



Beyond the commons : the expansion of the Irish Music Rights Organisation, the elimination of uncertainty, and the politics of enclosure

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Beyond the Commons:

**The Expansion of the Irish Music Rights Organisation,
The Elimination of Uncertainty,
and
The Politics of Enclosure**

Volume 2 of 2

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Doctor of Philosophy

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Introduction

In Chapter 1 of this thesis it was argued that the discursive complicity of descriptive, sponsorship, revisionist, sociomusical, and analytic approaches to the study of 'music and copyright' do not equip us with the necessary theoretical tools with which to truly assess such relational implications of IMRO's expansion. Therefore, in Chapter 2, we require a sixth approach

Chapter 7

Only connect.

E. M. Forster, Howard's End, 1910.

My research takes two steps. The first is counter-induction, or 'the invention and rejection of hypotheses inconsistent with a point of view that is highly confirmed and generally accepted' (Feyerabend 1975:47). In retrospect, there have been two major counter-inductive moves in this thesis. One was the omission of 'music' as a central focus in an ethnomusicological thesis, with the purpose of exploring wider social and political concerns, as discussed briefly in the introduction. Another was the break from the binary opposition of enclosure and the commons in order to come to an understanding of *enclosure without the commons*.

The Emergence of Theory

The second step of the retheorising approach is an openness to the emergence of theory as it arises from an examination of the expansion of the Irish Music Rights Organisation. Earlier, the complicities of standard approaches to 'music and copyright' were noted (see pp. 19-22). Furthermore, the basic assumptions of the Irish Music Rights Organisation were questioned, indeed, rejected (see pp. 23-24). It is necessary, then, to provide an alternative base of assumptions with which to undertake analysis of the relational implications of IMRO's expansion.

Introduction

In Chapter 1 of this thesis it was argued that the discursive complicity of descriptive, sponsorial, revisionist, sociohistorical, and analytic approaches to the study of 'music and copyright' do not equip us with the necessary theoretical tools with which to fully assess such relational implications of IMRO's expansion. Therefore, it was suggested, we require a sixth approach - retheorising.

This involves two steps. The first is counterinduction, or "the invention and elaboration of hypotheses inconsistent with a point of view that is highly confirmed and generally accepted" (Feyerabend 1978:47). In retrospect, there have been two major counterinductive moves in this thesis. One was the evasion of 'music' as a central focus in an ethnomusicological thesis, with the purpose of exploring wider social and political concerns, as discussed briefly in the introduction. Another was the break from the binary opposition of enclosure and the commons in order to come to an understanding of enclosure *without the commons*.

The Emergence of Theory

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To this end, a theory of 'negotiation' is presented in Chapters 7 and 8. This theory provides a different set of working assumptions for our analysis. Through an understanding of negotiation we are drawn towards the recognition that IMRO's expansionary practices have *relational implications for our negotiations of meaning and power in social interaction*. The theory of negotiation, then, can be regarded as the first stage of emergent theory in this thesis, the second being the theory of enclosure, presented in Chapter 9.

Retheorising: In Search of a Terrestrial Fulcrum.

Following Myra Jehlen (1981), we might say that the task of retheorising is to find a "terrestrial fulcrum" (75) for a "radical comparativism" (83). Jehlen characterises feminist thinking as 'rethinking': "an examination of the way certain assumptions about women and the female character enter into the fundamental assumptions that organize all our thinking" (75). In claiming that such radical scepticism provides for new understandings, she also draws attention to the "unusual difficulties" that accompany such an approach by characterising it as a task of Archimedes. Were Archimedes to be able to lift the world with his lever, he would have required someplace else to stand and place his fulcrum. Jehlen likens this to the situation of feminists who question the presumptive order, thereby in many ways removing the ground from under their own feet. Thus, it would seem, they require an alternative base of assumptions, for "one has to assume something in order to reason at all" (ibid.). This is precisely the difficulty that must be confronted in our attempts to understand the relational implications of the expansion of the Irish Music Rights Organisation. In order to avoid discursive complicity it would seem that "like the Greek philosopher, we have to find a standpoint off this world altogether" (ibid.). The term 'Archimedean perspective' has thus come to refer to "one that is disinterested, impartial, value-free, or detached from the particular, historical social relations in which everyone participates" (Harding 1991:59). This is exactly the type of perspective that is claimed to inform the expansion of the Irish Music Rights Organisation.

But achieving an extraterrestrial standpoint was something, of course, which Archimedes, deprived of the benefits of space travel, was not able to do. He remained earthbound and the earth stayed where it was. But, in acknowledging this, Jehlen reclaims an insight which proves most useful for our purposes. What Archimedes really needed, she argues, was a “terrestrial fulcrum”, and, likewise, she argues that this is the requirement of a feminist project of rethinking: “a standpoint from which we can see our conceptual universe whole but which nonetheless rests firmly on male ground” (1981:75). To reconfigure this in the current context, what is required to escape a damaging discursive complicity in our analysis of the expansion of IMRO is a terrestrial fulcrum that allows us to ground a “radical comparativism”, that is, a theoretical perspective that can come to terms with the complexities of this expansion as an example of a particular character of social and political relations, viewed from the mundane perspective of humans-among-humans. Thus we might work towards meshing an analysis of the expansion of the Irish Music Rights Organisation and an analysis of interpretive practices - the world of meaning and power relations. In other words, we might respond to Halbert’s (1999) call, moving outside the law, and into other modes of speaking.

Negotiation: The Terrestrial Fulcrum

The terrestrial fulcrum chosen to understand the production and generation of meaning, power, and expectation is “negotiation”. The term “negotiation” most generally refers to a wide range of social contexts and processes in which the people involved experience an adjustive and adaptive experience. The situations and processes covered by general usage of the term include bargaining, arbitration, discussion, compromise, brokering, exchange, and conflict mediation. In academic research, however, the term “negotiation” has come to be associated with an expanding body of literature dealing largely with social interaction and the social construction of organisational processes, and is particularly associated with the research of Anselm

Strauss (e.g., 1978).¹ The concept of negotiation as understood by Strauss is broad and inclusive. It is constituted by three elements: first, interaction or communication; second, agreement; and, third, change and adjustment on the part of the agents involved. This would seem to be consistent with the usage offered by Erving Goffman: “we personally negotiate aspects of all the arrangements under which we live, but often once these are negotiated, we continue on mechanically as though the matter had always been settled”(Goffman 1974:2). For Strauss and Goffman, then, there are times when negotiation does not occur. As David Maines notes, however, the term “negotiation” has been criticised as “a quite imprecise term if one wishes to think of it as a sociological concept”(1977:243). It has even been suggested that as the term “negotiation” is used in sociological literature it often refers not just to an aspect of the social order, but to the social process itself.²

In this thesis, the term “negotiation” does indeed refer generally to “the social process”, and, as such, there are never times when negotiation does not occur. The manner in which the term is used here is, however, very specific. Although in sympathy with the broader literature, my understanding of “negotiation” has developed independently of it. For our purposes, “negotiation” is constituted by four elements:

- The ever-presence of uncertainty
- The emergence of certainty
- Social Interaction
- Expectation

The presentation of the theory of negotiation is divided in two parts.

The first part, “Uncertain Connections”, provides a discussion of the first two elements of negotiation. The first element of negotiation is the ever-presence of uncertainty. A new approach to uncertainty is proposed, in which a physiological grounding for our experience of uncertainty is suggested. Uncertainty is here understood as a constant and dynamic element of

¹ Scholars advocating what might be called the “negotiation perspective” include Strauss et. al. (1963), Glaser and Strauss (1964), Scheff (1968), Hall and Spencer-Hall (1982), Maines (1977, 1982), Levy (1982), and Fine (1984).

² See Alan Bond’s website at <http://www.cs.caltech.edu/~bond/cs101c/commit/node3.html>.

consciousness. The second element in our understanding of negotiation is the emergence of certainty. An alternative approach to certainty is proposed, in which a physiological grounding for our experience of certainty is suggested. Certainty, like uncertainty, is taken to refer to a constant and dynamic element of consciousness.

Chapter 8, "The Power of Expectation", presents the last two elements of negotiation. In this part we extend the physiologically-grounded insights about uncertainty and certainty to encompass discussion of social and political dynamics.

The third element of negotiation is social interaction. Social interaction is here understood as the constant and dynamic relational environment of negotiation. An understanding of social interaction can lead us to an understanding of the role of power in negotiation.

The fourth element of negotiation is expectation. Expectation is here understood as the basic condition of consciousness, the nexus of our isomorphic experience of uncertainty and certainty. Our experience of expectation, it is argued, is associative, cumulative, adaptive, individually-negotiated, structured, directive, and composite. An understanding of all four of these elements of negotiation, as they are presented here, provides an alternative base of assumptions with which to proceed in our examination of the relational implications of the expansion of the Irish Music Rights Organisation.

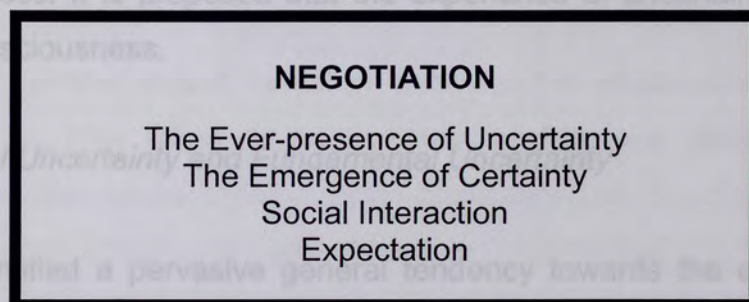


Figure 3. The Elements of Negotiation

The Ever-presence of Uncertainty

Uncertainty is ever-present. This is a basic premise in our understanding of 'negotiation', and one which directly challenges the expectation of uncertainty elimination. In this section we explore the term 'uncertainty'. Two contrasting uses of the term will be briefly examined. They can be broadly distinguished as 'behavioural uncertainty' and 'fundamental uncertainty'. Stemming from the use of the concept of 'uncertainty' within information theory, behavioural uncertainty is gauged by the number of alternatives available in a given situation of decision-making and the relative likelihood of their occurrence. Uncertainty, then, increases as the alternatives increase. In contrast, it will be shown, the concept of 'fundamental uncertainty', championed by certain post-Keynesian economists, has a temporal rather than a behavioural focus, emphasising the absence of deterministic laws and social processes. This position holds that the past cannot at all be relied upon as a guide to the course of future events, and thus 'fundamental uncertainty' might also be understood to refer to what has been termed 'perfect uncertainty'. Both behavioural uncertainty and fundamental uncertainty are, then, constructed in relation to the concept of absolute predictability; the first on the basis of it, the second in direct opposition to it. A different understanding of uncertainty will be suggested here, however. Arguing that uncertainty is a fundamental condition of human life, recourse is taken to the work of neuroscientist Susan Greenfield. By taking Greenfield's analysis of emotions to refer to the experience of uncertainty, we can come to a more comprehensive understanding of uncertainty and its relation to consciousness. It is proposed that the experience of uncertainty is a basic form of consciousness.

Behavioural Uncertainty and Fundamental Uncertainty

Having identified a pervasive general tendency towards the elimination of uncertainty as the foundation for the expansion of the Irish Music Rights Organisation, it is perhaps instructive to follow Stephen P. Dunn (2001a) in

acknowledging the need to distinguish at least two broad schools of thought in relation to uncertainty within discourses of economics:

- Orthodox behavioural theories that focus on outcomes, probability, and predictability; and
- Post-Keynesian analysis, particularly the work of Paul Davidson (1988, 1991) and Dunn himself (2001a), that draws a conceptual distinction between behavioural uncertainty and “fundamental” uncertainty, otherwise understood as the impossibility of foreseeing future knowledge.

The first of these, behavioural uncertainty, is about outcomes, probability, and predictability. In this scheme, uncertainty concerns what course of action to take in a particular situation. Uncertainty therefore implies the issue of choice and decision-making. Garner (1975), drawing upon information theory to present a psychological analysis of uncertainty, remarks: “The uncertainty associated with any particular outcome of an event is inversely related to the probability of that particular outcome; and thus the information obtained when the particular outcome occurs can be directly interpreted in terms of the probability of occurrence” (24). A relationship is established, then, between uncertainty and information, information being that which is obtained by a reduction in uncertainty, information being regarded as the opposite of uncertainty. Following the logic of this position, as Garner points out, uncertainty can be understood as potential information: “What now constitutes uncertainty is always potential information, and, in a moment, may be information; and what is information for you may be uncertainty for me” (7). It is interesting that Berger and Bradac (1982) juxtapose uncertainty and knowledge, calling knowledge “the reverse side of the uncertainty coin” (8). Berger and Bradac’s particular concern is the role of uncertainty and uncertainty reduction in interpersonal relationships, defining behavioural uncertainty as “the extent to which behaviour is predictable in a given situation” (7). This takes us away from choice and decision-making. Nevertheless, this understanding is still consistent with our characterisation of behavioural uncertainty as concerning outcomes, probability, and predictability.³

³ In Chapter 5 (see p. 126) we saw that Marris, too, understands uncertainty in direct relation to predictability: “What constitutes as uncertainty depends on what we want to be able to predict, what we can predict, and what we might be able to do about it” (1996:16). This, we

Understandings within post-Keynesian analysis provide an alternative perspective on uncertainty in economics, however. Dunn (2001a) draws attention to the prevalence of behavioural understandings of uncertainty within bounded rationality approaches⁴, developed from the work of Herbert Simon (1959, 1961). In contradistinction to the probabilistic understandings of behavioural uncertainty within bounded rationality, however, Dunn highlights the work of Paul Davidson (1988, 1991) whose concept of “fundamental uncertainty” draws attention to the distinction between “ergodic” and “nonergodic” processes, statistical concepts that are grounded respectively in the stasis of immutable determinism and the chaos of transmutable indeterminism. To put this more simply, this is a distinction between an emphasis on predictability in behavioural uncertainty and an emphasis on unpredictability in fundamental uncertainty. Behavioural uncertainty, says Dunn, relates to the behavioural characteristics of agents. Fundamental uncertainty, on the other hand, “relates to the essential unknowability of the future, to creative human agency and the unique nature of unfolding time” (2001a:568). Davidson’s understanding of fundamental, or what he has called elsewhere “true” uncertainty (1991), stems from Keynes’ analyses of uncertainty. By “uncertainty”, Keynes did “not mean merely to distinguish what is known for certain from what is only probable. ... The sense in which I am using the term is that ... there is no scientific basis on which to form any calculable probability whatever. We simply do not know” (cited in Davidson 1991:131). Within the frameworks offered by theories of fundamental uncertainty, then, “agents are truly uncertain in that there are no deterministic laws or equations to discover” (Dunn 2001a:572).⁵

noted, is particularly relevant in the context of the expectation of the elimination of uncertainty, whereupon anything that does not conform to absolute predictability is understood as an uncertainty that must be eradicated.

⁴ The term “bounded rationality” refers to economic decision-making that is “*intendedly* rational but only *limitedly* so” (Simon 1961:xxiv). The framework of rational choice (see Zey 1998) arguably remains, then, the central referent of bounded rationality approaches. The limits come from the presumed ‘cognitive limitations’ of the decision-maker with regard to the informational processing abilities of knowledge acquisition and computational capacity. This range of limitations presumably prevents economic actors from behaving in ways that approximate the predictions of classical or neo-classical economic theory (see Dunn 2001a).

⁵ Fundamental uncertainty, then, approximates to what Galtung (1979:185) refers to as ‘perfect uncertainty’.

Understandings of uncertainty in both 'behavioural' and 'fundamental' paradigms fit not so much within theories of action or activity so much as into theories of decision-making. On the one hand, there is the question of probabilistic decision-making in the face of uncertainty arising from the range of information available. On the other hand, we have decision-making made in the face of ignorance of an open, transmutable future. Both approaches offer widely-varying and oft-times mutually-exclusive understandings of time, choice, and agency (Dunn 2001a). The terms 'behavioural uncertainty' and 'fundamental uncertainty' can still be characterised, though, without too much violence to the complexity of these positions, to the configuration 'uncertainty about'. This still brings us no closer to an understanding of the character of uncertainty, or to the relational implications of a tendency towards the elimination of uncertainty. What we need is a theory that concerns itself not with 'uncertainty about' but 'about uncertainty'. It is to this task that we now turn.

Towards a New Understanding of Uncertainty

We are moving then towards an understanding of the meaning and role of uncertainty in what we term 'negotiation'. We have drawn attention to the need to characterise our experience of uncertainty itself, as opposed to characterising the role of uncertainty in decision-making processes. It will be important first to establish that uncertainty here refers to a condition of human life and existence. Indeed, following Foucault, we now state that what we are looking for is a principle of uncertainty-as-law. The work of neuroscientist Susan Greenfield suggests that emotion is the most basic form of consciousness. We will now usefully transpose Greenfield's argument and restate it as saying that the experience of uncertainty is the basic form of consciousness.

Johan Galtung remarks that "not only is uncertainty a necessary condition for what one might refer to as the historicity of human beings, it may also be said to be a necessary condition for human life itself" (1979:189). Peter

Marris' approach is a little more nuanced. For Marris, uncertainty is not so much a condition *for* human life, as it is a condition *of* human life (1996:1).⁶ For Erving Goffman uncertainty is an integral part of social interaction, which is undertaken in a condition of "special doubt" or "puzzlement" (1974:302). It would seem to be inferred by each of these perspectives that uncertainty, then, is not only an element of human life, but a *constant* element of human existence. To appropriate Foucault's insights on power for our own purposes, we might even say that we are looking to elaborate a principle of uncertainty-as-law, namely the fact that there is no escaping from uncertainty, that it is always-present, constituting the very thing which one attempts to counter it with (Foucault 1990:82).

It might be useful here to turn to the work of neuroscientist Susan Greenfield. In her book, The Private Life of the Brain (2000), Greenfield explores possible correlations between theories of mind, theories of consciousness, and the physiology of the brain. She does this in response to a dominant objectivism in her field which ignores "the obvious yet frustrating fact that consciousness is a highly private event" (2).⁷ This objectivism has led to a radical separation of the presumed mutually-exclusive phenomena of emotion and logical thinking. A common factor in this recurrent paradigm is "the basic assumption that when you are thinking, being reasonable, and indulging your individual memories, there is no emotion present at all" (2000:15). Greenfield, in reply, comments: "But surely the idea of no emotion at all is alien to our ideas of being human" (ibid.). Simplifying in the extreme, Greenfield's exploration is supported by a key hypothesis, that emotion is the

⁶ Uncertainty for Marris, too, is generally concerned with outcomes, predictability, and decision-making. He writes: "Uncertainty is a fundamental condition of human life. We try to master it by discovering the regularities in events which enable us to predict and control them. When they do not turn out as we expected, we look for ways to revise our understanding, our purposes and means of control. When we cannot foretell what will happen, we try to keep our choices of action open; and when none of these choices seems hopeful, we try to withdraw into familiar certainties or fall into despair. The management of uncertainty is therefore a very individual endeavour, because each of us learns in our own way, through our unique experience, to find patterns of events, and develops our own strategies of control and avoidance" (1996:1).

⁷ In making her point, Greenfield refers to philosopher John Searle's remark that studying the brain without an interest in consciousness is like studying the stomach without an interest in digestion (2000:2).

most basic form of consciousness. Indeed, she goes as far as to state in an interview for the journal Worldlink that:

For me, consciousness and emotion are one and the same thing. The concept of having an emotion without being conscious is almost a paradox in terms. Similarly, the idea of having consciousness without some kind of residual feeling is hard. Most of the time we're not having road rage and we're not in great ecstasy. But one has some residual mood and residual feeling. It's always there every moment you are awake (Cohen 2001).

For Greenfield, then, some kind of emotional state is present whenever you are conscious (2000:16). Emotions are with us all the time, albeit at a spectrum of intensity. They just are (20). Far from being radically separate from thinking, "Emotions are the building blocks of human mentality. Even when you think you're just thinking, it's shot through with some kind of emotional tone" (Sunday Times 1998)⁸.

At first glance, Greenfield's work may not seem to be particularly helpful. One weakness which might be noted in Greenfield's argument is an uncritical use of the terms 'emotion', 'feelings', 'subjectivity', 'individuality', and 'self', possibly leaving any use of her work in this thesis open to discursive complicity with romantic discourses of genius, originality, and authorship, discourses which play a crucial role in the perpetuation of copyright. There are very suggestive echoes, however, between Goffman's 'special doubt' and Greenfield's 'residual feeling', and Greenfield's search for the principles of emotion-as-law clearly parallel our search here for the principles of uncertainty-as-law. If we substitute the term 'uncertainty' for each use of the term 'emotion' in Greenfield's work, we can usefully re-address Greenfield's work in light of the particular concerns of this thesis. We can thereby understand 'emotion' as a subcategory of 'uncertainty'. By using Greenfield's work in this way, while also eschewing the terms 'self' and 'subjectivity', we may open doors to some very fruitful inquiry as we move towards an understanding of 'negotiation'.

Our understanding of uncertainty as an element of 'negotiation' is distinct from theories of behavioural uncertainty and fundamental uncertainty. Where

⁸ This article may be found at <http://www.thetimes.co.uk/article/0,,474-63015,00.html>.

these understandings of uncertainty retain decision-making as a central definitional referent, here the experience of uncertainty refers more to a dynamic and ever-present condition of consciousness. Uncertainty is with us all the time, albeit experienced in degrees of intensity. It is suggested that our physiological response to uncertainty, our awareness of uncertainty, is distributed or channelled across the neural networks of the brain. So it is that we experience uncertainty both as ever-present and at varying degrees of intensity.

Awareness of Uncertainty

Our awareness of uncertainty varies. This, despite the fact that, at least while we are alive, stimulation of the nervous system and the brain is constant. That is to say, our physiological response to uncertainty is both at a constant level of stimulation, but also differentially distributed in various parts of the brain at various times. As a result, the constancy of uncertainty is paradoxically experienced as a variable. We can get a clearer picture of our awareness of uncertainty by aligning our understanding of it with the physiological indicator of 'arousal'. As Susan Greenfield explains:

Arousal is not only a useful everyday term for describing how excited or sleepy we are but a physiological reality. Deep in the most primitive region of the brain, the brain stem, are diffuse groups of neurons that send their connections throughout the rest of the brain to release their transmitters. They act not so much as local specific messengers but more like fountains. These diverse chemicals (dopamine, serotonin, noradrenaline, and acetylcholine) are differentially active at different times of the day and night. But they are always at work, energizing the rest of the brain to different degrees and in different ways (2000:41).

Arousal, it is argued, is a physiological indicator of our awareness of uncertainty. It is interesting to note here that R. G. Collingwood (1938) observed that 'feeling as *sensation*' and 'feeling as *emotion*' are a unified experience: "Referring to the evidence of colour symbolism of the Middle Ages ..., Collingwood argued that, at that period in history, people would not have been conscious of seeing a colour (sensation) and feeling a certain emotion as being separate" (Cherry 1979:79). Sensation and emotion are conflated here, then, as aspects of our experience of uncertainty united by the 'physiological reality' of arousal.

In this section we have moved towards a preliminary understanding of the principle of uncertainty-as-law, that is, that uncertainty is inevitable. We have established that the usage of the term 'uncertainty' in the theoretical framework of this thesis is very different from the usage of the term in the concepts of 'behavioural uncertainty' and 'fundamental uncertainty'. Uncertainty here refers not to processes of decision-making but to a condition of human existence. By appropriating and adapting the work of neuroscientist Susan Greenfield, it was suggested that our constant and dynamic experience of uncertainty is the most basic form of consciousness, indeed, that consciousness and the experience of uncertainty are synonymous. Uncertainty, then, is inevitable. By adopting the physiological phenomenon of arousal as synonymous with our awareness of uncertainty it was suggested that 'sensation' and 'emotion' can feasibly be included as aspects of our experience of the 'physiological reality' of uncertainty awareness.

The Emergence of Certainty

Uncertainty is ever-present, and a significant element of negotiation. The second element in this presentation of negotiation is the "emergence of certainty" in our engagement with the experience of uncertainty. The term 'certainty' must, then, be discussed. Our experience of certainty in negotiation is, like our experience of uncertainty, somewhat paradoxical, being both constant and dynamic, experienced as ever-present and at varying degrees of intensity. We can speak, then, of our experience of emergent certainty. Five points are salient in this regard:

- *Certitude*. The understanding of the experience of certainty in negotiation is to be distinguished from what we might term "foundationalist" perspectives that take 'certainty' to be synonymous with eliminated uncertainty. We might more usefully understand foundationalist usage of the term as 'certitude'.
- *Certainty in and through Uncertainty*. In contrast to foundationalist assumptions, it is posited that our experience of certainty cannot be separated in experience from our awareness of uncertainty. Our experience of certainty, like our experience of uncertainty, is constant.
- *Certainty and Synaptic Transmission*. It is argued that our experience of certainty has physiological correlates. By acknowledging that the physiological dynamics of

brain activity have as their foundation the process of synaptic transmission, simplistically understood as the process of associative thinking, we can draw a correlation between our experience of certainty and what is known as 'brain plasticity'. This refers in particular to the use-it-or-lose-it dynamics of Hebbian Learning.

- *Making Sense of Our World*. Our experience of certainty, then, *can never be fixed*. Furthermore, certainty is taken to be broadly synonymous with meaning. Certainty emerges in relation to our awareness of uncertainty, structuring our engagement with the world. By understanding the emergence of certainty we can begin to appreciate the capacity we exhibit to perceive, organise, and understand relationships. In particular we focus on the emergence of associative, cumulative, adaptive, and individually-negotiated "structures of meaning".
- *The Isomorphism of Uncertainty and Certainty*. It is suggested that there is a direct correlation between our experience of emergent certainty and our awareness of uncertainty. The term "isomorphism" is used to refer to this correlation, whereby our experience of uncertainty at any time is inversely proportional to our emergent and structured experience of certainty. This isomorphism is established as a key aspect of consciousness in negotiation.

Certitude

It is important in our discussion of the emergence of meaning in negotiation to distinguish what is understood here as the experience of 'certainty' from positions that understand 'certainty' as an absence of doubt, a condition synonymous with the elimination of uncertainty⁹. Fueled by "the Cartesian dogma that only the indubitable is true" (McCloskey 1994a:398), certainty in this formulation is the assumed achievement of a one-to-one equivalence between the thinking mind and the natural order of an objective, fixed, stable, immutable reality. This presumed objective reality is deemed accessible for the most part through the rational, logical methods of scientific inquiry. Scholars such as John Dewey (1929), Richard Rorty (1979), Donald N. McCloskey (1994), and Edward S. Reed (1996), have drawn attention to this "quest for certainty" insofar as it underpins the dominant trends of European and American philosophical thought. For example, Rorty characterises the search by Descartes, Locke, Hume, Kant, Russell, and Carnap for the foundations of knowledge as "the triumph of the quest for certainty over the quest for wisdom" (1979:61). Todd May characterises this quest as "foundationalism". Foundationalism, May summarises, presumes "that the world and our experience of it can be brought under absolute or indubitable

⁹ Uncertainty, as we saw earlier (Berger and Bradac 1982; Garner 1975) can be posited in this formulation as the opposite of knowledge or information. Uncertainty is synonymous,

conceptual categories, categories that do not allow for conceptual slippage” (1997:3). In words highly redolent of our earlier discussion of monologic utterance and authoritative discourse (see pp. 145-149), May further explains foundationalism as:

The project of giving an account (of some object of study) that is exhaustive and indubitable. An exhaustive account is one that says all that needs to be said on the issue. There may be more details to add, but the essence of the matter is captured. An indubitable account is one that cannot be surpassed; it is the final say on the matter (ibid.).

We might more usefully understand foundationalist usages of the term ‘certainty’, then, referring to that which is indubitable, as ‘certitude’: “a kind of assent from which doubt is not only in fact absent but absent of necessity, because such assent and doubt are incompatible” (M. J. Ryan 1908:539). As discussed in Chapter 6 (see pp. 145-149), this is the assent required in the face of the “necessary” authority of the Irish Music Rights Organisation. Certitude is, indeed, what the authority of IMRO relies upon.

Certainty in and through Uncertainty

Our understanding of certainty as an element of ‘negotiation’ is distinct from foundationalist understandings of certainty or certitude. Where these understandings of certainty retain the elimination of uncertainty as a central definitional referent, here our experience of certainty refers to a paradoxically dynamic and ever-present condition of consciousness. In negotiation, the experience of certainty cannot, then, be separated from the experience of uncertainty, also a dynamic and ever-present condition of consciousness. Certainty is with us all the time, albeit experienced in degrees of intensity.

Certainty and Synaptic Transmission

We can gauge the *ever-present* character of our experience of certainty, or our experience of uncertainty, for that matter, in and through the physiological process of synaptic transmission. It is suggested that our

then, with error. For a discussion of the range of meanings associated with the term “error” see Sosnoski (1989).

variable experience of certainty is manifested physiologically in the degree to which synaptic patterns are strengthened within the neural networks of the brain. Two terms which we might use interchangeably to refer to this process of synaptic strengthening are 'reinforcement' and 'sedimentation'. So it is that we experience certainty both as ever-present and at varying degrees of intensity.

E. M. Forster writes "only connect" in Howard's End¹⁰ as an advisory. "Connecting", however, is simply what happens as we negotiate experience. As Susan Greenfield notes, this "connecting", the process known as synaptic transmission, "is regarded as the basic building block of virtually all brain operations" (2000:7). As neuropsychologist Ian Robertson states in Mind Sculpture: "Everything which makes up 'you' ... is embroidered in a trembling web of 100 billion brain cells.¹¹ On average, each cell is connected 1,000 times with other neurons, making a total of 100,000 billion connections" (1999:8). What accompanies our experience, then, is incessant brain activity. This is known as synaptic transmission because the gaps between brain cells (called "neurons" or "neurones"), across which these connections are made, are called synapses.¹² We might, then, usefully consider our experience of reality to be, at base, a constant process of associative thinking. In the words of Robertson: "At this very moment, as you read this sentence, exactly this cascade of brain-cell firings is happening in your brain" (1999:9). Our constant experience of both uncertainty and certainty can be disclosed, then, by an acknowledgement of the constant process of synaptic transmission.

¹⁰ See the 'Only Connect' website at <http://www.musicandmeaning.com/forster>.

¹¹ We are reminded of the words of Clifford Geertz, that "man is an animal suspended in webs of significance he himself has spun" (Geertz 1973:4).

¹² As Greenfield describes this process: "First, one neuron generates an electrical signal lasting a thousandth of a second, and of an amplitude ranging anywhere from some sixty thousandths to ninety thousandths of a volt: this is the *action potential*, an electric blip that hurtles down to the end of the neuron at speeds of up to 250 miles per hour. Once it reaches the end of the neuron, the electrical impulse acts as a trigger for the [chemical] transmitter to be released. The transmitter then diffuses rapidly across the narrow synapse between the two cells, and joins in a molecular handshake with an appropriate custom-made chemical (*receptor*) embedded on the outside of the target neuron. This molecular handshake, perhaps more akin to a hand fitting in a glove, initiates the final step, the generation of a new action potential in the target cell" (2000:7). A popular introduction to this process can also be found in Robertson's Mind Sculpture (1999:5-9).

It is further suggested that the variability, the degrees of intensity of our experience of certainty can be gauged by an examination of what is known as "brain plasticity": "where physical changes can be seen in the degree and extent of connections between neurons in certain brain regions, as a result of injury, or more commonly, simple everyday experience" (Greenfield 2000:12). Greenfield notes that it is only in recent years, perhaps even the last decade, that the details of what is often referred to as Hebbian Learning have come to light (66). In the 1940s, psychologist Donald Hebb identified what he termed 'synaptic strengthening' as the basis for learning and memory processes. A key element in synaptic strengthening is the process of 'long term potentiation', "whereby a priming stimulation of a neuronal connection makes that connection more sensitive to subsequent, incoming signals" (208). Robertson explains:

After a few repetitions of firing together, [neuron(e)s] tend to team up. When two connected neurones have been triggered at the same time on several occasions, the cells and synapses between them change chemically so that when one now fires, it will be a stronger trigger to the other. In other words, they become partners and in future will fire off in tandem much more readily than before (1999:10).

What is particularly interesting is that as synaptic strengthening continues it is possible that changes within the neuronal cells themselves may occur, in which "the density of connections, or at least the manufacture of further molecular machinery for more effective communication" is altered indefinitely (Greenfield 2000:66). Another key term is 'long term depression' (LTD), which is in some ways the inverse of LTP, in which an absence of stimulation of neuronal connections makes the connection less sensitive to subsequent signals. As Greenfield phrases it: "our brains are working incessantly on the use-it-or-lose-it principle. Just like the muscles of your body, connections in the brain will strengthen and grow as they are exercised" (2000:62). Robertson (1999) likewise simplifies the processes in two principles: 'Cells that fire together wire together' and 'When cells fire apart, wires depart'. It is suggested that our experience of certainty correlates directly to the degree to which synaptic strengthening occurs in the neural networks of the brain.

Two terms which will be used almost interchangeably to refer to the process of synaptic strengthening are "reinforcement" and "sedimentation". Although the subject of much theoretical debate, which has largely questioned the nature of the processes involved, reinforcement is accepted as something that actually occurs (Hargie et al 1981). Theoretical stances dealing with reinforcement have developed mainly within the stimulus-response school of behaviourism, particularly in the work of B. F. Skinner (1953, 1969), who conceived of reinforcement as a social skill. Within the range of reinforcement as a social skill we find verbal reinforcers such as acknowledgement or praise, and non-verbal reinforcers such as smiling, looking, touch, gestures, posture, body proximity, and the realm of paralanguage - how something is said as opposed to what is said (Hargie et al. 1981). Within Skinner's behaviourist model, reinforcement is seen as the "the process whereby an event, when made contingent upon the emergence of a particular piece of behaviour, increases the probability of that piece of behaviour recurring under similar circumstances" (44). The term "reinforcement" is here used as another way to refer to the process of synaptic strengthening. The term "sedimentation" is taken from the work of Berger and Luckmann, where it refers to the way things "congeal in recollection as recognisable and memorable entities" (1966:85). Both reinforcement and sedimentation here refer, then, to a central process in our emergent experience of certainty.

Making Sense of Our World

We now suggest that the term "certainty" is broadly synonymous with the term "meaning". Meaning, then, resides in connectivity and association. If connections are the basis for meaning, then as connections increase, so, too, does our experience of meaning:

"This rapidly expanding inner world of personal associations offers an ever-growing framework of reference, an increasing degree of meaning to ongoing experience. The most obvious type of meaning is the culturally and socially accepted identity of objects and people around us. But gradually these objects and people acquire ever more eccentric and intense degrees of significance. The more ramifying and multiple the associations, the more "meaning," or "relevance," an object will have" (Greenfield 2000:52).

Our experience of certainty is, then, equated with our experience of meaning. To say that our experience of certainty is emergent and cumulative is not to say, however, that meaning is ever fixed, or that the emergence of meaning is teleological. Again, this would be to equate certainty with certitude, to equate meaning with the elimination of uncertainty. Meaning can never be fixed. Although constant, our experience of both certainty and uncertainty is never static, always variable. As noted before, the stimulation of physiological arousal is constant, and the associative endeavours of synaptic transmission are always at work: "Each time you hear a noise, blink at the light, have a conversation, or cut another piece of cake, some small, imperceptible, and unspectacular modification to the configuration of the brain occurs, and we interpret the world in a slightly different way" (Greenfield 2000:54). As psychotherapist David Smail writes: "Human beings exist in a delicate and sensitive relationship of mutual transaction with their surrounding world" (1997:86). Just as awareness of uncertainty is inevitable, and experience of certainty is inevitable, so too, and relatedly, is change inevitable. It is important to note, however, that "It is not the brain cells themselves that change and continue to change, so much as the *connections* between them" (Greenfield 2000:61). In Mind Sculpture, Ian Robertson conveys this very forcefully by informing the unsuspecting reader on the very first page that: "By the time you have read this far you will have changed your brain permanently" (1999:1). Our experience of meaning is constantly adaptive.

It is perhaps clear at this stage that the understanding of negotiation thus far outlined is broadly sympathetic with certain aspects of constructivist positions. Constructivism refers to a family of interrelated theories that challenge realist and objectivist positions, placing emphasis instead on the active, participative role that humans have in the interpretive construal of their personal realities. Common to all constructivist positions is "the assumptive framework that emphasizes the necessarily limited and fallible nature of all our quests to know" (Neimeyer and Neimeyer 1993:1). In particular, the understanding of negotiation presented here shares the

following assumptions: that human beings are oriented actively towards a meaningful understanding of the world in which they live; that the meanings that emerge in and through our experience are local, partial, and situated; and, that these meanings are continuously in a process of change. 'Negotiation' is to be distinguished from 'construction', however. The 'negotiation' position differs from constructivist positions in one important respect, rejecting the assumption that meaning is *subjectively* constructed (e.g., Kelly 1955; Berger and Luckman 1966). This assumption leads to the belief that we are denied direct access to any 'external' reality, that: "we can have little more than indirect, mediated, and partial access to a series of transformed and forever shifting "realities," flickering images given shape and substance by the very processes that yield them" (Neimeyer and Neimeyer 1993:2). Although designed in contradistinction to objectivism, constructivist approaches continue to rely heavily on the subject-object opposition. By focusing instead on the constant and dynamic condition of our experience of uncertainty and certainty, and by understanding this experience as the most basic form of consciousness, it is hoped that the subject-object dichotomy is evaded. At the very least, the dichotomy does not provide for a fundamental premise of this negotiational approach. As Lakoff and Johnson have remarked: "What the myths of objectivism and subjectivism both miss is the way we *understand* the world through our *interactions* with it" (1980:194).

Our awareness of uncertainty and the emergence of certainty is physiologically rooted in processes of associative thinking. The physiological dynamics of neurological activity have as their foundation the process of synaptic transmission. We can draw a correlation between our emergent experience of certainty and processes of synaptic strengthening and weakening, processes encapsulated by the term 'brain plasticity'. We have established, then, that certainty here refers not to certitude but to a dynamic and ever-present condition of consciousness. We have also established that uncertainty, too, refers not to behavioural or fundamental uncertainty but to a dynamic and ever-present condition of consciousness. We will now link these last two propositions by suggesting that certainty, that is, meaning, emerges in and through our experience of uncertainty. Together, uncertainty and

certainly constitute our constant and dynamic experience of consciousness¹³. Our experience of consciousness, however, is also an experience of emergent structure and structuring processes. We now turn our attention to what we understand as “structures of meaning”, structures that arise in and through negotiation. Our understanding of “structure” here is contrasted with the use of the term in Lévi-Strauss’ structuralism. Rather than referring to invariant and immanent cohesiveness, the term “structures of meaning” here refers to *the emergent, cumulative, associative, adaptive, and uniquely-experienced relations constituted in and through our awareness of uncertainty and our experience of emergent certainty*.

Central to human experience is the capacity to perceive, organise, and understand relationships (Marris 1996:39). Psychotherapist M. J. Mahoney writes that: “We are neurologically wired to classify our experiences and to transform the buzzing, booming confusion¹⁴ of sensation into some codified and dynamic representation of the world” (1982:92). Susan Greenfield has written that: “As we grow up and see the world increasingly in the light of previous experiences, we develop a personalized inner world of private resources that increasingly act as a retaliatory buffer to the assault of the “booming, buzzing confusion” that previously poured into our brains unopposed” (2000:52). From our early childhood we experience an astonishing growth in associative brain activity that structures and organises the world in which we find ourselves. Early and extreme awareness of uncertainty is in most cases gradually tempered by a sense of emergent meaning, a growing experience of certainty. Greenfield describes early connections as “agile” and “unconstrained” (75). As time goes on, certain associations become more dominant than others and contribute to greater and greater synaptic sedimentation, that is, heightened experience of emergent certainty, which initially enables us to negotiate better the environments in which we find ourselves: “Gradually, we become better

¹³ As I cannot conceive of its absence, consciousness is here considered unproblematic, and shall not be defined.

¹⁴ This phrase is used frequently by scholars and is drawn from William James’ Principles of Psychology (1890). Full text of this book is available on the Internet at <http://psychclassics.yorku.ca/James/Principles/>.

equipped with neuronal inner resources to interact with, rather than merely react to, the outside world" (69). This is a testament to the cumulative power of associative thinking, the sedimentation of synaptic strengthening. As Deborah Tannen writes: "The only way we can make sense of the world is to see the connections between things, and between present things we have experienced before or heard about (1993:14).¹⁵ We make sense of the world as we negotiate our experience of uncertainty.

These processes of association and sedimentation lead to the emergence not only of meaning, but of associative, cumulative, adaptive, and uniquely-experienced *structures of meaning*. As they are understood here, "structures of meaning" can refer to anything from an abstract concept to a coffee-cup, from a classificatory framework to a building, from a code of social etiquette to a song, from a film to a friendship, from a colour to a sneeze. It is by examining the structuring of meaning, as "the way we perceive, create and reiterate the relationships which give meaning to experience" (Marris 1996:29), that we are better equipped to assess the relational implications of that meaning. This is because structuring processes of meaning guide and circumscribe our interactions: "the process of structuring is, on the one hand, an overt patterning of behaviors in time and space and, on the other hand, a mental modeling of information about what interactive sequences apply to varying types of situations" (J. Turner 1988:149).

We have already shown that our understanding of uncertainty is here to be distinguished from behavioural uncertainty or fundamental uncertainty. It has also been demonstrated that our understanding of certainty is to be contrasted with what might be better termed certitude, or an absence of

¹⁵ As Greenfield reports, there are some interesting scientific investigations to support this hypothesis: "Within the brain, certain scientists such as the physicist Erich Harth and the physiologist Semir Zeki are starting to identify circuits that might underlie this interaction between the incoming sensory flood and preexisting associations, that is, the established connections between groups of neurons. In both cases, it is now well established that visual signals are not just relayed passively into the deep recesses of the brain and up into the cortex. Instead, there are also other connections that intercept this incoming stream of information, projecting it back down in the opposite direction to modify the way the incoming signal is relayed and thus how the world is perceived. We see the world in terms of what we have seen already" (2000:65).

doubt. It is important now to differentiate our usage of “structure” in the term “structures of meaning” from the influential usage of the term in structuralism, particularly the structuralist anthropology of Claude Lévi-Strauss. For Lévi-Strauss, structure refers to the internal cohesiveness of formal relations that are inaccessible to observation unless revealed through the comparative transformations of similarity in apparently different systems (Lévi-Strauss 1977:18). This elusive structural cohesiveness, then, is assumed to be a constancy underlying observable formal variations, and is revealed only through sufficiently ‘deep’ analysis (136). Structure, then, is taken as ‘given’, an example of “the problem of invariance” (24). Structure is simply assumed to be there: “the link one establishes between things pre-exists ... the things themselves and serves to determine them” (Lévi-Strauss cited in Fabian 1983:57). Comparative analysis of observable diversity is the apparent road to revelation for the analysis of invariant structure. Diversity, however, necessarily renders invariant structure irrelevant as anything other than a signpost to synchronic¹⁶, repetitive, non-historical forms (see Fabian 1983:54-55). Understandings of these “structures” follows the characterisation of the term “structure” in building, engineering, anatomy, physiology, and botany, where it is used to express “something relatively fixed and permanent, even hard. The intensive development of notions of structure in physics ..., added to the sense of deep internal relations, discoverable only by special kinds of observation and analysis” (Williams 1976:255). Within structuralism, then, little attention is paid to attitudes, dispositions, or normativities. Within this school of thought it is assumed, with no little influence from Freudian analysis, that the key to motivation in social interaction lies beyond consciousness, at the level of the unconscious, at the level of “deep structure”. This results in the subordination of people to formal relations.

¹⁶ The claims of synchronic structural analysis, as Fabian (1983:52) demonstrates, simply hide the central strategy of eliminating Time and history as significant. Rather than being a distinction *of* Time, de Saussure’s diachrony and synchrony operates as a distinction *against* Time, as “Time is removed from the realms of cultural praxis and given its place in that of pure logical forms” (Fabian 1983:56).

Lévi-Strauss' usage of the term "structure" is not, then, compatible with the needs of this research. As Kurzweil writes: "Lévi-Strauss does not deal with political conditions, because for him human behavior is preordained by unconscious forces beyond human control" (1980:27). We can perhaps come to a better grasp of the unsuitability of Lévi-Strauss' conception of structure in our understanding of structures of meaning by acknowledging Jean Paul Sartre's criticism of Lévi-Strauss' structuralism. As Kurzweil notes:

In Sartre's view, structuralism is remote from human existence and even denies its fundamental condition - that is, freedom. Consequently, structuralism presents a distorted and even morally suspect concept of this existence. Sartre considers the structuralist approach to be guilty of transforming men into static, timeless objects, related to things in the world and to other men in purely formal, objective and timeless ways. ... Sartre's dialectic is between men and their surroundings and the processes through which men consciously act in relation to these surroundings. Lévi-Strauss' dialectic is between men as social beings and men as the unconscious bearers of a universal order (derived from as yet undiscovered structures) (24).

We might reconfigure Sartre's criticism and identify that Lévi-Strauss' structures refer to a condition in which uncertainty is eliminated at the level of deep, permanent, unconscious infrastructure. This is analogous to what we identified earlier as the hypotheses of ergodicity or logical positivism, in which human life proceeds relative to an underlying, static, inherently predictable, and immutable environment to which we can gain access through the rationalist principles of the scientific method. Otherwise, as structure is presented in Lévi-Strauss' structuralism, this order remains elusive.

In contrast to the invariant and deterministic structures of Lévi-Strauss, the term "structure" is here understood as *the emergent, cumulative, associative, adaptive, and uniquely-experienced relations constituted in and through our awareness of uncertainty and our experience of emergent certainty*. As in some structuralist discourse, structures are here related to the neuronal patterns of the brain, although, unlike the neurological reductionism of structuralism (see Barrett 1997:143-144), these patterns are not fixed but are constantly changing and individually-negotiated. The universality of structures of meaning lies not in the structures, which are never fixed, but in the lawlike principles of awareness and emergence which allow for the

emergence of structure with which we make sense of unique experience in social interaction. Structure is political insofar as our experience of structured meaning structures the meaning of our experience.

Structures of meaning make sense of our worlds, constituting a social order. Structures of meaning might also be understood as forms of knowledge, not inherent or immanent in the human mind, but here understood as “those organized and perpetuated ways of thinking and acting that enable us to direct ourselves to objects in our world (persons, things, and events) and see them as something” (E. McCarthy 1996:23). The structuring of knowledges and meanings provides for the constitution of our worlds, mitigating our experience of uncertainty. The function of knowledge (singular) as central to truth-seeking is relegated to a secondary position in the recognition that social reality exists in and through knowledge distribution. Knowledges (plural), as structures of meaning, are recognised as socially negotiated and socially distributed, as they also “provide a coherent and meaningful sense of reality (and unreality) for human beings, render[ing] and preserv[ing] a person’s or a group’s identity, and legitimat[ing] action and authority” (E. McCarthy 1996:5). Structures of meaning are not, then, merely outcomes of a social order, but key forces contributing to its constitution in and through negotiation (Williams 1981). Our experience of reality, as our experience of uncertainty and certainty, is an experience of structures of meaning: “both exist as real for us; both our worlds and our selves are spun from knowledges that render them real and meaningful” (E. McCarthy 1996:2).

Thanks to the dynamics of associative thinking and brain plasticity, structures of meaning are experienced as associative working assemblies¹⁷, or what Susan Greenfield refers to as “transient neuronal assemblies” (2000:181). Foucault’s concept of “discursive formation” is also instructive here, clearly speaking to the associative assemblage of meaning in our experience:

¹⁷ Symbolic interactionists also speak of our experience of symbols, and the meanings and values to which they refer, as occurring in associative “clusters” (A. M. Rose 1962:10). Symbolic interactionism is discussed on pages 195-198.

Whenever one can describe, between a number of statements, such a system of dispersion, whenever, between objects, types of statement, concepts, or thematic choices, one can define a regularity (an order, correlations, positions and functionings, transformations), we will say, for the sake of convenience, that we are dealing with a *discursive formation* (Foucault 1972:38).

Reality is a constant and dynamic experience of interconnection and interrelationship. People, then, “acquire sets of cognitions that implicitly structure their perceptions and orientations to the world” (J. Turner 1988:105). These are organized assemblies of interpretive patterns that temper our experience of uncertainty, working assemblies of structures of meaning. It is important to note as well here that the assembly of connections is more important for our experience of structures of meaning than are the specific neuronal connections. Our consciousness is supported by adaptive and adapting patterns of association:

This is not only good news but is also utterly essential for our survival, as our brain connections are in flux throughout our life. If all our experience, memories and personality depended on very specific connections between particular neurones, then memory and personality would degrade far more dramatically and unpredictably than they actually do under normal circumstances (Robertson 1999:11).

In negotiation, then, structures of meaning make sense of our world, and we experience them as emergent, associative assemblies.

These associative assemblies are also cumulative, adaptive or “integrative”, and unique to each person’s experience. In asserting that they are cumulative we are simply referring to the character of synaptic strengthening as discussed earlier, that is, the processes of reinforcement or sedimentation: “With increasing frequency, previous associations start to dominate our interpretation an response to ongoing situations. The brain becomes less of a sponge and more of a yardstick in a turning world, retaliating in an increasingly balanced dialogue with the outside world” (Greenfield 2000:54). Sedimented structures of meaning allow for the approximate repetition of structured and structuring interactions. This is extremely important in very practical ways, for “without structuring, every reencounter of individuals would involve so much interpersonal work that they would exhaust themselves” (J. Turner 1988:121). Furthermore, as Berger and Luckman put it: “Unless such sedimentation took place the

individual could not make sense of his biography" (1966:85). By "adaptive" or "integrative" we mean that these emergent, associative, cumulative assemblies of structures of meaning also undergo a constant modification in the face of experience. As discussed earlier, meaning can never, then, be fixed: "there is an integration of newly acquired meanings with existing ones, a continuing modification. In this integrative sense, man's behavior is a product of his life history, of all his experience" (A. M. Rose 1962:17). To say that these working assemblies of structures of meaning can never be fixed is not, however, to say that they cannot nonetheless be experienced as stable:

Throughout life we constantly modify our outlook and expectations, shifting the furniture around in the room, purchasing new items, and throwing out the old. ... Our world view, then, remains highly interactive and dynamic, but increasingly there is a theme, a continuity of style as we grow that is more personalized and more individual than any room (Greenfield 2000:58).

Thus, by virtue of the fact that our experience of meaning is emergent, associative, cumulative, and adaptive, our experience of meaning, our experience of synaptic connections, our experience of uncertainty, is also unique insofar as it is individually negotiated. This is a consequence of the dynamicism of our experience of uncertainty and certainty:

[N]o one, however close, occupies the same identical points in time and space throughout your life as you do. And as you live, memories pile up, and this accumulation of past scenarios, all stored within your brain, gives you a unique perspective from which to interpret the flood of sensations that bombard you every waking moment (Greenfield 2000:61).

The Isomorphism of Uncertainty and Certainty

It has been suggested that emergent certainty is both constant and experienced in degrees of intensity. It has also been suggested that the emergence of certainty is synonymous with the emergence of meaning. It is now suggested that there is a direct correlation between our experience of certainty and our awareness of uncertainty. The work of Susan Greenfield would seem to support this hypothesis. Drawing from work concerning Alzheimer's disease, drug-induced states, and extreme emotional states, Greenfield tentatively suggests that the degree of emotion we experience at any one time is inversely proportional to the extent of prevailing neuronal

assembly (2000:181). Not only is it suggested here that our experience of certainty and our awareness of uncertainty are linked, but it is suggested here, likewise tentatively, that our awareness of uncertainty at any time is inversely proportional to the extent of the prevailing neuronal assembly, that is, inversely proportional to our emergent and structured experience of certainty.

We might usefully refer, then, to *the isomorphism¹⁸ of awareness of uncertainty and emergent certainty*. Our experience of uncertainty and certainty is both constant *and* dynamic, and constitutes “that familiar yet astonishing unified state we experience most of the time” (Greenfield 2000:42). As David Lowenthal writes: “Perception itself is never unalloyed: sensing, thinking, feeling, and believing are simultaneous, interdependent processes. ... The most direct and simple experience of the world is a composite of perception, memory, logic, and faith” (1975:111). We might get a broader appreciation of this “astonishing unified state” by turning to the field of social psychology. Donald Campbell draws attention to Murphy’s “unity of perception and action”, or Sherif and Sherif’s “unity of experience and behavior” (1988:127). Campbell also refers to the work of Asch, who draws upon the work of Wertheimer and Köhler in Gestalt psychology to re-introduce the concept of “isomorphism”. For Wertheimer and Köhler the assumption of isomorphism speaks to the relation between physical brain events and the conscious experiences that accompany them. Asch extends the range of the term isomorphism to include “the relation between brain processes and their conscious accompaniments on the one hand and the actions of individuals on the other” (cited in Campbell 1988:127), understanding it, then, as the “isomorphism of experience and action”. What

¹⁸ “Isomorphism” is here transposed and adapted from the mathematical sense of the term, where there is a one-to-one correspondence between the elements of two sets such that the result of an operation on elements of one set corresponds to the result of the analogous operation on their images in the other set (Pickett, ed. 2000). The term isomorphism is also used in structuralist semiology where it refers to “correspondences, parallels, or similarities in the properties, patterns or relations of a) two different structures; b) structural elements in two different structures and c) structural elements at different levels within the same structure” (<http://www.aber.ac.uk/media/Documents/S4B/sem-gloss.html>). Powell and DiMaggio (1983) use the term “institutional isomorphism” to speak of a pattern of analogies between the workings of different organizations. Here the basic sense of mutual correlation is preferred.

is important for our purposes here is the proposition of the dynamic unity of consciousness, the interrelationship between certainty and uncertainty, the *isomorphism of awareness of uncertainty and emergent certainty*.

Summary

This chapter initiates the discussion of negotiation. The understanding of negotiation presented here provides the basic set of assumptions with which we will approach the theory of enclosure, discussed in Chapter 9. Following the feminist perspective of Myra Jehlen, it was argued that negotiation provides us with the grounds for a radical comparativism. In other words, in and through this theory of negotiation we can come to a nuanced appreciation of the expansion of the Irish Music Rights Organisation as an example of social and political relations. The term 'negotiation' is used in a very specific sense here. Negotiation, it was argued, is constituted by four elements:

- The ever-presence of uncertainty
- The emergence of certainty
- Social Interaction
- Expectation

This chapter dealt with the first two elements of negotiation.

The ever-presence of uncertainty, it was argued, speaks to our constant and dynamic experience of uncertainty. Uncertainty in negotiation was distinguished from understandings of uncertainty that emphasise predictability and unpredictability. Uncertainty is here understood as a fundamental condition of human life, an aspect of consciousness.

In contrast to foundationalist positions which equate certainty and certitude, the emergence of certainty here speaks to a fundamental condition of human life, and an aspect of consciousness. Like uncertainty, our experience of certainty is understood here to be constant and dynamic. It was argued, indeed, that our experience of certainty is suffused with our experience of uncertainty. By emphasising the role of synaptic transmission, it was argued

that our experience of certainty is emergent, associative, cumulative, adaptive, individually negotiated, and structured. Furthermore, our experience of consciousness is an isomorphic experience of uncertainty and certainty.

In this chapter we have grounded an understanding of negotiation in neural research. This research has been used in order to emphasise the contingencies of our shifting yet structured experience in negotiation. In the following chapter we extend the analysis of negotiation to social considerations, all the while moving towards an appreciation of the relational implications of the expansion of the Irish Music Rights Organisation. The second two elements of negotiation, then, are social interaction and expectation.

ESTRAGON: What do we do now?

VLADIMIR: I don't know.

ESTRAGON: Let's go.

VLADIMIR: We can't.

ESTRAGON: Why not?

VLADIMIR: We're waiting for Godot.

ESTRAGON: Ah!

Samuel Beckett, Waiting for Godot, 1959

Introduction

To recap, the aim of Chapters 7 and 8 is to provide a theoretical foundation on which to base a retheorising approach with which we can begin to assess the relational implications of expansion of the Irish Music Rights Organisation. Because no work to date has successfully engaged with the relational implications of copyright and performing rights, it is important that we take a new approach. It is being argued here that the notion of

Chapter 8

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ESTRAGON: Ah!

Samuel Beckett, Waiting for Godot, 1959

In Chapter 7 we discussed two elements of negotiation: the ever-presence of uncertainty, and the emergence of certainty. The discussion of these elements drew extensively on popular expositions of research in neuropsychology. We are able, then, to suggest that our constant and dynamic experience of both uncertainty and certainty can be evidenced by physiological correlates. In Chapter 8 we now look at the last two elements that constitute our experience of negotiation: social interaction, and expectation.

In doing this, we move from a focus on the neural to a focus on the social, from talk of neurons and synapses to discussions of power and expectation. Nevertheless, it should be remembered throughout the discussion that the neuropsychological correlates are crucial aspects of the understanding of negotiation presented here. It is understood, indeed, that there is no radical divide between the neural and the social. This is particularly apparent in the later discussion of expectation, and is a basic assumption throughout the discussion of negotiation.

Chapter 8

Negotiation II: The Power of Expectation

Introduction

To recap, the aim of Chapters 7 and 8 is to provide a theoretical foundation on which to base a retheorising approach with which we can begin to assess the relational implications of expansion of the Irish Music Rights Organisation. Because no work to date has successfully engaged with the relational implications of copyright and performing rights, it is important that we take a new approach. It is being argued here that the notion of 'negotiation' provides us with a less partial perspective from which to undertake a radical and, importantly, *peopled* analysis of the expansion of the Irish Music Rights Organisation.

In Chapter 7 we discussed the first two elements of negotiation: the ever-presence of uncertainty, and the emergence of certainty. The discussion of these elements drew extensively on popular expositions of research in neuropsychology. We are able, then, to suggest that our constant and dynamic experience of both uncertainty and certainty can be evidenced by physiological correlates. In Chapter 8 we now look at the last two elements that constitute our experience of negotiation: social interaction, and expectation.

In doing this, we move from a focus on the neural to a focus on the social, from talk of neurons and synapses to discussions of power and expectation. Nevertheless, it should be remembered throughout the discussion that the neuropsychological correlates are crucial aspects of the understanding of negotiation presented here. It is understood, indeed, that there is no radical divide between the neural and the social. This is particularly apparent in the later discussion of expectation, and is a basic assumption throughout the discussion of negotiation.

Social Interaction

Social interaction is here understood as the constant and dynamic relational environment of negotiation. By drawing on the field of social interactionism, meanings are further shown to be emergent, adaptive, and suffused with uncertainty. It is now suggested that social interaction constitutes a “cauldron of power”. It is acknowledged that such a statement is somewhat counter-intuitive, given the general neglect of power within the field of social interactionism. Nevertheless, it is argued here that power is perhaps the most significant aspect of any analysis of social interaction. The concept of power, however, is problematic. It is important to distinguish what is meant by power in this discussion of negotiation from what we might identify as “behavioural” conceptions of power, such as that promoted by the work of Max Weber or John Kenneth Galbraith. This type of thinking can easily lead to unhelpful binary polarisations of omnipotence and powerlessness. In contrast, a more nuanced understanding of power is proposed. Recourse is first taken to the work of Michel Foucault, through which we can understand power as ubiquitous and pervasive, constant and dynamic, exercised, not possessed. Having already understood social interaction as a cauldron of influence, and drawing on the discussion of negotiation thus far, we are in a position to redefine power as *the ability to increase or decrease the awareness of uncertainty or the emergence of certainty in either one’s own life or that of another*.

Social Interaction and Social Interactionism

Social interaction is the third of the four elements of negotiation. It is, of course, important to clarify what is meant here by “social interaction”. Goffman’s definition of social interaction, for example, is unusually narrow, understood as “that which uniquely transpires in social situations, that is, environments in which two or more individuals are physically in one another’s response presence” (1997:235). For Goffman, then, there are times when social interaction does not occur. Here, however, social interaction alludes broadly to the constant and dynamic environment of interrelationship that we

experience in the course of our lives, in the course of negotiation. In saying that social interaction is constant, our position is sympathetic with the approach of Jonathan Turner (1988) whose theoretical stance builds on social interaction as an “invariant property of the universe” (13). In saying it is dynamic, we can reiterate that “The simplest notion of social interaction when applied to man is that of reciprocal influencing among persons or social forces” (Becker 1964:657), that “Individual acts and social pressures mutually modify each other” (Burns 1979:13), or that “social interaction is the process whereby the overt movements, covert deliberations, and basic physiology of one individual influence those of another, and vice versa” (J. Turner 1988:14).

This allows us to draw on the field of social interactionism¹⁹, or simply “interactionism”. Paul Rock refers to this field as “a deliberately unsystematic and often vague method of interpreting the ways in which people do things together” (1985:843). The unsystematic nature of the field leads to a proliferation of perspectives and the absence of a dominant orthodoxy (ibid.).

¹⁹ I use the terms “social interaction” and “social interactionism” here while also acknowledging that the more prevalent terms are “symbolic interaction” and “symbolic interactionism”. The latter terms were retrospectively coined by Herbert Blumer in 1937 to refer to the research focus of sociologists and social psychologists working from the University of Chicago, in particular the work of William James, George Herbert Mead, Charles Horton Cooley, W. I. Thomas, Robert E. Park, Florian Znaniecki, Robert Redfield, Louis Wirth, James Baldwin, and Blumer himself (Blumer 1969). Symbolic interactionism identifies symbols as the basis of social life. Individuals and society, it is proposed, develop in and through people’s interaction, a process of reciprocal influencing mediated by symbols (see Becker and McCall, eds. 1990). By “symbol” is meant “a stimulus that has a learned meaning and value for people, and man’s response to a symbol is in terms of its meaning and value rather than in terms of its physical stimulation of his sense organs” (A. M. Rose 1962:5). Symbols, and the meanings and values to which they refer, are understood in symbolic interactionism to occur in associative clusters (10). Individuals develop a sense of themselves as they learn to use symbols, and also as they learn to see themselves the way they believe others see them. Individuals in this way become objects to themselves, and conscious of their condition of otherness. Although “symbolic interaction” and “symbolic interactionism” remain the more common terms (see Plummer, ed. 1991, 1991a), it has long been recognised that interactionist studies that actually focus on symbolic concerns are few and far between. The field, it could be argued, is misnamed. As Fred Davis, President of the Society for the Study of Symbolic Interaction was to remark in 1981: “What is noteworthy about (many good interactionist studies) is ... the (at best) utter casualness or (at worst) complete neglect with which we attend to the actual symbolic materials by which the meaning generation process is carried forward” (quoted in Plummer 1991a:xiv). This neglect of symbol is largely due, Davis argues, to a dominant and influential structuralism in the rise of semiotics, which approach is generally inconsistent with interactionist concerns for emergent, negotiated meaning. Symbolic interactionism, then, is here taken to be a subcategory of the broader field of social interactionism.

J. R. Hall uses the term "the social interaction perspective" to refer to "the cluster of approaches that focus on meaning, action, symbols, and the interactive unfolding and historically contingent character of social life" (1990:17). In this cluster he includes interpretive sociology, symbolic interactionism, phenomenology, hermeneutics, and ethnomethodology.²⁰ Although interactionism is a field of diverse approaches (see Plummer, ed. 1991, 1991a), following Rochberg-Halton (1982:455-456), we might say that interactionists are united by an emphasis on the situational context of meaning, a focus on the ways "meanings emerge, are negotiated, stabilized and transformed" (Plummer 1991a:ix). Burns summarises the central principles of interactionist approaches as follows:

Firstly, humans respond to the environment on the basis of the meanings that elements of the environment have for them as individuals. Secondly, such meanings are a product of social interaction, and thirdly these ... meanings are modified through individual interpretation within the ambit of this shared interaction (Burns 1979:12-13).

We experience structures of meaning in and through our experience of social interaction. Meanings, after all, cannot be divorced from the historically specific forms of social intercourse (E. McCarthy 1996:1). Social interactionism affirms an understanding of negotiated and structured meaning as emergent, adaptive, and adapting. Social interactionism holds that: "structure ... is a culturally infused aspect of social reality that, if it is to have causal salience, either directly shapes the emergent practices of social actors ... or is "made present" by those actors" (J. R. Hall 1990:31). This echoes the formulation of Marx and Engels that thinking and the experience of consciousness are a social product, developing out of the actual social conditions that individuals share: "The mode of production of material life determines the social, political and intellectual life process in general. It is not the consciousness of men that determines their being, but, on the contrary,

²⁰ Denzin (1989), for example, explicitly acknowledges a debt to this "cluster of approaches" in his development of what he terms "interpretive interactionism". From this perspective Denzin explores the relationship between personal troubles and the public policies and institutions that have been created to address those problems, advocating that "the perspectives and experiences of those persons who are served by applied programs must be grasped, interpreted, and understood if solid, effective, applied programs are to be created" (12).

their social being that determines their consciousness" (Marx 1983:159-160).²¹ As E. Doyle McCarthy writes:

The realities we live within and act toward are part of a social and productive process involving a socialized consciousness at every phase of its development. The types of knowledge we use, the images and ideas they invoke, the forms of classification are intrinsic conditions of all social action (1996:21).

Structures of meaning constitute and are constituted in and through social interaction. They are never fixed, but continually checked against experience and revised. Human thought and consciousness develops in the actual, changing social conditions of a constant and, crucially, dynamic reality.

The Assumptions of Social Interactionism

One of the central assumptions behind the principles of social interactionism is that of "process". Stemming from the philosophical school of pragmatism²², the idea of process is encapsulated by William James' phrase, "the stream of your experience" (1995:21). All aspects of human behaviour, consciousness, thought, activity, interaction, and society are characterised as being dynamic and continuously in flux, that is, "in process" (A. M. Rose 1962; P. M. Hall 1972:36). A second assumption of social interactionism is "emergence". Scholars adopting the approaches of social interactionism assert that meaning is emergent, in and through the process of social interaction.

²¹ This is often referred to as the principle of social determination, and is held to one of the fundamental principles of the sociology of knowledge (see K. Mannheim 1936; Berger and Luckmann 1966; Douglas 1986; E. McCarthy 1996).

²² Initiated by Charles Sanders Peirce and William James, and developed more explicitly through the "instrumentalism" of John Dewey, pragmatism was an attempt to counter what were seen as the overly atomistic and reductionist stances of the dominant philosophies of the day in the late nineteenth and early parts of the twentieth century within Europe and America. First and foremost, pragmatism is a method for solving or evaluating intellectual problems, and also a theory about the kinds of knowledge we are capable of acquiring. A fundamental tenet of pragmatism is that the effect of an idea is more important than its origin: "[I]f you follow the pragmatic method, you cannot look on any such word as closing your quest. You must bring out of each word its practical cash-value, set it at work within the stream of your experience. It appears less as a solution, then, than as a program for more work, and more particularly as an indication of the ways in which existing realities may be *changed*. ... Theories thus become instruments, not answers to enigmas, in which we can rest" (James 1995:21; see also Reed 1996).

Attempts, then, are made to focus on the individually constructed²³ and socially negotiated meanings. This forces analysis “into the realm of the lifeworld, where neither structure, social forces, symbols, nor ideas have lives of their own, but must come into play as proximate realities” (J. R. Hall 1990:17). People are understood to participate in a constantly-shifting, adaptive experience of meaning in interaction. Taken together, then, process and emergence are fully consistent with our previous discussion of the isomorphism of awareness of uncertainty and emergence of certainty.

Another basic but often implicit assumption in social interactionism is the ever-presence of uncertainty, already noted as a key element in our understanding of negotiation. As we noted earlier, uncertainty is an integral part of social interaction for Erving Goffman. Goffman proposes that social interaction is undertaken in a condition of “special doubt” or “puzzlement”: “some expectation is present that the world ought not to be opaque in this regard. And insofar as the individual is moved to engage in action of some kind – a very usual possibility – the ambiguity will be translated into felt uncertainty and hesitancy” (1974:302). Likewise, David Smail has drawn attention to the ever-presence of uncertainty in social interaction: “since we ourselves are, through our conduct, determiners of our world and our fate, and since we cannot know ourselves and each other as fully analysable and therefore completely understandable objects, we are in reality doomed to operate without certainty” (1997:171). When interactionists speak of ‘process’ they refer to the uncertainties of social interaction, in particular its contingency, whereupon new conditions arise as social interaction proceeds, new conditions which must be negotiated. This has profound implications: “Nothing *has* to happen. Nothing is fully determined. At every step of every unfolding event, something else *might* happen” (McCall and Becker 1990:6). Acknowledging the role of contingency and uncertainty in social interaction is not to insist that people behave randomly. This is not a condition of

²³ Social interactionist approaches tend to affirm constructivist perspectives. As we saw earlier, such constructivism admits the importance of human agency and the partial, situated, local, and unique character of experience: “so that the common social origin and constitution of individual selves and their structures does not preclude wide individual

fundamental uncertainty. It is, rather, a middle-ground, a corrective to positions that proclaim the necessities of determinism (Blumer 1969). Knowledge and meaning are, then, provisional, "liable to reformulation with the answering of just one more question. All knowledge is a novel and often unanticipated synthesis of what has gone before" (Rock 1985:844).

Social Interactionism and the Cauldron of Power

It was stated earlier that negotiation has been chosen as a terrestrial fulcrum with which to understand the production and generation of meaning, power, knowledge, and expectation, so that we might then assess the relational implications, the power effects, of the expansion of the Irish Music Rights Organisation. Turning to social interaction as a key element of negotiation might, then, seem somewhat counter-intuitive. The field of social interactionism has often been criticised for providing a limited view of social power that tends to be non-economic and ahistorical (Meltzer, Petras, and Reynolds 1975/1991:97/37). Like structuralists, social interactionists have even been criticised for neglecting the issue of power relations altogether. As Peter Hall states it bluntly: "The concept power ... is noticeably absent in the writings of the interactionists" 1972:46). What is suggested now is that, rather than social interaction and social interactionism offering no insights into the dynamics of power relations, by incorporating our earlier discussion of uncertainty and certainty into our discussion of social interaction we can see social interaction as the very cauldron of power. Power is, then, perhaps the most significant aspect of social interaction, and a crucial element in our understanding of negotiation. A lot depends, of course, on what we mean by "power". Three perspectives will, then, be presented:

- Behavioural power
- Foucault and power
- Social interaction and power

differences and variations among them, or contradict the peculiar and more or less distinctive individuality which each of them in fact possesses" (G. H. Mead 1962:201).

Behavioural Power

In a brief survey of definitions and usages, James T. Duke acknowledges the problematic character of the concept of power, and summarises the range of approaches as follows:

First, power has sometimes been treated as a *potential* for social action, at other times as an indicator only of *actual* behavior. Second, power has sometimes been distinguished from force, coercion, persuasion, and influence, and sometimes has been used as inclusive of all of these. Third, power has sometimes been viewed as asymmetrical – as involving a single direction of influence (leader to follower); at other times it has been treated as symmetrical or involving reciprocal influences between two parties, as for example between a leader and his follower. Fourth, power has sometimes been associated with the illegitimate use of force, at other times only with legitimate uses by established leaders. Fifth, power has sometimes been viewed as a zero-sum possession, in which the holding of power by one precludes possession by another; at other times, it has been treated as a sharable commodity such that possession by one does not forestall possession by another. Relatedly (sixth), power has sometimes been treated as a possession or commodity, other times as an available resource. Seventh, power has sometimes been viewed as a generalized capacity available in all situations; by others, it has been treated as situationally-specific (1976:41-41).

It seems clear from this summary that “the concept of power suffers from a plethora of definitions” (Lipman-Blumen 1994:109). It is perhaps useful, then, to focus particularly on the concept of power as it is used by Weber, who has probably articulated the most influential perspective on power (Duke 1976:41). Weber defines power (*Macht*) in slightly different ways, and translations of Weber’s work have also varied in interpretation. Nevertheless, there is a certain consistency of approach. In The Theory of Social and Economic Organization, we find that:

“Power” (*Macht*) is the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests (1947:152).

In Basic Concepts in Sociology we find a slightly different translation:

By power is meant that opportunity existing within a social relationship which permits one to carry out one’s own will even against resistance and regardless of the basis on which this opportunity rests (1962:117).

Elsewhere, Weber provides a more concise definition, stating that power is “the possibility of imposing one’s will upon the behaviour of other persons” (cited in Rheinstein, ed. 1954:323). Economist John Kenneth Galbraith follows Weber in defining power as “the ability of an individual or a group to

impose its purposes on others" (1973:108), or "the possibility of imposing one's will upon the behavior of other persons" (1983:2). We might refer to these, then, as the "behavioural" conception of power, and simplistically characterise it as "power over". Galbraith notes that this conception of power invites three questions: "[W]ho possesses the power (something that it not always evident); to what ends is it used; and what are the instruments that are employed in winning the consent or obedience of others?" (1973:108). Power, then, would be something that is possessed by the strong and influential in their actions against the weak and impressionable. The centralization of authority that occurs under a regime of successfully legitimated monologic utterances, such as has shown to be the case in the expansion of the Irish Music Rights Organisation, reinforces this behavioural conception of power. The more power that the Irish Music Rights Organisation possesses, the less others possess. In this configuration, as feminist theorists have often noted (see Radtke and Stam, eds. 1994), the weak are both the objects of power and those who do not possess it, hence they cannot change the way that things are, or, indeed, the way that things must be. Hence, we may be led toward binary polarisations of authority and subordination, persuader and persuaded, rulers and ruled, oppressor and oppressed, dominator and dominated. Conceiving of power as "the ability of an individual or a group to impose its purposes on others" concedes the quality of necessity to the circle of certainty constructed by authoritative discourse, thus reinforcing "the dual myth of powerlessness and omnipotence" (Lipman-Blumen 1994:113).

Foucault and Power

Michel Foucault provides the most radical alternative to this dominant behavioural conception of power. He draws attention to a greater complexity of differentiation in social processes than the behavioural model allows for, thereby moving the main focus from the "behaviour" of power to the "effects" of power (Foucault 1980, 1990, 1991). Foucault's understanding of power provides a foundation for our understanding of power in social interaction, power in negotiation, and a foundation for our understanding of the relational

implications of the expansion of the Irish Music Rights Organisation. As Foucault sees it, power is neither positive nor negative, as such; neither is it possessed, but rather deployed and exercised in and through the production of meanings of which our reality is constituted. Insofar as those meanings can never be fixed, then, power relations are not and cannot ever be inevitable, unchanging, or unalterable (Faith 1994:55). Power is not seen to radiate in a single direction from a specific source, and is not solely a matter of force or coercion, but permeates every aspect of social life, exercised from an infinite multiplicity of positions.²⁴ People, then, are not so much victims of power, as vehicles:

Power must be analysed as something which circulates, or rather as something which only functions in the form of a chain. It is never localised here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organisation. And not only do individuals circulate through its threads; they are always in the position of simultaneously undergoing and exercising this power. They are not only its inert or consenting target; they are always also the elements of its articulation. In other words, individuals are the vehicles of power, not its points of application (Foucault 1980:98).

Power for Foucault, then, is constant and dynamic, ubiquitous and pervasive, constitutive and enabling, always operating in conditions of unequal, shifting relations, operating at every site of social life: "Power is everywhere; not because it embraces everything, but because it comes from everywhere" (Foucault 1990:93).

Social Interaction and Power

We have already argued for an understanding of social interaction as the constant and dynamic environment of interrelationship and influence that we experience in the course of our lives. We have also drawn attention to the paradoxically constant and dynamic aspects of our experience of uncertainty and certainty. Following Foucault, and in contrast to behavioural conceptions of power, we are now in a position to confront the principle of power-as-law, "namely the fact that there is no escaping from power, that it is always-

²⁴ For example, use of Foucauldian conceptions of power within feminist theory has drawn attention to the complexities that implicate women as participants in their own oppression and subjugation, and also often as participants in the subjugation of other women, and men (Holub 1997:8).

already present, constituting that very thing which one attempts to counter it with" (1980:82). We can now state that power is here understood as *the ability to increase or decrease the awareness of uncertainty or the emergence of certainty in either one's own life or that of another*. This allows us to incorporate Foucault's insights, understanding power as ubiquitous and pervasive, constant and dynamic, exercised, not possessed, understanding power as "an effect of the operation of social relationships" (Sheridan 1980:218). This conception of power gives us an idea of the particularism of effect of the interconnectedness of everything. With this understanding of power we are in a position to come to an understanding of the specificities of differentiated power relations, the specificities of the strategies, manoeuvres, tactics, techniques, and mechanisms of power that arise from "a network of relations, constantly in tension" (Foucault 1991:26). More importantly for our understanding of negotiation, though, this conception of power allows us to reclaim social interaction as the cauldron of power relations.

Expectation

We are moving towards an understanding of negotiation. The first three elements of negotiation are the ever-presence of uncertainty, the emergence of certainty, and social interaction. From our discussion of these elements a number of statements can be drawn:

- our experience of uncertainty is both constant and dynamic
- our experience of certainty is both constant and dynamic
- our experience of uncertainty and certainty is isomorphic
- our experience of uncertainty and certainty constitutes our experience of power
- humans respond to the environment on the basis of associative, cumulative, adaptive, and structured meanings that emerge for them as individuals
- these meanings are modified through individual negotiation within social interaction
- as our experience of meaning is reconfigured, so, too, is our experience of uncertainty, our experience of certainty, and our experience of power

In this section we turn to the fourth element in this theory of negotiation - expectation. It is suggested that expectation is the most significant element of negotiation, providing for the fundamental character of our experience, consciousness, and social interaction.

"Expectation" has received little attention as a condition of human experience. What little attention expectation has received has been largely limited to the investigation of expectation insofar as that expectation refers to anticipated future happenings. This can be understood simplistically as 'expectation *that*', or 'expectation *of*'. Deborah Tannen, however, focuses on the constitution of expectation itself, understanding it to include both prior experience and new perceptions. Using the concept of "structures of expectation", Tannen argues that expectations are associative, cumulative, adaptive, individually-negotiated, and structured. It will be suggested that we can, then, substitute the term "structures of expectation" for our earlier term "structures of meaning". We go further, proposing that our experience of expectation and structures of expectation is actually the most basic experience of consciousness, the most crucial element in our understanding of negotiation. Expectation is understood here as the constant and dynamic nexus of our isomorphic experience of uncertainty and certainty, the constant and dynamic nexus of our experience of power and meaning.

Not only is our experience of expectation and structures of expectation constant and dynamic, it is also *directive*, that is, our experience of expectations and structures of expectation guides and shapes our negotiation in and through our experience of social interaction. To get a clearer sense of the influence of expectation and structures of expectation on our negotiation it is perhaps useful to conceive of expectation in terms of guiding forces. We can understand these forces analytically in terms of vectors. Following Foucault (esp. 1991), we can conceive of structures of expectation, then, as vectoral mechanisms, with relational implications for negotiation. We can also come to a clearer understanding of the implications of our working assemblies of structures of expectation by turning to the social psychological concepts of disposition and attitude. Disposition is understood to refer generally to a person's composite consistency of expectation, while attitude refers to a consistency of expectation as specifically evidenced in negotiation.

Expectation as Future Orientation

Earlier it was noted that understandings of both behavioural uncertainty and fundamental uncertainty can be summarised as referring to 'uncertainty *about*'. Understandings of expectation can similarly be summarised as being limited to an understanding of 'expectation *that*' or 'expectation *of*', rather than focusing on the character of expectation itself. The Shorter Oxford English Dictionary, for example, states as the first of its definitions that expectation is "the action or state of waiting, or of waiting for (something)" (Onions, ed. 1973:704). Understandings of expectation are heavily weighted towards an anticipated future. Barbara Misztal, for example, in a discussion of the role of trust in the social sciences, typically remarks: "In short, the content of expectations is a combination of different kinds of meaning and a variety of shared understanding, which actors develop within their specific relationships. All these expectations have, however, something in common; namely, they are all orientated towards future action" (1996:24). So it is that attempts to provide a precise psychological meaning for expectation are often treated within a context of 'preparedness' or 'readiness'. Thus, E. L. Hartley understands expectation as: "A subjective state, deriving from an orientation within a time process, which may be described in non-behaviouristic approaches as the quality of experience which relates to the adjustment of the individual to anticipated future experiences" (Hartley 1964:250). Similarly, for P. L. Harriman, expectation refers to "a condition of readiness ... to make a certain type of response to a situation ... The term usually connotes the emotional condition of preparedness for a given type of response" (1952:129). This is also the emphasis in research relating to response-expectancies in behaviourist psychology (see Kirsch, ed. 1999).

In economics, too, understanding of expectation is limited to 'expectation *that*', being concerned primarily with outcomes, probability, and predictability. It is duly noted that 'economic expectations' are implicitly linked to issues of behavioural or fundamental uncertainty, that is, to the experience of uncertainty in decision-making processes. This is consistent with The Shorter Oxford English Dictionary's seventh definition of expectation, first sourced in

1832, as “the degree of probability of the occurrence of any contingent event” (Onions, ed. 1973:704). As Hartley comments, within economic understandings of expectation there is “less concern with the precise psychological meaning of the term and greater stress on the function of expectations in social relations” (1964:251). Expectations within economics are, then, more or less synonymous with projected possible outcomes, the emphasis being more on the future outcome than on the character of expectation itself (Shackle 1972:389). In contrast, as noted in relation to uncertainty, within this discussion of negotiation what we require is more an understanding ‘of expectation’ than of ‘expectation *that*’ or ‘expectation *of*’.

Structures of Expectation

The work of sociolinguist Deborah Tannen is helpful in this regard. Tannen takes a nuanced approach to expectation, emphasising not only a future orientation but also past experience: “As soon as we measure a new perception against what we know of the world from prior experience, we are dealing with expectations” (Tannen 1993:15). Expectations, then, are something we deal with all the time. For Tannen, expectations are associative, cumulative, adaptive, individually-negotiated, and structured. She draws these characteristics together in her use of the term “structures of expectation”²⁵, drawn from the work of Robert N. Ross (1975), which refers to the conditions whereby “on the basis of one’s experience of the world ..., one organizes knowledge about the world and uses this knowledge to predict interpretations and relationships regarding new information, events, and experiences” (Tannen 1993:16). Tannen understands this as an overarching term that draws together a range of other terms such as “schema”, “script”, and “frame”, from interpretive and cognitive fields such as psychology, linguistics, anthropology, sociology, and artificial intelligence:

What unifies all these branches of research is the realization that people approach the world not as naïve, blank-slate receptacles who take in stimuli as they exist in some independent and objective way, but rather as experienced and sophisticated veterans

²⁵ We might also note, but eschew on account of base-level assumption incompatibility, the use of the term “expectation structures” in the work of systems theorist Niklas Luhmann (1995).

of perception who have stored their prior experience as "an organized mass,"²⁶ and who see events and objects in the world in relation to each other and in relation to their prior experience. This prior experience or organized knowledge then takes the form of expectations about the world, and in the vast majority of cases, the world, being a systematic place, confirms these expectations, saving the individual the trouble of figuring things out anew all the time (1993:20-21).

At this point it is proposed that we can usefully replace our earlier term "structures of meaning" with the term "structures of expectation". Tannen herself recognises that theories referring to schemata, scripts, frames, or structures of expectation have not focused on the constituent elements of these structures, nor on how they may be socially determined (1979:144; 1993:21). Expectation as *expectation* is a little-studied aspect of human experience.²⁷ We now confront this directly as we suggest that our experience of expectation and structures of expectation is the basic experience of consciousness.

Expectation as the Basic Condition of Consciousness

Following our earlier discussion of the awareness of uncertainty and the emergence of certainty, it is now proposed that the term "*expectation*" refers to the basic condition of consciousness.²⁸ To explain, the constant and dynamic experience of expectation is understood to arise from the isomorphic nexus of the constant and dynamic experience of both uncertainty and certainty. By prioritising *expectation* rather than uncertainty and certainty we are drawn away from the temptation of binary opposition. Expectation is the constant and dynamic, generating and generative condition of the nexus of awareness and emergence, and is characterised by the experience of constant and dynamic power relations. Negotiation, then, offers a position of uncertainty-as-law, certainty-as-law, power-as-law, and expectation-as-law.

²⁶ Tannen here builds upon the Frederick Bartlett's work in the 1930s on memory processes. Bartlett proposed that the past is stored in memory "as an organized mass" rather than as a group of static elements, each with a specific and unchanging character (cited in MacLachlan and Reid 1994:65).

²⁷ An exploration of indices of psychology textbooks in the library of the University of Limerick, for example, revealed no incidences of the term "expectation".

²⁸ This is something that William James hints at in his comment that "the knowledge of some other part of the stream [of consciousness], past or future, near or remote, is always mixed in with our knowledge of the present thing" (1890).

The Directive Character of Expectation

Our experience of expectation and structures of expectations, then, is constant and dynamic. Structures of expectation are experienced as are associative, cumulative, adaptive, and individually-negotiated. Crucially, however, structures of expectation are also *directive*. That is, the structures of expectation that we experience direct and guide us in and through social interaction, channelling our experience, and, to some degree at least, determining the course of our negotiation. As Deborah Tannen notes: "At the same time the expectations make it possible to perceive and interpret objects and events in the world, they shape those perceptions to the model of the world provided by them" (Tannen 1993:21). Structures of expectation, then, have *relational implications* for our experience of negotiation.

Stating this brings us back to considerations of power in negotiation. Earlier, social interaction was described as the constant and dynamic relational environment of negotiation. Subsequently, we built on the work of Michel Foucault to offer a redefinition of power in social interaction as *the ability to increase or decrease the awareness of uncertainty or the emergence of certainty in either one's own life or that of another*. If structures of expectation are understood to be directive, to have relational implications for the ways in which we negotiate our experience, then we might also say that structures of expectation are structures of power, or, at the very least, that structures of expectation are implicated in the effects of power. Ubiquitous, constant, and dynamic power can be conceived of as being constituted by ubiquitous, constant, and dynamic forces, as Foucault's analytics of power (see pp. 210-211) would suggest (e.g., 1990, 1991). Although Foucault nowhere specifies his use of the term "force" in this regard, it seems clear that this is a quasi-metaphorical usage in relation to the concept as it is used in the physical sciences, that is, an influence which produces or tends to produce motion or change of motion. Gestalt psychologist Kurt Lewin notes that in psychology the concept of force refers to "phenomena which have been called *drive*, *excitatory tendency*, or by any other name expressing "tendency to act in a

certain direction.” The term *force* intends to express this directed element, attributing to it, in addition, a magnitude (strength of force) and a point of application, without assuming any additional implications” (Lewin 1972:201). In this theory of negotiation, such forces of power are likewise directive. Positing forces allows us to consider the constitution of our isomorphic experience of uncertainty and certainty, our experience of awareness and emergence. Structures of expectation can also, then, be characterised as being constituted by forces, as expectation and structures of expectation arise in and through the nexus of awareness and emergence. These forces may also be understood not only as forces of negotiation, but forces of expectation.

The mathematical concept of *vectors* allows us to come to a more specific analytic understanding of the constitution of these forces. The concept of vector is often used to describe multi-dimensional quantities (quantities which require more than one number to describe them), and relates to anything that has both magnitude and direction, for example, velocity, acceleration, or virtually any type of force (frictional or gravitational, for example). It is contrasted with a scalar, which has only magnitude, for example, mass, or speed.²⁹ It must be emphasised that we are using the term “vector” as an analytic aid. What the metaphor of vector allows us to do is to posit, first, a dynamic ‘unit’ (for want of a better word) of analysis as regards expectation and structures of expectation. Second, it allows us to posit ‘forces’ in expectation which are apparently distinct but which nonetheless reinforce and support each other in a composite manner, in often very subtle ways, influencing and directing individual negotiations as they go. This is consistent both with our understanding of power in social interaction, and with our position as regards emergent certainty, and reinforcement or sedimentation. Third, it tentatively holds out the possibility that these forces may be, in some fashion, analysed and maybe even approximately quantified for the purposes of comparison. The metaphor of vectors has initially been drawn, in this instance, from Hunt and Wickham’s

²⁹ Scalar analysis would be appropriate for analytic models which rely on static, synchronic, or positivist methodologies.

(1994) articulation of an oblique reference within Michel Foucault's *History of Sexuality*. Speaking of micro-powers, Foucault suggests that they: "... form a general line of force that traverses the local oppositions and links them together ... Major dominations are the hegemonic effects that are sustained by all these confrontations" (1990:94). Hunt and Wickham identify this 'line of force' as a 'vector'.

Use of the vector metaphor is not without a significant precedent, however. Kurt Lewin makes use of vector analysis in his examination of psychological forces in what he called the environment of the "life space" (1972; Burns 1979). Lewin uses the concept of vector as a metaphor to speak of psychological forces while also offering the concept as the basis for a quasi-mathematical analysis of psychological experience. While usage of the term here is broadly sympathetic with Lewin's usage, we differ in the specifics. For Lewin "the directional feature of the force vector is equivalent to the specification of the response involved, the length of the vector to the strength of the response tendency" (Campbell 1988:117). Here, the directive element of a force vector in negotiation refers to the degree to which uncertainty is experienced. The magnitudinal element of a vector is the degree of emergent certainty experienced. These elements are isomorphic, hence we need only focus on one of them. Given that our interest is in the directive character of structures of expectation we are here drawing attention to what we term the "uncertainty index" of a structure of expectation. The higher the uncertainty index, the less directive or determining the vector will be in negotiation. The lower the uncertainty index, the more directive or determining the vector will be in negotiation.

It follows, then, that all structures of expectation are vectorally constituted and vectorally constituting. It might be more useful, then, to understand structures of expectation as 'vectoral mechanisms'. Vectoral mechanisms guide and shape our negotiations, our expectations, or in plainer terms, guide and shape our lives. 'Mechanism' is here understood in much the same way as Foucault speaks of disciplining mechanisms:

Its strength is that it never intervenes, it is exercised spontaneously and without noise, it constitutes a mechanism whose effects follow from one another. Because, without any physical instrument other than architecture and geometry, it acts directly on individuals; it gives 'power of mind over mind'. ... it arranges things in such a way that the exercise of power is not added on from the outside, like a rigid, heavy constraint, to the functions it invests, but is so subtly present in them as to increase their efficiency by itself increasing its own points of contact (Foucault 1991:206).

Not only do vectoral mechanisms act on 'practised' (but not necessarily 'docile') bodies³⁰, but the experience of uncertainty and certainty implicated in the negotiation of vectoral mechanisms in and through social interaction also provides for the instruments and procedures in and through which expectations are constituted. Vectoral mechanisms, then, in many ways regulate the types of expectation, that are *possible* (and unlikely) within negotiation, although never fully divesting the individual of the power of positive transformation. Structures of expectation, after all, are never fixed. Structures of expectation, as directive vectoral mechanisms, can be understood, therefore, to have *relational implications* for the ways in which we experience uncertainty and meaning in our lives.

Social Psychology

Drawing upon precedents set by the field of social psychology we find further instruction as to how meanings and expectations are organised in social environments, and how they guide the way we behave. Social psychology³¹ (to greatly simplify the focus of a diverse field) deals with social behaviour and the experience of people in social contexts. Experience is regarded by social psychologists as both cumulative and directive. For example, a "commonplace observation" among social psychologists is that "*behavior is modified as a result of experience, that somehow a person retains residues of experience of such a nature as to guide, bias, or otherwise influence later behavior*" (Campbell 1988:96). It is possible to identify two broad trends of

³⁰ "Its strength is that it never intervenes, it is exercised spontaneously and without noise, it constitutes a mechanism whose effects follow from one another. Because, without any physical instrument other than architecture and geometry, it acts directly on individuals; it gives 'power of mind over mind'. ... it arranges things in such a way that the exercise of power is not added on from the outside, like a rigid, heavy constraint, to the functions it invests, but is so subtly present in them as to increase their efficiency by itself increasing its own points of contact" (Foucault 1991:206).

³¹ For a general introduction to social psychology see Argyle and Colman, eds. (1995).

research within the field, one deeply influenced by stimulus-response theories of behaviourism and cognitive science, and the other influenced by the subjectivist epistemologies of phenomenological schools such as hermeneutics, constructivism, and ethnomethodology. This divide mirrors the convergence of experimental psychology and psychoanalysis in the foundation of social psychology (Allport 1935; Rokeach 1968). Whether research in social psychology is grounded in behaviourism or phenomenology, however, the assumption that past experience provides “agendas for action” (Rokeach 1968:453) provides a foundation for the field. Central concepts in this regard are “attitude” and “disposition”, both of which will prove key in our understanding of negotiation, and in our assessment of the relational implications of the expansion of the Irish Music Rights Organisation.

Attitude

In social psychology we can find a substantial body of research dedicated to exploring the link between attitudes and behaviour.³² Indeed, certain scholars (e.g., Allport 1935; Thomas and Znaniecki 1918) have referred to attitude as social psychology’s central problem (Campbell 1988:94). Despite there being a lack of common definition for the term (see Campbell 1988), it remains indispensable to both social psychology and the psychology of personality (Rokeach 1968:449). Definitions of attitude, like definitions of expectation earlier, are heavily weighted towards an anticipated future, couched as ‘readiness’, or ‘predisposition’. It might be suggested that in, social psychology, attitude is to some degree regarded as directive expectation. Allport, for example, defines attitude as “a mental and neural state of readiness, organized through experience, exerting a directive or dynamic influence upon the individual’s response to all objects and situations with which it is related” (1935:810). For Rokeach attitude is “a relatively enduring organization of beliefs around an object or situation predisposing one to respond in some preferential manner” (1968:450). Campbell (writing in 1950)

³² For further discussion on the psychology of attitude see Ajzen (1988) or Eagly and Chaiken (1993).

notes a contrast between the wide-range of explanatory definitions of “social attitude” and the broad similarity of evidentiary research procedures. In response to this paradox, he proposes that there is already an implicit operational definition of attitude, that is, “a social attitude is (or is evidenced by) consistency in response to social objects” (1988:95). There seems to be widespread agreement that attitude is to be defined in relation to a preferential or discriminatory response, however, as Rokeach notes, “the basis for the preferential response is not clear” (1968:453).

Disposition

Like “attitude”, understandings of “disposition” also arise from the assumption that past experience provides “agendas for action”. There are two prevalent understandings of “disposition”, one dominant in philosophical discourse (see Mumford 1998; Armstrong, Martin, Place, and Crane (ed.) 1996; Prior 1985), the other prevalent in social psychology (see D. T. Campbell 1988; Rokeach 1968; Brewster Smith 1968; Argyle and Colman, eds. 1995). From the perspective of philosophical thought, a disposition is generally (though not uncontroversially³³) referred to as:

a property (such as *solubility*, *fragility*, *elasticity*) whose instantiation entails that the thing which has the property would change, or bring about some change, under certain conditions. For instance, to say that some object is soluble is to say that it would dissolve if put in water; to say that something is fragile is to say it would break if (for instance) dropped in suitable circumstances; to say that something is elastic is to say it would stretch when pulled. The fragility (solubility, elasticity) is a disposition; the breaking (dissolving, stretching) is the *manifestation* of the disposition (Crane 1996:1).

In his development of psychological attribution theory in the 1950s, Fritz Heider drew on this understanding of disposition. Heider’s research focused particularly on the way we attribute traits, motives, and abilities to people following observation of their behaviour:

In an analogy with the world of physical causality, he noted that objects behave in ways they do because of the joint influence of their own qualities that *dispose* them to behave in certain ways (dispositional qualities) and environmental forces. ... Heider argued that people are also disposed to behave in particular ways when various kinds of forces are applied to them (Schneider 1995:41).

³³ “It is hard to give an uncontroversial definition of the notion of a disposition, since its very definition is one of the matters under dispute” (Crane 1996:1).

This, then, is the foundation of the psychological usage of the term “disposition”. As with “attitude”, there is a lack of common definitions for the term in psychology. Furthermore, definitions of the term are rare (Katz 2001). Buss and Craik (1983) define dispositions as “summaries of act frequencies” (1983:105), that is, frequently exhibited trends in behaviour. For Donald Campbell (1988:115), the generic term “acquired behavioral disposition” covers an expansive range of social science concepts, “from sentiment to expectancy to *Anschauung* to social habit” (95), all of which can be declared synonyms until such time as operational evidence distinguishing them can be brought forth.³⁴ A formal definition of psychological disposition is offered by the Comprehensive Dictionary of Psychological and Psychoanalytical Terms: “a general term for any (hypothesized) organized and enduring part of the total psychological or psychophysiological organization in virtue of which a person is likely to respond to certain statable conditions with a certain kind of behavior” (English and English 1958:158).

Having been transposed from philosophy to psychology, the term “disposition” now also finds a place in the influential sociological terminology of Pierre Bourdieu. For Bourdieu, the term is key in discussions of what he terms “habitus”, understood as “a system of dispositions” (1977:214 n.1). Bourdieu outlines the suitability of the term “disposition” as follows: “It expresses first the *result of an organizing action*, with a meaning close to that of words such as structure; it also designates a *way of being*, a *habitual state* (especially of the body) and, in particular, a *predisposition*, *tendency*, *propensity*, or *inclination*” (Bourdieu 1977: 214 n.1). Bourdieu’s elaboration of dispositions as both “transposable” and “durable” is little different from the

³⁴ He lists 86 terms: acquired drive, adaptation, adjustment, *Anschauung*, anticipation, apperceptive mass, association, attitude, behavioral environment, belief, bent, canalization, cathectic orientation, cathexis, cell assembly, cognitive map, cognitive structure, concept, conditioned reflex, conviction, definition of the situation, determining tendency, disposition, engram, evaluation, expectancy, expectation, experience, fixation, frame of reference, goal, hab, habit, hypothesis, idea, imprinting, integrative field, intention, interest, judgment, knowledge, learning, life space, meaning, memory, mental image, motive, need disposition, neurobiotaxis, notion, object, opinion, orientation, past history of reinforcement, perceptual sensitization, percept, perseveration, personality trait, predisposition (acquired), prejudgment, representation, response disposition, response latency, response probability, response threshold, role perception, schema, sentiment, set, stereotype, synaptic threshold change, tendency, tinsit, trace, valence, and value (Campbell 1988:99).

psychological definition offered above which seeks "to account for sameness of behavior despite variation in the enviroining situation" (English and English 1958:158). Bourdieu's understanding of the system of dispositions that constitutes habitus as "a past which survives in the present and tends to perpetuate itself into the future by making itself present in practices structured according to its principles" (1977:82), is echoed by Stephen Mumford's general characterisation of dispositions³⁵ as "explanations of past events and grounds for the prediction of future events" (1998:11). This characterisation covers philosophical, psychological, and sociological usages of the term, and refers us back to Deborah Tannen's understanding of expectations. It is interesting, then, that Donald Campbell at one point remarks that the diagnosis of expectations in some sense constitutes an operational definition of disposition (1988:100). This leads us on towards what is specifically meant by the terms "disposition" and "attitude" in negotiation.

Disposition and Attitude in Negotiation

In this section we have examined the role and character of expectation as the fourth element of negotiation³⁶. It was noted that general understandings take the term "expectation" to refer to a future orientation. Following Deborah Tannen, we can extend this understanding of expectation to encompass not only future orientation but also past experience. We can go even further, though. Within negotiation, the term "expectation" is understood to refer to

³⁵ Mumford also interestingly notes the work of I. J. Thompson, who argues that the issue of disposition is also an important one in quantum physics: "[T]he notion of [a disposition] is likely to be fundamental to a realistic and non-paradoxical account of quantum physics. ... it is thus important to resist certain interpretations of physics and of the physical world that render dispositions impossible. ... In quantum field theory (a more complete form of quantum physics), even the *existence* of objects is a dispositional property that may or may not be manifested, as, for example, pairs of particles and anti-particles may or may not be formed" (I. J. Thompson 1988:76-77).

³⁶ The term "negotiation" is here preferred to Bourdieu's term "habitus", not least because, as Jenkins (1992) argues, there are twenty seven different usages of the term "habitus" in the work of Bourdieu, not to mention the various deployments of the term in the work of Aquinas, Hegel, Husserl, Weber, Durkheim, and Mauss. The general ambiguity of Bourdieu's term is here considered unhelpful, and the specificity of the term "disposition" in this theory of negotiation leaves the use of the term "habitus" unnecessary. The theory of negotiation presented here seeks not to bridge subjective-objective and individual-social dichotomies, in the manner of Bourdieu's theory of habitus, but to bypass them.

the basic condition of consciousness. Expectation is here understood as the constant and dynamic nexus of our constant and dynamic experience of uncertainty and our constant and dynamic experience of certainty. Expectation, then, also encompasses our constant and dynamic experience of power relations in social interaction. Our experience of expectation, in and through structures of expectation, is understood to be associative, cumulative, adaptive, individually-negotiated, structured, and directive.

Summary

We can now understand "disposition" to refer generally to *a person's consistency of expectation*. Dispositions are, then, assemblies of structures of expectation. As such, they are associative, cumulative, adaptive, individually-negotiated, structured, and directive. Dispositions have relational implications for the ways we live our lives. Those relational implications are evidenced by the disclosure of "attitude" in the particularities of social interaction, the particularities of power relations. "Attitude" here refers to a *consistency of expectation as specifically evidenced in negotiation*. Attitude is here understood as the manifestation of disposition.

Dispositions and attitudes are also composite.³⁷ An acknowledgment of the composite character of disposition and attitude allows us to proceed with particularist analysis without necessarily pursuing examination of particular experiences of particular structures of expectation. The metaphor of vectors allows us to better understand the directive and composite character of dispositions and attitude. An understanding of vectors of expectation also highlights that the so-called "content" or "subject-matter" of structures of expectation does not matter as much as a person's composite orientation towards uncertainty in disposition and attitude, at least insofar as relational implications are concerned.³⁸ In the social sciences (as contrasted with the

³⁷ This point is argued by Campbell (1988) in his discussion of the different informational modes on which acquired behavioural dispositions are based. Brewster Smith (1968:460) notes, however, that solid evidence for the composite character of dispositions is lacking. I am unaware of more recent advances in relation to this specific issue in social psychology.

³⁸ This is borne out by Susan Greenfield's analysis: "... an enriched environment, in neurological terms, would have little to do with whether one was on a beach in the Caribbean or trapped in a financially compromised position at home. As far as the brain is concerned, stimulation is provided by conversations, experiences, and encounters, irrespective of material wherewithal" (Greenfield 2000:63). It is also interesting to note here

neurological sciences), dispositions and attitudes can be most clearly gauged in and through examination of orientations towards uncertainty. By focusing on composite dispositions, and by seeing the manifestation of disposition in the particularism of attitude, we can, in Chapter 9, move towards a general composite assessment of the relational implications of the expansion of the Irish Music Rights Organisation.

Summary

In Chapter 6 it was argued that the workings of law play a vital role in the production and generation of meaning and power in the social interactions of our everyday lives. By structuring our experience, it was offered, they guide and shape our lives. It was stated that law “only exists in the sense that it is embodied as a set of expectations or understandings about behaviour” (Cotterrell 1984:155). By accepting the meanings that structure the Irish Music Rights Organisation, we also allow those same meanings to structure our expectations and our social relationships. By acknowledging the ways in which law can guide and shape our lives, it was suggested, we might also recognise IMRO’s expansionary practices as *interpretive* practices, with relational implications for our negotiations of meaning and power in social interaction. At the time, however, no theoretical foundation was offered on which to base these claims.

Now, however, this theory of negotiation takes up Myra Jehlen’s challenge and provides us with “a terrestrial fulcrum for a radical comparativism”, a theoretical grounding for these claims. It offers an alternative base of assumptions upon which to base the project of retheorising. Negotiation, as it has been outlined here, provides the first steps of a theoretical perspective that seeks to come to terms with the complexities of the expansion of the

David Icke’s use of the term “opposames”. This term refers to discursive ‘opposites’ that are nonetheless implicated in similar relations of power: “While the belief they seek to indoctrinate may be slightly different, often very slightly, the overall theme is exactly the same – the imposition of one person’s belief on another” (2001:4). Once again, it is not so much the ‘content’ as the power relation we should look to. Icke’s reputation as a conspiracy theorist with a dislike of seven foot reptilian overlords does not diminish the usefulness of this term.

Irish Music Rights Organisation. This expansion provides an example of a particular character of social and political relations, viewed from the perspective of humans-among-humans. We have shown that the four elements of negotiation are the ever-presence of uncertainty, the emergence of certainty, social interaction, and expectation. By focusing on the interrelationship of these elements we come closer to an appreciation of how it is that law, intellectual property, copyright, performing rights, and the monopolistic hegemony of the Irish Music Rights Organisation can guide and shape lives. Understanding negotiation in this way allows us to acknowledge that “everything is “in the last analysis” political” (Jameson 1981:20). This theory of negotiation prepares the way for the final chapter, in which we underscore the relational implications of IMRO’s expansion, arguing that this expansion provides us with an excellent example of the process and practices of enclosure.

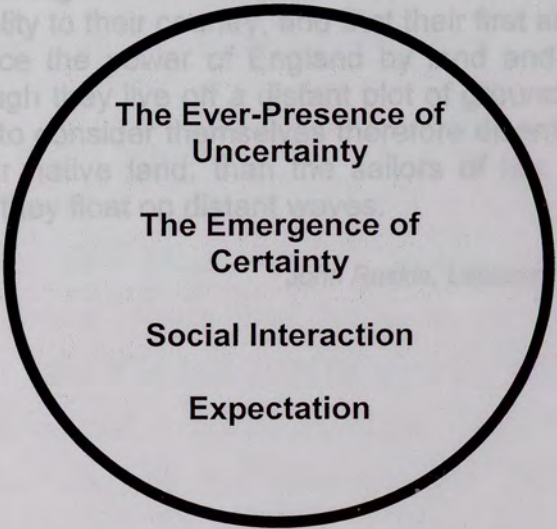


Figure 4. The Elements of Negotiation (II)

Introduction

Chapters 7 and 8 provide us with a set of basic assumptions, built around the notion of negotiation. These assumptions move us towards the retheorising aims of this thesis. They provide us with basic parameters with which to assess the relational implications of negotiations in and through social interaction. Our experience of power, in this chapter we

Chapter 9

And this is what she must either do, or perish: she must found colonies as fast and as far as she is able, formed of her most energetic and worthiest men; - seizing every piece of fruitful waste ground she can set her foot on, and there teaching these her colonists that their chief virtue is to be fidelity to their country, and that their first aim is to be to advance the power of England by land and sea: and that, though they live off a distant plot of ground, they are no more to consider themselves therefore disenfranchised from their native land, than the sailors of her fleets do, because they float on distant waves.

John Ruskin, Lectures on Art, 1894

transformed in the space of less than five years into what seemed like consensual silence? How it is that IMRO's authority is often taken to be value-free, politically-neutral, natural, inevitable, and necessary? What principles and forces underlie the extension and consolidation of the organisation's authority? How can we understand the expansionary activities of the Irish Music Rights Organisation as a particular character of social and political relations? How can we explore the implications of acquiescence to IMRO's authority for personal negotiations of meaning, power, and expectation? What, in short, are the specific relational implications of this expansion? In analysing the expansion of the Irish Music Rights Organisation as an example of the process and practices of enclosure we address these questions, remembering that "The person who would challenge the logic or justice of any one aspect of the chain must eventually confront the logic and justice of the entire system" (Goldsmith et al. 1992:144). Here we undertake

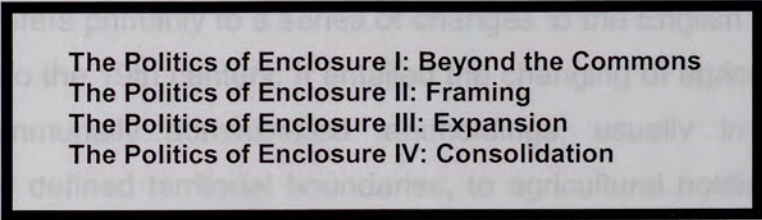
Introduction

Chapters 7 and 8 provide us with a set of basic assumptions, built around the notion of negotiation. These assumptions move us towards the retheorising aims of this thesis. They provide us with basic parameters with which to assess the relational implications of negotiations in and through social interaction. Our experience of negotiation is our experience of power. In this chapter we go further. We look at the expansion of the Irish Music Rights Organisation as an example of a particular modality of negotiation, a particular modality of power relations. In this chapter we move towards an understanding of the expansion of the Irish Music Rights Organisation from 1995-2000 as an example of negotiations of enclosure.

It is perhaps helpful at this juncture to return to some of the central issues. How did it happen that a resistant wave of fear, confusion, anger, and loathing against the Irish Music Rights Organisation was effectively transformed in the space of less than five years into what seemed like consensual silence? How is it that IMRO's authority is often taken to be value-free, politically-neutral, natural, inevitable, and necessary? What principles and forces underlie the extension and consolidation of the organisation's authority? How can we understand the expansionary activities of the Irish Music Rights Organisation as a particular character of social and political relations? How can we explore the implications of acquiescence to IMRO's authority for personal negotiations of meaning, power, and expectation? What, in short, are the specific *relational implications* of this expansion? In analysing the expansion of the Irish Music Rights Organisation as an example of the process and practices of enclosure we address these questions, remembering that "The person who would challenge the logic or justice of any one aspect of the chain must eventually confront the logic and justice of the entire system" (Goldsmith et al. 1992:144). Here we undertake

a re-examination of IMRO's expansion, then, as an example of the process and practices of enclosure, without taking recourse to the concept of the commons.

This chapter is presented in four sections:



- The Politics of Enclosure I: Beyond the Commons
- The Politics of Enclosure II: Framing
- The Politics of Enclosure III: Expansion
- The Politics of Enclosure IV: Consolidation

Figure 5. The Structure of Chapter 9

**The Politics of Enclosure I:
Beyond the Commons**

In this, the first section, dominant understandings of the politics of enclosure are briefly outlined. Most commonly, the term 'enclosure' refers to either 'land, property, and the commons', or 'resources, intellectual property, and the commons'. Thus, we might say that enclosure is most often understood as 'enclosure of'. Here, however, we move towards an understanding of enclosure without taking recourse to the notion of the commons.

The basic meaning of the verb 'to enclose' is to surround on all sides and confine in a limited area. Hence, it may be associated with the verbal synonyms 'cage', 'fence', 'wall', or 'frame'. As a noun, 'enclosure' allows for synonyms such as 'perimeter', 'frame', 'claim', 'territory', 'defences', 'trap', 'cell', 'box', 'cage', or 'prison'. This is to take a very literal approach to the term 'enclosure'. It is perhaps more useful for our purposes to turn to usages which open up wider connotations of a social and political nature. Although the term 'enclosure' is "an arena for the criss-crossing of disputed and competing values and orientations" (Siemon 1994:23), we can generally differentiate two ways in which the term has been used. We can perhaps

broadly refer to these usages as the “first enclosure movement” and the “second enclosure movement”.³⁹

In simple terms, we can safely say that study of the “first enclosure movement” concerns land, property, and the commons (see Thirsk 1958; Mingay 1968; Yelling 1977; M. Turner 1984; Allen 1992). ‘Enclosure’, in this sense, refers primarily to a series of changes to the English landscape from the 15th to the 19th century. It entailed the changing of agricultural practices from communally administered landholdings, usually in fields without physically defined territorial boundaries, to agricultural holdings which were non-communal. Common lands were ‘enclosed’ by man-made boundaries that separated one farm from another. Slater identifies three generic features of ‘enclosure’ in this regard:

(1) the laying together of scattered properties and consequent abolition of intermixture of properties and holdings; (2) the abolition of common rights; (3) the hedging and ditching of the separate properties. The third process is the actual “enclosing” which gives its name to a series of processes which it completes (1907:85).⁴⁰

For many people, this “enclosure” is undoubtedly negative. William Carroll (1994) has noted that during the Tudor-Stuart period (1485-1714) the term “enclosure” is unstable, to the point where it is used as “an all-purpose signifier for virtually every negative socioagricultural development” (1994:36). Those who oppose the encroachment of enclosure as a negative almost invariably move in defence of ‘the commons’, ‘common rights’ as positives. This can primarily be characterised as a people-centred approach to the commons, whereby the commons is understood in terms of a particular character of *social relations* that are constituted, at least in part, by an ethic of interdependence and cooperation (see E. P. Thompson 1968, 1993; Neeson 1993).

There are others, however, for whom the “first enclosure movement” carries positive connotations. Allen notes that “Few ideas have commanded as much assent amongst historians as the claim that enclosures and large

³⁹ I take this bipartite structural approach from Boyle (2001).

farms were responsible for the growth in productivity" (1992:2). Thirsk, for example, defines enclosure as "a method of increasing the productivity or profitability of land. This definition would apply accurately to all forms of enclosure" (Thirsk 1958:4). In a more recent commentary, Boyle agrees: "The big point about the enclosure movement was that it *worked*; this innovation in property systems allowed an unparalleled expansion of productive possibilities" (2001:3). Apologists of enclosure almost invariably criticise 'the commons', 'common rights' or 'common property' as negatives. This can be characterised as a resource-centred approach to the commons. The term 'commons', in this sense, refers to *resources* which are 'held in common' or managed in such a way as to allow unproductive common access. As this approach is resource-centred, the privileged criterion is often the maximisation of utility, such that "[Enclosers] deplored the insubordination of commoners, the unimprovability of their pastures, and the brake on production represented by shared property" (Neeson 1993:7).

Study of the "second enclosure movement", simplistically characterised, concerns resources, intellectual property, and the commons (see Lange 1982; Goldsmith et al. 1992; Brush 1996; Gudeman 1996; Shiva et al. 1997; Frow 1997; C. May 2000; Boyle 2001). The term "enclosure", in this second general sense, refers to more recent developments concerning the expansion of intellectual property rights into more and more domains of life, and, in particular, the appropriation of genetic resources and scientific or indigenous knowledge by opportunistic researchers. This new understanding of the term "enclosure" speaks to major ethical issues that have arisen in the last twenty or thirty years, as advances in scientific research and development have ushered in a situation where "more and more, the traditional lifestyles, knowledge, and biogenetic resources of indigenous, traditional, and local peoples have been deemed by governments, corporations, and others to be of some commercial value, and, therefore, to be property that can be bought and sold" (Posey and Dutfield 1996:1).

⁴⁰ This is reflected in book titles such as *The Enclosure and Expropriation of the Commons*, *Biogenetic Appropriation, Biopiracy and Intellectual Property Rights* (Coville et al. 1997) or *A*

⁴⁰ This is cited in Yelling (1977:5).

Parallels with the “first enclosure movement” are typically emphasised by critics of this contemporary “enclosure”.⁴¹ In addition, just as the “first enclosure movement” is predominantly understood in its relation to the phenomenon of the ‘commons’, so too, in a sense, is the “second enclosure movement”. It is somewhat ironic, however, that critical responses to the impact of the enclosure of intellectual property expansion is often framed in terms of protection of a *resource-centred* commons, despite intentions to implement “alternative, people-centred conservation models” (Posey and Dutfield 1996:3). This is perhaps most clearly illustrated by the anti-enclosure efforts of the Global Coalition for Bio-Cultural Diversity, which links indigenous peoples, scientific organizations, and environmental groups in a common cause. Although the Global Coalition’s working group is loath to use the term “property”, nonetheless the group’s title reflects a general resource-centred bias, calling itself the Working Group for Traditional Resource Rights:

“resource” is used in its broadest sense to mean all knowledge and technology, esthetic and spiritual qualities, tangible and intangible sources that, together, are deemed by local communities to be necessary to ensure healthy and fulfilling lifestyles for present and future generations (Posey and Dutfield 1996:3).

The “second enclosure movement” is primarily understood to refer, then, to enclosure of common resources.

Whether referring to the ‘land, property, and the commons’, or ‘resources, intellectual property, and the commons’, understandings of the term ‘enclosure’ can most often be characterised, therefore, by the configuration ‘enclosure of’, and then most often within the binary of ‘enclosure of the commons’. The relationship between ‘enclosure’ and the ‘commons’ is, then, often unquestioningly presented as a dichotomous one. If nothing else, this is an invitation to take sides. Depending on which side you take, the term ‘enclosure’ can have either negative or positive connotations. For some, enclosure is undoubtedly a synonym for increased productivity or profitability

⁴¹ This is reflected in book titles such as The Enclosure and Recovery of the Commons: Biodiversity, Indigenous Knowledge and Intellectual Property Rights (Shiva et al. 1997), or A Global Political Economy of Intellectual Property Rights: the new enclosures? (C. May 2000).

(Thirsk 1958:4), for others enclosure refers starkly to “expropriation, exclusion, denial and dispossession” (Goldsmith et al. 1992:131). As noted in Chapter 1, if we stay within this binary logic we can only ever understand ‘enclosure’ in relation to a ‘commons’ and only ever understand a ‘commons’ in relation to ‘enclosure’ (see pp. 28-31). This leaves us bound by what rhetorician Kenneth Burke calls contextual or dialectical definition. In this formulation, something is defined in terms of something else, that which is not itself. As Burke notes, this is at the heart of the very idea of definition (1969:24). There is a clear temptation to reduce ‘the commons’ to a set of features that are understood to express its essence, but only insofar as it stands in contrast to enclosure, for “It is arguably only in reaction to invasion, dispossession or other threats to accustomed security of access that the concept of common rights emerges” (Goldsmith et al. 1992:126).⁴²

In this thesis, however, we are seeking to break away from the binary structures implicated in the study of ‘enclosure of’ in order to come to a better understanding of enclosure itself. Enclosure, it will be argued, is a social process that cannot simply be identified with specific historical periods or associated solely with identifiable “movements”. Enclosure is better understood, not as one side of a binary opposition, but, rather, as a character or mode of power relations in negotiation. There is not, then, an *a priori* assessment of enclosure as positive or negative, with associated tendencies to judgment and blame. Rather, in a Foucauldian move, the focus is on enclosure as a particular modality of *negotiation*, a particular modality of the *exercise of power*. The aim of this chapter, then, is both to identify the features of enclosure as a process through an examination of the expansion of the Irish Music Rights Organisation, and also to move towards an assessment of the effects or *relational implications* of enclosure for negotiations of social interaction. In this chapter we move beyond the commons towards an understanding of the process and practices of enclosure.

⁴² The power of contextual or dialectical definition is explored in Occidentalism: Images of the West (Carrier, ed. 1995).

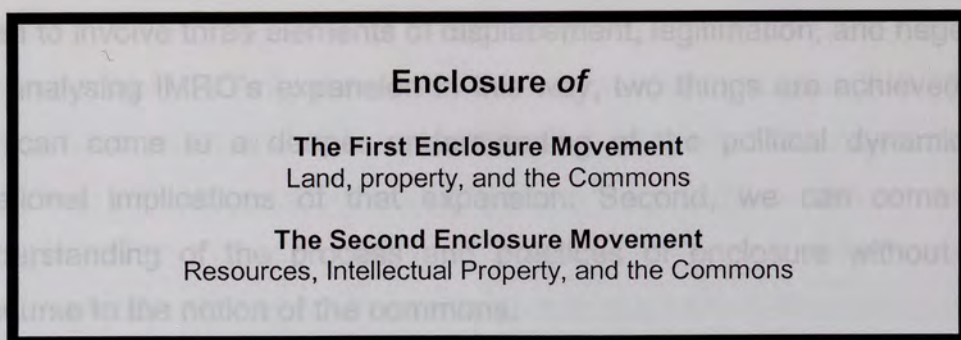


Figure 6. Dominant Understandings of Enclosure

The Process and Practices of Enclosure

For Christopher May (2000), the relationship between property and intellectual property is a metaphorical one, and, hence, enclosure which concerns 'land, property, and the commons' is used as the basic referent from which to draw metaphorical analogies for issues of 'resources, intellectual property, and the commons'. However, following this examination of the expansion of the Irish Music Rights Organisation from 1995-2000, I am more inclined to view enclosure as a single process, or, rather, a characteristic modality of power, with undoubtedly infinite manifestations in social interaction. Any such analysis of enclosure as a characteristic set of power relations is faced with the challenge of achieving what Yelling refers to as "an appropriate set of generalisations", the derivation of which "is the crux of the matter, and it is on the solution of this problem that any general work on enclosure must depend" (1977:4).

This chapter, then, presents a preliminary analysis of the features of enclosure. In particular, it is argued that enclosure can be understood as having three features: framing, expansion, and consolidation. Each of these features is analysed in the context of the expansion of the Irish Music Rights Organisation 1995-2000. In and through this analysis, it is shown that the features of enclosure can be further subdivided. Framing is understood to be constituted by three operations of power: monologic generalisation, closure, and separation. The analysis of the expansion of enclosure is divided into

two elements: representation and resistance. The feature of consolidation is seen to involve three elements of displacement, legitimisation, and hegemony. By analysing IMRO's expansion in this way, two things are achieved. First, we can come to a deeper understanding of the political dynamics and relational implications of that expansion. Second, we can come to an understanding of the process and practices of enclosure without taking recourse to the notion of the commons.

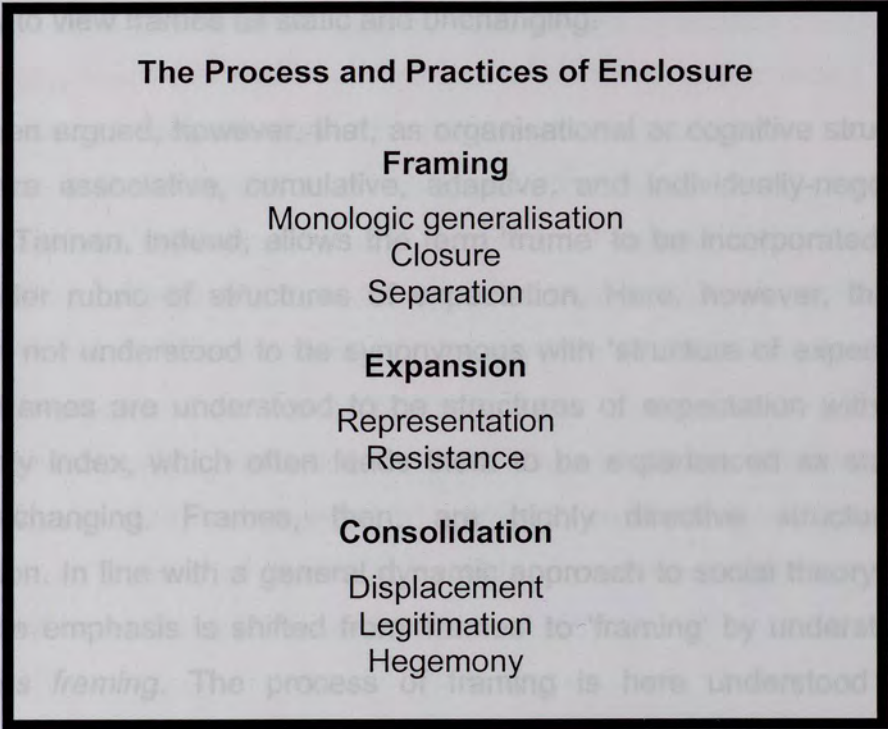


Figure 7. The Process and Practices of Enclosure

**The Politics of Enclosure II:
Framing**

Framing is the first feature of the process and practices of enclosure. In this section we examine the role of framing in the expansion of the Irish Music Rights Organisation from 1995-2000. We first examine the dominant meanings of the term 'frame'. The most obvious association is with picture frames. It is interesting that 'frame' in this sense has frequently been explained in terms of enclosure, understood as a dual process of inclusion and exclusive separation. There are now wider connotations of the term,

however. Scholars identify two related categories. The first is derived from the work of Gregory Bateson. Here, the role of 'frames' as organisational principles for communication in social interaction is emphasised. The second stems from the work of Frederick Bartlett, and focuses on 'frames' as cognitive 'knowledge structures'. Both are frequently explained using the metaphor of enclosure. Specifically, frames are presented as both enclosure *of*, or inclusion (that which is included within the frame), and enclosure *from* or exclusive separation (that which remains outside the frame). There is a tendency to view frames as static and unchanging.

It has been argued, however, that, as organisational or cognitive structures, frames are associative, cumulative, adaptive, and individually-negotiated. Deborah Tannen, indeed, allows the term 'frame' to be incorporated within the broader rubric of structures of expectation. Here, however, the term 'frame' is not understood to be synonymous with 'structure of expectation'. Rather, frames are understood to be structures of expectation with a low uncertainty index, which often leads them to be experienced as stable or even unchanging. Frames, then, are highly directive structures of expectation. In line with a general dynamic approach to social theory in this thesis, the emphasis is shifted from 'frames' to 'framing' by understanding frames *as framing*. The process of framing is here understood to be constituted by three interdependent techniques of power: monologic generalisation, closure, and separation. Following a brief outline of the character of each of these techniques, examples are provided which demonstrate that framing suffuses the activities and expectations of the Irish Music Rights Organisation.

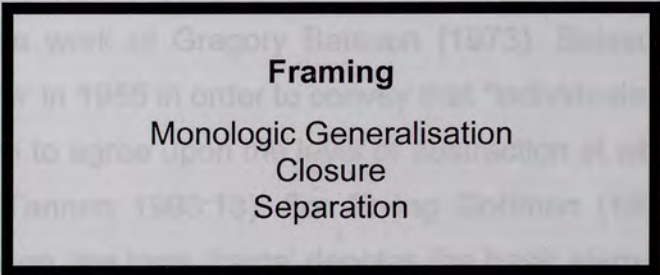


Figure 8. The Operations of Framing

'Frames' and 'Framing'

The notion of a frame is most obviously associated with picture frames, devices with which we surround a picture in order to mark it off as special, to mark it off as worthy of our interest. Bateson saw picture frames as a message that serves to organize the perception of the viewer, saying "Attend to what is within and do not attend to what is outside" (1973:187). Frequently, such frames are explained by using the metaphor of enclosure. Simplistically, frames are often understood to encompass processes of both enclosure *of* and enclosure *from*: "Framing a painting can be seen as an act of enclosure that serves to demarcate a semiotic field, separating it from the rest of the plane against which it is viewed and thereby telling us how to regard it" (MacLachlan and Reid 1994:12). As MacLachlan and Reid remind us: "frames function both as part of the structure of what they enclose (at their inner edge) and (at the outer edge or rim of the frame) part of the 'outside' world against which the enclosed text or activity is framed" (55). Frames in general, then, are also understood to be result from a process of 'enclosure', a "process of demarcating phenomena in a double-edged way that is simultaneously inclusive and exclusive" (16).

This apparently straightforward understanding of 'frame' has been extended to encompass wider associations. Deborah Tannen subsequently distinguishes two categories of 'frame' in relevant literature (1993:59-61). The first category is that of interactive 'frames of interpretation'. MacLachlan and Reid refer to this as the 'psychological' or 'social' approach to frames. This is generally the usage of the term in anthropology and sociology, and it stems from the work of Gregory Bateson (1973). Bateson introduced the notion of 'frame' in 1955 in order to convey that "individuals exchange signals that allow them to agree upon the level of abstraction at which any message is intended" (Tannen 1993:18). For Erving Goffman (1974), for example, following Bateson, the term 'frame' denotes the basic elements, principles, or premises of organisation that govern social events or situations, and interaction within them. Individuals, Goffman suggested, fit their actions to

their understanding of a frame of activity, such that: "a strip of activity will be perceived by its participants in terms of the rules or premises of a primary framework" (Goffman 1997:158).

The second category Tannen identifies is that of 'knowledge structures' or 'schemas'. MacLachlan and Reid refer to this as the 'cognitive' approach to frames. This theoretical affiliation derives largely from the work of cognitive psychologist Frederick Bartlett. Bartlett emphasised that what we understand as acts of perception are really acts of recall. Subsequently, he was particularly interested in the socio-cognitive points of reference which interact with contextualising cues thereby guiding our interpretation of messages (see MacLachlan and Reid 1994:Ch. 4; Tannen 1993). Cognitive frames, then, are regarded as the organising basis for cognitively-processed experiential knowledge.⁴³

Tannen emphasises the need to always keep in mind that interpretive framing is both interactional and dynamic, continually checked against experience and revised, however minutely. MacLachlan and Reid argue that one of the central aspects in Bateson's understanding of frames is "their dynamic potential for, or vulnerability to, change" (1994:46). Similarly, they point to Goffman's understanding of the provisional, interpretive character of frames:

for [Goffman], like Bateson, frames are not stable structures which unambiguously demarcate strips of experience. ... Experience is always subject to (re)organisation or (re)framing according to different interests and points of view, and this makes possible various disturbances to our perception of 'what it is that's going on' (47).

It would not be going too far to state that the term 'frames', whether social or cognitive, is used to refer to structures which are associative, cumulative, adaptive, and individually-negotiated. Tannen stresses that frames are constantly implicated in negotiations of power, involving "constantly evolving lines of interpretation, constantly negotiated footings" (1979:78). For Tannen, as we saw in Chapter 8 (see p. 213), the term 'frames' is coterminous with the term 'structures of expectation', referring to the process whereby "on the

basis of one's experience of the world ... one organizes knowledge about the world and uses this knowledge to predict interpretations and relationships regarding new information, events, and experiences" (1993:16). In this thesis, frames are understood slightly differently; as structures of expectation, yes, but as structures of expectation with a low uncertainty index. Frames, then, are experienced as structures of expectation that are stable or even unchanging.⁴⁴ They become "boundary markers, often naturalised to the point of invisibility" (McLachlan and Reid 1994:55). This is consistent with Tannen's remark that there is a general tendency to regard 'frames' as static, and to prioritise 'frames' over the process of framing (61).⁴⁵ Following on from earlier discussion, frames are, then, those structures of expectation which we experience as most stable, most unchanging, and, importantly, *most directive* in our negotiation of social interaction.

Understanding 'frames' as structures of expectation in this way leads us to question the distinction between *literal* frames and *metaphorical* frames. Instead of this distinction, we are drawn to understand frames as *framing* that occurs in the negotiation of social interaction. In this spirit, MacLachlan and Reid translate Derrida's "*Il y a du cadre mais le cadre n'existe pas*" as "Framing occurs but there is no frame" (1994:6). They continue: "There is no frame, first because framing is an *act* rather than a stable given, and second because even solid, material frames tend to be naturalised by the viewer into near oblivion" (ibid.). Here, also, we want to draw the emphasis away from 'frames' and shift it to the process of 'framing'. 'Frames', structures of expectation with a low uncertainty index, encountered in negotiation, implicate people in 'framing'. Framing is here understood to be constituted by

⁴³ Tannen notes that such 'cognitive' understandings of frames are dominant in the fields of artificial intelligence, cognitive psychology, and linguistic semantics (1993:59).

⁴⁴ What I understand by 'frames' would seem to correlate somewhat with what David Harvey refers to as concrete abstractions. For Harvey, 'concrete abstractions' are taken-for-granted, 'embedded' concepts that are available to us in everyday speech and which we draw upon in the conduct of everyday life (see Gregory 1994:361).

⁴⁵ It follows, then, that the model of enclosure most often used to convey the sense of 'frame' (enclosure *of* and enclosure *from*) is dominated by static referents.

three interdependent techniques of power⁴⁶: monologic generalisation, closure, and separation.

Monologic Generalisation

The first technique of framing is monologic generalisation. Within the process of framing there is a tendency for people to work from the general to the particular, to start from sweeping generalisations or 'grand labels', which offer the solace of resolution, keeping the dogs of uncertainty from the heels of reflection. As Primo Levi has written: "To give a name to a thing is as gratifying as giving a name to an island, but it is also dangerous: the danger consists in one's becoming convinced that all is taken care of and that once named the phenomenon has also been explained" (1991:127). Simplistically, the labelling, naming, or statements of monologic generalisation can be understood to encompass the following types of statement: 'We're all the same', 'They're all the same', 'It's the same all the way through', or 'It's always the same'.

Monologic generalisation not only proceeds on the assumption that a general label is useful or convenient, as many labels often are, but also on the assumption that the general label is an unchanging fulcrum of certitude around which all discussion of particular circumstances rotates. Such generalisation is monologic insofar as the expectation is that the generalisation will remain unquestioned and authoritative. Monologic generalisation in effect closes off the possibility of further discourse. What becomes important where monologic generalisation is concerned is the issue of which meanings and expectations are privileged at this 'end of discourse', when such terms are used in particular circumstances, and, more importantly still, which are hidden beneath an unquestioned veil of generalised abstraction *in extremis*. This technique of framing allows for the *assumption* of consensus, which, while unchallenged, provides powerful legitimation for some voices and not others. One subsequent characteristic of monologic

⁴⁶ Power, it will be remembered, is understood here as the ability to increase or decrease the experience of uncertainty or certainty in one's own life or that of another.

generalisation is a high level of abstraction, given that the peopled particularism of specificity and difference is always a challenge to generalised assumptions of homogeneity, and is therefore avoided.

Closure and Separation

The second technique of framing is closure. Facilitated by monologic generalisation, closure is here understood as the assumed elimination of variables in the cause of unity. Stuart Hall explains closure as "the establishment of an *achieved* system of *equivalence* between language and reality" (1998:1060). In effect, the technique of closure signals that no more need be said, that the quest for meaning is already satisfied, that what Gramsci referred to as "the struggle over meaning" is irrelevant because it is superfluous. Rhetorically, closure is characterised by assumptions of unquestionable truth-value, whereby statements are taken to be "proposition-free, natural and spontaneous affirmations about "reality"" (1056), thereby rendering the foundational logic and power operations of framing invisible.

As noted above, framing, understood as a form of 'enclosure', refers to both enclosure *of* and enclosure *from*. The former refers to what we understand here as closure⁴⁷. The latter refers to the third technique of framing that we identify here - separation. Closure and separation go hand in hand, in something of a symbiotic relationship. For closure to occur successfully, it must be closure *as distinct from* something else. Chandler and Van de Vijver (2000) note, for example, that: "In the act of defining the specific closure of concern, one purposely includes objects of one class and excludes other objects or classes. Thus, the act of defining a closure leads naturally to a separation, a distinction, a placing of value on what is important and what is not important" (ix). Similarly, Stephen P. Dunn identifies both intrinsic and

⁴⁷ David Hult draws a direct connection between closure and 'enclosure': "As a spatial description, "closure" initially encompasses all the coordinates appertaining to a circumscribed territory: the "enclosed place" itself; "that which encloses"; "the act of enclosing"; and "the fact of being enclosed." A metaphorical transfer makes the term operate at an abstract level, as applied to logical or perpetual enclosures, a "bringing to a conclusion"" (Hult 1984:iv).

extrinsic forms of closure which coincide with what we identify here as closure and separation:

The intrinsic condition of closure refers to the immutability of the phenomena in question and can loosely be described as suggesting that a cause always produces the same effect. The extrinsic condition requires that the phenomenon in question be isolated from external influences and refers to the condition that an effect has the same cause. Together these two conditions of closure permit a determinate account of event regularities (2000:347).

When deployed together, these three techniques of framing result in a variety of 'frames', each of which is imbued with, at the very least, a tinge of certitude. Those who are guided by the techniques of framing would tend to negotiate social interaction with an experience of abstract, depeopled, binary oppositions, strict polarities, rigid, essentialist classifications, and canonical hierarchies, among many other forms. This will become more clear in following section, in which we briefly explore the deployment of these techniques in and through the structures of expectation promulgated by the representatives of the Irish Music Rights Organisation.

Framing and the Irish Music Rights Organisation

Copyright provides for a composite and exemplary confluence of framing strategies in that the discourses of copyright emerge from a proliferation of monologic generalisations, closures, and separations. Delving through the histories and narratives of law, intellectual property, and copyright at great length is not a luxury that is afforded to us at this point in the thesis. Detailed research has been undertaken by others and need not be replicated here. Of particular note is the work of Martha Woodmansee (1984), Peter Jaszi (1991), Mark Rose (1993, 1994), Brad Sherman (1994, 1995), Brad Sherman and Alain Strowel, eds. (1994), Martha Woodmansee and Peter Jaszi, eds. (1994), Ronald Bettig (1996), Debora Halbert (1999), and Brad Sherman and Lionel Bently (1999). What is of interest are some of the framing operations that occur on a regular basis within the activities of the Irish Music Rights Organisation. We will concentrate on three interrelated 'frames' that feature strongly in the working assembly of IMRO's structures of expectation. We will briefly examine framing of the 'work', the discourse of

economics, and of the organisation itself. The techniques of framing (monologic generalisation, closure, and separation) will thus be shown to suffuse the expansion of the organisation.

Monologic Generalisation and the Work

The notion of the artistic or musical 'work'⁴⁸ is one of the most significant elements in the activities of the Irish Music Rights Organisation. As is stated on the organisation's website: "IMRO's function is to collect and distribute royalties arising from the public performance of copyright works".⁴⁹ The notion of the work and its plural together provide an excellent example of how monologic generalisation operates. As far as the licensing operations of the Irish Music Rights Organisation are concerned, works are 'all the same'. When viewed from the perspective of the particular, each work may indeed be understood to issue from the life of a different person, each in different circumstances, and each may also be given a separate title for purposes of registration. Nevertheless, all are referred to as works. This is the dominant 'grand label', inasmuch as it constitutes the unchanging fulcrum of certitude around which all discussion of particular circumstances of the organisation's activities rotates.

Through monologic generalisation, works function as a homogeneous multitude, as a paradoxically singular unity in infinite diversity. This is most forcefully conveyed by the deployment of blanket licensing. Practices of blanket licensing within the market of 'music rights' ensure that works continue to operate as quintessential commodities: "The concept of a market assumes that the various units of commodity demanded and supplied are considered identical by the various economic actors, both buyers and sellers" (Shanahan 1978:20). As market commodities, then, works are most useful at the highest level of abstraction, in order to facilitate the smoothest (that is,

⁴⁸ It would be my inclination to place the word 'work' in inverted commas at all times. This is, however, more than a little awkward. The use of the inverted comma shall be used, therefore, to refer only to the term 'work'.

⁴⁹ http://www.imro.ie/about/what_we_do.shtml

depeopled) transactions within the frictionless (that is, arelational) space of the capitalist market.

As noted earlier, however, the term 'work' or 'musical work' is never defined, either in legislation or in documentation provided by the Irish Music Rights Organisation. The Copyright and Related Rights Act, 2000, provides two tautologous non-definitions that do not at all define what a musical work or work are:

"musical work" means a work consisting of music, but does not include any words, or action, intended to be sung, spoken, or performed with the music (2.1)

"work" means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program (2.1).

These types of tautologous non-definition assume the existence of the work as an *a priori* and a 'given' within copyright discourse. The absence of definition, combined with the extensive use of the term within IMRO's operations, contributes to mystification, heightened abstraction, and the unquestioned assumption of consensus that everyone must know what is being referred to when the term 'works' is used. The lack of definition also suggests that to privilege particularism over generalisation in this instance is to run into the problem of having nothing in particular that satisfies a definition in the first place.

A similar technique is employed in relation to the terms 'music' and 'performance', both of which are significant frames within the working assembly of frames that cradles the certitude of the generalised work. Like the work, neither 'music' nor 'performance' is ever adequately defined. There is simply a pervasive assumption that the deployment of these terms refers to conditions that provide solid justification for the activities of the Irish Music Rights Organisation. IMRO's 'product' is located somewhere in the nebulous nexus of 'work', 'music', and 'performance'. All are assumed to refer to central, abstract, universal phenomena or 'things'. This is, however, rhetorical sleight-of-hand, supporting discourses and practices that require a commodity to justify their continuance. All three terms, 'work', 'music', and

'performance' are generally self-referential, that is, each term refers, most often implicitly, to the other two terms. In fact, it could be argued that the abstracted generalisation of these terms allows them to function co-extensively, thereby facilitating a further undefined, monologic generalisation, that of 'music use'. The expectation that the monologically generalised 'product-nexus' of the Irish Music Rights Organisation does indeed yield a tradeable commodity is supported by the second technique of framing - closure.

Closure and the Work

Closure, discussed above, is here understood to refer to the assumed elimination of variables in the cause of unity. In the following section we briefly discuss how the closure of the work within copyright discourse can be organised thematically, whereby the work can be understood as a point of intersection for a series of spatial and temporal closures that coalesce in particular around discourses of 'the work-as-property' and 'the work-as-original'. Moreover, the deployment of spatial and temporal closures of the work facilitate what we can understand as social closure, both in the celebration of atomistic and self-interested individualism, and in the work as a focus of operations of prescription and control. Together these contribute to the composite effect and function of the work as a "reified aesthetic object, unitary, closed, and caught up in relations of ownership" (M. Rose 1994:33).

The Spatial Closure of the Work

Performing rights in a work are understood to be analogous to the literary property of copyright, which has developed within the general schemes of intellectual property law: "The notion of intellectual property at its simplest suggests that ideas and knowledge can be parcelled into separable and transferable knowledge objects which enjoy similar characteristics to material property" (C. May 2000:47). As an object of property, the work must be "capable of distinct and separation possession" (M. Rose 1994:34). Hence,

the history of the work within the discourses of law, intellectual property, copyright, and performing rights discloses an ever-decreasing circle of objectification, which we might otherwise understand as spatial closure. This is encapsulated in what is now often referred to as the 'fixity' requirement.

For our purposes, the crucial shift in conceptions of literary property occurred in mid-to-late eighteenth century England. Champions of exclusive and perpetual rights for authors began to emphasize a new understanding of the literary work which was no longer characterised by the ideas it embodied but by its *form*. A work, it was argued was "recognizable by the specificity of its expression ... by the particular way in which an author produces, assembles, expresses and presents concepts" (Chartier 1994:15). It is important to note that this move occurred concurrently with the emergence of what Abrams calls the "objective orientation" within aesthetic discourses of the English literary scene in the late eighteenth and early nineteenth centuries: "which on principle regards the work of art in isolation from all ... external points of reference, analyzes it as a self-sufficient entity constituted by its parts in their internal relations, and sets out to judge it solely by criteria intrinsic to its own mode of being" (1953:26). The emphasis on form and expression was also validated by the philosophical writings of people like Kant, Fichte, and Herder. A burgeoning print culture further consolidated the spatial closure of the work:

"[T]he proponents of literary property were forced to develop ... techniques that would enable them both to identify the protected subject matter and at the same time to draw boundaries around literary property. The initial strategy adopted to achieve this end was to focus upon the physical manifestation of the mental labour as it was captured or represented in the printed word. ... [I]t enabled the proponents of literary property to argue that it could be identified, distinguished and appropriated and that, as such, it exhibited the requisite characteristics for it to be treated as a form of property" (Sherman and Bently 1999:27).

In securing the role of literary property in the concept of the autonomous work, then, recourse was taken to "the 'fixity' which printing and print lend to discourse" (Leed 1990:55). Print, as a technology, facilitated the purveyance of certitude required for the work-as-property. As Mark Rose (1993) details, the emphasis on form and expression in the move towards proprietary authorship was consolidated following the *Donaldson v. Becket* court case in

1774, which also in many ways signalled the beginning of the end of the literary property debate. Where before texts had been widely considered as actions, now texts, as an author's property, became transformed into 'things', or, more particularly, 'works', replaying the classic and abstract legal distinction between *persona* and *res*:

[I]t was not until after the literary property debate that the modern notion of the intangible as a property right existing in a 'thing', with no direct connection to the realm of the physical, came to be accepted, with few questions or doubts (Sherman and Bently 1999:41).

Since the end of the nineteenth century, then, the spatial closure of the work has been unquestionably encapsulated and reinforced in what is often referred to as the "fixity requirement". This is reproduced unequivocally in the Copyright and Related Rights Act, 2000, which states that "Copyright shall not subsist in a literary, dramatic or musical work or an original database until that work is recorded in writing or otherwise by or with the consent of the author" (18.1). Similarly, in the IMRO Members' Handbook, we find that "Copyright in an original work does not arise until it is fixed in writing or by some other material form. Writing includes a form of notation, whether by hand or by printing, typewritten or similar process" (1995a:B10).

Temporal Closure and the Work

If 'fixity' is one key requirement for the recognition of a work of intellectual property, then 'originality'⁵⁰ is another. The copyright doctrine of originality provides for *temporal* closure of the work. In separating the author (*persona*) from the work (*res*), and in instituting the spatial closure of the work in the 'fixity' of 'expression', lobbyists on behalf of literary property were left with something of a gap to fill. The author had been radically separated from the protected work in the cause of property. What was required, however, was a way in which to reconnect the author with the work while retaining the radical separation or alienability that a property right requires. Rose (1994) argues

⁵⁰ For general discussions of creativity, genius, and originality see Abrams (1953), S. Burke, ed. (1995), Connor (1989), Rothenberg and Hausman, eds. (1976), and R. Williams (1976). For discussions on legal aspects of originality see Chused, ed. (1998), Gervais (1998), M. A. Hamilton (1994), G. Lea (1998), Sherman (1995), Sherwood-Edwards (1995), M. Woodmansee (1984), Jaszi (1991), or Woodmansee and Jaszi, eds (1994).

that many inconsistencies in English copyright law were satisfied by the influence of German Romantic theory at the start of the nineteenth century:

Indeed, the Romantic elaboration of such notions as originality, organic form, and the work of art as the expression of the unique personality of the artist was in a sense the necessary completion of the legal and economic transformation that occurred during the copyright struggle. Why should an author have a property right in his work? What does that work consist of? How is a literary composition different from a mechanical invention? It was precisely the theoretical problems raised by the copyright struggle that Romantic theory resolved (M. Rose 1994:52-53).

Legal notions of originality were refined by Romantic literary and cultural discourses to validate narratives of direct causality and unitary provenance. In other words, a clear relationship could be established between the author and the work. Abrams (1953) shows clearly that the development of originality narratives in English literary discourse occurred during a key period. The end of the eighteenth and the beginning of the nineteenth centuries was also the same time as the notion of the author's property right achieved full elaboration in the unquestioned notion of the work of intellectual property (Sherman and Bently 1999). The legal designation of 'original' calls forth the identification of the essential features of an 'original' work. The point isn't whether a work is or isn't original, an issue over which many court cases have been fought. The point is that the criterion of originality, as used within legal discourses of copyright and intellectual property, provides a temporal narrative of certitude within which to locate the spatial certitude of an object of property. The identification of the author as 'origin' of the work supported the temporal closure implicit in the rhetoric of creation *ex nihilo*, a perspective which still retains credibility in copyright discourse (see Goldstein 1990).⁵¹ Furthermore, as both Nietzsche and Foucault have pointed out, the pursuit of origins "is an attempt to capture the exact essence of things, their purest possibilities, and their carefully protected identities; ... this search assumes the existence of immobile forms that precede the external world of accident and succession" (Foucault 1991a:78). It might be argued, indeed, that legal notions of originality paradoxically effect two temporal closures simultaneously; the first being the deterministic temporal closure of direct

⁵¹ "Copyright, in a word, is about authorship. Copyright is about sustaining the conditions of creativity that enable an individual to craft out of thin air, and intense, devouring labour, an *Appalachian Spring*, a *Sun Also Rises*, a *Citizen Kane*" (Goldstein 1990:110).

causality,⁵² the second being the temporal closure of atemporal transcendence in and through the spontaneous 'creation' of the aesthetic work of genius. Paradoxically, this second temporal closure occurs within a general framework of linear temporality. Both function to confirm the uniqueness of the work, thereby further contributing the unitary 'nature' of the autonomous work.

Social Closure and the Work

We have seen, then, how the work provides a focus for a series of framing operations. Monologic generalisation ensures universalised abstraction of the work which facilitates the spatial closure of the work-as-property, and the temporal closure of the work-as-original.⁵³ Now we briefly examine how the work serves as the locus of a series of social closures. Copyright, and performing rights as analogous to copyright, exemplify social closure insofar as they facilitate individual *control*, centralised upon the entity of the work. This is done in two main ways. First, narratives of originality effect the social closure of an isolated possessive individualism around the property of the work. Second, the work provides a focus for the social closure of monopolisation and exclusion, enshrined in copyright legislation. This confluence of closures provides the ideal environment for the work as the quintessential commodity.

We have already seen how the temporal closure of originality sets up a linear narrative of direct cause and effect between the author and the work. This might be understood in another way, that "in order for a work to be protected

⁵² The closure of direct causality inferred by the discourses of originality was further strengthened by the popularity of the metaphor of paternity in literary production: "But of course the patriarchal notion that the writer 'fathers' his text just as God fathered the world is and has been all-pervasive in Western literary civilization, so much so that, as Edward Said has shown, the metaphor is built into the very word, *author*, with which writer, deity, and *pater familias* are identified ... Said himself later observes that a convention of most literary texts is 'that the unity or integrity of the text is maintained by a series of genealogical connections: author-text, beginning-middle-end, text-meaning, reader-interpretation, and so on. Underneath all these is the imagery of succession, of paternity, or hierarchy'" (Gilbert and Gubar 1995:151-152; see also Halbert 1999).

by copyright law, the creator must be seen as exercising the requisite level of control over the production of the artefact" (Sherman 1994:118). Originality narratives, then, are also narratives of social closure, in that they enshrine the isolationism of possessive individualism in the control of the 'creation' of the work: "[T]he romantic vision of authorship plays down the importance of external sources by emphasizing the unique genius of the author and the originality of the work" (Boyle 1996:114-115).⁵⁴

The second social closure located in the work is still about control. However, in this case, it is the continued control permitted in and through the prescriptions of copyright legislation.⁵⁵ It is perhaps useful here to draw on the work of Raymond Murphy. Murphy has followed Weber for his understanding of 'social closure'.⁵⁶ For Murphy, the study of 'social closure' involves analysis of "the mechanisms and practices of monopolization and exclusion" (1988:15). Although Murphy largely approaches social closure from the perspective of class analysis and market operations, it is useful here to consider the work of copyright as the focal point for social closure, in Murphy's sense. This is entirely appropriate, given that, as Murphy writes: "the principal form of exclusion in capitalist society consists of the rules guaranteeing the legal title to private property" (Murphy 1988:57). The

⁵³ This analysis is necessarily simplistic, given that the primary purpose of this section is not to provide a detailed analysis of 'the work' but to outline some of the framing operations at work within the discourse of copyright.

⁵⁴ This is further reinforced by the methodological aesthetic individualism of discourses of originality, in which "the realm of the genius was defined as utterly autonomous. Free from determination by any cultural category other than the absolutely free constructions of his creative imagination, the genius broke down the reciprocal relationship between the author and the rest of culture" (Pease in Burke 1995:267).

⁵⁵ It could be argued that both the social closure of originality and the social closure of prescriptive copyright, as well as depending upon the spatial and temporal closures of the 'work', also depend for their effectiveness on the unitary referent of the legal subject: "Only as an author can a legal subject have a right in a work, and only as a legal subject can an author be said to have a "right" to defend or to assign to a third party" (Gaines 1991:26). As Blomley remarks: "The self, in this account, is innate, and is not constituted, even partially, by relationships with the community. Indeed, the individual is to be protected from the potentially oppressive actions of the community" (1994:205). This line of argument is undertaken by Bernard Edelman (1979), influenced heavily by Evgeny Pashukanis. Jane Gaines builds on the work of both Edelman and Pashukanis to propose the term author-subject as a focus for critical legal analysis. See also Cotterrell (1984).

⁵⁶ Unfortunately, there is no scope here to provide a detailed summary of Murphy's complex and suggestive work. Further work will explore many of the nuances of Murphy's analysis of theories of social closure in the work of Weber, Collins, Parkin, and Bourdieu. In many ways,

prescriptive character of copyright legislation epitomises such monopolization, the Copyright and Related Rights Act, 2000, stating that “copyright is a property right whereby ... the owner of the copyright in any work may undertake or authorise other persons in relation to that work to undertake certain acts in the State, being acts which are designated by this Act as acts restricted by copyright in a work of that description” (17.1). The monopoly grant⁵⁷ of copyright thus allows for the possible enactment of exclusionary procedures: “Denying the social conditions and cultural influences that shape the author’s expressive creativity, we invest him with powers of expropriation and censorship in the name of property” (Coombe 1998:226).

The spatial, temporal, and social closure of the work, then, serves to enable and perpetuate the monologically generalised, universalised, and abstracted entity as the quintessential commodity, minimizing “the threat to free exchange posed by the notion of an intimate link between the “author” and her productions” (Jaszi 1991:478). It is precisely *because* of the abstracted status of the universalised work within the frictionless, arelational space of commodity capitalism⁵⁸ that spatial, temporal, and social closure, that is, *control* of the work, is so important. This is stated clearly from the heart of orthodoxy:

Creations of the mind, such as an idea for an invention, a piece of music or a trademark, can not, like physical objects, be protected against other persons’ use of them by the mere possession of the object. Once the intellectual creation is made available for the public, its creator can no longer exercise control over the use made of the creation. This basic fact, that is, the inability to protect something by the mere possession of an object, underlies the whole concept of intellectual property law (WIPO 1997b:3).

Murphy’s analysis of ‘social closure’ complements my own theory of enclosure. I became aware of this work late in the research process, however.

⁵⁷ Jane Gaines (1991) provides a detailed examination of the dynamics of intellectual property as a monopoly grant. Ronald Bettig also draws attention to the monopolistic character of intellectual property, and particularly the way in which “Copyright seeks to restrict the use of a work to those willing to pay for it” (1996:8).

⁵⁸ The commodity form is a social relationship, and a commodity is anything that is governed by it. In the banal usage of neo-classical economics, however, the social texture of the commodity is erased: the word comes to designate any object produced for use or exchange, or it is given the specialized sense of an unelaborated primary product, or else it is displaced by the unspecific term ‘goods’. A generalized abstraction, it loses all its historicity and its social particularity (Frow 1997:132).

For the system to work(!), each work must be generalised to absolutist abstraction (as property), while also remaining fully individuated and separated from each and every other 'work' (as original). This universalism and particularism *in extremis* cannot be maintained 'successfully' without the constant policing and surveillance of blanket monitoring systems and the blanket bureaucracy of total registration.⁵⁹ That the focus of registration efforts conveniently emerges from a nebulous and unsubstantiated product-nexus is neither here nor there. Nicholas Blomley writes that "The power of concepts such as "individual" or "space" rest upon their abstraction. Once we try to locate and contextualize these concepts, they rapidly become untenable" (1994:219). This could be said equally well of the work. This is not a problem for organisations whose operation is based upon this abstraction, given that political economy, utilitarianism, and neo-classical economics provide for the primary emphasis of modern intellectual property law: "We are already moving toward a permission-less, remuneration-only system. As we do, we move farther and farther away from the notion of the author as a rights-holding genius and closer and closer to the notion of the work as a commodity of challenge" (M. A. Hamilton 1994:126; see also Sherman and Bently 1999).

As more and more elements of life are expressed through the depersonalised and abstract exchange relations of the money economy we find that indifference to distinctive specificity paradoxically leads to a process of separation and partition. In this process, a general trend towards abstract differentiation is reflected in objects which are enclosed as commodities for the sole purpose of exchange: "The contents of life ... are, as it were, split up into so many small parts; their rounded totalities are so shattered by any arbitrary synthesis and formation of them is possible" (Simmel 1990:276).

⁵⁹ This is perhaps epitomised by developments in the field of digital watermarking (Lai 1999). "Watermarks serve as tools for digital copyright protection. There are various general scenarios to which watermarking may be applied. An example is image copyright protection by means of a visible watermarking algorithm. Such a mark is visually apparent, but does not prevent the image from being used for other purposes. The visibility is intended to make apparent any commercial exploitation of the image, hence assisting enforcement. This watermarking system can also be used, *inter alia*, to indicate the ownership of original works. Typically, watermarks are used to prevent and detect unauthorised reproductions and distributions" (Lai 1999:171).

Exchange at its most fundamental can only take place, Simmel proposes, with the formation of differentiated private property concentrated in the individual. From this base, money, "as the absolute representative and embodiment of exchange becomes - by means of private property, with its dependence upon exchange - the vehicle for the expansion of the economy, for the inclusion of innumerable contracting parties through the give-and-take of the exchange process" (349-50). Simmel would argue that the abstraction of money as an exclusively economic value, distanced from the specificity of social relations, grounded in a systematic atomised individualism, and cradled in the formations of private property, "grants the greatest amount of freedom to purely intellectual activity" (314). Following the systematic separation of objects and people, objectified commodity forms (understood as the embodiment of thought, work, and skill) are seen to move independently as objects of exchange: "By their independent, impersonal mobility, objects complete the final stage of their separation from people" (460-461).

Separation and the Work

We have briefly examined, then, the framing operations of monologic generalisation and closure as they apply to the work, perhaps the lynchpin of the operations of the Irish Music Rights Organisation. The third technique of framing is that of separation most obviously characterised by the discursive presence of binary oppositions and polarised dichotomies. Literature on copyright is replete with such separations, so we will do no more than signal a number of the most relevant.⁶⁰ The notion of the work is accompanied by a

⁶⁰ The technique of separation is deployed throughout the varied discourses of copyright. The following is taken as one example among many: "During the heyday of the concept of romantic authorship, the eighteenth and nineteenth centuries, the work was depicted as an entire text. Works were envisioned as indivisible wholes, created out of thin air by the genius author. But the very concept of derivative work rights institutes a revolution in the "work." The existence of the derivative work right subtly alters how we look at all texts. By presupposing that any text might not be wholly original, it reinforces the idea/expression dichotomy's tendency to disaggregate the text, which has a historical pedigree at least as distinguished as romantic authorship. The derivative work right makes it necessary to dissect every text into its constituent parts: ideas, facts, unoriginal expression, public domain material, pre-existing copyrighted material, and finally original expression. Only the latter receives copyright protection" (Hamilton 1994:104).

significant number of 'necessary' separations, without which the closure of the work would have no foundation. We find clear indication of framing in the separation of idea and expression or form.⁶¹ This is paralleled by the discursive separations of mind and matter, intangibility and tangibility.⁶² Closure of proprietary control of the work was separated from frictionless access to the work, and criteria were established to maintain this separation.⁶³ This is paralleled by the separation of private and public.⁶⁴ The closure of originality and 'the original' was accompanied by radical separation from imitation and the copy.⁶⁵ At the centre of it all we find the separation of *persona* and *res*, the crucial confluence of separations in the dualism of author and work:

To summarize the logic of the literary property debate, then, we might say that there were three principal exchanges between the parties. First, the proponents of perpetual copyright asserted the author's natural right to a property in his creation. Second, the opponents of perpetual copyright replied that ideas could not be treated as property and that copyright could only be regarded as a limited personal right of the same order as a patent. Third, the proponents responded that the property claimed was neither the physical book nor the ideas communicated by it but something else entirely, something consisting of style and sentiment combined. What we here observe, I would suggest, is a twin birth, the simultaneous emergence in the discourse of the law of the proprietary author and the literary work. The two concepts are bound to each other. To assert one is to imply the other, and together, like the twin suns of a binary star locked into orbit about each other, they define the centre of the modern literary system (M. Rose 1994:39).⁶⁶

⁶¹ See Abrams (1953), Woodmansee (1984), Chartier (1994), or M. Rose (1994).

⁶² See Sherman and Bently (1999).

⁶³ See in particular Gaines (1991).

⁶⁴ For discussions of the dichotomy between public and private see N. Rose (1987), Thornton (1991), Blomley (1994), Weintraub and Kumar eds. 1997).

⁶⁵ The apotheosis of originality was the denigration of imitation. It is interesting to note that "The literary criticism of the sixteenth century knew of no breach between originality and imitation" (Wittkower 1973:306). See also Lowenthal (1985) and Schwartz (1996).

⁶⁶ It could also be argued that the legal and economic formulations of the 'work' are based in a radical separation of space and time. It is clear from the reliance on the spatial 'certitudes' of boundedness, repeatability, and fixity that the notion of the 'work' within intellectual property is fundamentally grounded in masculine conceptions of space as the realm of stasis, "a passive arena, the setting for objects and their interaction" (Massey 1994:261). There are two consequences of this position. The first affirms the apoliticality or atemporal transcendence of 'the work'. As Doreen Massey has written of space-as-stasis in the work of Laclau: "There is, in the realm of the spatial, no true temporality and thus no possibility of politics" (1994:251). The second facilitates the smooth operation of the 'work' of copyright within a range of wider discursive dualisms: "There is a whole set of dualisms whose terms are commonly aligned with time and space. With time are aligned History, Progress, Civilization, Science, Politics and Reason, portentous things with gravitas and capital letters. With space on the other hand are aligned the other poles of these concepts: stasis, ('simple') reproduction, nostalgia, emotion, aesthetics, the body. All these dualisms, in the way that they are used, suffer from the criticisms made above of the dichotomies of this form: the problem of mutual exclusivity and of the consequent impoverishment of both of their terms" (Massey 1994:257).

The Work as a Confluence of Framing Operations

The notion of the work exemplifies the role of framing strategies within the activities of the Irish Music Rights Organisation. The autonomous work has its most extensive formulation in and legitimation from discourses of aesthetics (Goehr 1992). Yet when the term is used in the context of performing rights its meaning is primarily grounded, not in aesthetic discourses, but in legal and economic framing operations. Thus, the work is sheltered by the certitude of spatial, temporal, and social closures.⁶⁷ The work operates as a nebulous fulcrum of (hardly merited)⁶⁸ certitude around which the Irish Music Rights Organisation operates within a maelstrom of abstractions, inclusions, and exclusive separations. The concept of the work stands as though referring to a fixed and unchanging entity, a structure of expectation with a negligible uncertainty index. It serves, then, as a highly directive frame, a powerful vectoral mechanism, within a working assembly of highly directive frames. Thus, it is naturalised beyond question, imbued with qualities of prescription and control. The expansion of the Irish Music Rights Organisation is grounded in the licensing, performance, registration, and monitoring of works as commodities.

We have illustrated the techniques of framing by focusing on the work within discourses of copyright and performing rights. Framing is here taken to be the first of the three features of enclosure. Framing is understood to be constituted by three interdependent techniques of power: monologic generalisation, closure, and separation. We can now turn to the second feature of enclosure - expansion.

⁶⁷ The 'work', in the legal or economic terms of the Irish Music Rights Organisation, ironically retains the autonomy granted to it by the discourses of aesthetics while totally disregarding any question of aesthetic merit by treating it as a pure commodity. Within the systems of copyright a 'work' is, in principle, due protection in complete oblivion to its 'artistic merit': "For a work to enjoy copyright protection ... it must be an original creation. The ideas in the work do not need to be new but the form, be it literary or artistic, in which they are expressed must be the original creation of the author. And, finally, protection is independent of the quality or the value attaching to the work - it will be protected whether it be considered, according to taste, a good or a bad literary or musical work - and even of the purpose for which it is intended, because the use to which a work may be put has nothing to do with its protection" (WIPO 1997b:153-154).

The Politics of Enclosure III: Expansion

Enclosure, it is being argued, is a particular modality of negotiation. By understanding the expansion of the Irish Music Rights Organisation as an example of the process and practices of enclosure we can understand that expansion, then, as a particular modality of the exercise of power.

The first feature of enclosure is framing. We highlighted framing strategies in IMRO's activities by looking at the role that the commodified work plays in the organisation's operations. Expansion is now presented as the second feature of enclosure. In Chapters 2, 3, and 4, it was argued that the dominant feature of the activities of the Irish Music Rights Organisation during the period 1995-2000 was an aggressive expansion. Following the work of John Ryan (1985), this was portrayed as a cyclical process of expansion, resistance, and legitimation, followed by further expansion. Examples illustrating this were drawn from IMRO's involvement with primary schools, publicans, and supporters of 'traditional music'. By turning to the work of John Kenneth Galbraith it was argued in a more explanatory fashion that the expansionary dynamic of the Irish Music Rights Organisation was grounded in an organisational tendency towards the achievement of predictability, control, and the elimination of uncertainty. This tendency was exemplified by the protective and affirmative purposes of the technostructure of the Irish Music Rights Organisation.

Defining Expansion, Defining Authority

At its most basic, expansion is formally defined as: "The action or process of expanding or spreading out" (Onions, ed. 1973:704). This gives us a general idea of what expansion *involves*, but it does not give us any clear insight into what expansion *is*. In this section we define expansion, in the context of anthropological or sociological concerns, as 'the extension of authority'.

⁶⁸ "The word *work* and the unity that it designates are probably as problematic as the status

Authority is predominantly understood as the provision of certitude. However, a broader understanding of authority, consistent with the understanding of power in negotiation (outlined in Chapters 7 and 8), is now presented. Authority-in-negotiation is *the ability to increase the experience of certainty in one's own life or that of another*. With this understanding of authority we are able to define the expansion of enclosure as the extension of authority-as-certitude. The authority of enclosure, then, is merely a particular modality of authority in exercise of power. This will clarify what we mean when we speak of 'expansion' in the context of this analysis of the expansion of the Irish Music Rights Organisation, and in the context of this general theory of enclosure.

Authority-in-negotiation

In Chapter 6 it was noted that authority is predominantly understood as the provision of certitude (see pp. 145-149). Authority-as-certitude is generally understood to be something that is *possessed*. It is no surprise that discussions of this type of authority are frequently couched within discussions of what we referred to in Chapter 8 as 'behavioural power' or 'power over'⁶⁹ (see pp. 209-210). If we look to the definition of power offered within the theory of negotiation, as the ability to increase or decrease the awareness of uncertainty or the emergence of certainty in either one's own life or that of another (see pp. 211-212), then we are drawn to provide an alternative definition of authority. As Peter Hall remarks: "Power ... is typically linked to and therefore must be distinguished from authority because they have often been defined in terms of each other" (1972:47).⁷⁰

Authority-in-negotiation is understood to refer to *the ability to increase the experience of certainty in either one's own life or that of another*. Authority is, in this case, most definitely linked to power, being an aspect of it. Like power,

of the author's individuality" (Foucault in Rabinow, ed. 1984:104).

⁶⁹ Hindess (1996) characterises this conception of power as 'quantitative'.

⁷⁰ It is interesting, for example, that "it has been customary to use the term authority in dialectical juxtaposition to power to describe a situation in which a claim to obedience may

then, authority is both constant and dynamic, and an intimate aspect of our experience of social interaction. Authority, like power, is no longer understood to be vested in single, centralised points of certitude. Authority, then, need not always be claimed in ways that seek to bypass the specificity of social interaction - 'you must obey' (regardless of your circumstances). Authority, rather, can also be earned in and through social interaction, in the infinite particularities of experience. Within this scheme, we can see authority at work whenever one person makes another person smile, for example. This second type of authority emerges in and through our negotiation of social interaction, and need not be a question of total or absent authority. Our experience of authority-in-negotiation, like our experience of power, is a question of ever-presence and degree. Our experience of certainty, it will be remembered, is an element of our experience of consciousness, our experience of expectation. Understanding authority in this way reveals authority-as-certitude to be but a modality of authority. Authority-as-certitude is a claim to the elimination of uncertainty as the absence of doubt. Understanding authority *only* as authority-as-certitude occludes vast swathes of experience of authority-in-negotiation.

It could be suggested, indeed, that the claims of authority-as-certitude are all that is available to those who bypass the patient process and power relations of authority-in-negotiation in favour of a complete reliance on the rarefied expectations of intellectual property and the frictionless, arelational space of commodity capitalism. This is exemplified by the opening ethnographic passage in the introduction to the thesis. In that case, a publican had received a letter from the Irish Music Rights Organisation asserting a claim to licensing revenue for the performance of copyrighted works. This can be seen as a typical example of a highly directive claim made with the assumption of authority-as-certitude. For the publican, however, the Irish Music Rights Organisation did not constitute a point of certitude. Instead, the claims greatly increased his experience of uncertainty, resulting in his experiencing IMRO's claims as a threat. So it was, then, that the

be largely neglected. It is then said that a person has authority, but no power" (Friedrich 1964:43). This is, of course, stated within the authority-as-certitude paradigm.

organisation's claims to 'authority'(-as-certitude) were not compatible with the level of authority-in-negotiation that IMRO had achieved in the experience of the publican.

Having defined the character of authority within the general schemes of negotiation, we are now in a position to define the expansion of enclosure as the extension of authority-as-certitude. To trace the expansion of the Irish Music Rights Organisation, as we did in Chapters 2, 3, and 4, is, then, to trace the extension of the authority of the Irish Music Rights Organisation as *a source of certitude* - that which must remain unquestioned if it is to retain the status of authority-as-certitude. As noted in Chapter 6, to question the 'natural, inevitable, universal, and unchallengeable principles of copyright law', to question 'the ubiquity and universality of performing rights administration', is to question the existence of the Irish Music Rights Organisation itself (see p. 145). Authority-as-certitude is all that the representatives of the organisation really have to rely on as the basis for their activities.

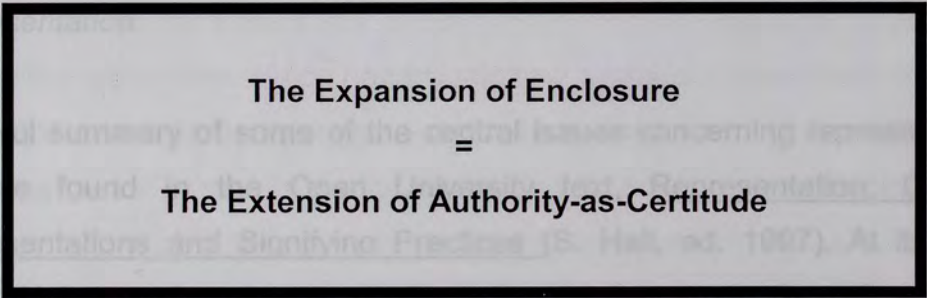


Figure 9. The Expansion of Enclosure

The Expansion of Enclosure: Representation and Resistance

Enclosure is understood to entail three features: framing, expansion, and consolidation. The framing of enclosure was seen to be constituted by three interdependent operations of power: monologic generalisation, closure, and separation. The expansion of enclosure (the extension of authority-as-certitude) can be understood by looking at two interrelated processes:

representation and resistance. First we consider 'representation'. We outline some of the dominant meanings of the term, before redefining representation in the context of the theory of negotiation as *the articulation of one's own or another's negotiation of meaning*. Our understanding of the representation of enclosure is more specific, however. The representation of enclosure is understood as *the articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude*. We then consider resistance, for it is through resistance that we identify the representations of enclosure. Dominant meanings of the term 'resistance' are first considered, before a redefinition of resistance is offered in the light of the theory of negotiation. Resistance is here defined as *the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility)*. Resistance is not, then, understood in opposition to power. Resistance, rather, can serve as a diagnostic tool with which to identify the representations of enclosure. Taken together, an awareness of the representation and resistance of enclosure can give us a clear picture of the expansion of enclosure as the extension of authority-as-certitude.

Representation

A useful summary of some of the central issues concerning representation can be found in the Open University text, Representation: Cultural Representations and Signifying Practices (S. Hall, ed. 1997). At its most basic, Hall would suggest, representation is the production of meaning through language. Three general approaches to the representation of meaning through language can be identified. According to Hall, these are the reflective, intentional, and constructionist or constructivist approaches. To adopt the reflective approach, also sometimes referred to as the 'mimetic' approach, is to understand language as a mirror which reflects the true meaning that exists externally in the real world. The intentional approach would take the opposite view, proposing that the speaker, author, or subject imposes their own unique meaning on the world through language, words meaning precisely what they are intended to mean. The third approach, constructivism or constructionism, is the one with which Hall would align

himself. Discussed in Chapter 7 (see pp. 190-191), constructivism owes a considerable debt to the semiotic work of Saussure, who showed that language and representation constitutes, rather than mediates, practice. This position recognises the social character of language, acknowledging that meaning cannot be fixed in language by either users of language or by an objective reality of things in themselves. Meaning is understood to be produced rather than found, constructed rather than discovered, in and through representational systems of concepts and signs in social interaction: "Meaning is produced by the practice, the 'work', of representation" (S. Hall, ed. 1997:28). Representation of meaning, then, and, in particular, representation of meaning as natural, inevitable, and fixed, is of great concern to those who would seek to govern, regulate, order, structure, and shape the conduct and ideas of others:

I believe it needs to be made clear about cultural discourse and exchange within a culture that what is commonly circulated by it is not "truth" but representations. It hardly needs to be demonstrated again that language itself is a highly organized and encoded system, which employs many devices to express, indicate, exchange messages and information, represent, and so forth. In any instance of at least written language, there is no such thing as a delivered presence, but a *re-presence*, or a representation (Said 1978:21).

The work of Michel Foucault is crucial in this regard. Foucault investigates the politics of representation, examining the intimate connections between language, meaning, knowledge, and power through theoretical explorations of 'discourse'. Foucault's understanding of discourse, though profoundly influenced by constructionist approaches to representation, seeks to widen the scope of inquiry beyond language to include elements of institutional regulation and practice, allowing for a broader investigation of the effects and consequences of representation. Foucault was clear in pointing out that he did not wish to treat discourses as groups of signs, but as fundamental guidance systems for power relations: "practices that systematically form the objects of which they speak" (1972:49):

Discourse - the mere fact of speaking, of employing words, of using the words of others (even if it means returning them), words that the others understand and accept (and, possibly, return from their side) - this fact is in itself a force. Discourse is, with respect to the relation of forces, not merely a surface of inscription, but something that brings about effects (Foucault, cited in A. I. Davidson, ed. 1997:4-5).

Particular discourses authorise particular people to speak and particular views to be heard, while also marginalising, deriding, excluding, and even prohibiting others: "Discourses impose themselves upon social life, indeed they produce what it is possible to think, speak, and do" (Hunt and Wickham 1994:8-9). The effect of this is such that what is socially constructed can, through the power of discourse, appear natural. Not only are language and representation implicated in the production of meaning, but the knowledge which a particular discourse produces was seen to link into relations of power, defining and limiting representation, defining and limiting the ways in which things are thought about, practised, and studied: "Knowledge linked to power, not only assumes the authority of 'the truth' but has the power to *make itself true*. All knowledge, once applied in the real world, has real effects, and in that sense at least, 'becomes true'" (S. Hall, ed. 1997:49). Discourses, then, are embedded in characteristic practices. The emphasis for Foucault is historical specificity, representational practice and power/knowledge relations in concrete historical situations, in particular times and places. Foucault highlights not only the power of representation but also the question of power *in* representation, including "the exercise of *symbolic* power through representational practices" (259).

It is important to acknowledge here the use of the term 'representation' in 'political representation' for "political representation cannot be dealt with in isolation from other kinds of representation" (Sartori 1968:466). Political representation has often been presented as "the foremost structural problem of democracy" (de Grazia 1968:462). Within a political context representation has been defined in terms of a binary relationship, that between a 'representative' and the 'represented' or 'constituent', "with the representative holding the authority to perform various actions that incorporate the agreement of the represented" (461). Similarly, E. M. Sait states that representation "occurs whenever one person is authorized to act in place of others" (1938:476). Giovanni Sartori acknowledges that 'representation', in this sense, is a many-faceted and elusive concept. Nevertheless, he presents three dominant meanings of the term: "(1) the idea of *mandate*, or instructions; (2) the idea of *representativeness*, that is, resemblance and

similarity; and (3) the idea of *responsibility*, or accountability" (1968:465). It is interesting to note in passing, for reasons that will become apparent below, that "the origin of the modern idea of representation was vitally connected with the principle that the deputies represent the will of the nation, not the will of the people" (466).

Representation in Negotiation

Within the context of the theory of negotiation, representation is not necessarily associated solely with language, but it may be, in that representation is understood to be *the articulation of one's own or another's negotiation of meaning*. Understanding representation in this way we can immediately collapse the distinction between political and other representation - all representation is political; all representation involves people, and all representation involves relations of power in and through negotiation in social interaction. A second corollary of this approach to representation is that all representation is (mis)representation insofar as there can never be an exact equivalence between the articulation of one's own or another's negotiation of meaning and the actual experience of negotiation. A personal diary, for example, can never fully communicate what it was actually like to experience 'being there'. Representations are inherently "partial - committed and incomplete" (Clifford and Marcus 1986:7).

Representation and Enclosure

Within the context of enclosure, however, we must understand representation differently. The representation of enclosure is understood as *the articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude*. The representation of enclosure is a particular modality of representation, and can be simplistically characterised as a process of 'framing and claiming'. It therefore implicates people in the power operations of monologic generalisation, closure, and separation, as outlined earlier in this chapter. Perhaps most crucial among these is closure, or rather, 'semantic closure', in which an exact equivalence is claimed between

the articulation of negotiated meaning and the experience of negotiation. The representation of enclosure can mostly be summarised as a claim to 'truth-as-certitude' in the sense of 'this is the way the world is, and the way the world must be'. It is suggested that we can understand 'reflective', 'intentional', and 'political' approaches to representation as examples of the representation of enclosure. What becomes apparent from this understanding of the representation of enclosure is that it involves not only (mis)representation but *gross* misrepresentation of individually-negotiated experiences of negotiation, and, consequently, *gross* misrepresentation of the element of ever-present uncertainty by its very denial.⁷¹

Understanding the role and activities of the Irish Music Rights Organisation within the frameworks of the politics of representation-as-enclosure allows us to perhaps characterise IMRO's expansion as what Whisnant (1983) would call 'cultural intervention'. Whisnant emphasises that cultural issues must be construed in political terms. This is all the more important in situations where the differences between cultural systems are socially or economically unequal. This is certainly the case here, insofar as the Irish Music Rights Organisation has the lobbying support of the music industry, the Irish government, and national and international legislation on their side. Many people who felt that the meanings that IMRO encroached unnecessarily and inappropriately upon their lives speak without such legitimation. As Whisnant frames it, the "culture" that is perceived by the intervenor rarely coincides with what actually happens. Gross misrepresentation often results. That this was felt to be the case with IMRO was made clear by the many people who expressed that representatives of the organisation simply did not know what

⁷¹ We can perhaps understand this better by looking to Marcus and Fischer and their identification of a 'crisis of representation' with the human sciences: "The authority[-as-certitude] of "grand theory" styles seems suspended for the moment in favor of a close consideration of such issues as contextuality, the meaning of social life to those who enact it, and the explanation of exceptions and indeterminants rather than regularities in phenomena observed - all issues that make problematic what were taken for granted as facts or certainties on which the validity of paradigms had rested" (1986:8). This 'crisis' could be reinterpreted as a growing movement against those categories, metaphors, narratives and discourses that are predicated on certitude (and implicated in the process and practices of enclosure). Not only does the 'crisis of representation' arise from 'uncertainty about adequate means of describing social reality', but, in very real terms, it is founded on

they were talking about when it came to what might be considered “traditional” contexts. What the representatives of the Irish Music Rights Organisation understood as ‘Irish Traditional Music’ was, as David Whisnant would phrase it, “a *selection*, an *arrangement*, an *accommodation* to preconceptions” (1983:260), or, in other words, their understandings arose from monologic generalisation, closure, and separation - the operations of framing.

From a position of certitude, the representatives of the Irish Music Rights Organisation claim that their organisation only has the best interests of musicians at heart, and within their own circle of logic this is undoubtedly true. IMRO was formed to champion the cause of commercial composers and songwriters, and those who work on behalf of the organisation feel duty-bound to extend its reach on the assumption that all musical practice is commodity exchange, an assumption founded on the epistemologies of neo-classical economics. Enthusiasm, however, is no excuse:

That cultural intervenors may be on the whole decent, well-meaning, even altruistic people does not (indeed must not) excuse them from historical judgment. One may reasonably display great charity for the cross purposes, confusions, and miscalculations of fallible individuals in difficult circumstances. But insofar as those people actively intervene in the cultural (or other) lives of large numbers of people, their failures and miscalculations, however “understandable,” become a legitimate object of concern. For the effects of what they do touch so many, and linger so long (Whisnant 1983:263-4).

The activities of the Irish Music Rights Organisation rely on the authority-as-certitude of narratives that weave the frames and expectations of law, intellectual property, copyright, and performing rights in and through negotiations of social interaction. Our lives are saturated by stories in which we play a part. In the words of radical pedagogist Roger Simon: “The stories we tell, the narratives that give coherence and meaning to our lives, set the terms within which we are able to formulate the possibilities of existence” (1992:60). Following Ricoeur, we might look to the ‘paradox of narration’, whereby contingent events are transformed into ‘necessary’ episodes by providing a context or link with other events, unifying elements that appear to

uncertainty about the dynamic discrepancy involved in representing anyone’s negotiation of meaning-making, even our own.

be totally disparate through a process of emplotment (*mise en intrigue*), creating what Ricoeur refers to as a dialectic of sameness and selfhood (Reagan 1996:85). This is particularly the case with IMRO's justificatory narratives. From the position of authority-as-certitude, they serve as highly-directive vectoral mechanisms. As they lay down the law, so, also, they lay down clear paths that guide our experience of negotiation.

We can adequately speak about these narratives as 'narratives of certitude' because that is how they are presented and deployed - as universally-applicable, totalizing schemes. These have been detailed throughout this thesis. Working from abstract, tidy, idealised 'truths' and principles, 'narratives of certitude' are predicated on oblivion to the particular.⁷² It is clear that we can include Jean-François Lyotard's (1997) 'grand' or 'meta'-narratives as examples of narratives of certitude.⁷³ Thomas Docherty (1993) approaches metanarrative within the context of a general critique of Enlightenment rationality, such as that offered by Adorno and Horkheimer (1979), whereby 'reason', as implied by Enlightenment thinking, is exposed as a "specific *form* of reason"; mathematical consciousness and formalism privilege abstract and utilitarian categories as "knowledge is reduced to technology, a technology which enables the *illusion* of power and of domination over nature" (Docherty 1993:6). Docherty traces the Enlightenment's dominant abstract certitude through the narratives of structuralism, semiotics, historicism, and 'rational efficiency'.⁷⁴ In the atmosphere of the 'postmodern', the certitude of 'reason' has gone on trial: "It can no longer assume the capacity for self-legitimation without assuming an exclusivity; and henceforth its claims upon universality are sullied by its inherent tendency to fall into rationalism. It produces an administered

⁷² "Institutional creeds, such as law, economics, or theology, must be false in order to function effectively. This paradoxical statement means that they must express contradictory ideals, and must authoritatively suppress any facts which interfere with those ideals" (Arnold 1937:357).

⁷³ Although where Lyotard would see them as characteristic of 'the modern' (and 'incredulity' towards them as characteristic of the 'postmodern'), it is suggested here that the representation of narratives of certitude has always been a possibility. It is a sobering thought to consider that what we understand as 'history' could simply be the histories of successful enclosure.

⁷⁴ The last of these is significantly implicated by Zygmunt Bauman (1989) in the horrors of the Holocaust.

society, not a rational society: reason is replaced by efficiency and by the aesthetic and formal vacuities of rationalism" (13-14). Following Lyotard, Docherty reaffirms the affiliation of metanarrative with the certitudes of Enlightenment's 'reason'; through the assertion of an abstracted master code, the employment of metanarrative necessarily denies "the specificity of the local and traduce[s] it in the interests of a global homogeneity, a universal history" (11). This is the environment of certitudes in which the Irish Music Rights Organisation operates. These are the narratives that the representatives of IMRO promulgate.⁷⁵

The expansion of enclosure, it has been argued, can be better understood by turning to the concept of representation. It is suggested that the representation of enclosure entails claims to authority-as-certitude. The expansion of enclosure, then, is understood as the extension of authority-as-certitude. The expansion of the Irish Music Rights Organisation, detailed throughout this thesis, can be understood as the extension of IMRO's claims to and narratives of authority-as-certitude. However, we are only really able to identify the character of the frames, claims, and narratives of the Irish Music Rights Organisation by identifying the points of resistance that they evoke in social interaction.

Resistance

Now we look to the second element of the expansion of enclosure - resistance. In this section we will first note that resistance is often understood as juxtaposed in opposition to power or domination. This can be simplistically

⁷⁵ Rosemary Coombe (1998) also speaks to the way in which such narratives empty social relations of specificity, thereby diffusing the challenge, or even possibility, of alternative interpretations or practices. Within narratives of certainty, conflict, difference, and social inequality are effaced: "The dialogic, contested dimensions of social life [are] evaded by a focus on dominant interpretations as the univocal voice of legitimate meanings and values" (13-14). As Sandra Harding has shown in her feminist critique of the knowledge politics of science (1991), such all-encompassing narratives of certitude are most often accompanied by claims to value-neutrality and the cleanliness of objectivity, thereby divesting the Big Story of all social causes, and hiding the question of 'whose perspective?' under the carpet. Certain feminist thinkers such as Genevieve Lloyd, Sara Ruddick, and Susan Bordo have also come to critique such homogenising 'master codes' within a gendered frame, as "abstract masculinity" (see Harding 1991).

characterised as 'resistance to'. The work of Michel Foucault on power has also led to fresh approaches to resistance. Here we once again build upon the theory of negotiation in order to redefine resistance in negotiation as *the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility)*. This enables us to draw upon the work of scholars who use resistance as a diagnostic tool with which to analyse power relations, working from the principle that 'wherever there is resistance there is power'. We then reassess the character of resistance in the face of the expansion of enclosure. Resistance, it is argued, will always be deeply experienced in cases of enclosure, though not always clearly manifest, and the identification of particular resistance is a key step in the identification of the process and practices of enclosure. This is evidenced by a review of the resistance uncovered during the course of this research.

Resistance 'to'

A formal definition of 'resistance' presents it as: "The act, on the part of persons, of resisting, opposing, or withstanding. ... Opposition of one material thing to another material thing, force, etc. ... *esp.* in the physical sciences, the opposition offered by one body to the pressure or movement of another" (Onions, ed. 1973:1807). Correspondingly, resistance in social life is often defined in terms of dualisms. One popular dualism, based upon notions of what we identified in Chapter 8 as behavioural power or 'power over' (see pp. 209-210), is that of resistance in opposition to power or domination: "The orthodox assumption seems to be that resistance is against power and that effective resistance will eventually overturn power" (Cresswell 2000:264). Analyses of resistance, therefore, have tended to focus on social movements, organised in opposition to dominant forces of state or multinational capital (see Sharp et al. 2000). It has been noted, however, that within anthropology such dualistic approaches have had the drawback of vagueness, "the vagueness of what was taken to be 'resistance' - i.e. action which *impeded* or subverted unequal power relations, as apart from moments of relative autonomy when the apparently powerless could step aside from the realities of oppression" (Spencer 1998:489). In what should

now be a familiar rhetorical structure, dominant understandings of resistance constitute a prime example of contextual or dialectical definition, being most often defined in relation to its 'opposite', that being 'power' or 'domination'. In some cases, indeed, that power is represented as being so 'powerful' that resistance is the work of the powerless, and hence futile (Sharp et al 2000:2). Resistance, then, is primarily understood as 'resistance to'.

Resistance in Negotiation

Thanks to the work of Foucault, however, "Resistance is in danger of becoming a meaningless and theoretically unhelpful term" (Cresswell 2000:259). This is largely on account of his statement that: "Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power" (1990:95). Foucault has argued at length for the ubiquity of power. It follows, therefore, that he must also be arguing for the ubiquity of resistance. As Cresswell remarks, however:

Something that is applicable to everything is not a particularly useful tool in interrogating social and cultural life. ... Everybody is so busy resisting always, and already, that little more needs to be done. One problem is that an act such as an armed insurrection or a general strike is equated with the act of farting in public or telling jokes about the boss. The word resistance can apply to all of these and yet they are clearly more different than they are alike (2000:259).

In the theory of negotiation presented earlier, a way was found in which the ubiquity of Foucault's conception of power could be grounded by locating power in the experience of uncertainty and certainty in social interaction. Similarly with resistance, although it must be noted in passing that "Foucault did not spend too much time on the subject of resistance" (263). Resistance, then, is redefined as *the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility)*. This understanding of resistance is still compatible with definitions, such as that found at the 'Lectric Law Library on the Internet, that present resistance as "the opposition of force to force"⁷⁶, if only in the sense that expectations are understood in terms of forces or vectors in negotiation. This allows us to

⁷⁶ <http://www.lectlaw.com/def2/q154.htm>

think of resistance in a way which is not opposed to power, or domination. Resistance is best understood as resistant negotiation. In many ways resistance is the tension of difference within social life. Its ubiquity might render it totally useless were it not for the benefits of resistance as a diagnostic tool.

Resistance as Diagnostic of Enclosure

Tim Cresswell (2000) emphasises the usefulness of resistance as a diagnostic tool. His position draws on Lila Abu-Lughod's (1990) anthropological fieldwork among Bedouin women. The complex realities of Bedouin life challenged Abu-Lughod's search for resistance as the absence or incompleteness of power. The 'romance of resistance' with which she had originally approached her work had led her to foreclose her analyses of power and social life among Bedouin women. It was ultimately more useful to allow resistance to "tell us about forms of power and how people are caught up in them" (42). Tim Cresswell combines the work of Abu-Lughod with the insights of Foucault, thereby inverting Foucault's dictum, that where there is power there is resistance, to come up with the slogan that "everywhere there is resistance there is also power" (2000:265):

It is important that we do not stop thinking about everyday forms of resistance, but equally important that we do not romanticise and essentialise them. Rather than telling us how people are free or partially free from forces of oppression inscribed in space, resistance can be used strategically to reveal how people are caught up in a multitude of often invisible modes of power (266).

This is broadly how 'resistance' is presented in Chapter 3 of the thesis, in the context of the analysis of IMRO's 'cycle of expansion':

"Resistance" refers ... to a manifestation of opposition to the expansion of the Irish Music Rights Organisation in such a way as hinders the licensing operations of the organisation. Resistance, in this sense, is an indication of a refusal to comply with IMRO's contractual expectations. In the case of both the primary schools and the Vintners' Federation, resistance was vociferous. The claims made by IMRO representatives were characterised in both disputes as being unnecessarily aggressive. In the case of primary schools, the claims to jurisdiction were even portrayed as being both inappropriate and immoral, though undeniably "legal". In the case of the Vintners' Federation, the most obvious resistance took the form of adversarial legal action in direct opposition to the demands of the Irish Music Rights Organisation. For the purposes of analysis, resistance can prove very useful. It is unlikely that the claims that IMRO representatives made regarding licensing would have even been noticed by anybody other than the contracting parties had it not been

for the resistance offered by both primary schools and publicans. In this sense, identification of IMRO's cycle of expansion relies heavily on the identification of resistance (p. 63-64).

In this thesis, then, we have focused on manifestations of resistance, and these manifestations of resistance have allowed us to identify the expansion of the Irish Music Rights Organisation. This thesis, then, has proceeded in the spirit of Stuart Hall's remark that "The effects of power are particularly visible when attempts are made to fix meanings" (S. Hall, ed. 1997:10).⁷⁷ We might say that we are only able to identify the expansion of the Irish Music Rights Organisation, the extension of the organisation's authority-as-certitude, by identifying and highlighting the moments and sites of most resistance. What follows from an understanding of the representation of enclosure as claims of authority-as-certitude, is that resistance indicative of enclosure will be experienced as quite extreme. As noted before, where authority-as-certitude is concerned there is no middle ground. The claims of authority-as-certitude must be met with either acceptance or rejection. One of the primary features of resistance in situations of enclosure, then, is that it is characteristically negotiated within discourses of obedience and disobedience, loyalty and disloyalty, orthodoxy and heresy, truth and error. This is clearly evident in the polarisation of legality and illegality that overshadows the activities of the Irish Music Rights Organisation, and, indeed, any operation reliant on the certitudes of legislation.

Greatest indication of widespread resistance in the face of IMRO's 'framing and claiming' from 1995-2000 was found among people who supported 'traditional music', or, more to the point, people whose expectations in social interaction were more compatible with what they considered to be a 'traditional' perspective than with the perspective promoted by the representatives of IMRO. Resistance was primarily evidenced by the championing of the cause of 'traditional music' as a 'commons' in opposition to the legislative enclosure of copyright and intellectual property (see Shields 1993:179; Ó hAllmhuráin 1998:151; Carolan 2000:27). The final act of 'enclosure' was deemed by some to be the accession of Labhrás Ó Murchú

and Comhaltas Ceoltóirí Éireann to IMRO's licensing demands. As one contributor to the IRTRAD-L internet mailing list in 1999 put it: "Before, traditional music was a "commons" on which we all could graze. Now it has been grabbed and fenced by IMRO with CCÉ assistance".

We are not concerned here to analyse expectations that were, and are, incompatible with those of the Irish Music Rights Organisation. Rather, we are interested in identifying resistance in order to bring the power relations deployed by IMRO to visibility. This has already been done. The structure of this thesis is founded on an initial examination of the expansion of the Irish Music Rights Organisation and the resistance manifested by that expansion. This is not now understood simply as 'resistance to' that expansion, but is now complexified to speak of expectational difference in social interaction. Resistance is not the privilege of any one group. Indeed, it might even be suggested that resistance and conflict are here taken to be synonymous.

In this chapter we are both moving towards a theory of enclosure and towards an understanding of the expansion of the Irish Music Rights Organisation from 1995-2000 as an example of both process and practices of enclosure. By understanding enclosure as a modality of negotiation and of the exercise of power, we can come to a better understanding of the relational implications of IMRO's expansion. Enclosure it is argued, can be understood as disclosing three primary features: framing, expansion, and consolidation. Framing, we have seen, is constituted by three operations of power: monologic generalisation, closure, and separation. These operations were exemplified by a brief examination of the role of the 'work' in IMRO's activities. The second feature of enclosure is expansion. The expansion of enclosure, it has been argued, refers to the extension of claims to authority-as-certitude, and, in particular, claims to authority-as-certitude made by representatives of IMRO. It has been suggested that the expansion of enclosure can be usefully viewed from the perspectives of both representation and resistance. Representation is here understood as the

⁷⁷ We are reminded of the words of poet John Clare, that "enclosure had a terrible but instructive visibility" (cited in E. P. Thompson 1993:180).

articulation of one's own or another's negotiation of meaning, and the representation characteristic of enclosure, and of the Irish Music Rights Organisation, is understood as the articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude. High levels of resistance are typically experienced in social interaction following such absolute claims, insofar as claims to authority-as-certitude must be either accepted in full or rejected as spurious. Absolute claims leave no room for compromise or expectational ambiguity. Resistance is redefined as the constant and dynamic experience of encounter with expectational difference. The manifestation of resistance, then, can be used in the analysis of enclosure as a diagnostic tool with which to clarify the character of divergent expectations, the character of the representations of enclosure, and their role in power relations of negotiation. Now we in a position to examine the third feature of enclosure - consolidation.

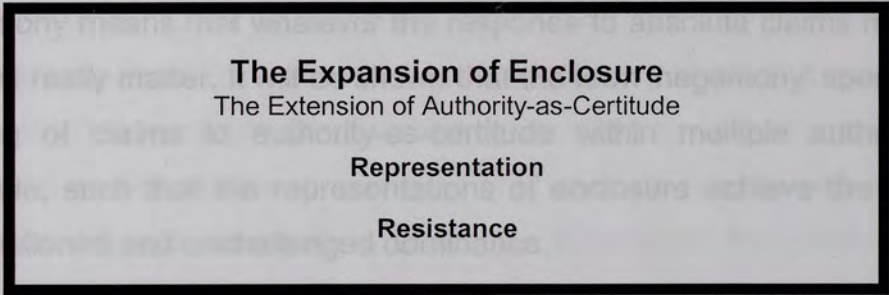


Figure 10. Analysing the Expansion of Enclosure

**The Politics of Enclosure IV:
Consolidation**

Consolidation is the third feature of the process and practices of enclosure. The word 'consolidation' suggests a number of primary associations, each of which is relevant to our concerns here. First, it conveys the sense of a process of making strong or solid. Second, it can be used in the sense of reinforcing or strengthening one's position, 'consolidating' one's power. Third, it can be used in the sense of unification, combining disparate parts into a general whole (Tulloch, ed. 1993:305). Within this theory of enclosure, consolidation is the stage in which the power effects of enclosure, and thus

the effects of the expansion of the Irish Music Rights Organisation, are seen most clearly. Following on from our discussion of expansion as the extension of claims to authority-as-certitude, in the elements of consolidation we get some idea of the effects of power that arise as people respond to those claims. The consolidation of enclosure is understood here to be comprised of three elements: displacement, legitimization, and hegemony. Displacement refers to the effects that acceptance of the representations of enclosure brings. Accompanying the acceptance of such absolute claims is the displacement of local, personally negotiated expectations in favour of the universal, absolute, and generalised expectations of enclosure. This can be simplistically viewed as an experience of 'conversion'. Legitimation happens when claims to authority-as-certitude are rejected. Legitimation is understood here as *deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure*. Displacement comes with acceptance, legitimization comes with rejection, and the achievement of hegemony means that whatever the response to absolute claims might be it doesn't really matter. It will be shown that the term 'hegemony' speaks to the nesting of claims to authority-as-certitude within multiple authorities-as-certitude, such that the representations of enclosure achieve the status of unquestioned and unchallenged dominance.

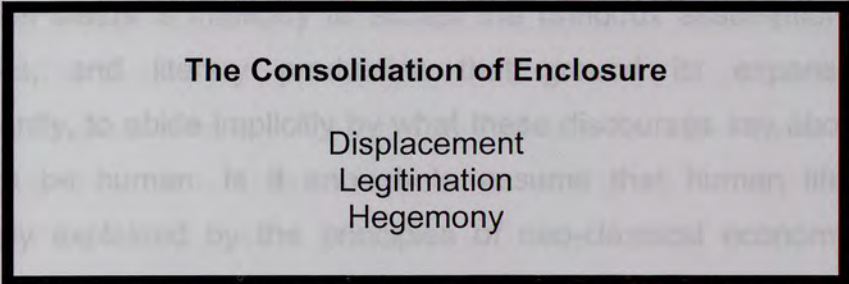


Figure 11. The Consolidation of Enclosure

Displacement

The expectations that structure the Irish Music Rights Organisation also contribute to the structure of negotiations within the lives of those who fall on the side of acceptance rather than rejection of IMRO-as-certitude: "The

transformation of interpretation into legal meaning begins when someone accepts the demands of interpretation and, through the personal act of commitment, affirms the position taken" (Cover 1983:45). With acceptance of the representations of enclosure new expectations take the place of old. New relations of power are established in negotiation which prescribe the voices that are to matter, and concentrate power around newly focused expectational assemblies:

Enclosure tears people and their lands, forests, crafts, technologies and cosmologies out of the cultural framework in which they are embedded and forces them into a new framework which reflects and reinforces the values and interests of newly-dominant groups. Any pieces which will not fit into the new framework are devalued and discarded (Goldsmith et al. 1992:149).

Three points serve to exemplify the displacements that occur with acceptance of the absolutist representations of enclosure, remembering that the range of possible displacements is as specifically infinite as the negotiations in which displacements occur. The first point is that the acceptance of the authority-as-certitude of the Irish Music Rights Organisation displaces the possibility of disagreeing with the organisation on the most basic principle - that it should exist. The second point, related to the first, is that acceptance of the authority-as-certitude of IMRO implicitly displaces the possibility of disagreement with the basic assumptions on the basis of which the organisation operates.⁷⁸ Accepting the validity of IMRO's operational status is implicitly to accept the orthodox assumptions of law, economics, and literary production that ground its expansion, and subsequently, to abide implicitly by what these discourses say about what it means to be human. Is it enough to assume that human life can be adequately explained by the principles of neo-classical economics or by romantic ideologies of literary production? To acquiesce to IMRO's activities is to agree implicitly that the universalisms of such conceptions of humanity suffice. Whether someone who accepts IMRO knows what these discourses say about what it means to be human is neither here nor there. General

⁷⁸ This echoes one of the arguments of systems theorist Niklas Luhmann, as summarised by Barbara Mizstal, that: "Once citizens have accepted their own roles within procedural mechanism ... they no longer possess any opportunity for questioning its results and mobilizing on the basis of values, interests or general principles" (1996:249-250).

acceptance of the Irish Music Rights Organisation implies suspension of radically effective disagreement.

This has very real consequences. It can involve displacement, for example, of perhaps unacknowledged understandings of musical activity, rooted in fuzzy, bulging, dangerous, overflowing, uncertain experiences of social relationships and social interaction, in favour of highly directive framings of 'music', based on notions of 'authorship', 'composition', 'originality', and 'works', in the certified safety of 'purely' aural or visual understandings. This kind of displacement may be manifest in the smallest ways. In 'traditional circles' a 'tune' or 'song' might have many names or be played in many ways, for "the names of tunes are *not* the tunes: they are tags, referents, snippets of speech which find themselves attached to musical encounters ... as mnemonics, the names summon up a tangled web of circumstances; they not only help to summon the tune into being, but recall other times and other places where the tune was played, and [who] the company there might have been" (Carson 1996:7-8). Within the expectational matrices of copyright, however, particular tunes, and particular ways of playing particular tunes, are associated with one name for the purposes of registration and royalty collection, thereby satisfying the monologic generalisation, closure, and separation required for the commodity of the work. A 'definitive' name thus becomes a unitary focus for authority-as-certitude. In the session situation described in Chapter 4, where musicians made a point of not playing certain tunes because they were 'copyright' (see p. 82), we can see a clear and unequivocal example of this displacement in practice. 'Tunes', singularly conceived, are 'displaced' from the session, as, clearly in this case, are understandings of the purpose and role of tunes within the fluidity of a relaxed 'traditional' session.⁷⁹

⁷⁹ For example, in a session, tunes are sometimes known by one name, sometimes by another. Sometimes they can have up to thirty names. Sometimes the name refers to a moment with which a musician associates the tune. Sometimes it refers to a person who is fondly remembered for playing the tune a particular way. Exploration of this is beyond the scope of this thesis. For considerable insight into these and other related matters see Carson (1996), or Wilson (1995).

A key operation in the process of displacement, then, is naming. Naming, like anything else, is often considered a value-neutral activity. Like anything else, it isn't. Naming can be an operation with a low uncertainty index: fluid, adaptive, and negotiable. Naming can also, however, be coopted as an operation within the wider operations of enclosure. Feminists in particular have drawn attention to monologic strategies of linguistic authority. As Mary Daly notes: "Women are now realizing that the universal imposing of names by men has been false because partial. That is, inadequate words have been taken as adequate" (cited in Fetterly 1998:566). The naming of enclosure can be seen as a task of 'framing and naming', implicated in the operations of monologic generalisation, closure, and separation. Each act of 'framing and claiming' is an act of misrepresentation. Each act of 'framing and naming' is also, then, an act of misnaming within a scheme of misrepresentation, if only because the singularity of highly-directive, single-association naming is a denial of the possibilities of negotiation. The declaration of 'the real/proper/only name' is more a declaration about 'authority to name' than a declaration about a name 'itself'.

This is related to a third point about the displacement of enclosure. Through the acceptance of the representations of enclosure, personal authority, experience through locally- and individually-negotiated meanings, is displaced in favour of abstract, generalised, universalising prescriptions of normative, legal authority-as-certitude. Instead of working it out for yourself, you actively do what other people expect you to do, but then only within the parameters defined by the Irish Music Rights Organisation and other organisations like it. Within the context of copyright and the Irish Music Rights Organisation, labels like 'author', 'singer-songwriter', 'creator', or 'composer' refer specifically to very specific roles that are suffused with very specific and highly directive expectational requirements of prescription and control, remembering that: "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning" (Cover 1983:4). These terms are effectively synonymous with the term 'producer', and it is within the narrative of production and consumption that members of IMRO find themselves operating: "[Enclosure] shifts the reference points by which

people are valued. Individuals become "units" whose "value" to society is defined by their relationship to the new political entity that emerges from enclosure" (Goldsmith et al. 1992:152).

This suggests that displacement effected by acceptance of the claims of representatives of the Irish Music Rights Organisation to authority-as-certitude affords greater concentrations of power to those who master the language and expectations of the system of enclosure, those whose negotiations are most compatible with the logic of enclosure. A new, focused, goal-oriented language of power is there to be employed and deployed, a language inaccessible to those who have not been 'successfully' 'educated' in the ways of the Irish Music Rights Organisation or the 'music industry'. This is perhaps most clearly shown by the binary opposition of the terms 'professional' and 'amateur' within copyright discourse. This binary operates very simply, serving as an overlay for a more obviously dubious dichotomy, that of legitimate and illegitimate musical activity:

Whether male or female, a person's influence and ability to make a living depends increasingly on becoming absorbed into the new polity created by enclosure, on accepting - willingly or unwillingly - a new role as a consumer, a worker, a client or an administrator, on playing the game according to new rules. The way is thus cleared for cajoling people into the mainstream (Goldsmith et al. 1992:154).

The expansion of the Irish Music Rights Organisation is the extension of claims made by representatives of the organisation to authority-as-certitude. Acceptance of those claims is acquiescence to a silence of unquestioning, unchallenging negotiation, at least insofar as the existence and, importantly, the activities and assumptions of IMRO are concerned. The claims of the Irish Music Rights Organisation call for a positioning of oneself, a declaration of self-inclusion or self-exclusion, a wonderful example of co-optation into the operations of framing. The boundary between acceptance and rejection is not only a boundary between orthodoxy and heresy, but, crucially, also a boundary between obedience and disobedience, legality and illegality. It is also effectively a boundary between worlds:

The point that is relevant here is not only that private lawmaking takes place through religious authority, contract, property, and corporate law (and of course through all private associational activity), but also that from time to time various groups use these universally accepted and well-understood devices to create an entire *nomos* - an

integrated world of obligation and reality from which the rest of the world is perceived. At that point of radical transformation of perspective, the boundary rule - whether it be contract, free exercise of religion, property, or corporation law - becomes more than a rule: it becomes constitutive of a world. We witness normative mitosis. A world is turned inside out; a wall begins to form, and its shape differs depending on which side of the wall our narratives place us on (Cover 1983:31).

Legitimation

The second element of the consolidation of enclosure is legitimation. Where displacement is associated with *acceptance* of representations of enclosure, the 'need' for legitimation emerges with their *rejection*. 'Legitimation' has been formally defined as "The rendering or authoritatively declaring (a person) legitimate" (C. T. Onions, ed. 1973:1197). Here, we adapt this definition slightly to understand the power operation of legitimation as *deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure*. There are two important points to highlight here. The first is that the vital element (literally) in both of these perspectives on legitimation is that authority(-as-certitude) is bequeathed to another *person*. No matter what we call it, or how we label it, the deferral of authority to a 'legitimate' authority-as-certitude is always and most importantly the deferral of authority in negotiation to a *person* other than oneself.⁸⁰ Legitimation thus defers authority for meaning, interpretation, and definition to a source other than oneself. The second point is that this deferral is effected *in the cause of representations of enclosure*. This is sympathetic with the position of Berger and Luckmann who identify legitimation as the process of 'explaining' and 'justifying' "the salient elements of the institutional tradition":

⁸⁰ This needs to be particularly remembered in the case of an organisation such as IMRO, where the monologic generalisation implied by unitary corporate branding can blind us to the reality that it all still comes down to people in social interaction with other people. The power relations that characterise the organisation are the power relations that characterise the lives of those who constitute the organisation. Subsequently the effects of these power relations are felt in the social interactions of those who defer to the authority-as-certitude of the organisation. A similar point is emphasised in a Competition Authority ruling: "A body corporate, in itself, is merely a legal conception. Its purposes, objectives and activities are determined by individual human beings. To suggest some general distinction between a purpose of the body and a purpose of the constituent members is somewhat unreal. The purposes of a company and the purposes of its members, as members, are ultimately identical" (IECA Ruling no. 4, June 30, 1992).

Legitimation 'explains' the institutional order by ascribing cognitive validity to its objectivated meanings. Legitimation justifies the institutional order by giving a normative dignity to its practical imperatives. ... Legitimation not only tells the individual why he *should* perform one action and not another; it also tells him why things *are* what they are (1966:111).

With the absolutist character of the representations of enclosure, however, the 'why' eventually comes down to: 'because that's the way things are'. Berger and Luckman also point out that the problem of legitimation arises most inevitably arises "when the objectivations of the (now historic) institutional order are to be transmitted to a new generation" (ibid.). I would suggest that the issue of legitimation arises not just with the involvement of a new generation, but generally with the involvement of anyone who has not yet been 'converted' to (mis)recognise the authority-as-certitude of the representations of enclosure. If the basic assumptions of the Irish Music Rights Organisation remain unquestioned, then the issue of legitimation need not arise.

Legitimation is deployed primarily in the face of challenges to representations of enclosure, claims to authority-as-certitude. Legitimation, that is, is deployed primarily in the face of a rejection of enclosure. As Frederic Jameson writes in the introduction to Lyotard's Postmodern Condition (1997): "legitimation becomes visible as a problem and an object of study only at the point in which it is called into question".⁸¹ It has already been argued that representations based on authority-as-certitude are gross misrepresentations of the experience of negotiation. Because such claims are misrepresentative, the perpetrator of such a claim, if questioned, must enthusiastically undertake a program of legitimation until such time as the status of the claim's authority-as-certitude is secured, and the questions subside. Any other outcome unsettles the delicate balance of duplicity, and

⁸¹ It has been argued, indeed, that the issue of legitimacy as problematic is historically linked to this very issue: "In the form most familiar, legitimacy as a distinct issue traces to the seventeenth century when the above assumptions were challenged by the view that human beings (some among them) are, by nature or before God, free and equal in at least one respect: no human being has natural or divinely ordained authority to rule them. On this picture, the only unproblematic authority is each person's authority over herself. Government of any kind, certainly government with content-independent authority, demands justification" (Flathman 1993:527).

uncovers the representations of enclosure as vulnerable to the criticism of 'infinite regress':

The adequacy of logical proofs was always suspect. For a logical proof to be a justification, it must be possible to demonstrate the proof for all to see. Failure to do so is evidence of an error. An example of a failure to demonstrate is the so-called 'infinite regress'. If we give reasons for *why* some particular statement is true, we might be asked to show why we think our reasons are true. ... we must [then] step backward and provide another set of reasons to prove the truth of the first set of 'reasons'. But if that is possible, then any subsequent reasons can also be questioned. This requires still another backward step and another set of reasons. There is no limit to the number of required sets. Hence, we have an infinite regress. Such a possibility means that one could never provide a complete (and thus finite) proof of one's knowledge (Boland 1997:99).

Legitimation is very clearly, then, a technique of power deployed in the cause of 'conversion': from disobedience to obedience, from heresy to orthodoxy, from illegality to legality, from injustice to justice.⁸² This returns us to our earlier discussion in Chapter 5 about what Galbraith calls the 'cultivation of useful belief' and its role in the expansion of the Irish Music Rights Organisation (see pp. 135-141). For Galbraith, the 'cultivation of useful belief' "consists ... in inducing the individual to abandon the goals he would normally pursue and accept those of another person or organization" (1973:22). This is primarily achieved, it was argued, through the twin process of persuasion and, in the case of the the failure of persuasion, coercion. It is now argued that persuasion and coercion are undertaken as operations of legitimation within the general schemes of enclosure. Legitimation, then, is the key technique of power in the 'cultivation of useful belief'.

To reiterate, legitimation is here understood as *deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure*. We turn now to provide examples of the authorities-as-certitude to which representatives of the Irish Music Rights Organisation turn in the face of resistance and outright rejection. First, the role of 'member', 'consumer', and, now, 'authorial' mandates is noted. Second, the 'perfect reason' of the 'rule of law' is presented as an underlying source of authority-as-certitude for IMRO. Third, it is suggested that the positivist approaches implied by the

⁸² See Jack Goody's *The Logic of Writing and the Organization of Society* (1986) for some interesting remarks on connections between the role of conversion and the institutionalisation of literate authority(-as-certitude). See also Muir (1967).

'rule of law' are reinforced by positivist neo-classical economic doctrines that pervade the organisation's claims. With contracts, we find deferral to the authority-as-certitude provided by instruments of both legal and economic closure.

In Chapter 5 we highlighted the member⁸³ and consumer mandates upon which IMRO relies to furnish support for its activities from the explanatory logic of neo-classical paradigms (see pp. 118-124). These mandates, it is now noted, constitute key authorities-as-certitude in the organisation's legitimisation strategies. In performing rights discourse, however, not only does taking recourse to neo-classical economics or the member mandate serve to deflect attention away from the power and influence of the technostucture of the royalty collection agency, but so too do appeals to romantic discourses of creativity, genius, and originality. We might refer to this as the 'authorial' mandate. As Mark Rose has remarked generally: "Copyright is founded on the concept of the unique individual who creates something original and is entitled to reap a profit from those labors. Until recently, the dominant modes of aesthetic thinking have shared the romantic and individualistic assumptions inscribed in copyright. But these assumptions obscure important truths about the processes of cultural production" (1993:2). Appeals to the rights of "creators" serve to further deflect attention away from the economic and political implications of the activities of the Irish Music Rights Organisation. They also defer to the authority-as-certitude of the legal 'subject'. Jane Gaines refers to the 'subject' as "the hypothetical point where meanings converge - the "point of unity" where sense is made" (1991:22). She also draws on the work of Pashukanis and Edelman, proposing that we consider intellectual property through the concept of the legally- and capitalistically-constructed "author-subject": "Only as an author can a legal subject have a right in a work, and only as a legal subject can an author be said to have a "right" to defend or to assign to a third party" (26). Through the rhetoric of romantic creativity, focus is maintained on the

⁸³ Legitimation strategies which embrace the member mandate have much in common with strategies that look to the democratic mandate: "The notion that government must rest on

individual “creator” as the locus of the power, another locus of authority-as-certitude for the system, adding to the other convenient constructs of member-producer or consumer-user. This allows the activities of the collection agency to again go unexamined, unquestioned, and unchallenged for the very simple reason that they are rendered invisible, or at least irrelevant: “there is a way in which we *are* imprisoned by legal discourse. As rights-holders, we are built into an invisible structure that requires our symbolic agreement *whether or not we act in any empirical way in concert with this structure*” (1991:28).

This suggests that another key source of authority-as-certitude that is deferred to in the legitimation processes of the Irish Music Rights Organisation is ‘Law’ itself. This is entirely appropriate, as the etymology of the word ‘legitimate’ is rooted in an allusion to law. Nicholas Blomley, in Law, Space, and the Geographies of Power (1994), outlines how the rule of common law, in particular the ‘supremacy of law’, or, for our purposes, the ‘certitude of law’, received a crucial and highly influential elaboration through the work of Edward Coke (1552-1634). It was Coke who defined law as “perfect reason” and this definition became the fulcrum of his theory of precedent, finding optimum articulation in Coke’s, “*Neminem oportet esse sapientiores legibus*: no man (out of his own private reason) ought to be wiser than the law, which is the perfection of reason” (cited in Blomley 1994:72). Coke’s second major contribution was the related effect whereby all other sources of legal interpretation became subordinate to the rule of common law in its perfect rationality. This effected a disconnect between local legal life, and the “disembedded superstructure” (76) of common law. This ran counter to the multivocal, decentralised origins and aspirations of early common law, but became an influential component of increasingly centralised and rationalised legal practices. “Local legal knowledge is subsumed within a unitary and systematic monolith. The diversity and materiality of social life and legal understanding is consumed by a unitary and abstract system in which legal practice and legal doctrine exist in a self

the consent of the governed has become an article of political faith, a conviction that much contemporary political philosophy labours to secure” (Flathman 1993:528).

validating circularity, independent of "external" conditions" (82). This perception of the law as the source of authority-as-certitude is reflected most obviously in the notion of the 'rule of law', which underpins much Anglo-American conceptions of law, and is also, subsequently, a source of authority-as-certitude to which the representatives of the Irish Music Rights Organisation may defer in their deliberations:

The English jurist A. V. Dicey formulated in the late nineteenth century (Dicey 1885) the most celebrated composition of the rule of law as involving three elements: first, the absolute supremacy of law over arbitrary power including wide discretionary powers of government; secondly, that every citizen is subject to the ordinary law of the nation administered in the ordinary courts; and thirdly, that rights are based not upon abstract constitutional statements but upon the actual decisions of courts. ... (Cotterrell 1984:168).

As Cotterrell notes, the certitudes of the rule of law presuppose the certitudes offered by a positivist approach to law insofar as "The doctrine of the rule of law demands that law consist of known, predictable rules" (ibid.). The role of legal positivism within the claims of the Irish Music Rights Organisation is further reinforced by an economic version of logical positivism. Donald McCloskey (1994) terms it 'architectural modernism', while Lawrence Boland (1997) prefers the term 'conventionalism'. Distinguishing in particular a "workaday rhetoric" of logical positivism within the practices of neo-classical economics,⁸⁴ McCloskey has shown how it flees from the uncertainties of "ambiguity, polysemy, obscurity, mythopoeic allusion, and primitivism" (xii), participating in what Richard Rorty has termed "the triumph of the quest for certainty⁸⁵ over the quest for wisdom" (cited in McCloskey 1994a:398). The authority of the discourse of neo-classical economics, grounded in logical positivism, assumes the status of authority-as-certitude for IMRO representatives, providing yet another source for legitimation in times of challenge. As Boland notes, one of the key advantages of the legitimations of positivist rhetoric is that neo-classical hypotheses are often immunised by rhetorical strategies that keep such claims safe within a merry-go-round of certitudes: "This *strategy* immunizes the neo-classical hypothesis from refutation even when it is false – and

⁸⁴ As distinct from the more sophisticated but related positivisms of philosophers such as Schlick, Carnap, and Ayer (see Ayer 1960).

regardless of whether the axiom is falsifiable. The question is not whether the statement of the maximization hypothesis is falsifiable but whether the immunization *strategy* can ever be defeated!" (1997:74).⁸⁶

Knowledge within positivism is taken to be asocial and independent of both 'senders' and 'receivers', culture, and history, and it is guided by "the Cartesian dogma that only the indubitable is true" (McCloskey 1994:398). The certitudes provided by the legitimations of positivism also save effort in that they require no broad-based consideration of factors other than those that interest you: "Most of the facts of the matter could be ignored, since most could be construed, if you were dull enough, as not bearing on the hypothesis under test. No tacit knowledge was necessary, no sense of the landscape, no feel for the story" (8-9). This is reflected unconditionally in Hugh Duffy's admission during his radio argument with Fintan Vallely, presented in Chapter 4: "I don't claim to have a knowledge of music" (p. 86). Such knowledge is not deemed necessary, or relevant. Another statement of Duffy's is perhaps more obviously positivist: "Who owns the tune is a matter of fact! It's property rights. It's nothing to do with us." (p. 87). This statement, for all its brevity, is particularly revealing, in that it manages to highlight the composite legitimations of both legal and economic closure, through an appeal to the certitudes of 'property rights'. Duffy also defers here to the certitudes of the classic fact-value split of positivism,⁸⁷ grounded in a behaviourist phenomenism that cannot incorporate introspection or meaning negotiated in and through social interaction. It is through claims like these that the operations of the organisation are consistently portrayed as

⁸⁵ Within the terms of reference provided in this thesis, what Rorty refers to here as 'certainty' might be better understood as 'certitude'.

⁸⁶ In Chapter 1, I made a similar point: "What is particularly powerful about the discourse of copyright is the way in which it is comprised of elements from a number of different and often paradoxical literary, economic and legal discourses that coalesce around a regularising terminology of creativity, originality, authorship, incentive, rights, property, and individualism. What happens is that a challenge to one aspect of this working assembly of discourses is often undertaken in the language of another one of copyright's constituent discourses" (p. 20).

⁸⁷ "Believing, mistakenly, that operationalism and objectivity and statistical significance are enough to end all dispute, the economist assumes that his opponent is dishonest when he does not concede the point at issue, or that he is motivated by some ideological passion and by self-interest, or that he is simply stupid. It fits the modernist split of fact and value to

value-free and politically-neutral.⁸⁸ In both cases, the IMRO representative's claims disclose unequivocal operations of the legitimization of enclosure.

Contracts are also an issue here. In the face of resistance, people defer to contracts as a source of authority-as-certitude. This is exemplified by the 'turnaround' enacted by Labhrás Ó Murchú's declaration of the 'end of debate' upon the signing of a private contract with Shay Hennessy of the Irish Music Rights Organisation, on behalf of all the members of Comhaltas Ceoltóirí Éireann. Contracts typically play a key role in many legitimations of enclosure, given that they serve simultaneously as instruments of both legal and economic closure. First come the alliances: "Throughout history, enclosures have been resisted: and throughout history, enclosers have sought to contain that resistance, where possible turning it to their advantage. ... [A]lliances between different interest groups have played a key role in the enclosers' strategies" (Goldsmith et al. 1992:161). Then comes the contract as a seal of certitude: "By helping us categorize, [contracts] encourage us to simplify in a way that denies the complexity, and ambiguity, of human relationships. By offering us the false hope of definitive resolution, they allow us to escape the pain, and promise, of continual reassessment and accommodation" (Dalton 1989:195).

These are just some examples of the authorities-as-certitude that are available to representatives of the Irish Music Rights Organisation in their drive to 'cultivate useful belief' amidst the extension of their own claims to authority-as-certitude for their own organisation. When their own representations of enclosure fail they move to shore up those claims by deferring to one 'certitude' after another until acquiescence is achieved. The ultimate aim is total acquiescence. Only then can the authority-as-certitude of the organisation, which is arguably based on what Mark Kelman refers to as

attribute all disagreements to political differences, since facts are alleged to be, unlike values, impossible to dispute" (McCloskey 1986:184).

⁸⁸ "The notion of value-free objectivity is morally and politically regressive ... It has been used to legitimate and hold up as the highest ideal institutions and individuals that are, insofar as they are scientific, to be studiously unconcerned with the origins or consequences of their activities or with the values and interests that these activities advance" (Harding 1991:158).

"patently unstable babble" (1989:215), be secured, and, importantly, validated, as 'natural, inevitable, and necessary'. Legitimation is an attempt to displace other people's interpretive structures of expectation, other people's experience of meaning. It signals a call to delegate personal power and authority in negotiation to others within the parameters of specific concerns, thereby hiding, and even denying the degree to which responsibility can be assumed for meaning in that regard. In a very real way, acquiescence to legitimation is acquiescence to a degree of self-disempowerment. As Richard Flathman writes of political legitimacy: "To concede the legitimacy of government is to accord some number of persons a right that we otherwise reserve to ourselves, the right to conduct our own lives and affairs as each of us deems appropriate" (Flathman 1993:527). Legitimacy need not have anything to do with the 'content' of that which is deemed legitimate. Once things are placed beyond question, the content is largely irrelevant. As Thurman Arnold puts it: "When we attempt to analyze the actual operation of creeds in society, we discover the surprising fact that their content and their logic are the least important things about them" (1937:21). What matters is one's orientation to that 'content' in a submissive stance of deferral to authority-as-certitude: "Legitimacy ... relies not on trust, but on an impersonal sense of duty on the part of the followers to follow commands of a proper authority, whoever is in authority, and whatever is the content of these commands" (Pakulski 1992:26).

Hegemony

Consolidation is the third feature of enclosure, the first two being framing and expansion. The first two elements of consolidation are displacement and legitimation. The third element of consolidation is hegemony, initially discussed in Chapter 3 (see pp. 65-68). In this section we will first be examining general understandings of hegemony. The term 'hegemony' is most commonly used to speak of relations of domination, and then most frequently in relation to the work of Antonio Gramsci. There is another use of the term, however, whereby hegemony is understood in terms of leadership. Here it is argued that both of these perspectives can be united by viewing

hegemony as the nesting of heavily-sedimented interlocking frames (authorities-as-certitude), around people whose negotiations of meaning subsequently achieve the legitimacy and status of authority-as-certitude. With this understanding of hegemony, then, we move towards further analysis of the expansion of the Irish Music Rights Organisation, with particular emphasis on the relational implications of this expansion. First, we will identify how IMRO satisfies the requirements of this understanding of hegemony. Second, we will focus on the consequent 'self-evident' character of the organisation. Third, we will examine the role and place of resistance within hegemony. Fourth, we will bring these points together by suggesting that the achievement of hegemony coincides with the emergence of what we might call 'registers of enclosure'. By briefly examining this notion we can come to a preliminary awareness of the particularities of the relational implications of IMRO's expansion.

Hegemony: Domination and Leadership

There is an interesting tension in notions of hegemony, a tension that highlights and, it will be argued, usefully clarifies key aspects of what is understood here by 'hegemony'. A tension exists between understandings of 'hegemony' that emphasise its negative role in 'domination', and those that emphasise its positive role in 'leadership'. Most often, however, the dual purposes of the notion have been ignored, and associations with domination have been embraced. Kay Anderson, for example, sees hegemony as "the pervasive type of conceptual domination that has been exercised by powerful groups over the definition of people and places in Western societies" (1988:130). This type of understanding, implicitly or explicitly evoking narratives of domination and subordination, is deeply influenced by the work of Italian theorist Antonio Gramsci (1892-1937). For Gramsci hegemony was "the means whereby the dominant class obtained the spontaneous adherence of the rest of the population to its rule" (Bellamy 1998:153). The dominant class, he argued, "achieve domination not by force or coercion alone, but also by creating subjects who 'willingly' submit to being ruled"

(Loomba 1998:29). Thus, typical of general definitions of 'hegemony', we find:

This is a term used by A. Gramsci to describe how the domination of one class over others is achieved by a combination of political and ideological means. Although political force—coercion—is always important, the role of ideology in winning the consent of the dominated classes may be even more significant. The balance between coercion and consent will vary from society to society, the latter being more important in capitalist societies. ... Hegemony is unlikely ever to be complete (Abercrombie et al. 2000:195).

Gramsci also used the term 'hegemony' in other ways, however, ways which emphasise the role of hegemony in positive 'leadership' as opposed to domination. This is sympathetic with the position of Mensheviks and Leninists, where the term is used to "indicate political leadership in the democratic revolution, based on an alliance with sections of the peasantry" (Sassoon 1983:201). In work written before his incarceration, Gramsci similarly used the term to refer to "the system of alliances which the working class must create to overthrow the bourgeoisie state and to serve as the social basis of the workers' state" (ibid.). Gramsci held that it was the educative task of the Communist Party to contribute to the formation of "a moral awareness and political will among the proletariat" (Bellamy 1998:153). As Bellamy notes, this involved two stages. First, this education involved making the proletariat conscious of their 'real' class and economic interests. Second, it involved educating the peasantry and the petit bourgeoisie to identify their interests with those of the proletariat. This was a clear echo of the vanguardism of Lenin's Marxism, which was based on the principles of "there can only be one struggle, there can only be one theory, there can only be one leadership" (T. May 1994:20). Lenin was adamant about the nature of hegemonic leadership: "The workers must be taught their true interests; they are mistaken about them. ... In order to discover the proper route, they need a vanguard party to educate them about the true struggle and its theory" (21). For both Lenin and Gramsci, the 'Party' and its cause were central to the achievement of hegemony: "The moral and intellectual revolution within people's consciences was to be so complete that the Party was to take the place of 'the Divinity or the categorical imperative' in their minds, with all acts judged good or bad to the extent that they benefited the Party" (Bellamy

1998:153). For Gramsci, then, in contrast to what is generally conveyed, hegemony is *both* a focus of criticism *and* a call to arms.

The Hegemony of Enclosure

The tension between domination and leadership in understandings of 'hegemony', and particularly in the meanings brought to bear upon the term by Gramsci, brings a central issue to light. Whether conceived as domination or leadership, hegemony still refers to negotiations suffused by interlocking authorities-as-certitude, available to those who would enact enclosing strategies of legitimation. It doesn't matter what you call it, in either case the power effects of legitimation are the same. 'Domination' from one standpoint can be 'leadership' from another and vice versa.⁸⁹ Within the theory of enclosure, then, 'hegemony' is understood as *the nesting of heavily-sedimented interlocking frames (authorities-as-certitude), around people whose negotiations of meaning subsequently achieve the legitimacy and status of authority-as-certitude*. With acquiescence to the multiple legitimations of hegemony, then, comes participation in the operations of legitimation, acceptance of the role of authorities-as-certitude in personal negotiation, and some degree of displacement of one's own authority by the act of deferral to the certitudes of another's negotiation of meaning. It is precisely on account of the apparently impenetrable 'ring' of authorities-as-certitude that "The term hegemonic contains within its network of associations the sense of a 'master principle'" (Williams 1976:117).

It's There Because It's There

One of the most significant effects of IMRO's achievement of hegemony is that the authority-as-certitude of 'self-evidence' comes to be vested in the organisation. With the achievement of hegemony, the activities of the Irish Music Rights Organisation, and the assumptions upon which they are based, become naturalised, assuming a patina of necessity and inevitability. The

⁸⁹ This is another good example of David Icke's notion of 'opposames' (2001:4).

existence of the organisation “becomes experienced as an axiom, a *fait accompli*: children all too soon stop asking ‘Why?’” (Jenkins 1992:107). The very existence of the organisation becomes monologic, not being open to question, for questions only ever run into the brick walls of nested justifications. In some ways, we might understand this as an example of the ‘organisation-as-spectacle’; Guy Debord’s critique of spectacle can also be taken as a critique of the hegemony of enclosure: “The spectacle is by definition immune from human activity, inaccessible to any projected review or correction. It is the opposite of dialogue. Wherever representation takes on an independent existence, the spectacle reestablishes its rule” (1994 sect. 18). It could equally be said that: “The certainty of the political order is everywhere on exhibit, yet nowhere quite accessible, never quite touchable” (Timothy Mitchell, cited in Gregory 1994:174).

With the self-evidence of the existence of the Irish Music Rights Organisation comes systematic reinforcement of the organisation’s authority-as-certitude. Something as simple as an IMRO sticker on the door of every commercial premises in the country quietly reinforces the position of the Irish Music Rights Organisation as a taken-for-granted presence in the social interactions of everyday life in Ireland. Many music festivals are sponsored by the organisation, increasing brand recognition and garnering bucketloads of positivity-by-association. The Irish Music Rights Organisation takes out a monthly full page advertisement with the influential Irish Music Magazine, self-proclaimed as “The Definitive Voice of Irish Music Worldwide”, a deal which has been accompanied by adulatory feature article interviews with past and present members of IMRO management.⁹⁰ IMRO showcase gigs are held regularly to promote the musical talents of IMRO members in major Irish population centres such as Dublin, Belfast, Cork, Limerick, Galway, Waterford, and Wexford. Such exposure allows the organisation to

⁹⁰ As John Kenneth Galbraith writes: “The power of the Planning System in relation to the media lies not in forthright control of expression but in its capacity to identify its needs with what, in public policy, seems basic and reputable. Thus, while interesting deviation has no difficulty finding a voice, the needs of the Planning System are the norm to which discussion eventually returns. ‘Men with power have an extraordinary capacity to convince themselves that what they want to do coincides with what society needs done for its [own] good’

consolidate the unchallenged position it holds in virtually all contexts of Irish life. In a variety of ways the unquestioned status of the organisation is perpetuated, the hegemony of IMRO's influence maintained.

It is perhaps useful to view this as a process of 'autopoiesis', literally 'self-production'. Autopoiesis, following Maturana and Varela (1987), refers to the property of systems whose components, first, participate recursively in the same network of productions that produced them. Second, they realise the network of productions as a unity in the space in which the components exist. Autopoiesis is thereby a process whereby a system produces its own organisation and maintains and constitutes itself in a space. Although too overtly structuralist to be wholly compatible with the theory of negotiation presented earlier, the notion of autopoiesis adequately represents the process of multiple and mutual reinforcement which occurs over time within the authoritative nestings of hegemony. The achievement of monopoly-in-hegemony cradles the representatives of the Irish Music Rights Organisation in a situation of such security that they are solely concerned with the maintenance of the organisation, and the constant reproduction of the operations of power that constitute its existence as a unitary body. The enclosed unity of the organisation is epitomised by the monologically generalised corporate brand of 'IMRO'. Within the closed circle of authorities-as-certitude that hegemony provides, expectations seem to petrify as negotiations become *framed* negotiations: "Past experience is encapsulated in an institution's rules so that it acts as a guide to what to expect from the future. The more fully the institutions encode expectations, the more they put uncertainty under control, with the further effect that behaviour tends to conform to the institutional matrix: if this degree of coordination is achieved, disorder and confusion disappear" (Douglas 1986:47-48).

Another form of silencing occurs within the processes of the organisational structure. The constitutive elements of the organisation (1990, 1992a, 1992b, 1993), for example, produce the discursive field which controversy must not exceed. Anywhere else, such as in the work of the

[Raymond Vernon]. And this is the norm to which editors, publishers and broadcasters, in the absence of thought to the contrary, also automatically repair" (1973:175).

Hegemony and the Place of Resistance

One of the primary occlusions of 'self-evidence' is resistance. With the achievement of hegemony resistance is rendered 'silent'. This is despite the fact that "What appears to us today as self-evident ... has quite often been the stake of struggles and instituted only as the result of dogged confrontations between dominant and dominated groups" (Bourdieu 1998:56-57). This silence happens in two particular ways. It all depends on which side of the representations of enclosure (or the enclosures of representation) one is standing. For those whose negotiations accept the full support of the hegemonic order, resistance takes the form of that-which-must-be-overcome. This is very much in the spirit of Jacques Attali's "Make people Forget, make them Believe, Silence them" (1985:19). To seek to overcome resistance is to deploy the techniques of legitimation, to shore up leakages perpetrated by the 'not-self-same' (Cixous 1997) with any or all available authorities-as-certitude. Within this atmosphere manifestations of discontent are simply irritating, and are thus rendered 'disobedient', 'illegal', 'unjust', and just 'wrong'. Resistance is also "overcome" by processes of 'hegemonic streamlining', in which the operations of the Irish Music Rights Organisation are maintained by those most compatible with the smooth functioning of acquiescence to authority-as-certitude. It is significant, for example, that the current Chief Executive of the organisation, Adrian Gaffney, has a training in orthodox economics. As Galbraith sees it:

In a world of organization the values of organization are brought strongly to bear in selecting men for positions of public responsibility. Again the man who offers a divergent view - who departs from the Establishment position - is heard. But he is not thought fit for what is called real responsibility. That requires a man who accepts the goals of organization with a minimum of question, inner conflict or even ostensible thought. The Planning System defines public policy in accordance with its own need. It also specifies the qualifications of those who carry forward the policy (Galbraith 1973:179).

Another form of streamlining occurs within the parameters of the organisational structure. The 'constitutional' documents of the organisation (1990, 1995a, 1996c, 1996d), for example, provide "the limits beyond which controversy must not extend. Arguments may occur within the terms of the constitution, but to attack the constitution itself is heresy and calls down

penalties which vary with the culture of the people from a mild ostracism to instant execution" (Arnold 1937:28). This is consistent with Foucault's recognition that "dominant structures legitimise themselves by allowing a controlled space for dissidence - resistance, in this view, is produced and then inoculated against by those in power" (Loomba 1998:50).

A key forum for such procedures is the Annual General Meeting of an organisation, for "Public debate is necessarily only a method of giving unity and morale to organizations. It is ceremonial and designed to create enthusiasm, to increase faith and quiet doubt, it can have nothing to do with the actual practical analysis of facts" (Arnold 1937:379). The following ethnographic passage recounts the business of the Extraordinary General Meeting and Annual General Meeting of the Irish Music Rights Organisation as convened on the 13th of September, 2000, at *HQ, The Irish Music Hall of Fame*, no. 57 Middle Abbey Street Dublin.

Dublin 1, 2.00 p.m., 13th September, 2000.

I wasn't sure what time the meeting was supposed to be starting. It was 1pm now. I hadn't been in the place before, although I had heard about it for a while. It was set up in association with Hot Press, Ireland's leading music magazine, to pay tribute to the many musicians who had contributed to Ireland's prominent position in the music industry worldwide. I was told to come back and see again at around 2pm. The people at the door weren't too sure about the time either. I went to get a curn (currant) scone and a drink to tide me over for food until after the meeting.

I arrived at the newly-allotted time and went up to the table that had been placed at the bottom of the staircase at the far end of the narrow lobby. Behind it sat a man wearing a dark business suit, white shirt, and tie. He had an IMRO badge on his lapel so I presumed he knew what was what. There were row upon row of name tags on the table for IMRO staff who had not yet arrived. The first issue of the new and glossy IMRO magazine was freely available for the taking, a small pile of them sitting over to the left of the table. In the centre was an open book with a pen attached, and blank spaces for names. I presumed that this was where attendees would sign in. I leant over to sign my name. As I did so, I thought to ask the man a question.

"Would it be at all possible to record the proceedings of the AGM on a tape recorder?" I thought it better to ask. I always feel guilty if I haven't done so.

"No, I don't think that would be possible. We'd have to get the permission of all of those speaking, and I don't think that would be possible." I knew this to be patently untrue, so I tried again.

"It's for academic purposes," I offered for the purposes of illumination. I received no reply. I thought briefly about arguing the case of Fair Dealing under the new Copyright and Related Rights Act but decided it might be better not to cause a scene. Although a registered IMRO member, I was also here in my capacity as an unobtrusive academic observer. I didn't want to blow my cover. I was motioned up the stairs to the main music venue on the premises, the room in which the Extraordinary General Meeting was to be held. I decided not to tape, but felt frustrated that I hadn't been afforded permission. I had, after all, bothered to ask.

It was a spacious medium-size music venue, probably capable of seating around 200 people comfortably. The lights had been turned down low. Small round tables, permanent fixtures, sat empty for the expected crowd. The semi-circular room focused all attention on the stage, at least it would have done so normally, but today the focus was redirected to a table in front of the stage, bathed in light so that it stood out against the black swathe of the back wall. At each end of the table was a vase of fresh flowers. Four name-plates had been placed, evenly-spaced, across the table, awaiting the presence of Shay Hennessy, "Cathaoirleach" (Chairman), Adrian Gaffney, Chief Executive, Mike Hanrahan, "Leascathaoirleach" (Vice-Chairman), and Carmel Ryan, Company Secretary. Across the back of the stage hung a large banner with the IMRO logo. To the left and right of the stage hung a black and white poster showing a silhouetted electric guitarist beside a microphone, obviously caught in mid-performance. At the foot of each poster was the statement, "IMRO - Proudly supporting live music in Ireland." Far off to the left was a small photo exhibit to mark the recent Songwriter Collaboration Workshop that had taken place in Maynooth. I seated myself at the back of the room, near the bar. Drinks were bound to be expensive and I hadn't finished the bottle I still had in my bag from lunch, so I wasn't inclined to tipple. I felt a little self-conscious about having a notebook open and a pen at the ready, and it reminded me somewhat of my attempts to be unobtrusive in darkened music venues during my days as a small-time music critic a few years previously. Along the bottom of the upper viewing gallery there were publicity photographs of Irish music industry success stories - U2, the Cranberries, Van Morrison, Clannad, Brian Kennedy and others. Over to my left, up on the wall, there was a permanent sign:

IMPORTANT NOTICE
CAMERAS AND AUDIO
AND VIDEO RECORDING
EQUIPMENT ARE NOT PERMITTED WITHIN THE
AUDITORIUM

IMRO representatives milled round the room in suits and ties or business suits, gesturing, smiling, and welcoming appropriately as people came in and seated themselves. The top table was soon filled, and those seated at it were a little more relaxed and a lot less formally dressed than others. As more people filed in I began to feel less underdressed, as many were suitably scraggy to fit the eccentricities of the creative singer-songwriter stereotype. Around 160 members eventually turned up, above expectations. The place was starting to buzz.

Senator Labhrás Ó Murchú, Director-General of Comhaltas Ceoltóirí Éireann, was brought in by an IMRO staff member and seated near the front. He looked a little lonely seated up there by himself. He quickly reseated himself, further back in the room, beside someone he knew. Also present were Senator Tom Kitt, the Minister in charge of the recently ratified Copyright and Related Rights Act, and Senator Donie Cassidy, a strong lobbyist on its behalf.

The main purpose of this Extraordinary General Meeting had been outlined in a letter to members, dated the 15th August. "One of the most important developments for IMRO Members in recent years", the letter stated, had been the enactment of the Copyright and Related Rights Act 2000, which had been signed into law by Mary McAleese, President of Ireland, on the 10th July of that same year. Said to be the largest piece of legislation ever to have passed through the Irish parliament, this Act was the first time that the issue of copyright had been specifically addressed in legislation since the 1963 Copyright Act. A draft of the proposed Bill for the new Copyright and Related Rights Acts had been published in 1998, whereupon lobbying interests had made their case known through the voices of Senators in the Irish Seanad. The new legislation was a significant revision and expansion of the 1963 Act in line with advances in technology, international obligations, and the laws of the European Union. Now, at this meeting, IMRO members were getting a chance to realign the documents of their organisation in light of this new legislation, most particularly the "Deed of Assignment", "the Rules", and what has been called "the Bible of IMRO", the "Memorandum & Articles". "In order to avoid any unnecessary

legal complexities", members had been informed, the legal advisors of the organisation recommended that the old language of the 1963 Act be replaced in IMRO documents by terminology from the new legislation. The IMRO Board now strongly recommended that members approve the proposed changes ('To All IMRO Members', Hennessy, 15 August 2000).

The Extraordinary General Meeting was officially opened by Chairman, Shay Hennessy. Attendance and Proxies were noted. The main purpose of the meeting was outlined. Hennessy read the proposed changes out loud from the printed page. Each resolution was proposed, seconded, and voted upon in the standard manner of official business meetings. In each case a call was made for a 'show of hands against', and in each case no objections were noted.

"That completes the EGM," said Hennessy. "Thank you for your attendance, thank you for your vote, and thank you for not asking too many questions." This was greeted with a laugh.

The Annual General Meeting was then declared officially open. A few lines of welcome were said in the Irish language. Note was made of the growing number of members and of the growing interest of members. Carmel Ryan, the Company Secretary, read the Notice of Meeting. A call was made for the Auditors' report, whereupon one of the company auditors stood up with microphone in hand and read the Auditors' Report verbatim. It was asked if there were any questions relating to the accounts, which there weren't, and the accounts were proposed, seconded, and voted. The auditors left once the report had been presented, at which point Hennessy joked, "They charge by the hour!"

The Chairman's report spoke of a resoundingly successful year, the single greatest indicator of which was the 13.5% increase in revenue. A licensing agreement had been signed with Comhaltas Ceoltóirí Éireann, a national traditional music body, which was welcomed not least for the increase in IMRO membership that it promised. A decision had been reached in IMRO's favour in a court case brought by IMRO on the basis of the WTO Treaty against the government of the United States, a decision which calls for the US government to enact changes to its copyright legislation in order to bring it into line with European practices. Representatives of IMRO had also been involved with the drafting and preparation of the Copyright and Related Rights Act, 2000.

The floor was opened for questions to the 160 people in attendance, and it quickly became apparent, in contrast to the smooth operations of the meeting up to this point, that the overwhelming feeling among people in attendance was discontent. There was widespread anger that Irish radio stations refused to play Irish material, that it was easier to get airplay abroad than it was in Ireland. Hennessy stated that the Irish Music Rights Organisation could absolutely and totally sympathise, indeed this complaint had been the main topic at IMRO members' meetings around the country throughout the year. But it was reiterated that IMRO was not in a position to take up this issue on behalf of Irish members as IMRO also represented the interests of members of all affiliated organisations worldwide. As Hennessy put it, IMRO was not in a position to take a sectional area of their repertoire and seek airplay for it. In response to a comment that musicians are second-class citizens, Hennessy stated, somewhat laterally, that "You should never do anything for free". What IMRO would do for its members, it was claimed, was to make developing the company website a "top priority financially". Plans were announced to develop an internet chatroom, and online collaborative songwriting was mentioned as a possibility. It was felt, said Eoin Colley, the IMRO employee in charge of the company webpage, that IMRO wished "to build a community around the possibilities of the website".

In clarifying IMRO's role and purpose, Hennessy stated that the only aspect IMRO is concerned about is the performing right, that IMRO collects money from anyone who uses music in Ireland, and that everybody who uses music is obliged to have a licence. "We're collecting money on your behalf," he said, "You must join! Any area where people are involved in music we encourage people to join IMRO. Our intention is to increase our membership to the maximum." He admitted that IMRO was an organisation with a lot of power and strength, saying as well that "We are very successful in how we use that power and that strength". It was felt by some that because IMRO was "the organisation with all the clout" in the music industry in Ireland

that maybe IMRO should lobby on behalf of the members of the Irish music industry. Hennessy answered that: "The reason we are the organisation with the clout is because we represent the entire repertoire," reiterating that there are certain protocols that IMRO must adhere to in their business dealings. One member remarked that: "Most of the people in this room have no interest in what you collected because we've nothing to collect," to which Hennessy replied: "We collect on behalf of all our members". Another member complained about the amount of mail that he received from IMRO. "We're obliged to send out stuff by company law. We must go through those procedures. It's part of our remit," replied Hennessy. Not only the amount was a problem, the member continued, but he couldn't understand the letters he received: "The legal stuff you sent out ... Possibly you could have sent out a translation as well. You're using a language we really don't understand." Hennessy replied: "Maybe there isn't another language to use." Mike Hanrahan, Leas-Chathaoirleach (Vice-Chairman) remarked in this regard: "Since I joined the board I've learned to read this. Recently we had a board meeting, and we talked about having a "gobshite-friendly" version. We are moving in that direction. We're very much active." Following a few other comments and questions the meeting was officially closed and those who had assembled dispersed.

This passage is presented with little commentary, but attention is drawn in particular to the operations of power that have been discussed. The EGM/AGM is presented here as the epitome of a hegemonic environment. There are suggestive indications of monologic generalisation, closure, and separation, realised in dynamics of inclusion and exclusion. Particularly striking, though, are the multiple authorities-as-certitude, provided by texts, legislation, 'authority figures', and even the venue itself. The highly-directive structuring of expectations, with specific relevance to copyright, is particularly evident in the framing of 'recording' as 'unhealthy', unwanted, and, thanks to a sign, illegal. The role of resistance in the passage is illustrative of the discussion above. Members who were not earning royalties were dissatisfied with their lot. To head off the dissatisfaction, recourse was taken to legitimisation through persuasion, in particular the legitimisation of the member mandate. Ultimately, resistance was rendered ineffective and irrelevant, while the impression was created that concerns had been heard in a democratic forum.

With this analysis of hegemony we can draw our analysis of the feature of consolidation to a close. The representations of enclosure, it has been argued, are faced with either unquestioning acceptance or outright rejection. This is primarily because these representations are made in the character of claims to authority-as-certitude. Such claims leave little room for

compromise. Acceptance of the claims of the Irish Music Rights Organisation, that is, acceptance of the claims of enclosure, leads to considerable displacement of locally-negotiated meanings. Importantly, this also entails the displacement of personal authority to negotiate meaning locally and specifically, in favour of highly abstract, generalising, and universalising claims. Rejection of the framing and claiming of enclosure calls forth the political operation of legitimation, in which people defer to a source of authority-as-certitude other than themselves in the cause of the representations of enclosure. With hegemony we see the effects of widespread legitimation strategies. Representations of enclosure, compatible with the hegemonic order, are cocooned by the security of multiple sources of authority-as-certitude. Hegemony effects the illusion of self-evidence for IMRO's claims, and leads to the widespread silencing of resistance in the cause of certitude.

Summary

The features of the process and practices of enclosure may be represented as follows:

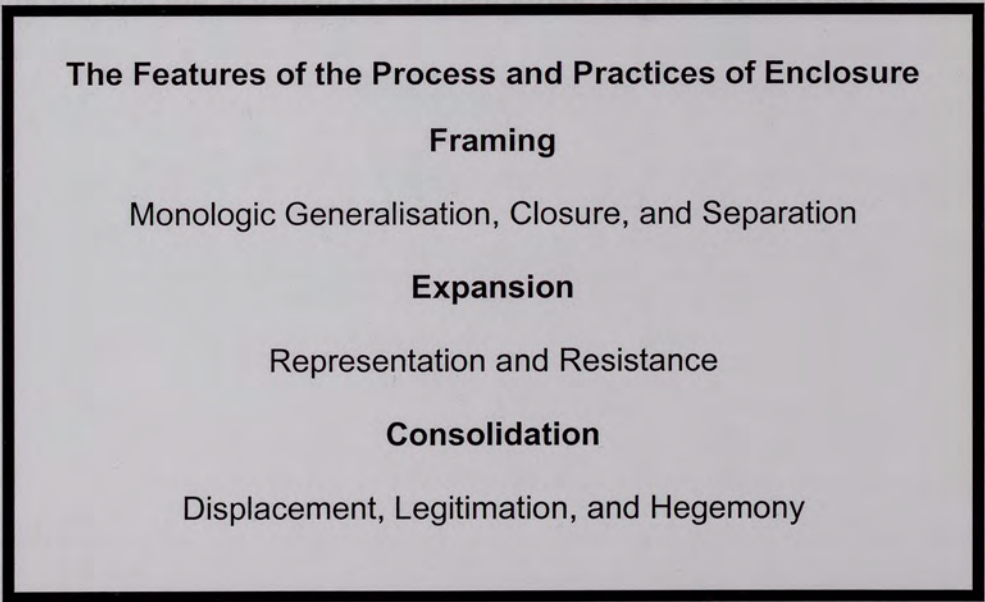


Figure 12. The Features of the Process and Practices of Enclosure

By examining these features we are not only drawn to understand enclosure as an interesting social phenomenon, but are also called to recognise enclosure as an important modality of power in and through negotiation, that is, in the relations of humans-among-humans. Understanding enclosure in this way leads us to an awareness that enclosure is not an abstract process, divorced from the situations in which we ourselves operate. Rather, the process and practices of enclosure implicate us all in a call to greater understandings of our authority, our power, in negotiations of meaning and expectation in everyday life.

Chapter 9 provides evidence of the second stage of the process of emergent theory in this research - the preliminary presentation of a theory of enclosure. This analysis of enclosure undermines the absolute authority of the Irish Music Rights Organisation, but does not replace one set of monologic claims with another. Instead, it makes clear how such dominance has been possible, and, as a consequence, asserts that such absolutism may be challenged. By prioritising the specificities and possibilities of experience we can move beyond the totalising claims of absolute authority promulgated by the representatives of the Irish Music Rights Organisation. The methodological approach of this thesis, then, offers a direct challenge to both the authority and the activities of the Irish Music Rights Organisation.

Introduction

In this thesis we have moved 'Beyond the Commons': first, the expansion of the Irish Music Rights Organisation from 1995-2000 was examined; second, the importance of the elimination of uncertainty in that expansion was highlighted; and, finally, it was demonstrated that the expansion of the Irish Music Rights Organisation can be understood as an example of the process and practices of enclosure. It has been shown that the representatives of

Conclusion

Halfway down the stairs is a stair where I sit.
There isn't any other stair quite like it.
I'm not at the bottom, I'm not at the top.
So this is the stair where I always stop.

Halfway up the stairs isn't up and isn't down.
It isn't in the nursery, it isn't in the town.
And all sorts of funny thoughts run round my head.
It isn't really anywhere, it's somewhere else instead.

Halfway down the stairs is a stair where I sit.
There isn't any other stair quite like it.
I'm not at the bottom, I'm not at the top.
So this is the stair where I always stop.

A.A. Milne, sung by Robin on The Muppet Show

- First, people come first, that is, people's experience takes priority over abstraction.
- Second, uncertainty is central to our experience of the world.
- Third, we are all active participants in our experience of meaning and power, and that therefore everything is, at its most basic, political.
- Fourth, nothing is fixed, neither meaning, social structure, nor history, nothing is necessary, and things may always be otherwise.

Also in Chapter 1, a general survey was provided of the literature on 'music and copyright' (see pp. 8-19). Five dominant approaches were examined: descriptive, sponsorist, revisionist, sociohistorical, and analytic. It was argued, in particular, that none of the approaches had adequately addressed the question of the relational implications of copyright. In and through the retheorising methodology of this thesis we have moved towards a preliminary

Introduction

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- First, people come first, that is, people's experience takes priority over abstraction.
- Second, uncertainty is central to our experience of the world.
- Third, we are all active participants in our experience of meaning and power, and that therefore everything is, at its most basic, political.
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assessment of these relational implications, in particular focusing on the relational implications of the expansion of the Irish Music Rights Organisation as enclosure.

The Disposition of Enclosure

On the basis of the arguments presented in this thesis, it is now suggested that we can identify a *disposition* of enclosure. In Chapter 8 it was stated that, in the context of negotiation, the term 'disposition' is understood to refer to a person's consistency of expectation (see p. 301). The disposition of enclosure, then, is understood as a *consistency of expectation of certitude*, that is, a *consistent orientation towards the elimination of uncertainty*. It is suggested that the more our composite experience of expectation is guided towards the disposition of enclosure, the more the features and operations of enclosure will become part and parcel of our negotiations of social interaction. In retrospect, this examination of the expansion of the Irish Music Rights Organisation has been, in part, an examination of the *attitude* of enclosure, that is, an exploration of the disposition of enclosure as specifically evidenced in and through the social interactions of negotiation.

The following sentiments, the words of Michel Tournier's Robinson from the novel *Friday* (1997), epitomise the disposition of enclosure:

Henceforth, whether I am waking or sleeping, writing or cooking a meal, my time is marked by this regular ticking; positive, unanswerable, measurable, and precise. How eagerly I seek those adjectives which for me represent so many victories over the forces of evil! I demand, I insist, that everything around me shall henceforth be measured, tested, certified, mathematical, and rational. One of my tasks must be to make a full survey of the island, its distances and its contours, and incorporate all these details in an accurate surveyor's map. I should like every plant to be labelled, every bird to be ringed, every animal to be branded. I shall not be content until this opaque and impenetrable place, filled with secret ferments and malignant stirrings, has been transformed into a calculated design, visible and intelligible to its very depths! (66).

For Robinson, the disposition is manifested as a classificatory drive to make the unknown legible, to transform the chaos of uncertainties into a unified, rationally-tamed object of inquiry, prescription, and control. Time is transformed into the regularity of unchallenged and unchallengeable

precision. All that is answerable, immeasurable, imprecise, untested, irrational, invisible, or unintelligible is understood not simply as negative, but, for Robinson at least, representative of the forces of evil, the ultimate uncertainty. This disposition of enclosure implies a general tendency towards the elimination, marginalisation, eviction, eradication, exclusion of uncertainty, whether as difference, conflict, threat, or doubt. As a particular disposition within the politics of representation, it has been crucial that we do not simply seek out the 'negative effects' of enclosure, the 'negative effects' of IMRO's expansion, but, rather, examine and understand the strategies and effects that arise in and through the attitude of enclosure. It must also be remembered that any generalised characterisation of enclosure is premised on the understanding that the practices of enclosure are historically, geographically, and culturally variable, both in their idealisation and their execution. They are so, because the practices of enclosure arise from individual negotiations in social interaction.

The structures of expectation, the connections of meaning and power, promoted by the representatives of the Irish Music Rights Organisation and the discourses of copyright have the character of highly directive frames. The more we negotiate experience in acquiescence to the prescriptions and controls implied by these frames, the more we experience shifts in our relationship to uncertainty, shifts in our experience of expectation. This is not to say that IMRO is to blame for all operations of enclosure everywhere, but to highlight that the representations of the organisation are a significant *contributing factor* in many people's composite experience of expectation. What is particularly interesting is the ease and speed with which these frames were assimilated into the lives of so many. This is a suggestive indication of negotiational environments engulfed in a confluence of enclosures, such that the enclosures of the Irish Music Rights Organisation were compatible with the expectations of many. It is the *composite* effect of all the enclosures in our lives that challenges us with the possibility that we, too, participate in the disposition of enclosure.

The hegemony of enclosure, it must be remembered, can never be complete. Regardless of claims to authority-as-certitude, the power of negotiation is retained by virtue of a life in social interaction, and by the ever-presence of uncertainty in negotiation. This, as Mark Slobin says, is the kernel of the identification of hegemony: "that there is an unequal distribution of power within societies and that this distribution is both formulated and contested on a daily basis by everyone, in both deliberate and intuitive ways" (Slobin 1993:28). Claims to authority-as-certitude are just that - claims, and as *grossly misrepresentative* claims they remain vulnerable to the intrusion of doubt. Furthermore, hegemony can never be complete because it speaks to the identification of *operations of power*. To identify 'completeness' in operations of power is to miss key points; that negotiation is ongoing, that negotiations are ongoing, and that the identification of the features of enclosure as indicative of a particular modality of power is more a call for vigilance than a triumphant classification. This is because to identify enclosure as grounded in a disposition is to take us away from the essentialist dichotomies of dominance and subordination, away from the demonisation of one 'side' as friend and the 'other side' as 'foe'.

A dispositional approach to the analysis of enclosure "does not need to make any moral claims about the identity of the resister and the oppressor. A model of resistance as a diagnostic of power makes no investment whatsoever in the subject position of the agents - it simply uses their acts as evidence for various modes of power, including the power of resistance itself" (Cresswell 2000:266). It is not resistance that is the issue, as such; it is the character of negotiation in and through which resistance, that is, difference, is registered, for "Certain resistances are themselves a reproduction or extension of dominating power, rather than a challenge to it" (Sharp et al. 2000:23). As Said remarks: "there is an inherent danger to oppositional effort of becoming institutionalized, marginality turning into separatism, and resistance hardening into dogma" (1993:63). Paradoxically, the processes of enclosure are often at their most insidious when deployed in the cause of truth, freedom, law, and economic prosperity, as we see in the case of IMRO. Similarly, to champion the 'commons' can also be an example of enclosure,

particularly if the commons is championed as the shrine of gift, community, and 'traditional culture', or as the last bastion of open-access, the epitome of the arelational, free-for-all frictionless space of commodity capitalism.⁹¹ A dispositional approach to enclosure, then, draws us to examine the character of our own negotiations and the character of our relationship with others and the environment we find ourselves in. For example, it is suggested that the more we try to eliminate uncertainty, the more aware we will be of our experience of it. To assume the disposition of enclosure, then, would be to live one's life in a cauldron of anxiety, and to suffuse other lives with the effects of that anxiety through the operations of a free-fall enclosure that paradoxically seeks to eliminate the seeds of itself.

The Experience of Uncertainty

So what? To deny or seek to eradicate uncertainty is, in effect, to deny or seek to eradicate one of the most fundamental aspects of the experience of being human: "[W]e cannot deny what experience means to another person without, in effect, denying that the person exists in their own right" (Marris 1996:31). Barbara Adam has called for the "need to embrace uncertainty, ambiguity and multiple meanings" (1996:142). To accept the ever-presence of uncertainty, or to acknowledge its role in our experience-as-expectation, is to offer a direct challenge to the closures of enclosure, to assert that the quest for meaning can never be fully satisfied, that the struggle of contested meanings is a crucial part of the way in which we make sense of the world. It is to proclaim that there are always alternatives, that nothing is determined or inevitable. For quantum physicist Max Born, uncertainty is far more crucial, being the only thing that allows us the possibility of moral significance, all that provides us with scope for responsibility and ethical action (J. Adams 1995:18). Uncertainty grounds us in negotiation, that is, negotiation-with-others. To accept the inevitability of uncertainty is, as stated in Chapter 1 (see p. 32), to participate in a politics of *hope*:

⁹¹ As Raymond Murphy states: "Formally open contests are, despite their formal openness, systems of closure" (1988:223).

Hope is the acknowledgement of more openness in a situation than the situation easily reveals; openness above all to possibilities for human attachments, expressions, and assertions. The hopeful person does not merely envisage this possibility as a wish; the hopeful person acts upon it now by loosening and refusing the hold that taken-for-granted realities and routines have over imagination (Simon 1992:3).

With the acknowledgement of uncertainty, new doors are open to critically-engaged research, which “starts from the presupposition that knowledge is always contextualised by the conditions that make it possible and that it only progresses so long as it changes such conditions in a progressive way. Thus, knowledge-as-emancipation is earned by assuming the consequences of its impact” (de Sousa Santos 1999:40). Hope resides in the constant and dynamic possibilities of negotiation. Hope arises in the acknowledgement of our own authority, our own power in negotiation. It also arises in the acknowledgement of the power of others, from the infinite relational forces of social interaction. Hope emerges from the rejection of necessities, but also from the admission of guidance and effect.

It is not strictly true, however, as Lyotard would claim, that “the grand narrative has lost its credibility, regardless of what mode of unification it uses” (1997:37). It is one thing to say that incredulity is available to us. It is quite another to say that grand narrative has lost its credibility, or that “we no longer have recourse to the grand narratives” (60). Surely such statements are of the same character as the narratives they seek to criticise. Grand narratives of certitude remain entrenched all around us, guiding us, quietly informing our lives, implicating our negotiations in the operations of enclosure. Sedimented and institutionalised, we constantly and consistently participate in the propagation of the Big Story. We consent to the quiet legitimations of authority-as-certitude. As this happens, we frequently misrepresent ourselves, our experience, and the extent of our often unacknowledged power and authority in negotiation. To paraphrase Said (1978:5): from copyright to capitalism these grand narratives of enclosure have a history and a tradition of thought, imagery and vocabulary that have given them a reality and a presence in our lives. They persist through what I see as a proliferation of characteristically-similar mini-narratives, what Clifford Geertz might understand as ‘webs of significance that we ourselves have

spun' (1973:4): creativity, originality, authorship, the Subject, the individual, among others, that, composite in their effect, structure our goals, mould our institutions, and create what Lyotard (1997) skeptically referred to as our 'future anterior'. What might help is an injection of specificity, an awareness of power, authority, and expectation, an awareness of the primary function of spider webs, and an awareness of the operations of enclosure and their place in our lives.

The Indignity of Speaking for Others

In the final section of Whose Common Future? (Goldsmith et al. 1992), an analysis of the relationship between enclosure and the commons, the editors of the text find themselves with a dilemma. They acknowledge that it is customary to finish an analysis such as theirs with a list of policy recommendations. In stating that they shall not do so, they include a citation from Philip Raikes, taken from the introduction to his book Modernising Hunger:

It becomes increasingly difficult to say what are practical suggestions, when one's research tends to show that what is politically feasible is usually too minor to make any difference, while changes significant enough to be worthwhile are often unthinkable in practical political terms. In any case, genuine practicality in making policy suggestions requires detailed knowledge of a particular country or area; its history, culture, vegetation, existing situation, and much more besides. Lists of general 'policy conclusions' make it all too easy for the rigid-minded to apply them as general recipes, without thought, criticism or adjustment for circumstances (205).

In lucid commentary, the editors state that: "Like Raikes's book, our document is "full of implicit conclusions" and explicit demands, but to formulate them as "policy recommendations" would be to go against the case we have attempted to make. It would suggest that there is a single set of principles for change; and that today's policy-makers, whether in national governments or international institutions, are the best people to apply them. We reject that view" (ibid.).

Such thoughts go to the heart of this thesis and highlight one of the inherent weaknesses of policy as policy, or of legislation as legislation. By seeking universal standards and definitions to a multiplicity of circumstances, and by formulating courses of action based on those universal standards and

definitions, all that is happening is that an ill-fitting, misrepresentative, universalised interpretive framework is being used to understand, and more importantly manipulate, particular circumstances. The interpretative frameworks of legislation and policy are never designed to suit particular circumstances, but all circumstances. Therein lies a major problem. Policy as policy, legislation as legislation, are inherently geared towards the enactment of misrepresentation. The issue is not whether the wielders of policy and legislation will have the delicacy of understanding required to deal with whatever situation they are dealing with. The frameworks and power relations implied by policy and legislation guarantee that they will not, despite, or often because of, the good intentions of policy-makers. In another section of their text, the editors of Whose Common Future? cite farmer, writer, and poet Wendell Berry, to illustrate that "manager-friendly knowledge is *in principle* not local-friendly knowledge":

To the textbook writer or researcher, the farm - the place where knowledge is applied - is necessarily provisional or theoretical; what he proposes must be *generally* true. For the good farmer, on the other hand, the place where knowledge is applied is minutely particular, not *a* farm, but *this* farm, *my* farm, the only place exactly like itself in the whole world. To use it without intimate, minutely particular knowledge of it, as if it were *a* farm or *any* farm, is, as good farmers tend to know instinctively, to violate it, to do it damage, finally to destroy it (Goldsmith et al. 1992:180-181).

On the one hand we are faced with the rigid frameworks of remote policies and legislation, with singular meanings, grand labels, and generalised sweeps of understanding, and on the other we experience the socially-situated negotiations of local⁹² people in particular circumstances, with emergent and adaptive meanings and expectations. This is the tension between narratives of certitude and negotiations imbued with the ever-presence of uncertainty:

To talk about representing the interests of others as though those interests were either natural or given, even in the unfolding of a historical destiny, is simply to be mistaken in one's view of what people are like: it is to commit the error of humanism. However, as the poststructuralists recognize, this error is not politically neutral. ... Micropolitical analysis, if it is not to fall into epistemological and political inconsistency (or worse), must reject the attempt to explain the victims of various oppressions to themselves and must content itself with talking to them about how their situation arose. "In my opinion," Deleuze once told Foucault in conversation, "you were the first - in your books and in the practical sphere - to teach us something absolutely fundamental: the indignity of speaking for others" (May 1994:97).

⁹² This word is a bit redundant here, but speaks to specificity.

Speaking for Myself

In 'Beyond the Commons' I have tried not to speak for others, but, rather, to speak for myself. This thesis is a window into some of the ways in which I make sense of my world. Whether friends, writers, or interviewees, many have enabled me to articulate the connections that have emerged in the process of this thesis. I have tried not to use other people's sources as certitudes to which I can refer in times of trouble. Rather, I have attempted to draw on the contributions of others to add to my own narratives, to articulate what I have encountered in my own negotiations. Along the way, aspects of my world have been turned upside-down. I have moved from being a card-carrying member of the Irish Music Rights Organisation to being a trenchant critic of the politics implied by its activities. I have had to re-evaluate almost every aspect of my life in relation to the theories of negotiation and enclosure that I have presented here. Indeed, that is, I believe, how I wanted it to be. In one way, this is not so much a direct challenge to the Irish Music Rights Organisation as it is a direct challenge to myself. The only claim I can honestly make is that I have found this thesis helpful. My world makes a lot more sense to me than it did when I started. I have a greater sense of my place in the wider scheme of things. I simply invite others to consider if the connections presented here make sense in their own lives. I invite others to think upon these things. For hope.

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Irish Statutes

Public Dance Halls Act, 1935

An Act to make provision for the Licensing, Control, and Supervision of places used for Public Dancing, and to make provision for other matters connected with the matters aforesaid. 19th February, 1935.

Copyright Act, 1963

An Act to make new provision in respect of Copyright and related matters, in substitution for the provisions of Parts VI and VII of the Industrial and Commercial Property (Protection) Act, 1927, and other enactments relating thereto, and to provide for matters connected with the matters aforesaid. 8th April, 1963.

Performers Protection Act, 1968

An Act to prevent the making of unauthorised records, films and broadcasts of Performances of Literary, Dramatic, Musical and Artistic Works. 2nd July, 1968.

Competition Act, 1991

An Act to prohibit, by analogy with articles 85 and 86 of the treaty establishing the European Economic Community, and in the interests of the common good, the prevention, restriction or distortion of competition and the abuse of dominant positions in trade in the state, to establish a Competition Authority, to amend the Mergers, Take-overs and Monopolies (Control) Act, 1978, and to provide for other matters connected with the matters aforesaid. 22nd July, 1991.

Copyright and Related Rights Act, 2000.

An Act to make provision in respect of copyright, protection of rights of performers and rights in performances, to make provision for licensing schemes for copyright and related rights; to restate the law in respect of Council Directive No. 91/250/EEC of 14 May 1991 on the Legal Protection of Computer Programs; to give effect to Council Directive No. 92/100/EEC of 19 November 1992 on Rental Right and Lending Right and on certain rights relating to Copyright in the field of Intellectual Property; to give effect to Council Directive No. 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning Copyright and Rights Related to Copyright applicable to Satellite Broadcasting and Cable Retransmission; to restate the law in respect of Council Directive No. 93/98/EEC of 29 October 1993 harmonising the Term of Protection of Copyright and certain Related Rights and to give effect to Article 2.1 thereof; to give effect to Directive No. 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases; and to provide for related matters. Number 28 of 2000, 10th July.

International Intellectual Property Protection Treaties

Full text of the following treaties can be accessed on the Internet at <http://www.wipo.org/treaties/ip/index.html>:

Berne Convention for the Protection of Literary and Artistic Works (1886, 1971)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)

Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)

WIPO Copyright Treaty (1996)

WIPO Performances and Phonograms Treaty (1996)

The Universal Copyright Convention (1971) can be accessed on the Internet at: http://www.eff.org/Legal/Intellectual_property/ucc.paper

The full text of the World Trade Organisation GATT Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994) can be accessed on the Internet at: http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

Glossary

Attitude: a general response consistency with regard to uncertainty, as evidenced in social interaction.

Authority: the ability to increase the experience of certainty in one's own life or that of another.

Authority-as-certitude: the provision of certitude for oneself or another.

Autopoiesis: literally 'self-production', autopoiesis, following Maturana and Varela (1987), refers to the property of systems whose components, first, participate recursively in the same network of productions that produced them, and, second, realise the network of productions as a unity in the space in which the components exist.

Certitude: the absence of doubt.

Constructivism: a family of interrelated theories that challenge realist and objectivist positions, placing emphasis instead on the active, participative role that humans have in the interpretive construal of their personal realities.

Disposition: a general response consistency with regard to uncertainty.

Ergodicity: a statistical concept, used to refer to a system in which conditions of a stochastic process are such that time and spaces averages will coincide for infinite realisations. Within economics, the term is sometimes used to refer to processes that are considered to be governed by timeless, immutable, and, hence, predictable relationships.

Expansion (characteristic of enclosure): the extension of authority-as-certitude.

Expectation: the constant and dynamic condition of consciousness constituted by our isomorphic experience of uncertainty and certainty.

Hegemony: the nesting of heavily-sedimented interlocking frames (authorities-as-certitude) around people whose negotiations of meaning subsequently achieve the legitimacy and status of authority-as-certitude.

Isomorphism: a mathematical term, referring to one-to-one correspondence between the elements of two sets such that the result of an operation on elements of one set corresponds to the result of the analogous operation on their images in the other set (Pickett, ed. 2000).

Legitimation: deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure.

Negotiation: what we do.

Power: the ability to increase or decrease the experience of uncertainty or certainty in one's own life or that of another.

Reinforcement: the process of synaptic strengthening in the neural networks of the brain.

Representation: The articulation of one's own or another's negotiation of meaning.

Representation (characteristic of enclosure): The articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude.

Resistance: the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility).

Sedimentation: the process of synaptic strengthening in the neural networks of the brain.

Social interaction: the constant and dynamic relational environment of negotiation

Symbolic Interactionism: a field of study in which symbols are identified as the basis of social life. Individuals and society, it is proposed, develop in and through symbolic interaction, a process of reciprocal influencing mediated by symbols

Vector: a unit of expectation, conceived as a directive force, constituted by the experience of uncertainty and certainty.

Appendix A

List of Interviews

Name	Affiliation	Date and place of Interview
Maighr��ad N�� Mhaonaigh	Musician	Galway, July 23, 1995
Labhr��s �� Murch��	Senator, <i>Ard-Sti��rth��ir</i> CC��	Dublin, August 7, 1998
Martin Hayes	Musician	Seattle, November 22, 1998
Roy Rogers	Musician	Philadelphia, 6 December, 1998
Liz Carroll	Musician	Chicago, March 30, 2000
Nicholas Carolan	Director, Irish Traditional Music Archive	Dublin, May 12, 2000
Shay Hennessy	Chairman, IMRO	Dublin, May 16, 2000
William Hammond	Musician	Cork, June 24, 2001