
Violence and Local State Formation: A Longitudinal Case Study of Appalachian Feuding

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We investigate the causes of protracted violent conflict by examining the dynamics of a so-called family feud in one Appalachian county in the 19th century. Using data from the civil and criminal court docket and sociohistorical sources, we find that protracted local violence was neither an alternative to dispute resolution through the courts nor a simple function of economic development. Rather, feud violence reflected the social and economic relations and cleavages that accompanied local state building. We discuss the implications of these findings for a historically specific understanding of the relation between local governance and protracted disputing.

In popular image, late 19th-century Appalachian Kentucky was nearly synonymous with violence and social conflict. A dozen so-called family feuds, hundreds of casualties, and repeated interventions by the state militia earned Kentucky's mountainous region a reputation as "the Corsica of America" and contributed to enduring stereotypes of Appalachia as a "community of lawlessness" (Klotter 1982; Shapiro 1978:106). Sensationalistic travelers' accounts spread legends of the feuds, furthering an image of Appalachian Kentucky as a primitive, untamed place and people (Litsey 1902):

We swept deeper and deeper into the mountains, and traces of civilization became scarcer. Now and again we would pass a small hut. . . . Wild and poorly clad forms would appear in low doorways; faces almost expressionless would stare at us in a kind of apathetic wonder. . . . We were getting in the feudists' country, where the sun set crimson and the moon rose red.

Kentucky's feuds have been the subject of extensive popular attention, but—except for the important work of Altina Waller on

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the Hatfield-McCoy feud—little systematic research.¹ Yet the size, duration, and impact on local politics and governance of these feuds affords unusually rich data on the dynamics of prolonged social disputes.

This article uses a longitudinal case study to investigate the nature and causes of protracted conflict in 19th-century Clay County, Kentucky—the site of one of the nation’s most famous, bloody, and long-lasting feuds. Drawing on recent developments in the field of dispute resolution, as well as on theories of state formation and regional development, we examine 60 years of socioeconomic and court docket data from Clay County to analyze legal confrontation and feud violence in the context of the political and economic relations of local society. From this case study, we suggest directions for a historically specific understanding of the relationships between local governance and protracted disputing.

Historical Background

“Feuding” was the common term that contemporary commentators applied to sustained incidents of widespread violence throughout Appalachia, especially in Kentucky, in the 19th century. Although fragmentary data make it impossible to assess whether this area produced unusually high levels of violent confrontation, images of mountain violence in the *New York Times* and other national media did much to persuade middle-class readers throughout the rest of the United States of the strange and peculiar nature of Appalachia and its apparently “benighted” population (Waller 1995).

Feuds were regarded as widespread across the Kentucky mountains, but it was Clay County that was often singled out for the perceived ferocity of its populace. It was, one writer intoned, a place “tinged with the blood of the innocent and blackened by reasonless deeds of hate,” where “death stalks abroad at noonday like a roaring lion seeking whom he may devour” (Litsey 1902:287). By another account, “there [was] scarcely an acre within the county boundaries that d[id] not hold a spot where some member of the populace has been shot from ambush”

¹ In a comprehensive review of popular literature, Klotter (1982:295) examines a number of interpretations for Appalachian feuds. “Some pointed to a frontier spirit, others to an Old World inheritance of violence, still others to a kind of urban-rural conflict. Several authors or observers saw the feuds resulting from isolation, or strong family ties, or partisan politics, or moonshine whiskey, or the absence of religion and education, or the Civil War’s effects, or lawlessness, or other possible causes.” In addition, Klotter notes that others discussed “quarrels over land, rivalries over business matters, struggles centering on a woman, and effects of the terrain.” Klotter (pp. 290, 291) sums up his review by noting that “historians generally have not examined feuds in much depth” and that “most conflicts still await detailed scholarly work.”

(Ross 1909:191). According to a *New York Times* article, "Clay County knows that it has a bad name."²

In *Appalachia on Our Mind* Henry Shapiro (1978) points out how *naming* functioned as *explaining* in the process of identifying and understanding social problems in the southern mountains. Newspaper reportage and scholarly accounts of violence in Clay County represent a good example of this phenomenon. Community conflicts were used by nonlocal writers to help define "Appalachia" and, once constructed, the idea of "Appalachia" was used to explain the forms of violence that erupted there. Thus, in the huge body of popular and scholarly commentary that the Clay County feud and others like it stimulated, writers developed a canonical set of explanations for Kentucky's violence. Feuds were seen to result from poverty, ignorance, and isolation, as having been triggered by the most trivial of incidents, prolonged by primitive clan loyalties and tolerated because of the ineffectiveness of, or hostility toward, legal institutions in mountain society (Billings & Blee 1996).

Although Clay County became one of the most celebrated sites of Appalachian feuding, its pattern of prolonged violence actually differed considerably from popular stereotypes of Appalachian feudists as isolated, impoverished, and ignorant (Klotter 1982). Instead, the social origins of Clay County's feuds can be traced to cleavages among wealthy and politically powerful entrepreneurs that erupted in violence in the 1840s, simmered for more than a half-century, and reached a violent crescendo at the turn of the century.

Clay County's feud was rooted in rivalries among salt-making entrepreneurs. As yeomen farmers pushed into the Kentucky hills in the first years of the 19th century, so too did the representatives of wealthy slaveowning families who began purchasing land and manufacturing salt. By 1817, Clay County salt was one of Kentucky's leading exports (Clark 1938). The industry reached its highest production between 1835 and 1845 when as many as 250,000 barrels of salt were produced annually from 8 to 15 salt works (Verhoeff 1917; Smith 1927). At the peak of the salt industry's influence, entrepreneurs from Clay County, cooperating with entrepreneurs and politicians in other southern states, outlined a bold scheme to the Kentucky legislature, proposing a \$10,000,000 interstate canal, lock, and dam system to link its salt works to the Atlantic coast (Verhoeff 1917). But the Panic of 1837 and opposition from railroad interests doomed the project. Soon thereafter, the Clay County salt industry began to decline as salt manufacturing elsewhere, in regions with better locational advantages, prospered.

² "Where Feuds Flourish," *New York Times*, 26 Nov. 1899, p. 13.

By the mid-19th century, however, a few Clay County families had established economic and political dynasties based on salt manufacturing, slave labor, and extensive landownership. The county's 58 slave owners, representing only 7% of household heads, owned 10% of the total population (515 slaves) in 1850, but slave ownership did not touch directly the lives of most farm households in Clay County. The result of this dual system was a highly stratified county. The top ten wealthiest individuals in Clay County in 1860—all of them slaveowners—averaged personal estates worth \$45,890 in a county where the mean estate was worth only \$859, or 53 times less. In fact, the wealthiest individual, salt manufacturer Francis Clark, was 200 times richer than the mean, with an estate worth \$175,000 in 1860 (Billings & Blee 1992). Early life in Clay County consequently revolved around two very different systems of production, subsistence-first agricultural production that was practiced by the vast majority of the population and based predominantly on family labor (Billings & Blee 1995; Otto 1983) and a smaller, slave-based salt manufacturing economy controlled by a few wealthy families.

Frontier conditions created relations among Clay County's early entrepreneurs that were both interdependent and contentious. In the absence of local banks and sufficient specie, antebellum salt manufacturers were bound together by dense, and personal, networks of debt and liability, as revealed in their heavy volume of lawsuits. But Kentucky's notorious history of overlapping land claims—the result of inconsistent laws (some of them dating back to colonial Virginia), poor surveys, and multiple forms of acquisition including royal grants and speculation, payments in land for military service, headrights, and various policies regulating land sales—resulted in fierce litigation over land (Hammon 1980, 1986).

Political fragmentation of the county began in the late 1830s. The national economic depression of 1839–41 strained a local economy based heavily on the circulation of promissory notes at the same time as county government was paralyzed by a bloody courthouse battle between the county clerk, George Stivers, and the county's wealthiest and most powerful families—the Whites and the Garrards—together with their allies and slaves. The source of this original conflict remains uncertain, but long-lasting consequences followed. The salt manufacturer Daniel Bates, an ally and business partner of Stivers, was accidentally wounded during the fray. Having previously loaned the Garrards money during the depression, and now blaming them for his injuries, Bates forced payment on promissory notes signed by the Garrards to satisfy a \$100,000 civil suit for injuries he sustained in the battle. This action further taxed the county's already-tenuous networks of financial obligations and intensified rivalries among elite families.

The contours of Clay County's infamous feud between the White and Garrard families came into view three years later in the aftermath of their united battle with the clerk. The two families took opposing sides in a local murder trial in which Dr. Abner Baker was accused of killing Daniel Bates; their antagonism in this proceeding was intensified by increasing competition and decline in the local salt industry.³ Conflict between the Garrards and Whites ultimately created such a volatile situation that the governor deployed the state militia to prevent an armed assault on the jail where Baker was detained and to safeguard the circuit court.

From that time to the turn of the century, the Whites and Garrards and their allies engaged in internecine struggles—known popularly as “family feuds” and locally as “wars”—to control Clay County's political and economic life. In their roles as landowners and manufacturers, and later as local boosters, lawyers, and indigenous agents of outside capital in the exploitation of local labor, land, timber, and coal resources, the two families prospered immensely from the increasing commercialization of Clay County. At the same time, economic contradictions of low accumulation, population increase, intergenerational farm division, soil depletion, and land shortages produced great strain in the subsistence farming system (Billings & Blee 1995). These factors contributed not only to the development of an underemployed labor pool that could be utilized cheaply in railroad, timber, and mining industries but also provided dependent and readily deployable human resources for lethal battles between the Whites and Garrards over control of local politics. Moreover, both the Garrards and the Whites were able to command extralocal political influence and power. One immediate member of the White family served as Speaker of the U.S. House of Representatives in the 1830s. Daniel Garrard was the son of James Garrard, the second governor of Kentucky, and the son-in-law of a Kentucky secretary of state. His own son, James, also served as a Kentucky secretary of state.

Until the last decade of the 19th century, disputes between the Whites and Garrards were sporadic, although often deadly. Economic and political power in the county was contested frequently by the two families and their allies, but no faction was able to exert enduring control over county affairs. In 1857, for example, John White was accused of murdering the county jailor; his prosecution was led by T. T. Garrard. Three decades later, an election-day conflict between John G. White and Garrard associ-

³ This trial, besides pitting the Whites and Garrards against each other, was the origin of the Bakers' long time affiliation with the Garrards, who defended Baker in court. In some popular accounts the Garrard-White feud in the 1890s was referred to as the “Baker-Howard feud” because of the dramatic and violent role the Bakers and the White-allied Howards played in this final stage of conflict.

ates, provoked by White's accusation that the Garrards were coercing African Americans to vote Democratic, ended in a lethal gun battle.

In the late 1890s an outbreak of extensive violent conflict between Clay's leading families and their allies again spread throughout the county. "Conditions in the county [in early 1898] became so strained that even the neutral families felt they were in danger . . . [and] began to go armed at all times. If men had to be away from home overnight they arranged for armed neighbors to protect their families. Both sides armed themselves for war" (Richardson 1986). Arsons and murders, including the assassination of a sheriff, were commonplace and suspects refused to surrender, citing the danger of armed bands in court. Twice, the governor dispatched the state militia, but violence—including the courtyard murder of a Garrard-allied prisoner and assassinations of prisoners through the windows of the county jail—continued unabated. As one outsider to the conflict wrote, "a perfect reign of terror exist[ed] all over Clay County" (Anonymous 1899) and the state debated whether to declare martial law or to dissolve the county altogether. At the turn of the century, however, a cataclysmic gun battle between the Garrards and Whites at the county courthouse prompted a newly arrived county judge to negotiate the "great truce" of Clay County. The feud officially came to an end in 1901, although tensions and sporadic violence persisted well into the 20th century.

Methodology

The history of Clay County's prolonged violent conflict provides an excellent opportunity to probe the conditions under which violent disputes emerge in a given locality, how these disputes are related to alternative forms of dispute resolution, particularly courts, and what bearing such disputes may have on local governance and politics. Scholars of dispute resolution recently have called for studies that address such issues by combining intensive analysis of local legal cultures and contextual factors with court docket data (Friedman 1990; Lempert 1990; Munger 1990). Our research adopts such a strategy, compiling longitudinal data from both docket records of civil and criminal court proceedings and standard sociohistorical sources such as censuses, tax rolls, and property deeds. Although infrequently used by sociologists, local court records are an unusually rich source of data on economic, social, and political practices and relations. Clay County's case docket contains not only records of official litigation but also information on sureties, bonds, wages, prices, and slave transactions, providing considerable data on networks of indebtedness and patronage, the economic structure

of salt manufacturing, slavery, and alliances among the county's elites.

This study analyzes data from the following sources.

1. *Civil court docket:*

- a) All case files for civil cases adjudicated in Clay County Circuit Court in which a member of a feuding family⁴ was party as plaintiff(s) or defendant(s) from county formation in 1807 to 1849 (411 cases) and from 1890 to 1901 (361 cases)
- b) Chancery and common law case files from Clay County and from Bourbon County, a more commercial, market-embedded county of the Kentucky Bluegrass, 1844–1901
- c) For comparative purposes, all court records involving a family group located in an isolated rural area of the county
- d) Summary data (case type; method of resolution; disposition) for all civil cases filed in the Clay County Circuit Court in 1810, 1830, 1840, 1860, 1880, and 1900

2. *Criminal court docket:*

- a) Records and court order book entries for criminal cases filed in Clay County Circuit Court from 1893 to 1902 (300 cases; earlier records are lost)
- b) Clay County Fiscal Court records of payments to sheriffs, deputy sheriffs, jailers, prosecuting attorneys, and witnesses for criminal arrests, prosecutions, and incarcerations
- c) Scattered trial transcripts, pardon petitions to the governor and newspaper accounts of criminal trial proceedings

3. *Social and economic data:*

- a) All deeds, mortgages, bonds, wills, and other county records to which any member of the feuding family was party as principal or surety
- b) All records of apprenticeship, slave contracting, commercial development, and patent rights
- c) Manuscript records for all individuals listed in federal population censuses, federal agricultural censuses, and state tax rolls between 1850 and 1910 from households containing a member of a feuding family
- d) All available records and reports from every major salt, timbering, minerals and mining, railroad, and land com-

⁴ Feudists were identified through contemporary accounts and records of Clay County's feud; members of feuding families were identified through genealogical reconstruction of family groups.

pany that operated in Clay County at any time during the 19th or early 20th centuries

- e) Accounts of the Clay County feuds from contemporary observers and newspaper reports.

All civil and criminal court cases were compiled, summarized into chronological case files, and evaluated for adequacy and fairness of legal and judicial proceedings by a team of three attorneys. Since documents in each case were handwritten and not indexed, simply compiling and organizing case documents in chronological sequence was extremely time-consuming. Together, the attorneys worked more than 2,000 hours on this project, compiling and evaluating over 1,000 feud-relevant civil and criminal cases in their entirety as well as providing decennial summaries for an additional 395 cases unrelated to the feud that we used for baseline information on court processes.⁵

In addition to their value for recording the use of litigation as a strategic technique of disputation, the civil and criminal case files contained numerous documents and depositions that provided information on local politics, economic production, consumption and pricing, family genealogies, relationships between local residents and extralocal corporations, relationships between local government and state government, gender relations, race relations, and social change. Our historical reconstruction of Clay County's society and feud—as well as our analysis of its judicial and legal structure—rests largely on examination of these case files.⁶

Engel (1990:334) notes the limitations of adopting the “often simplified or distorted definition of parties that the court, for its own purposes, must use” (see also Munger 1990). In light of this caution, the attorneys linked cases according to the underlying issues in dispute, noting all antecedent and subsequent cases involving those issues. This allowed us to establish chains of cases stemming from a common dispute or litigation resulting from antecedent court judgments and to follow particular conflicts over time, across court cases, and through changing configurations of litigants. These case sets then were analyzed to uncover relationships among the timing, process, and outcomes of litigation, socioeconomic conditions, and incidents of extralegal vio-

⁵ Although many cases had fewer than a dozen documents, some cases were very large with hundreds of separate documents. One case involving a dispute between a local elite family and an outside corporation took 133 single-spaced typewritten pages simply to summarize (*M. J. Treadway v. John D. White*, Clay County Circuit Court, 1893). All the attorneys who worked on this project had experience in interpreting historical documents in addition to their legal training. One was a sociology graduate student and a lawyer. Another attorney had been researching Kentucky feuds for several years. The third had expertise in Clay County history and in genealogical reconstruction.

⁶ Other aspects of this history and analysis will be presented in a larger book-length project by the authors on the historical development of poverty and violence in this region.

lent feuding. We use these data to examine the dynamics of prolonged and violent disputing in Clay County.

Historical Analysis

What explains the sustained violence and legal confrontation between contending elite families that characterized 19th-century Clay County? To answer this question, we turn to recent scholarship on community conflict and dispute resolution. Although dispute resolution research has focused largely on disputation through courts and other forms of legal mediation, this scholarship provides a useful foundation for understanding disputes more broadly by pointing to the cultural, community, economic, legal, and political contexts in which conflicts between individuals or groups arise and in which they are resolved or remain unresolved. The prolonged conflict in 19th-century Clay County took place within the courts as well as revealing itself in extralegal violence. Thus, it is important to examine the contextual factors that shaped both legal contestation and extralegal violence and that structured shifting uses of litigious and violent means of conflict in the county.

In the dispute resolution literature, four factors are identified as likely to produce protracted conflict: (1) conflictual or litigious orientations and strategies; (2) dramatic economic change; (3) lack of robust local institutions, especially legal institutions; and (4) political schism. We examine each of these factors to understand the particular historical timing and social conditions in which Clay County's prolonged conflict erupted and the complex local circumstances that alternately gave rise to local legal contestation, violent feuding, and a mixture of both forms of disputation.

A. Conflictual Orientations

One commonplace assumption that continues to frame understandings of interpersonal conflict, aggression, and violence is the "subculture of violence" thesis (Wolfgang 1958; Wolfgang & Ferracuti 1967; for review, see Erlanger 1974), which argues that certain subcultures hold attitudes and values that promote the expression of violence. The prevalence of conflict in Appalachia and the rest of the South is commonly traced to a regional subculture of violence (Gastil 1971; Reed 1972; but see O'Connor & Lizotte 1978; Wyatt-Brown 1982).

Appalachian feuds have long been interpreted as a manifestation of a Southern proclivity toward violence. As early as the turn of the century, S. S. MacClintock (1901:171), a sociologist, depicted Appalachia as lawless and prone to violence, claiming that in the Kentucky hills, "each man had been a law unto

himself too long to be able to forget it immediately and look to civil law for protection." Nearly a century later, the 1994 Pulitzer Prize-winning play, *The Kentucky Cycle*, echoed this judgment, portraying mountain subculture as unmitigatedly and irrationally violent.

Seen by some as "outbreaks of perverted family affection," mountain feuds are commonly traced to traditions of violence brought to the region by its "warlike" Scotch-Irish settlers and perpetuated by decades of cultural and geographical isolation and by a social organization that placed a high value on kinship loyalty (Kephart 1984 [1922]:422). The prominent historian David H. Fischer (1989:668) claims that "strong continuities in family feuding may be traced from the borders of North Britain to the Appalachian backcountry—a pattern that persisted throughout the southern highlands even into the twentieth century."

A more complex understanding of conflictual orientations is found in a large body of research on disputes that emphasizes subcultural differences in the choice of dispute strategies and institutions, including court use (see Abel 1973). In contrast to arguments that assert that subcultures simply vary in their proneness to violence, these studies emphasize the rational and strategic nature of forms of disputation, suggesting that disputants can employ litigation at some points in a dispute and violence at other points. In a series of studies of "legal pluralism" in rural Sanders County, Illinois, Engel (1980, 1983, 1984) documented the coexistence of "multiple systems of overlapping rules and obligations in a single locality" (1980:426). His empirical analysis of different types of cases on the local court docket (torts, contracts, family law) revealed a complex array of parties, patterns of social relationships, strategies, goals, and values that varied widely among case types, including a variety of cultural orientations regarding the appropriateness of litigation.

In an ethnographic study of court use in rural Georgia, Greenhouse (1982a, 1982b) goes further than Engel in pushing the dispute literature away from an exclusive focus on "law-centeredness" toward the cultural study of indigenous conceptions of social order that may include "law aversion" (Greenhouse 1982b). Arguing against an implicit assumption in much of the dispute literature that "all disputants are potential litigants," Greenhouse (1982a:20) describes a local group that disavows conflict and adheres "to a concept of justice that specifically excludes recourse to [civil] law."

Both Engel and Greenhouse argue that divergent strategies in both the use and nonuse of courts represent the different "epistemological" approaches to understanding the social world that characterize community subgroups. Their work adds plausibility to the assumption that subcultural factors in rural Ap-

palachia may have encouraged “litigious marginals” (Greenhouse’s term, 1982a:9) to seek extralegal forms of dispute resolution. It further suggests that Appalachians involved in feuds may have been less likely than nonfeudists to make routine use of local courts as an alternative to violence in the resolution of disputes.

But the literature on “legal pluralism” also implies that an even more complicated relationship between feuds and court use may have existed in late 19th-century Appalachia. Anthropological and social-historical studies of disputes, as well as contemporary sociological research, suggests that disputants may use legal tactics to pressure their adversaries to negotiate or to add to the woes of their enemies. Greenhouse (1982a) identifies one group in the community she studied that often brought suits as an “adversarial strategy” to force compliance, and Engel (1978:207) describes plaintiff strategies to “gain leverage over the defendant [as well as] to tap new sources of power that can be used in the community.” Historical studies of the use of court actions as harassment (as well as peacemaking) in early modern England and Andalusia document similar conflict strategies (Sharpe 1983; Casey 1983; also see Roberts 1983; Wilson 1988) and suggest that we may not find a clear-cut distinction between court use and feud participation.

The thesis that subcultural traits structure community violence, while correctly orienting the researcher to variations in cultural outlooks among disputants, however, must be used with caution in the interpretation of Appalachian feuding. Many accounts draw on subcultural explanations to argue that the Appalachian Mountains were settled predominantly by Scotch-Irish immigrants who carried feuding traditions with them from the Old World (Fischer 1989). Such historical carry-over is unlikely, though, since feuds had vanished from Scotland nearly two centuries before Appalachian Kentucky’s earliest settlements (Wormald 1983). Moreover, the ethnic composition of Clay County’s early population consisted of some unknown mixture of English, German, French, Dutch, Welsh, and Scotch-Irish settlers (Dickey 1898).⁷ This ethnic diversity is apparent among families involved in the Clay County feuds, including its most prominent participants, the Garrards and the Whites. Thus while the Whites were, indeed, descendants of Scotch-Irish immigrants, the Garrards were descendants of French Huguenots.

Although the thesis of an ethnic subculture of violence cannot explain Clay County’s feud, the more complex thesis of legal-cultural pluralism valuably directs attention to varying orientations and strategies among disputant groups, suggesting that dis-

⁷ On the ethnic diversity of the settler population in the Kentucky mountains, see McClure (1933). For an important critique of assumptions about the nature and extent of the Scotch-Irish population in the South generally, see Berthoff (1986).

putes “can be understood only in terms of the social fabric from which they emerge and to which they return” (Engel 1983:872). In 19th-century Clay County, such variation is most evident between its two distinct groups of settlers: (1) the common folk of the backcountry who practiced an economically independent way of life based on subsistence farming and (2) the smaller group of elite, slaveholding farmers who were more commercially involved from the earliest days of Kentucky history. It was the latter group who predominated both in court use and—contrary to popular conceptions—in violent disputing.

To understand the relationships among socioeconomic position, use of the courts, and feuding activity, we first compared court use by feudists with the total volume of court cases in Clay County. As Table 1 indicates, feudists and their family members were consistent, and intense, litigators in 19th-century Clay County. Although the feud involved relatively few persons (less than a half-dozen main families in a county of several thousand people), those who were involved in the feud also populated the county’s courtroom. During periods of peak feuding activity (1845–49 and 1896–1900), cases involving feuding families constituted between a fifth and a third of all civil cases filed in the circuit court. The sole exception was 1846, in the aftermath of the Abner Baker murder trial, when civil actions by feuding families consumed a full 89% of the circuit court docket. Moreover, the preponderance of cases involving feuding families was not restricted to periods of active violence and feuding. Even years predating the first feud outbreak (1810, 1830) and years of relative quiescence (1890–95) show very high rates of litigation by members of feuding families. Only once, in 1892, did cases by feudists constitute less than 20% of the court’s civil docket.

Further, we examined the difference in court use between Clay County’s two distinct economic groupings—economically marginal subsistence farmers and elite, market-embedded, commercial farmers and entrepreneurs. For this, we compared all court actions from 1807 to 1900 that involved members of the Johnson family, a large group of nonslave-owning, noncommercial farmers living in an isolated section of the county, with court use by commercially oriented feudists.

Members of feudist families were involved in substantially more litigation than were members of the Johnson family. Collectively, the large Johnson family was involved in only 37 court actions over nearly a hundred years. By comparison, the Whites were involved in 176 cases and the Garrards in 234 cases in just the decade of the 1890s. Although a Johnson was involved in Clay County court proceedings as early as the second year of the court’s founding (1808), the majority of cases involving Johnsons occurred after 1860 (84%), most of these during the 1890s (62%). It is, of course, not surprising to find that commercially

Table 1. Circuit Court Cases Involving Feudists as a Proportion of All Circuit Court Cases, Clay County, Kentucky, Selected Years, 1810–1900

Year	Feudist-involved Cases	All Cases	% Feudist-involved Cases
1810	25	85	29.4
1830	8	36	22.2
1845	21	67	31.3
1846	32	36	88.8
1848	12	41	29.3
1849	14	47	29.8
1890	18	86	20.9
1891	39	128	30.5
1892	22	149	14.8
1893	48	131	36.6
1895	37	152	24.3
1896	59	156	37.8
1897	39	133	29.3
1898	28	136	20.6
1900	23	88	26.1

NOTE: Feudist-involved cases are those in which a member of a feuding family served as a plaintiff or defendant; data were collected from the records of the Clay County Circuit Court. Aggregate data for Clay County for 1810, 1830, and 1900 were collected from Clay County court records as part of the decennial analysis of the composition of court dockets. For other years, data are from the Annual Reports of the Kentucky State Auditor.

embedded Clay Countians were more frequent court users than their subsistence-oriented neighbors. This finding, however, does challenge the simplistic but still prevalent beliefs that 19th-century mountaineers did not make use of the courts and that Kentucky feuds can be explained simply in terms of the “remoteness of the law” and the “free, wild life” popularly attributed to the Kentucky hills (Semple 1910:589)—to cultural primitives prone to “set law at utter defiance, and curl their lips in scorn at a court of justice” (Litsey 1902:287).

Consistent with prior research on subsistence farm families in Clay County (Billings & Blee 1990), most of the Johnsons’ social and economic transactions—and conflicts—took place within the context of close relationships among kin and neighbors. In nearly one-third of the actions they were involved in—these primarily having to do with estate settlements, divorces, and family land disputes—both the plaintiff(s) and the defendant(s) were Johnsons. In contrast, in less than 20% of cases involving Whites (or any of their allies) in the 1890s, Whites were both plaintiff and defendant; the comparable figure for the Garrards and their allies was 17%. Because of their marginal economic status, in cases involving nonfamily members, the Johnsons tended to be defendants (65%) much more often than they were plaintiffs (35%). For the more commercially active Whites and Garrards, however, the plaintiff/defendant ratios were more nearly equal: Whites were plaintiffs in 94 cases, defendants in 84; Garrards were plaintiffs in 112 cases, defendants in 122.

As Table 2 indicates, there are differences also in the types of cases in which Johnsons were involved, compared with those that

Table 2. Case Docket Comparison: Johnson Family, Feudists, and Total Clay County

	Johnson ^a		Feudists ^b		Total for Clay County											
	1810		1820		1840		1860		1880		1900					
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%				
Promissory notes	9	24	165	49	10	28	46	59	20	38	11	20	27	31		
Money dispute	8	22	78	23	15	41	9	12	7	13	9	17	22	26		
Estate settlements ^c	5	14	16	5	0	0	0	0	0	0	0	0	0	0		
Land dispute	4	11	30	9	3	8	2	3	9	17	14	25	10	11		
Assaults	3	8	2	1	4	11	6	8	2	4	0	0	1	1		
Other tort cases	5	14	34	10	3	9	10	13	9	17	5	9	11	12		
Divorce	3	8	11	3	1	3	5	6	6	11	16	29	17	19		
Total	37	100	336	100	36	100	78	100	53	100	55	100	88	100		

^a Cumulative, 1807–1900.

^b Cumulative, 1890–1899.

^c In the survey of decennial dockets, we do not distinguish estate conflicts from other financial and property disputes as we did in examining cases involving Johnson family members and feudists.

involved feuding families. Overall, 71% of the Johnsons' court cases involved contract disputes, such as failure to pay promissory notes or other financial disputes. Most of these occurred in the 1890s as the pace of commercial activity quickened in Clay County and the Johnsons were increasingly involved in economic disputes, especially around logging, and when several generations of large families disputed inheritance and farm subdivision. Among feudists in the 1890s, in contrast, a full 86% of cases involved contract disputes. Table 2 also shows a pattern of contract cases for the county as a whole that is identical to that of the Johnsons. Contract disputes account for an average of 70% of the total county docket, the same as the Johnsons.

Tort actions, including assaults, constituted 22% of Johnson's total docket; divorces constituted another 8%. Thus, in contrast to the finding from contemporary communities where tort actions are relatively rare (Engel 1984), it was not uncommon for the Johnsons to go to or be brought to court for various injuries. Data on the total county docket for 1810, 1820, 1840, 1860, 1880, and 1900 reveal a similar pattern, where roughly 20% of all civil litigation was tort actions. These data further indicate that the Clay County population was not as adverse to seeking legal remedies to redress personal wrongs as some stereotypes suggest.

Feudists, by comparison to the Johnson family or to the county as a whole, were involved in a sizable number of tort actions (36 between 1890 and 1899 alone), but given their frequent involvement in contract litigation, tort actions represented only 11% of the total number of cases involving feudists. The intensive use of courts by feudists mainly to resolve contract disputes suggests that economic and political factors, more than personal wrongs, were at the root of the conflicts that propelled Clay County's long feud.

B. Economic Change

In contrast to early understandings of feuding as the expression of a violent subculture, a much different thesis of dispute styles and court use in Appalachia has been advanced by McKinney (1977) and Williams (1976). These historians contend that violence was not a constant feature of the region's social history and that feuding occurred primarily in the 1880–1900 period, following conflicts caused by the Civil War and during a period of rapid social change and industrialization, that is, as a violent reaction to what might be termed the “shock of the new.” They thus argue that feuding is best understood as a response to the disruption of traditional Appalachian culture, not as the result of cultural continuity and isolation.

On the surface, at least, the interpretation of feuds as violent responses to the disruptive impact of economic change has a

high degree of plausibility. It is consistent with the sociological observation that social movements tend to occur at the “space-time edges” that arise “between different structural types of society” (Giddens 1981:23). A rough correlation between economic development, cultural modernization, and feuds is confirmed by Klotter (1982), who affirms that the earliest Kentucky feuds occurred on the western fringe of the Kentucky mountains, where economic development was most advanced, and followed economic development into the more isolated sections to the east.

Although its focus is on legal activity rather than violence, longitudinal research on the changing role of courts in dispute resolution also lends credibility to an interpretation of feuds as a response, albeit a violent one, to economic transformation. Goldberg, Green, and Sander (1985:4) trace contemporary increases of strife, conflict, and litigiousness to negative impacts of economic change on “society’s traditional mediating institutions—the family, the church, and the community.” Moreover, the suggestion that Appalachian feuds occurred at an early stage of development is lent some plausibility by the assertion from the literature on dispute resolution that “disputing is minimized where remedies are most and least institutionalized” (Miller & Sarat 1980–81:10).

McIntosh (1980–81) argues against linear models that describe the substitution of routine administration for substantive adjudication of disputes as suggested by Friedman and Percival’s (1976) pioneering longitudinal analysis of rural and urban courts in California, but he too agrees that changes in the rates and type of litigation over 50 years in St. Louis correlate with socioeconomic changes. Likewise, Stookey (1990) uses longitudinal data on Arizona courts to correlate changing rates and types of litigation with economic expansion and depression. Grossman and Sarat (1975), too, associate increased litigation with industrialization, although Munger (1987:117) finds that tort litigation increased little with industrialization and suggests “the continuing importance of alternative mechanisms of conflict resolution.” At a minimum, such studies indicate the importance of investigating the timing of feuds in relation to socioeconomic transformation.

In fact, the first wave of feud activity in the 1840s occurred as the effects of national financial decline were felt in local economic networks, on the heels of a period of remarkable commercial prosperity. As noted above, early 19th-century Clay County was far from being the island of independent subsistence that most of the “feud” literature portrayed it; manufacture and sale of salt tied its early industrialists and slave owners into regional markets and made them vulnerable to fluctuations in the wider economy. Whereas soon-to-be feudists were involved in court actions to enforce the payment of promissory notes only 30 times

during the decade of 1810 to 1820, they were involved in 10 cases in 1838, 6 cases in 1839, 15 cases in 1840, and 33 cases in 1841. Despite the fact that these same years witnessed all-time peaks of salt production, several firms failed. Especially hard hit were the Garrards against whom more than \$4,000 in suits were filed in 1839. Although Daniel Garrard remained solvent, his sons J. H. and T. T. Garrard were forced to mortgage much of their personal property in land and slaves. In March 1840 the Garrards were forced to mortgage 17 slaves and 300 acres in order to borrow more than \$7,000 from their competitor Daniel Bates. In 1841, they lost judgments totaling more than \$8,000—more than half of this amount to nonlocal mercantile firms—and, after an episode of violent conflict in which the salt maker Daniel Bates was shot, they began to be pressed in civil court for the money they owed him.

The feudists weren't alone in experiencing an economic squeeze in the early 1840s. Longitudinal data on the case docket for Clay County as a whole (see Table 2) shows that the highest rate of litigation over promissory notes was in 1840 when these constituted 59% of all cases. Thus, the impact of the Panic of 1837–40 and a national economic recession was felt in Clay County by the early 1840s, fueling both an intensification of litigation over debts and violent conflict. Although the 1841 attack on Bates and his murder three years later by Abner Baker were the proximate events that set off the long tradition of feuding in Clay County, it was tensions born of economic conflict and competition that provided the context in which a single murder trial would erupt into a decades-long feud.

For the second phase of active feuding, feuding violence also followed economic change, and again it was tremendous expansion followed by contraction, here associated with the national depression of 1893.⁸ In the latter decades of the 19th century, speculation in land, timber, and minerals by local entrepreneurs and outside corporations sparked dramatic inflation in land values. Between 1880 and 1891 land values in the county increased 451%, from \$0.94/acre to \$5.18/acre. Average land values, however, disguise even greater profit-taking by well-placed Clay Countians. In 1889, A. M. Combs sold 450 acres of land to G. T. Howard (of a feuding family) for \$13,900 (\$31/acre). Just two years later, Howard sold less than half of that land to the New

⁸ Interestingly, the national panic of 1873 did not spark feud violence in Clay County as did national recessions in the 1840s and 1890s. During the 1870s—after the collapse of the salt industry but before the boom in timber and minerals—the Garrards and Whites had many fewer links to national financial and commercial markets. National economic conditions in the 1870s thus had less impact and provoked fewer conflicts, between these elite families. Even without substantial ties to outside markets, the effect of the 1873 panic was felt, however, among local farmers and merchants who were unable to pay their taxes, resulting in a short-lived local fiscal crisis (Acts of the Kentucky General Assembly, 1873).

York and Kentucky Land Company for \$20,000, at \$100/acre. By mid-decade, however, land prices in the county began to drop precipitously, falling to \$3.48 by 1894, a decline of 33% in three years. Such rapid depreciation of land prices left many Clay Countians with mortgage indebtedness that far outstripped the value of their real estate holdings.

Longitudinal studies of court use in other states also suggest that economic change can provoke additional conflict through the courts (Stokey 1990). To examine this relationship, we compare land values to rates of litigation during both periods of active feuding and periods of quiescence. In the years in which land values rose most quickly (1885–91), the rate of civil litigation in the county was unremarkable, an average annual rate of 4.1 suits per 100 adult white men as compared with an overall annual average of 5.3 between 1845 and 1898. (To see this in perspective, the comparable figure for highly commercialized Bourbon County, Ky.—for which we collected data over the same time period—was 16.8.) Looking only at the period of active feuding, for 1844–46 and 1897–98, however, we find average litigation rates of 7.5 and 5.0, respectively. Thus litigation in the first phase of the feud was 50% greater than average, but it was slightly less than average in the second phase.

If we consider only litigation involving members of feuding families—who most often extended promissory notes and issued mortgages for land purchases—a different relationship between land values and litigation is evident. During the period of rapidly inflating land values between 1890 and 1892, the number of feudist-involved cases was not exceptional, ranging from 18 to 39 annually (Table 1). As land prices began to decline in the mid-years of the 1890s, however, the number of cases in which these commercial giants were involved increased, reaching a total of 59 in 1896. As they scrambled to safeguard now-endangered mortgages and promissory notes, the Garrards and Whites turned to the courts to protect themselves against the declining fortunes of their debtors. Interestingly, as land values once again stabilized in the later part of the 1890s, the litigation rate of feud-involved families declined, reaching levels comparable to the beginning of the decade during the peak years of feud violence from 1898 to 1900.

Evidence from land values, litigation rates, and feud violence thus suggests a complicated relationship between economic development and conflict. Neither conflict through the courts nor violent conflict was at its peak during the years of rapidly increasing land values or commercial/industrial development, but neither were these factors unrelated to Clay County's prolonged violence. In fact, it was the combination of economic booms and national financial crises—in an economy deeply integrated into regional commercial development—that ultimately resulted in

sustained conflict, both legal and extralegal. The financial pressures of the 1840s and the fiscal straits of county institutions in the 1890s—after periods of great economic expansion—were associated with both legal and violent conflict in Clay County.

C. Local Institutions

A third line of inquiry suggested in the dispute literature stresses the role of local institutions in preventing the escalation of conflict into violence. A central tenet of much of the dispute resolution literature is that local courts function as instruments of social control to prevent the escalation of conflict (Abel 1973). From this perspective, even violence itself can sometimes be seen as a means of negotiating order (Parnell 1988). Altina Waller's (1988) recent analysis of the Hatfield-McCoy feud is consistent with this approach by hypothesizing that Appalachian feuds occur when local institutions, especially the courts, fail to resolve conflicts. She argues that family loyalty was not an issue in the Hatfield-McCoy feud since, *contra* stereotypes, members of both family groups can be found on either side of the conflict and many were able to avoid it altogether. Like the Garrards and Whites, the Hatfields and McCoys were leading and prosperous members of their community, and Waller claims that cooperation and competition in entrepreneurial activities, especially timbering, better predict allegiances and participation in the feud than does kinship. In addition, she discovers that local conflicts were exploited by outsiders with divergent economic interests. More important, Waller finds that both sides first turned to local courts to resolve conflicts and only resorted to violence because of the ultimate failure of these institutions. Because the Hatfields and McCoys belonged to a single rural community that was artificially separated by the boundary line (a river) between Kentucky and West Virginia, however, county-level courts with separate jurisdictions exacerbated rather than adjudicated conflicts. Rejecting the subculture of violence interpretation, Waller (1988:92) concludes: "To be sure, the feud had reached unusual heights of lawlessness and violence, but not because of the absence of a legal system or contempt for the law. Quite the contrary, an arbitrary political boundary had prevented the community from resolving the conflict with customary local mechanisms."

Waller points to the crucial role of local institutions in dispute settlement but is guilty of an overromanticized vision of 19th-century Appalachian courts. She interprets feudists' court use as a willingness for compromise blocked by the failure of courts, artificially divided by a state boundary, to perform their normally benign role effectively in dispute mediation and adjudication. But this view ignores the tactical use of courts for harass-

ment as well as the historical fact that 19th-century court disputants in rural Kentucky often organized armed parties of supporters to insure “fair” trials (Ireland 1990). Worse, her view diverts attention from the inherently political nature of courts (Sarat & Silbey 1988; Abel 1973). Symptomatically, Waller’s narrative omits the fact that the governor of West Virginia “extended the protection that prevented [Devil Anse] Hatfield’s extradition to Kentucky” because Hatfield, “patriarch and political leader of Logan County,” was West Virginia’s “staunchest Democratic [Party] bastion” in the southern part of the state (Williams 1976).

The commonplace assumption that Appalachians turned to violent means to resolve disputes rests on the widespread stereotype that—because of geographical and economic isolation—mountaineers were culturally unfamiliar and inexperienced with the use of civil and criminal courts. Thus in a discussion of mountain feuds, Kentucky historian Thomas Clark (1960: 413–14) argues that “since his natural environment landlocked him . . . [the Kentucky mountaineer was] denied a sufficient amount of legal knowledge and protection until the past few years.” Our research discredits this assumption.

Earlier, we have shown that feudists and their family members were consistent and intense litigators in 19th-century Clay County. In fact, many of the Garrards and the Whites were practicing attorneys, including Daniel Garrard’s sons, James and Will, and his grandson, Gilbert, as was Hugh White’s son, John White, and his grandson, John Daugherty White. Also, members of both the Garrard and White families often served as Clay County justices of the peace and in their roles as members of the state legislature and even the U.S. Congress, many were lawmakers as well. Finally, our examination of feudists’ litigation shows that both the Garrards and the Whites sought the best attorneys in the state when situations seemed to warrant such. In their early defense of land titles, for instance, the Whites hired future governor William Owsley to represent them and the Garrards hired another future governor to represent them. In the murder trial of Abner Baker, the defense attorney was the most distinguished jurist in antebellum Kentucky, George Robertson, former chief justice of the state supreme court.

Moreover, other features of the history of Clay County’s violent disputing suggests that it was not court collapse per se that precipitated violent disputes. In both periods of active feuding, local courts and legal systems did disintegrate for a period of time, but in each case the breakdown was a *consequence*, not a *cause*, of political conflict and the violence that accompanied it.⁹

⁹ Feud violence twice disrupted the operations of the Clay County court, but, by comparison, the court continued to function throughout the Civil War years.

Despite the violence that surrounded the creation of Clay County (discussed below), Clay's early county and circuit courts functioned to resolve local disputes and to oversee the diverse local improvements such as river clearances and road construction that were necessary to facilitate the manufacture, sales, and transport of the locality's most vital commodity, salt. This worked effectively until 1842 when conflicts involving local salt manufacturers created a political crisis in the county. In that year—against the context of conflicts among the Whites, Garrards, and other elites—the county court's appointment of the sheriff was invalidated by the Kentucky state legislature. In April, arguing that the court's activity had been put into effect by an inappropriately appointed sheriff, the Clay County circuit court judge ruled that the court had previously "done several acts during this week and rendered judgment in several cases and done various acts which the court is of the opinion were illegal." He also ruled that "it is therefore ordered that all and every act done by said court be set aside and held for nought" (*James v. White & White* 1842). No further court actions were taken until May 1843. In June 1843, the governor purged the county court and approved the appointment of new members in response to petitions from citizens in Clay County that excessive "party spirit" within the old court had made it "impossible sometimes to do business at all" (Letcher 1845).

Later, the Circuit Court was near collapse in 1899 when feud-related violence convinced the judge to flee to another county, and state militia were imported to protect the courthouse during trial proceedings. But, again, it was as much the case that violence undermined the court as that court malfunctioning gave rise to extralegal violence. Moreover, the turmoil in court proceedings does not appear to have affected other local institutions as severely. Even in the fall of 1899, at the peak of violence in this second period of feuding, for example, county deed books record an apparently peaceful sale and transfer of property between members of opposing feud factions.

Qualitative indicators, too, suggest that the Clay County Circuit Court was not ineffectual in resolving disputes, at least prior to the onset of major violence. The attorneys who read case files from the Circuit Court found the cases unremarkable in the competency, thoroughness, and fairness of the judicial and legal process. Petitions were almost uniformly literate, reasonable, and predictable. Both plaintiffs and defendants were represented by legal counsel, and pleadings were correctly formulated. Outcomes were more predictable from the evidence presented in the case file than from the familial allegiance of the plaintiff, defendant, or judge. In only five cases were any procedural irregularities noted.

Such efforts at impartiality are all the more remarkable in light of the White family's control of Clay County's courtroom, at least during the last decade of the 19th century. Although data on court personnel in Clay County are extremely fragmentary for most of the 19th century, for the period 1889–1901 we have been able to compile a list of county court officers and officials who worked with the courts such as sheriffs and county treasurers (Table 3). With the sole exception of 1889, when D. K. Garrard

Table 3. Clay County Office-Holding by Garrards and White, 1889–1901

Garrards in public office

1889

D. K. Garrard: county treasurer and commissioner

Whites in public office

1891

T. G. White: clerk of the county court

1892

T. G. White: clerk of the county court

1893

T. G. White: clerk of the county court

D. W. White: clerk of the circuit court

1894

T. G. White: clerk of the county court

D. W. White: clerk of the circuit court

T. G. White: deputy clerk (after Nov. 1894)

B. P. White: county treasurer

1895

B. P. White: deputy sheriff

Daugherty White: deputy clerk

B. P. White: county treasurer (then replaced by John G. White

Wm. L. White: sheriff

John E. White: trustee of the jury fund

1896

Wm. L. White: sheriff

John G. White: county treasurer

John E. White: trustee of the jury fund

B. P. White: deputy sheriff

D. W. White: county clerk

1897

Wm. L. White: sheriff (replaced by B. P. White)

John G. White: county treasurer

D. W. White: clerk of the circuit court

B. P. White: deputy sheriff

1898

Wm. L. White: sheriff

T. G. White: clerk of the county court

D. W. White: clerk of the circuit court

Ed White: election officer

John E. White: deputy clerk

B. P. White: clerk

John D. White: Congressional representative

1899

B. P. White: sheriff

D. W. White: clerk

1900

B. P. White: sheriff

1901

B. P. White: sheriff

served as county treasurer and commissioner, the Whites dominated county offices at the turn of the century. In the early years of the 1890s, the Whites held positions as clerks of court and county treasurer. By the mid-decade, Whites also were found in the offices of sheriff and deputy sheriff and as trustee of the jury fund. By 1898, after feud violence had escalated substantially, the Whites were represented throughout county offices, as sheriffs, deputy sheriffs, treasurers, county clerks, court clerks, election officers.

Although evidence from the court docket indicates the generally robust nature of Clay County's court system—even during much of the period of active feuding—attention to local institutions reveals some important exceptions. Table 4 shows out-

Table 4. Circuit Court Civil Cases Involving Feudists and Neutrals, 1890–1900

	Neutrals Win	Feudists Win	Settled by Agreement	Other, Unknown
Plaintiffs = Neutrals				
Defendants = Whites	23	8	19	6
Defendants = Garrards	45	9	16	4
Defendants = Neutrals				
Plaintiffs = Whites	3	35	10	1
Plaintiffs = Garrards	4	44	16	14

comes of civil cases from the 1890s involving a feud-neutral party and a feudist. Typically, plaintiffs were much more likely than defendants to win cases.¹⁰ As plaintiffs, feudists won 92% of their cases against feud neutrals (35 of 38 for Whites; 44 of 48 for Garrards). When feud neutrals sued those on the Garrard side, they won 83% of the time (45 of 54). But feud neutrals won only 74% of cases (23 of 31) against Whites (who controlled the county courts throughout most of this period). If we combine the outcomes in which plaintiffs won and in which the case was settled by agreement (likely to favor plaintiffs), we find no difference between the win rates of Whites or Garrards, but feud neutrals were less than half as likely to win as defendants as were feudists (6% vs. 14% and 13%). Thus, although case outcomes were not totally predictable by the allegiances of the parties involved, the courts did favor the wealthy and powerful feudist families over others, and somewhat favored Whites relative to Garrards.

Examination of civil cases in which defendants and plaintiffs were on opposing sides of the feud shows a similar, slight, partiality toward the Whites. For 11 cases with known outcomes in the 1890s in which those on the Garrard side were plaintiffs and those on the White side were defendants, Garrards won 6 and Whites won 3; 2 were settled by agreement. In the 20 cases when the White side were plaintiffs against the Garrard side, Whites won 16; as defendants, Garrards won none and 4 were settled by agreement. Since settlements by agreement typically favored plaintiffs, Garrards won 73% of cases against Whites when they were plaintiffs; Whites won every case they brought against Garrards, again suggesting court partiality toward the White family.

It is the case, of course, as Little (1991) argues in a study of the 19th-century criminal court docket, that case files do not reveal “what actually happened” in disputed actions; they only tell us how these events and processes are codified and represented to the legal system. The system of justice in class-stratified and capitalist societies effectively circumscribes or excludes a number of concerns from the reach of legal remedy. But within this

¹⁰ Since the overwhelming majority of such cases involved contract disputes, usually concerning payment of promissory notes, it is not possible to analyze differential win rates by case type.

framework, it is clear that legal and judicial systems continued to function fairly well throughout the 19th century in Clay County. Although court decisions reflect some partiality in favor of the White side of the feud, it was not the collapse of legal institutions that gave rise to violent disputing in the Clay County case. Rather, the courts and legal system became undermined by the same forces of political and economic conflict that spawned extralegal conflict and violent disputing.

D. Politics

The literature on dispute resolution tends to focus on seemingly “peaceful” forms of conflict settlement—bargaining, negotiation, mediation, and adjudication—to the relative neglect of power, politics, and violence (see essays in Goldberg et al. 1985, for example). Yet, as Grossman and Sarat (1975:325) note, “litigation is political in the sense that the very act of involving the formal, public authority of the courts in dispute resolution inescapably is part of the political process and is likely to have political consequences.” Since court records provide information on the local state in addition to local society (see Monkkonen 1990), the analysis of court records together with contextual data on local politics and violence thus focus attention on the political context in which local courts and local state institutions operate, on how a local state “both exercises its power and makes effective claims to the power it exercises” (Munger 1990:615). Thus, dispute researchers who call attention to the relationship between law use and the “imposition of state legitimated and administered force” (Sarat & Silbey 1988:138; see also Munger & Seron 1984) and those who recognize that dispute resolution, even in courtrooms, “takes place in a field of pain and death” (Cover, quoted in Sarat & Silbey 1988:138) suggest the importance of investigating possible relationships between feuding and struggles over Appalachian political and legal order.

In this, we draw on Munger’s (1988:98) study of circuit courts in three West Virginia communities during the same time period which concludes that “litigation was a weapon used at the discretion of actors with sufficient capacity [which] . . . may have played a systematic role in at least some important types of conflict arising from industrialization and the growth of monopoly capital.” Munger points to a need to understand how a community’s particular configuration of social classes and its history of conflict and accommodation among classes shapes potential litigants’ expectations—and use—of the court system. He argues that historical studies should pay attention to the ways in which socioeconomic factors shape relationships among actors and social classes and to the role of litigation as a “strategy that litigants

sought to manipulate, not an automatic response to conflict under conditions of uncertainty caused by rapid change” (p. 98).

The turn to politics required us to view feuds in Clay County, not only in relation to court use but in a fuller context of local political struggles, party building, elections, and state development. Earlier, we argued that throughout most of its history, the Clay County court circuit system functioned fairly effectively. But on the occasions when it did fail—briefly in the 1840s and again in the 1890s—breakdowns were preceded by, rather than followed by, political crises in the county. This is consistent with Munger’s (1982:55) argument that not only social conflict in general but also conflict over the proper use of courts tends to occur “during periods of political upheaval and realignment.”

In 19th-century Kentucky—where “essential governmental functions were in many ways conducted not from Frankfort [the state capital] but from the seats of her multitudinous counties” (Ireland 1976:vii)—counties were the most important unit of government. Because their powers were “so comprehensive and pervasive,” a “position in county government often meant monetary as well as political riches” (Ireland 1972:13). Although Kentucky feuds were often portrayed in the popular press as irrational responses to petty conflicts, they can better be interpreted as struggles to control county-level power and especially the office of sheriff which, during most of antebellum period, was dominated by county magistrates.

Indeed, Clay County itself was formed in order to provide legal mechanisms for the resolution of local disputes in a then-remote section of the Kentucky mountains. Its establishment was prompted, at least in part, by the occurrence of what has come to be remembered as a violent “cattle war” between local farmers that occurred in the spring of 1806 within the vast territory of Madison County, Kentucky, which then included hundreds of sparsely populated square miles. The “cattle war” conflict pointed to the need for the formation of a local county court to resolve disputes and “bring some law and order” to the area (Wilson 1981:48), the county seat of Madison County (Richmond) then being more than 75 miles away. Thus, Clay County was organized in December 1806 with its county seat near the center of salt manufacturing and its first court members selected to please both factions in the cattle war.

Clay County’s courts functioned effectively until the Garrards and the Whites began to vie for political domination of the county in the 1840s, following their conflict over the trial of Abner Baker. Throughout most of the period, they waged what political theorist Antonio Gramsci (1971) likened to “trench warfare”—“wars of position” in which both sides mobilized their supporters in civil society to compete for political office. As Democrats in a heavily Whig/Republican county, the Garrards—

descendants of the second governor of Kentucky—fared best in statewide and district-level elections (controlled by Democrats); the Whites generally dominated local elections.

The conflict between the Garrards and the Whites, however, shifted from a long-term “war of position” to a violent and short term “war of manoeuvre” aimed at the control of local government institutions in the 1890s. This final phase began when a political ally of the Garrards, Granville Philpot, was elected to the legislature in 1893, and it intensified when Gilbert Garrard was defeated for sheriff by Beverly White in 1898 and Clay County divided into armed camps. Why did the decades-long contestation for local power between Garrards and Whites intensify—and become violent—in the 1890s? To a great extent, the explanation lies in a series of political and economic changes that were transforming the balance of power within Clay County at the end of the 19th century.

First, and most important, Clay County faced a fiscal crisis in the 1890s, and the effect on county governance was dramatic. In the late 1880s, D. K. Garrard, then county treasurer, apparently embezzled the county’s tax receipts and was removed from office. Two years later, A. B. Howard (an ally of the Whites) was elected county sheriff and charged with collecting taxes, but he too failed to submit any tax receipts to the county. Although both Garrard and Howard were the target of repeated lawsuits by the county, no funds were recovered. As a result of its inability to secure tax monies, Clay County government nearly collapsed. Routine county expenditures—for road repair, payment of salaries of county officials and other county services—were covered by assuming loans from local banks, controlled by the Garrard family. In this way, political and economic forces in the county were set on a collision course: through their bank loans, the Garrards acquired a financial stranglehold over the county, while county political offices were increasingly monopolized by the Whites, who controlled the numerically preponderant Republican Party.

In the mid-1890s, as the county was still unable to collect past tax levies from its former sheriff and treasurer, the fiscal crisis of the county grew more acute. Court actions from 1894, 1895, and 1896 show that claims against the county were being bought and sold by the Garrard-controlled Bank of Manchester and the merchant firm of Garrard & Murphy; these claims had, in effect, become currency in the county where, for much of the subsistence farm population, “money” was scarce. When tax collection was resumed in 1895, the Garrards insisted on submitting their claims against the county as payment of their tax bill, an action which both intensified the financial problems of the county and directly challenged the White-dominated political structure. Other court actions followed. Sheriff William L. White (later as-

sassinated by a member of the Baker family which was allied with the Garrards) forced the sale at public auction of a \$875 safe owned by the Bank of Manchester to pay the bank's \$100 tax levy, after the bank tried unsuccessfully to offset its tax liability with claims it held against the county treasury. Both the bank's efforts to win a restraining order to block the sale of its safe and suits by Garrards to force the county to honor tax claims were similarly unsuccessful. Such fiscal problems resulted from—and in turn intensified—the political conflict between the county's most powerful families.¹¹

Second, political conflict between the Garrards and Whites intensified in the 1890s as a result of dramatic economic changes in the county and in the Southern Appalachian region as a whole. As discussed above, a frenzy of exploration and speculative investment in the region's timber, coal, gas, and mineral resources in the mid- to late 1880s fueled dramatic increases in land value and the possibility for immense profitmaking. Such economic growth intensified the value of controlling the political machinery of a county. As Lloyd (1952:455) notes, "now that the mountains were being opened for commercial exploitation, it occurred to both families that the quickest way to riches was through political power." In Kentucky, a state in which county offices were in many ways more important and strategic than offices at the state level, economic contestations quickly translated into county-level political conflict. Both Whites and Garrards were major actors and beneficiaries of the commercial exploitation of Clay County. Both invested heavily in the growing industries of timbering and coal mining, and both profited handsomely as agents for out-of-state land, timber, and minerals companies. Yet their parallel economic successes also pushed them further into political conflict. As fortunes increased, so did the stakes of control over county offices, especially those of sheriff, treasurer, and assessor who were directly responsible for assessing and collecting taxes.

Third, the virtually unchallenged political control of state offices by Democrats ended with the election of Republican Governor Bradley in 1896, shifting the balance of political control in the county as well. Although the Whites had long dominated county offices, their Republican affiliation had muted their ability to draw on state political resources to control county affairs. With Bradley's election, this changed. A White-controlled county could, and did, seek intervention by the state militia and pardons by the governor to increase its control on the local level (see Johnson 1899; Lloyd 1952; Bradley 1897–99; Adjutant General of

¹¹ It is not coincidental that contested elections for sheriff and county assessor touched off the 1890s phase of feuding; as social historians note, offices of tax assessment and collection often become economically pivotal in a period of economic change and speculative fervor (Ardant 1975).

Kentucky 1896–1901). Conflict within the county became magnified by political shifts within the state.

The context in which feuding took place in 19th-century Clay County, then, was one of politics and state building. In both phases of the feud—most clearly in the 1890s—the outbreak of feud violence occurred as the local institutions of political hegemony—county fiscal practices, elections, courts, and legal systems—became incapacitated by conflict between the most powerful political and economic actors in the county. Political conflict eventually paralyzed institutions of local state control; it was then that the unrestrained violence of the Garrard-White feud erupted.

Discussion

Researchers have begun to appreciate the importance of regionally specific articulations of local governance and local state formation (e.g., Duncan & Goodwin 1985:231; Somers 1993:610; Steinmetz 1993:149). Our analysis of court docket and sociohistorical data contributes to this discussion by showing the extent to which Clay County's recurrent episodes of deadly feuding were rooted in a complex historical combination of political, institutional, and economic factors. Prolonged violence in Clay County cannot be explained as a simple product of economic transformation, subcultural orientations toward conflict, or the ultimate partiality and collapse of local legal institutions. Rather, each of these—in the context of the political cleavages of local state formation—shaped the nature and extent of disputation in the county.

The violence that accompanied local state building in Appalachian Kentucky is more than a historical footnote. To a great extent, Clay County's subsequent political impasse—and even its chronic poverty—are legacies of social relations that shaped the institutionalization of county governance and prompted violent feuding at the turn of the 19th century. Although it is beyond the scope of this article to detail the 20th-century trajectory of political-economic relations in Clay County, the above-discussed patterns of unresolved conflict among the local elite and ties of quasi-clientelist dependency between elite families and others in the county had several enduring consequences.

First, the conflictual relations that characterized Clay County's economically and politically factionalized elite meant that neither a unified elite nor any elite segment could establish consistent political hegemony. Instead, continuous exploitation of nascent state institutions by feuding elite factions for strategic advantage kept county political institutions highly partisan, thwarting the ability of the local state to establish legitimacy as a coordinator of elite interests. Over time, a highly factionalized

and contentious elite also undermined the local state's capacity to develop an economic infrastructure. Regular use of the county's tax collection, property assessment, and judiciary by factionalized elites to pursue strategic advantages vis-à-vis other local elites undercut the autonomy necessary for the local state to undertake public investment projects that might benefit the county elite as a whole.

Second, relations of mutual dependency between elite feuding families and others in the county shaped the capacity of the local state. The county's dual economy—based in subsistence agriculture and large-scale extraction and manufacturing—left the majority of the population dependent on a few elite families as the viability of subsistence agriculture declined in postbellum Clay County (Billings & Blee 1995). Elites, in turn, were dependent on non-elites, to serve not only as jurors, sheriffs, and other state functionaries (see Fischer & Lundgreen 1975; Wyatt-Brown 1982) but also as political allies in electoral battles and as foot soldiers in feud battles. The institutionalization of county governance thus was built on preexisting semi-clientelist ties, and such bonds were reinforced rather than supplanted in the process of local state formation. The development of a nonpartisan corps of county officials and the legitimacy of the local state were compromised by the preexisting semi-clientelist relations through which official governance in Clay County was institutionalized.

Political fragmentation among the elite and the structure of dependency that bound non-elite to elite thus resulted in a political structure in Clay County that was at once fragile and ineffective. Ultimately, the inability of the nascent local state to establish autonomy from factions of the county's contentious elite undermined its legitimacy. This is evident during feud years when local courts were employed repeatedly to settle disputes between elite groups but collapsed during periods of severe and sustained intra-elite conflict. Such lack of robust local political institutions weakened the state's ability to promote a coherent set of elite interests at the same time as the extreme economic and political disenfranchisement of the majority of the population precluded effective non-elite representation. These factors undermined the development of effective local political leadership and set into motion an enduring political stagnation.

Moreover, the process of state formation in Clay County made local politics particularly vulnerable to corruption. Politics in Clay County were not institutionalized by eliminating earlier relations of clientelist particularism and patronage; instead, these became embedded in the structure of local governance—through the exchange of jobs for political—and feud-based—loyalty. As local government expanded, patronage and corruption also increased since local institutions themselves now served as sources of wealth (see also Schneider, Schneider, & Hanson

1977). Political corruption and political ineffectiveness were continually reproduced by the expansion and consolidation of local governance in Clay County.

Third, the process of local state formation in Clay County subordinated economic development to political interests. In the 19th century, the inability of local political institutions to coordinate the interests of a competing elite meant that Clay County's systems of taxation and assessment benefited and enriched particular sides of the feud but paralyzed local commerce and industry. In the long run, this resulted in a state structure in which partisan political considerations prevented the rationalization of the accumulation and investment in local infrastructure needed for sustained economic development, contributing directly to the lasting underdevelopment and impoverishment of the county (see also Arrighi & Piselli 1987:702–11, and Putnam 1993 for similar developments in the peripheral regions of Italy).

Feuding is an extreme manifestation of elite conflicts within clientistic states. Feuding was not uncommon in the Kentucky mountains in the 19th century—erupting in as many as 18 counties between 1874 and 1895 (Waller 1995), and its existence brings into relief the perpetuation of clientelism and corruption that continued in Appalachian Kentucky well into the next century. Some mountain counties, with less divided elites, did not experience episodes of full-fledged violent feuding, but these too bore the mark of the historical pathways of resource-extractive economies and clientelist social and political relations through which their institutions of local political governance were forged. Even at the end of the 20th century, scholars find a pervasive system of patronage and political corruption throughout the Kentucky mountains:

This patronage system extends well beyond the school system. The corruption that characterizes school-board races and school personnel hiring extends into every aspect of community life. Whether it is access to free government food, access to slots in youth training programs, jobs in state government offices, or referrals to openings at a new fast-food restaurant or a good security job with a private firm, having an opportunity depends on whom you know or whom you supported in the last election. (Duncan 1992:125)

Political sociologists have long recognized the significance of regime legacies on national political development (Moore 1966; Skocpol 1976). Clay County's history of violent state building also suggests the importance of understanding the legacies of the formation of *local* state structures. Local political institutions cannot be understood as mere reflections of the development dynamics of nation-states, classes, or economies (Evans & Stephens 1988; Mouzelis 1986). Rather, local states are formed through variable, uneven, and historically contingent routes (Somers 1993; Walton

1992). Local state structures reflect the historically conditioned logic of particular places, providing a context within which subsequent political and economic development occurs or fails to occur—as feuds among elites formed the framework within which both capitalism and the local state developed in Clay County.

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