restraining order. She told me later in our interview that her attorney had told her that John would probably sign an undertaking that he would leave her alone. Therefore, she was entirely unprepared when John failed to make that offer and the magistrate called her to testify.

Alena's testimony was confusing. She was unable to recall specifically when John had allegedly abused her, the exact nature of the abuse, or the words with which he had

threatened her. Asked to cite an example of the abuse she had suffered when they lived together, she told the court that he once told her when she was pregnant that he would not “take the child if there was anything wrong with it.” She said she was applying for a protection order because John harassed her about seeing their child. Once, when he was really angry, he threatened to kill her. He called her “a little girl who had to stay by her mother,” and said she was “old fashioned,” and “that was why he had to have a real woman, not a girl like you.” She testified that she was “annoyed, angry, and very hurt” by his words and actions. Alena also testified that John showed up unexpectedly at the preschool, that he called her home persistently, and that he told her “he knows he can talk his way out of anything.” She failed to mention the incident in the alley. Her attorney then rested the case.

The magistrate put down her pen and spoke directly to the attorney. She explained that there seemed to have been some harassment when John went to the pre-school and when he telephoned. “But there is really nothing here that qualifies for domestic violence. He calls her a child; he says he has to have a woman?” She went on to explain that a restraining order is “a serious thing for preventing suffering and threatening of life.” The magistrate found that the testimony she had heard amounted to some abusive language, but not something that would come under the Domestic Violence Act.

Alena’s attorney made a feeble attempt to protest this decision. He noted that John made abusive remarks to Alena and had threatened to kill her. The magistrate took up a copy of the Domestic Violence Act and proceeded to read from a section of the statute. She then told the attorney that he had not brought evidence that “reached that far.” The attorney reiterated that John had threatened to kill Alena. The magistrate countered, “Well, yes, but that was on one occasion when clearly the two of them were quarreling over their son.” She stated again that for a protection order she must have admissible evidence that the person is really fearful of injury and that she had to go by “a fear of life or limb sort of thing.... by a certain standard. Because this is a severe thing to do to someone. It means the police will be looking over his shoulder for a year.” In this case, the evidence presented “fell short, very short, of what is

required in the Act.” The case was dismissed.

John asked if he could say something. The magistrate said no. Alena and Pauline both looked shocked. They left the courtroom immediately. The attorney gathered up his papers, bowed to the magistrate, and departed. I remained in court to listen to the final cases of the day.

I interviewed Alena a short time after her case. She mostly blamed herself for the outcome of the case. She told me she had not testified properly, and that John was smart and often able to get away with things. She did not blame her attorney for failing to prepare her to testify. Nor did she blame the magistrate, whom she also imagined had been outwitted by John.⁷

What happened in Alena’s case, and in so many other cases I observed in court, is that specific rites of domination combined in ways that dis-empowered the complainants and made it unlikely that they win a restraining order. In the final section of this paper I define 12 rites of domination briefly, providing comparative examples from earlier research on lower courts which pointed to the existence of these practices, but which did not synthesize them systematically as I will do. Of the rites described here, some are associated with pre-trial activities, others configure trials, and a few shape the enforcement process. Since each case involves different parties and has a separate history, different cases include different combinations and numbers of these rites.⁸ As we analyze how the rites interconnect, we are able to explain how an abusive man like John can leave the courts without so much as a reprimand, without a record, and having avoided the expense of paying for an attorney. I begin with the rite I call “Giving Instructions.”

The Rites of Domination

1. Giving Instructions: Sharp instructions to subordinate the mind, voice, and body to authority.

As is true in American and British courts (Conley and O'Barr 1990; Eaton 1986; Emerson 1969; Feeley 1979; LaFont 1996; Merry 1990, 2000; Ptacek 1999), one must have [good] "manners" in courts throughout the English-speaking Caribbean. Instructions given to litigants and witnesses in the courts may include orders to be quiet, to bow, to sit, to stand, to pray, or to remove one's hat. Instructions set the tone of the court and establish its authority. A variety of officers of the court give such instructions. I regularly observed Trinidadian police constables, for example, ordering parties to behave in certain ways.

Other researchers who have studied English, Jamaican, and American courts have described the phenomenon of "giving instructions". For example, Carlen finds that in English magistrates' courts:

All defendants are escorted into the courtroom by the policeman calling the cases. Once the defendant is in the docket the escort acts as a kind of personal choreographer to him. He tells him when to stand up and when to sit down...when to speak and when to be quiet, when to leave the docket at the end of the hearing. During the hearing the policeman can tell the defendant to take his hands out of his pockets, chewing-gum out of his mouth, his hat off his head and the smile off his face (1976b:29).⁹

Armed sheriffs do much of the directing in domestic violence courts in Boston and Chicago. Ptacek found, for example: "In both Dorchester and Quincy, [pseudonyms for two courts in Boston] police officers wearing revolvers routinely walk in and out of the courtrooms; bailiffs wear handcuffs and enforce order by hushing spectators and even forbidding the reading of newspapers; and all are instructed to rise when the judge enters and departs"

(1999:147). In Chicago, Wittner found: “The armed sheriffs who bark commands to be quiet, order people out of the courtroom, and stand guard over the courthouse, can be intimidating” (1998:87).¹⁰

Giving instructions flows in one direction: from the powerful to the subordinated. We saw several incidents of this in Alena’s case. The magistrate gave instructions to John when she suggested that he seek the services of an attorney. She gave instructions to Alena when she chided her for not allowing John the right to see his son. And she postponed the case at the convenience of Alena’s lawyer. As other researchers have noted (LaFont 1996; Wittner 1998), “giving instructions” and “intimidation,” the next rite, are often linked.

2. Intimidation: Creating an environment in which individuals feel that they cannot speak freely because the listener(s) hold(s) physical, social, psychological, or economic power over them.

Intimidation is a regular part of people’s experience in small claims and juvenile courts in the U. S. and Great Britain (Conley and O’Barr 1990; Emerson 1969; Feeley 1979). Adults feel the effects of this rite as they wait hours for their cases to be called, often without any official explanation (Carlen 1976a: 52; Mileski 1971:489), and juvenile delinquents suffer threatening and moralistic lecturing (Emerson 1969:173-183). Women applying to Domestic Violence Court in Chicago complained to Wittner of feeling “intimidated, overpowered, and uncertain in their interviews with court staff, much as they had felt in the violent situations that brought them to court in the first place” (Wittner 1998: 85). Similarly, women in Boston described their first hearing in domestic violence court as extremely uncomfortable (Ptacek 1999:146).

In magistrates’ courts in Trinidad, moments of intimidation expose the tensions people experience when they must speak about domestic violence and contend publicly with what is for them an unusual exposure of their “private” lives. There is little doubt, for example, that Alena felt intimidated in the witness stand. That was obvious by her words and demeanor.

In sharp contrast, John did not have to address any of the alleged violence; rules of evidence protected him from having to testify. One would expect that learning there was a warrant out for his arrest would have caused John some feelings of intimidation. The court, however, never again addressed the matter of the arrest warrant. That fact brings us to the third rite of domination, delegating.

3. Delegating: Converting a discourse about legal rights into a complaint that is not worthy of legal redress.

Delegating is common in American courts. For example, Yngvesson (1988; 1993) found that "gatekeeper" clerks in lower courts in Massachusetts discourage people from bringing to court matters that they define as "trivial" and unworthy of legal redress. In addition, knowledge about how much time, effort, and expense are involved in processing a suit in the U.S. often discourages litigants from pursuing cases (Feeley 1979; Merry 1990; Yngvesson 1993). This was true of many of the women I interviewed in Trinidad and it has been documented in Jamaica (Jackson 1982; LaFont 1996).

Delegating also occurs through changes in the discourse through which a case is defined and transformed. Merry (1990:IX) points out, for example, that litigants in New England notice that court officials redefine their troubles as moral or therapeutic problems, deserving of counseling or mediation, but not of legal remedy. These litigants are turned away from the courthouse and denied the opportunity to present their cases. In "Dorchester" District Court in Boston, women's requests for child support and compensation were generally ignored, even if they obtained a protection order (Ptacek 1999: 128).

Delegating also occurs when police tell battered women that they can do nothing to protect them unless they already have a restraining order (Ptacek 1999: 163). Several of the women I interviewed in Trinidad had been told this when they sought police protection from violent men. Delegating is exactly what happened to Alena's case for a restraining order. After

her testimony the magistrate concluded that what was before her was a quarrelling couple that could not get along, but not cause for ordering a protection order that would place John under restraint for a year. Researchers have frequently noted "Delegalizing". Its opposite, "legalizing," has been less often observed.

4. Legalizing: Addressing parties and making arrangements as though judicial power exists, when in fact no legal basis exists for those actions.

Legalizing is a process in which officials assume powers that are not legally theirs (Carlen 1975:363-364). For example, in 1985-87, when I was conducting research on family law in Antigua, I only rarely heard magistrates discuss men's access to their children. On occasion, a magistrate lectured a party on the necessity of allowing children to visit with the non-custodial parent. By 1994, however, a new cohort of magistrates regularly took it upon themselves not only to lecture about children's needs for access to both parents, but also to work out very specific child visitation arrangements. In fact, there is no statute that grants magistrates any legal authority to make these arrangements.

As Coutin points out, legalizing can also take the form of accusatory questions designed to elicit information that is none of the business of legal officials. Excerpts from hearings in Los Angeles in which immigrants hope to regularize their legal papers provide examples.

In one suspension hearing, the judge not only asked an applicant whether he planned to marry the mother of his child but also questioned his answer that he was "not yet ready" for marriage. When this applicant's girlfriend (whose legal status was not an issue in this case) took the stand, the judge explored her financial and living arrangements, even asking if she was entitled to receive welfare if she was working (2000:124).

Legalizing was not a part of Alena's case, but Ptacek in domestic violence courts in Boston has observed it:

Although neither this observer nor the volunteer advocate assisting the woman heard the defendant ask for visitation, the judge struck out the part of the order barring the defendant from contacting the children and stated that visitation should be set up through an intermediary. According to the Supreme Judicial Court, district court judges have no jurisdiction to order visitation in restraining order hearings (1999:105).

Delegalizing and legalizing can both lead to the next rite, "humiliation."

5. Humiliation: Creating an environment in which certain languages, speech styles, individuals, social groups, or forms of behavior are "automatically," "naturally," "hegemonically" positioned as subordinate. This is sometimes the process of creating what Goffman (1963) called "stigma."

Throughout the Caribbean, a woman who seeks support for a child whose paternity is denied by the alleged father must prove her case through corroborating evidence (LaFont 1996; Lazarus-Black 1994, 2001). Such "proof" usually comes in the form of witnesses who can testify to the parties' relationship, but in the past there were lawyers who dragged children into court and demanded of the magistrate if it were not obvious whose child this was!

The practice of humiliation is an ordinary part of peoples' experiences in juvenile courts in the U.S. (Cicourel 1968:124, 166-167, 315-316) (Emerson 1969:174) and in magistrates' courts throughout the Caribbean (LaFont 1996) (Senior 1991:136). During one hearing for a restraining order, the magistrate lectured the woman, "to not use the child against him because at the end of the day he is the daddy. And a child needs to see the daddy in the best possible light. Her dad is part of her roots. So live positively for her sake." Similarly, Yngvesson's study found that women who complain about assault and battery by their former husbands in American small claims courts are sometimes themselves admonished

about their behaviour and parenting skills (Yngvesson 1993:56-57). Humiliation was not a factor affecting Alena's initial attempt to win a protection order, but it was certainly present at the verdict. Alena and Pauline were humiliated by the judge's decision that no "real" violence had occurred. The magistrate also humiliated Alena's attorney, who had clearly failed to prepare his client and his case. Humiliation is often a swift and blatant event. More subtle in character is euphemism.

6. Euphemism: Replacing a word or words with others thought to be less blunt or harsh, and which makes certain practices vague and less subject to question. Euphemism is used by dominant groups to mask power and to conceal certain conditions and activities.

I have in mind a particular kind of euphemism, a practice that deliberately distorts in order to conceal power. In our everyday lives we are all constantly engaged in euphemism of one form or another. In Trinidadian, Antiguan, Jamaican, and English lower courts (Carlen 1976a; LaFont 1996; Lazarus-Black 1994), magistrates become "Your Worship" and "Your Honour," lawyers are "learned friends," police are "public servants," and probation officers are "knowledgeable experts." Such titles perpetuate the hierarchical relationships between the agents of the state and ordinary citizens who bring grievances to court. Euphemism in courts also occurs when legal officials in the U.S. speak about time in prison before a defendant has had a hearing as "detention" (Feeley 1979:205-206), when defendants are sentenced to "time served" (Feeley 1979: 171), when suits are deliberately "delayed" to give the accused time to pay for his mistake (Feeley 1979: 175), and when juveniles are "helped" by placing them under "probation" (Cicourel 1968:64) (Emerson 1969:219-245).

Like the other rites, euphemism is constituted in interesting and culturally specific ways. For example, euphemism allows certain conflicts which are "really" about the Caribbean practice known as "sharing a man" to be brought to court under charges of "failure to keep the peace." Olive Senior explains, "sharing a man" this way:

A significant number of women in the Caribbean are in “sharing relationships”, that is, they knowingly or unknowingly share a man with whom they have a steady relationship with another woman (or other women). Children by various women are frequently the outcome. Such sharing relationships exist at all levels; it is not uncommon in middle and upper-class families for there to be a set of “inside” children of the “real” or legal family and “outside” children with another woman. Sometimes these parallel families exist unknown to each other, or at least unknown to each other, or at least unknown to the “inside families; others might be aware but turn a blind eye (Senior 1991: 175-176).

Relationships in which women "share a man" involve women and men of all ages and social classes. The circumstances of these relationships are difficult; jealousy and frustration occur, sometimes with intimidation and violence (Senior 1991: 175-179). When these disputes escalate, the women who are "sharing a man" sometimes go to court under the euphemism of "keeping the peace." Such cases bring to legal attention women whose source of tension is their poor treatment by the same man, a “crime” for which there is no name in law. During the hearing, the man's disreputable behavior to two or more families is ignored, while the mothers of his children are recast as troublesome characters who have “failed to keep the peace.” Ironically, the man not only remains outside the case, he watches the state scold his women to behave themselves and command that they keep away from each other - as he prefers.¹¹

Alena applied euphemism in her testimony to the court. In our interview, she told me she thought she should be “polite” in court. She was too embarrassed, she said, to use the actual words John used. She had no idea that the magistrate would not “read into her words” what had actually transpired. Her case demonstrates the literal quality of the law, and its insistence that certain kinds of words and deeds constitute “evidence of crime” while others do not.

Alena “whitewashed” her language to the point that the magistrate heard nothing she could

use to justify issuing a protection order; the testimony amounted to a case of annoying language. Linguistic euphemism can be a way of marking one's social identity. Objectification, on the other hand, is denial of identity.

7. Objectification: Creating an environment in which persons are treated as objects. The rite includes activities such as talking about a person as if he or she was without rights, not present, or was a child. Objectification may also entail the assignment of a person to a socially subordinated category or group.

"Objectification" occurs with stunning regularity in English and American courts. Writing about magistrates' courts in Britain, Carlen explained the process this way:

The objectification of people as defendants begins when they are charged with an offense. Thereafter objectification processes are systematically crystallized throughout the court hearing, so that by the time the magistrate asks for reports the defendant has already been transformed into client, prisoner, or patient (Carlen 1975:375).

Juvenile delinquents in the U.S. are similarly treated. Emerson writes that "officials frequently discuss details of a delinquent's life and behavior as if he were not there, making no acknowledgment of his presence either by word or by glancing in his direction" (Emerson 1969:179). Similarly, women who applied for court orders for protection in Boston complained to Ptacek of being reduced to the category of "victim" (Ptacek 1999:148).

The magistrate who presided over Alena's case provides us with another example of objectification. After hearing Alena's testimony, the magistrate put down her pen and spoke directly to the attorney, carefully avoiding any eye contact with Alena. She justified her decision to dismiss the case by reading to the attorney a section of the statute describing what words and actions constitute domestic violence in law – a section with which he should have been familiar. In this way, the case remained in the realm of legalities, lost in rules of evidence, rather than being conceived as a problem about violence in someone's life. In

addition to objectification, the next two rites of domination are critical in explaining why Alena did not get an order.

8. Extra-professional and Professional Erroneous Legal Advice and Ill-treatment: Consciously or unconsciously providing bad directions or inadequate advice.

Feeley notes that much of the free legal advice given by courthouse personnel to litigants in the U. S. is sound (Feeley 1979:184). One could say the same of the free counsel offered by lawyers and clerks in the magistrates' courts in which I have conducted research in the Caribbean. Occasionally, however, I have overheard instances of inept lawyering or erroneous advice. Clerks, for example, have a working knowledge of the abilities and conscientiousness of the attorneys and regularly provide information or shape lay persons opinions when asked. Some of the most popular lawyers are not necessarily the best advocates.

Several women I interviewed in Trinidad complained of inadequate advice. Their attorneys did not inform them about what to expect in court. As we have seen, Alena's attorney had incorrectly assumed that John would give an undertaking to refrain from future violence and he did not prepare her to testify. As a consequence, when Alena took the stand she was embarrassed, intimidated, and ill-prepared to give the testimony she needed to win an order for protection. In addition, the next rite, the practice of silencing – a practice that is a regular and important part of the adversarial system of justice-operated with important consequences in Alena's case.

9. Silencing: Creating an environment in which certain voices are heard but others are not. Silencing also occurs when a person is given the opportunity to speak, but the content of the message is ignored. Silencing has to do with the power to control both speech and silence.

There are many examples of silencing in the events and processes that characterize domestic violence and its legal redress. Initially, many women avoid telling anyone about the abuse they suffer. In the Caribbean, where the temperature is warm and peoples' windows are

open, neighbors know about violence but remain silent because there is cultural sanction against interfering with “husband-wife business.” Some women in Trinidad have been silenced by police officers, who also trivialize their cases. As one woman told me: “I called the police so many times when my husband came to harass me! And when I go to the station they would just turn up their face and say, “She? Don’t take she on. She’s always here!”

Being unable to tell one’s story, or to tell it only partially, is a very common experience for litigants in lower courts and it has been frequently described by anthropologists, sociologists and linguists (Conley and O’Barr 1990, 1998; Coutin 2000; Ewick and Silbey 1998; Matoesian 1993, 2001; Merry 1990, 2000; Wittner 1998; Yngvesson 1993).¹² In the case of John and Alena, the person who was most obviously silenced was John. As we have seen, the magistrate directly denied him the opportunity to speak. Ironically, this silencing prevented him from giving potentially incriminating evidence. The silencing of Alena was a more subtle and complicated process. Alena’s attorney had not prepared her for the possibility that she might have to testify. She went to court, therefore, without understanding what words and events constituted domestic violence. Alena was given the opportunity to tell her story, but she spoke in language that betrayed her socialization as a young, educated, middle-class Trinidadian woman, who was also a mother. In other words, she avoided cursing and mentioning specific behaviors that are considered “inappropriate” for a woman of her status. Surprised and intimidated at being called to testify, Alena used euphemisms to describe what John had said and done. Alena expected the magistrate to respect and appreciate her decorum in the witness stand. The consequence of these assumptions was that her testimony was an illustration of what Conley and O’Barr have characterized as “powerless” speech, speech that the legal system devalues and finds lacking in credibility (Conley and O’Barr 1998:65).¹³ The magistrate also silenced Alena’s attorney by reading out loud the clause in the Domestic Violence Act describing what constitutes evidence of domestic violence. Dismissal of the case, of course, was silencing writ large. But as law and society researchers know, judges sometimes exercise the next rite, which of judicial discretion, in ways that support already privileged parties or groups.

10. Judicial discretion to support privileged groups: the conscious and unconscious use of the power of the bench to support the options and privileges of dominant groups.

Judicial discretion, which supports privileged groups, has been documented qualitatively and quantitatively in Merry's historical and legal research on Hilo, Hawaii. Investigating court records from the 1870s, she found that the most frequent type of case prosecuted was plantation laborers' desertion from work (Merry 2000:171) and that "courts generally favored the more powerful, but were careful to examine evidence and sometimes acquitted the workers" (Merry 2000: 173). Twenty years later, in the 1890s, the men who controlled the plantations continued to find support in legal arenas. Workers were "generally disadvantaged," while the courts were a "much more amenable forum for employers" (Merry 2000: 185-186).

Scholars are well aware of the difficulties subordinated people face when they attempt to speak to those in power (Scott 1985). In the case of domestic violence, applicants for protection orders must prove to the court's satisfaction that words and deeds constituting violent behavior were committed at specific times and places, and in ways that have caused the applicant to be fearful of future harm. The process of judicial appeal also influences judicial discretion. Knowing that a case can be appealed places pressure on magistrates to render verdicts with which their senior colleagues can agree. Not surprisingly, they are often conservative in their reading of statutes and in deciding how much evidence is enough evidence to support a decision.¹⁴ As we saw in Alena's case, her lack of coherency in testifying and use of polite speech left the magistrate in doubt about whether the offense of domestic violence had occurred. In sharp contrast, John never had to take the stand. He was privileged in the sense that he did not have to explain his words or actions. Instead, John was a participant in the rite I call "Second Chances."

11. Second Chances: Providing individuals who are under court orders with opportunities to delay or avoid those orders.

"Second chances" is illustrated most readily by the case of men who fail to pay their court-

ordered child support. "Deadbeat dads" are as commonplace in the Caribbean as they are in the United States. For example, in both Antigua and Trinidad a man is always allowed to fall into arrears for some weeks after a magistrate makes an order for child maintenance. Then a summons is issued directing him to explain in court why he has failed to pay. If the man pays after receiving the summons, the case is marked "withdrawn" and the process starts all over again. If he ignores the summons, an arrest warrant is issued. The police will deliver it to him - eventually. The man must then pay the officer or go to jail. Thus a man's "first" second chance is the summons; his "second" second chance is the warrant.

The most salient example of "second chances" with respect to Trinidad's Domestic Violence Act was the provision in the law for "undertakings." As we have seen, undertakings give men the opportunity to avoid a trial, public evidence of their abusive behavior, and a criminal record by "undertaking" to refrain in the future from violence they are alleged to have committed in the past. On the other hand, some officers of the court prefer undertakings because they sanction men from future violence in a timely fashion and with the same penalties for breaching the court's directive that occur when the court makes a formal order. One of the great ironies of Alena's case was that early on John offered to give an undertaking but Alena rejected his offer because she wanted her attorney to be present before she made any agreement with him. The twelfth rite, "unenforced enforcement", protects abusive men's options further.

12. Unenforced Enforcement: Failure to ensure that the court's orders will be effected. This may take several forms, including failure to provide someone to carry out the court's directives or a waning of supervisory powers so that adherence to court orders occurs with decreasing frequency over time.

Unenforced enforcement reinforces a defendant's ability to postpone the state's demands.

Unenforced enforcement of child support orders is pervasive in the U.S. (Blankenhorn 1995; Fineman 1995; McLindon 1987; Weitzman 1985, 1987), in Jamaica (Jackson 1982; LaFont

1996), in Antigua (Lazarus-Black 1997), and in Muslim kadhi's courts in coastal Kenya (Hirsch 1998:127).

Unenforced enforcement influences domestic violence cases in Trinidad in two ways. First, there is the matter of summoning persons to court. When a person files a charge of domestic violence the alleged assailant must be notified by a summons to appear in court within seven days. Very commonly, however, the officer entrusted with serving the summons will not be able to deliver it in the timely fashion the law commands. Therefore, after she hears her name in court the complainant most commonly hears the magistrate state "fresh service," followed by a date that is usually two weeks later. Hopefully, the alleged offender will have received the summons by the next court date. If a defendant cannot be located after several weeks, the magistrate will ask the complainant if she wishes to swear out a warrant for his arrest. The case is then put on hold until the police find him. Unenforced enforcement of summoning defendants and other witnesses thus undermines the intentions of lawmakers that domestic violence cases be heard in a timely fashion.

Second, unenforced enforcement also characterizes the processing of breaches of protection orders. During my fieldwork in four magistrates' courts in Trinidad, I only rarely saw a defendant incarcerated for having breached a restraining order. More commonly, the magistrates voiced a strong oral reprimand to the defendant, effectively giving him a "second chance." Occasionally, a magistrate both reprimanded and fined an offender.

Concluding Thoughts

To conclude, litigants who apply for restraining orders in Trinidad and in other British and British-inspired legal traditions encounter rites of domination that impinge upon their ability to secure the protection they seek. In Alena's case, "bad advice," "intimidation," "silencing," "objectification," "humiliation," "euphemistic language," "judicial discretion," "delegalizing," and "second chances" each contributed to her failure to win a restraining order. Before, during, and after her court appearances, rites of domination combined to limit the effectiveness of Alena's testimony and of her case. She was ill-prepared to testify, and

the language she used - language that marked her social identity as an educated and polite woman and mother - worked against her. In sharp contrast, John did not have to testify in court. In fact, the magistrate denied him the right to speak. We can only surmise whether his words might have incriminated him.

Thus, as Malcolm Feeley (Feeley 1979:30-31, 199-243) demonstrated so aptly, the process of going to court and to trial is often punishment. But there is more to these individual interactions that each in its own way makes the process the punishment. What is revealed in Alena and John's case is that which goes unnoticed most of the time; namely, an articulation of practices that reinforce the prevailing gender hierarchy and the hegemonic notions that the state should not interfere in domestic matters or subject men to the indignity of court orders or police surveillance unless the court is absolutely convinced that each tenet of the Domestic Violence Act has been breached. The literal quality of the practice of law, and the operation of rites of domination, undermine women's ability to secure sufficient and timely protection. When examined as a collection of independent, yet interactive and mutually re-enforcing phenomena, the rites of domination show us how the legal process is shaped by and advances the structures of domination that prevail in the wider social order. Courts reproduce the power relations of the wider society, quite simply, because they are designed, organized, and run by persons for whom "order" references the existing class and gender hierarchies.

Finally, the rites of domination reveal an important irony, one that deserves the attention of legal reformers. Through lawmakers, "the state" can, on the one hand, pass laws designed to improve the lives of abused parties or needy children. Through officers of the court and in the legal process, however, that same "state" assures the perpetuation of class and gender hierarchies, undermines women's use of the court as a forum for resistance, and makes protection from violence an almost impossible task. In this way, "the state" creates the impression that it is protecting those who need its care, while in reality cases are lost in the unfolding of rites of domination.

Endnotes

1. Acknowledgments. The pilot study for this research was conducted in Summer 1995, with a grant from the Office of Social Science Research at the University of Illinois at Chicago. I thank the American Council of Learned Societies and The Wenner-Gren Foundation for Anthropological Research for enabling me to undertake the sustained fieldwork in 1997-1998, and Summer 1999. In addition, a Fulbright Senior Scholar Award funded me to teach in Fall 1997, at the University of the West Indies, Trinidad. The Office of Social Science Research at UIC made possible my return visit to Trinidad in April - May, 2002, so that I could follow-up on domestic violence cases left open during my earlier research and begin to assess the consequences of the 1999 Domestic Violence Act which was passed after my fieldwork. I thank Dr. Rhoda Reddock, and associated faculty, students, and staff of the Centre for Gender and Development Studies for granting me Visiting Scholar privileges during my sojourns in Trinidad and for encouraging me to present my research in progress. This lecture was completed during my tenure as a Fellow at the Humanities Institute at the University of Illinois at Chicago. I thank Mary Beth Rose Vavra, and the other Fellows at the Institute for their support and astute comments.

2. The Domestic Violence Act, 1991, provided for what often appear in the scholarly literature as "temporary restraining orders." Prior to the passage of the law, a victim of domestic abuse either had to bring criminal charges of assault and battery against the offender or obtain injunctive relief at the High Court. These remedies were rarely used as the police were reluctant to bring charges in family matters and suits at the High Court are time-consuming and expensive. In drafting the statute, lawmakers intended to provide swift relief at minimal cost to persons experiencing domestic abuse. To fall under the Act, the relationship between the parties had to satisfy one of the following categories: 1) spouse, de facto spouse, or former de facto spouse; 2) parent or guardian and child; or 3) other dependent, such as an adult in a guardian's care. Both men and women may bring charges of domestic abuse, although there is no protection in law for gay or lesbian couples. The alleged behavior must be judged to be "conduct of an offensive or harassing nature," which includes abusive and threatening language, damaging property, following a person, depriving someone of property, watching or "besetting" the home or workplace, and willful or reckless neglect of a child or other dependent. Women bring most cases, but perhaps ten percent are brought by men against women or against other men. (A quantitative analysis of court records from two courts for the years 1997 and 1998 is in progress.) Subsequent to my fieldwork, Trinidad passed the Domestic Violence Act, 1999, extending further the state's power to intercede in familial matters by giving the police more latitude to intervene, clarifying and expanding the parties to whom the statute applies, extending the duration of a protection order, and changing the fines and penalties for breach of an order. The process of

making a case for protection and the use of undertakings by defendants have not changed. Therefore, I write in the ethnographic present.

3. As of 2000, two thirds of all Caribbean territories had passed domestic violence legislation: Antigua and Barbuda (1999); Bahamas (1991); Barbados (1992); Belize (1997); Bermuda (1997); British Virgin Islands (1992); Cayman Islands (1992); Guyana (1995); Jamaica (1995); St. Lucia (1995); St. Vincent and the Grenadines (1995); and Trinidad and Tobago (1991, 1999) (Robinson 2000:102).

4. For example, investigating violence among East Indian women in Guyana, Parsad finds: "...much of the physical violence directed against wives finds acceptance among spouses and tolerance from the authorities of social control. Physical abuse of wives is both accepted and tolerated in the Guyanese context by the adage that 'teeth and tongue must bite.' Not only by this do we openly sanction violence and abuse in man-woman relationships but we also hold firm to a position that whatever occurs between a man and his wife is their business" (Parsad 1988:2) Historical research from Guyana confirms the pattern among Afro-Guyanese, Chinese-Guyanese, and Indo-Guyanese peoples (Moore 1995:105). Curiously Moore does not mention domestic violence when he discusses Guyana's white community. For references to wife beating and wife murder in Trinidad in earlier periods see Brereton 1981, Trotman 1986, and Wood 1968.

5. It remains possible to apply at the High Court for an injunction against domestic violence; however, an injunction is expensive, requires the services of an attorney, and must be brought with another matter, such as a divorce application. My analysis is limited to the much more prevalent applications for protection brought to the lower courts.

6. The wording is: "The Court may, at any time before a protection order is made, accept from the respondent a signed undertaking that he shall refrain from engaging in conduct of the nature specified in the application and in conduct that would constitute any domestic violence offense" (Laws of Trinidad and Tobago, No. 10, 1991:92). Undertakings are permitted only in cases in which there have been no previous undertakings or convictions for domestic violence. During my fieldwork, an undertaking, like a court order, lasted for one year, and a breach of an undertaking had the same consequence as a breach of an order: namely, a custodial sentence of up to six months and/or a fine of up to TT \$5,000 (U.S. \$835, or up to 21 weeks' wages for a worker earning a minimum wage). There were 25 closed cases of breaches of protection orders in Pelau in 1997-1998. Of these, only two respondents were fined: one in the amount of TT\$1,000 and the other in the amount of TT\$750.

7. Conley and O'Barr uncovered this same phenomenon in their work in small claims courts in the U.S. Instead of blaming the system or concluding that law was not concerned with

justice, laypersons instead blamed themselves or particular judges who heard their cases. "The litigants held themselves responsible for their failure to prepare for the transformations their stories had undergone...Whatever its therapeutic value for litigants, this personalizing reaction to adverse experiences clearly works to the benefit of the system" (Conley and O'Barr 1998:96). This means, of course, law's hegemony remains unchallenged (Conley and O'Barr 1998: 96).

8. I have often been asked if I believe that the rites are intentionally practiced or if they occur without the conscious realization of members of the criminal justice system. I believe that the answer to that question is both. Legal professionals and litigants sometimes practice these rites intentionally, as a deliberate strategy to buttress their own side of the case. But research in the courts and my reading of other ethnographic accounts convince me that sometimes the legal professionals don't realize the full impact of the choices they make in processing cases.

9. Elsewhere Carlen describes how people are very carefully spaced and placed in British courts: "Within the courtrooms of the magistrates' courts tacit control of their spatial and temporal proprieties is the monopoly of the police and the judicial personnel. In practice both the staging and the prosecution of the criminal business becomes the responsibility of the police. This renders absurd the judicial rhetoric of an adversary justice where, so the plot goes, both prosecution and defense stand as equals before the law" (Carlen 1976b:19-20). Eaton also notes the "respect and deference" expected of defendants in London's lower courts (Eaton 1986:80).

10. Emerson (1969:203) makes this point with respect to American juvenile courts: "the judge and other court officials may openly express disapproval of the appearance, behaviour, and comments of delinquents." Holstein finds that all of the behaviour of patients in courtrooms, not just their testimony, bears upon their hearings for commitment for insanity (Holstein 1993:138).

11. Like "intimidation" (of a man who is ordinarily powerful) and "legalizing" (by a judge or magistrate to command a parent to visit his or her children), "euphemism" can sometimes work to the advantage of subordinated peoples. For example, women in the English-speaking Caribbean are commonly perceived as going to magistrates' courts for money, while in reality many have other motives and goals for themselves and their children (LaFont 1996; Lazarus-Black 1994, 1997). Similarly, women in the U.S. apply for protection orders for a host of reasons, only some of which are recognized as "legitimate" by officers of the court (Ford 1991; Ptacek 1999; Winter 1998). Hence euphemism deserves scholars' further attention because it is both a technique wielded by powerful persons and a "weapon of the weak" (Scott 1985).

12. Other interesting discussions of the phenomenon of silencing in legal arenas can be found in Atkinson and Drew 1979:95-101; Carlen 1976b:75-81, 109; Hirsch and Lazarus-Black 1994:9-13; Matoesian 1993:139, 144; and White 1990:9-13. See Gal 1991 for a fine

review of the meaning of silence in research on language and gender.

13. Conley and O'Barr have written extensively about two contrasting ways of speaking in court: "rule-oriented accounts" versus "relational accounts" (Conley and O'Barr 1990, 1998). Rules-based accounts stick to the issues of most interest to the court, such as dates and contractual obligations. Relational accounts, like Alena's, rely on general rules of entitlement to fair and decent treatment. "Because relational accounts focus on personal status and social position, they tend to be full of details about the life of the speaker, details that the law usually deems irrelevant. Issues of time and of cause and effect are often dealt with in highly idiosyncratic ways" (Conley and O'Barr 1998:68).

14. My thanks to Bill Black for raising this point in discussion.

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