



The Parish Review  
Journal of Flann O'Brien Studies

John Conlan, "'F\_\_\_ the County Council': Local Government and the Biopolitics of Flann O'Brien," *The Parish Review: Journal of Flann O'Brien Studies* 6, no. 1 (Spring 2022): 1–24. DOI: <https://doi.org/10.16995/pr.6570>



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## 'F\_\_\_ the County Council': Local Government and the Biopolitics of Flann O'Brien

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This article addresses the relationship between Brian O'Nolan's writing and his career as a civil servant in the Irish Department of Local Government and Public Health. O'Nolan's references to local government and the ambiguity of the law in *Cruiskeen Lawn* and *The Third Policeman* are placed in their proper historical context. By examining the contradictions of the Irish local government and local justice systems (from the pre-independence era to the Free State and successive administrations) a portrait emerges of O'Nolan as a writer of Irish biopolitics, who is concerned with the paradoxical relationship between national government and local organs of power. Biopolitical themes of legal and bureaucratic aporia are situated in the context of recent scholarly writing about the law, sovereignty, and the body in O'Nolan. The article also gives examples of historical episodes that were likely formative influences on his narrative style of political critique. From local issues such as land appropriation, to O'Nolan's role as secretary to the tribunal of inquiry into a fire at St Joseph's Orphanage in Cavan, a new image can be constructed of the author as a critic of Irish justice and a theorist of biopolitical concerns.

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This article examines the status of local government in Ireland during Brian O’Nolan’s career as a senior civil servant. More generally, it places O’Nolan’s writing within the context of biopolitical theories of government—in particular, the theory of biopolitical sovereignty outlined by Giorgio Agamben in his *Homo Sacer* project, where the law, the ontology of the political subject, and questions of governmentality intersect. O’Nolan’s oeuvre is situated at a complex intersection of multiple political vectors in the formative years of the independent Irish state. His writing emerges as a site of critical ambivalence in this mid-20<sup>th</sup> century milieu, disclosing the paradoxes and paralogsms that were inherent to the Irish state and its unique exercise of sovereign power. Crucially, my analysis draws attention to the way in which O’Nolan’s work consistently proves the dictum that ‘the state is local,’ and it shows how a deeper understanding of the fraught relationship between municipal and national government can illuminate some of the more obscure and paradoxical aspects of O’Nolan’s prose (such as the ambiguous status that the law has in his writing). In both his fiction and his journalism, as well as his practical experience as a civil servant, O’Nolan documents the recurrence of different kinds of aporia in Irish life (legal, ontological, and political aporias—the key terms of ‘biopolitics’ as a theory of power). This article thus focuses on the biopolitical dimension of *The Third Policeman*,<sup>1</sup> a series of *Cruiskeen Lawn* columns from the 1940s, as well as O’Nolan’s work as secretary to the tribunal of inquiry into a fire that occurred at St Joseph’s Orphanage, Cavan in 1943. While recent scholarship has increasingly framed O’Nolan as a writer of Irish biopolitics, the present article pays closer attention to the specific kinds of aporia that inform his writing—aporias that disclose, in a profound way, the chequered history of government in which he was operating (as both an employee of the state and as one of its most acerbic critics).

### A ‘touchy subject’: Local Government in Context

Several inflammatory issues arose in Irish government during O’Nolan’s tenure as an officer with the Irish Department of Local Government and Public Health. As early as 1932, the bellicose rhetoric of pre-war Europe had already intercalated into Irish party politics, with Cosgrave’s Cumann na nGaedheal party initiating a red scare of sorts, and exhorting voters to turn away from De Valera’s Fianna Fail (who were represented in election posters as radical socialists and gunmen).<sup>2</sup> The postwar years, during which O’Nolan had been promoted to a principal officer in his department, saw renewed political tensions, as were evident in the controversy surrounding certain

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<sup>1</sup> Flann O’Brien, *The Third Policeman* (Normal, IL: Dalkey Archive, 1999). Hereafter *TP*.

<sup>2</sup> Anti-Fianna Fáil election posters from around the time of the 1932 election ran slogans such as ‘We Want no “Reds” Here! Keep their Colour off your Flag! Vote for Cumann na nGaedheal!’ See <https://www.historyireland.com/march-9/>.

government policies. In 1951, R.M. Smyllie and the *Irish Times* editors openly criticised De Valera's pact with the Catholic Hierarchy over the proposed Mother and Child Scheme, and the government effectively dismantled Dr Noël Browne's progressive social welfare innovations.<sup>3</sup> A palpable sense of the tensions within post-independence politics emerges in this rhetorical conflict between the forces of progressivism and conservatism. As Alana Gillespie shows, debacles like the Mother and Child Scheme were certainly on O'Nolan's radar, and his work engages with the conservative propaganda which painted welfarism as 'one filthy step away from all-out communism.'<sup>4</sup>

What is least apparent amidst this apparent political maelstrom is the extent to which the Department of Local Government might itself have been a site of political controversy. The significance of O'Nolan's dual role as civil servant and cultural commentator can be more precisely determined by highlighting a cluster of political anxieties, whereby state departmental policy contended with organs of power on the local level. Indeed, even the bureaucratic minutiae of local housing policy often involved a re-negotiation of the kind of power dynamic that operated between state and municipal government. Frequently, what seem like isolated bureaucratic issues for O'Nolan's department become key episodes in the longer history of competition between the executive powers-that-be and the smaller, local stakeholders in the Free State's experiment with constitutional democracy. In the transition from nascent, postcolonial polity to fully fledged post-war democracy, O'Nolan's *Cruiskeen Lawn* columns, as well as his fiction, manage to concentrate the ironies of this fraught space of transformation. As his writing documents the strange capriciousness of power and the law, O'Nolan becomes an exemplary witness to the complicated relationship between Irish government and the political subjects under its control.

Recalling his own time at the Department of Local Government and Public Health, Michael Phelan gives us a unique insight into the everyday professional life of Brian O'Nolan, the bureaucrat. In his recollection of the period 1952–53, Phelan—then a junior civil servant—remarks upon the taciturn mannerisms of his superior, O'Nolan, who was moonlighting as a writer whilst working as a senior Principal Officer and acting Secretary of the department. Phelan paints O'Nolan as a figure brimming with bureaucratic *ressentiment*, maintaining an aloofness from his colleagues that is comparable to that of Policeman Fox of *The Third Policeman*—an enigmatic figure who is mostly absent from the action of the story. Indeed, despite his complete immersion in

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<sup>3</sup> Ronan McGreevy, 'On This Day 70 Years Ago, *The Irish Times* Published its Most Famous Editorial,' *The Irish Times* (12 April 2021). Available at: <https://www.irishtimes.com/culture/tv-radio-web/on-this-day-70-years-ago-the-irish-times-published-its-most-famous-editorial-1.4535072>.

<sup>4</sup> Alana Gillespie, 'The Soft Misogyny of Good Intentions: The Mother and Child Scheme, *Cruiskeen Lawn*, and *The Hard Life*,' in *Flann O'Brien: Gallows Humour*, eds. Ruben Borg and Paul Fagan (Cork: Cork University Press, 2020), 81.

the business of the department, Phelan notes how O’Nolan remained largely oblivious to the presence of his junior colleagues, as he remarks: ‘I think it would be safe to say that O Nuallain [sic] never even knew of our existence.’<sup>5</sup> O’Nolan’s absenteeism is, in many ways, his defining characteristic, and from Phelan, we learn how (due to the writer’s unpindownable nature) internal departmental communications at the time had to be relayed indirectly between the junior and senior officers by means of intermediary messengers (such as the Higher Executive Officers in the department).<sup>6</sup> Despite the elusiveness of his subject, Phelan manages to give us a vivid snapshot of the hectic interior of O’Nolan’s private office:

Some days would find O Nuallain [sic] at his desk, but only for minor periods, staring gloomily ahead and blindly signing the documents presented. Others would find him at his typewriter, firing furious bursts at another target and violently resenting interruption.

‘Mr O Nuallain, Mr So and so has phoned about.....’

‘F\_\_\_ So and so!’

‘But the county council feel that we should.....’

‘F\_\_\_ the county council! F\_\_\_ the whole f-ing lot of them!’<sup>7</sup>

Here, what reads as a vignette depicting O’Nolan’s dereliction of duty (in its hostile attitude to the county council), is also symptomatic of the kinds of institutional ‘turf wars’ that have been part-and-parcel of government administration in Ireland throughout its history, as the latent animosity between the functionaries of central bureaucracy and those of municipal government is wryly on display. O’Nolan emerges as a grudging authority figure during this tense period in the state’s development:

unperused documents would be signed with a furious abandon and with a ‘plurality’ of epithets at a pen stabbed into paper to make it function. We were working at the time on a touchy subject, and the more vetting of documents the better.<sup>8</sup>

Regarding the ‘touchy subject’ in question, it is worth placing Phelan’s reminiscences within the context of the major policy reforms which the department was engaged in at the time. As Mary Daly notes in her history of O’Nolan’s department, *The Buffer State*, the Department of Local Government and Public Health had, since its inception, been given virtual *carte blanche* when it came to the funding and parliamentary expedition

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<sup>5</sup> Michael Phelan, ‘Watcher in the Wings: A Lingerer Look at Myles na gCopaleen,’ *Administration* 24, no. 1 (1976): 98.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, 99.

<sup>8</sup> *Ibid.*

of its policies.<sup>9</sup> Daly gives special mention to O’Nolan’s early career as private secretary to Minister Seán MacEntee in the 1940s, and she observes how nearly all departmental projects obtained approval in the Dáil without any political obstruction.<sup>10</sup> It is surprising, given such a rare model of bureaucratic efficiency, that any single policy might have proved contentious. On the surface, at least, it seems incongruous that Local Government and Public Health would have been considered a hotspot of political controversy, given the ‘touchy’ policies of other departments, several of which had attracted public scrutiny during the period 1952–53. Social Welfare and Finance were grappling with the fallout of the Mother and Child Scheme, and policy-points such as the Adoption Act and the restriction of child benefits had been hot-button issues in the Dáil.<sup>11</sup> It appears unlikely, therefore, that O’Nolan’s office would have raised the hackles of the court of public opinion, given the department’s preoccupation with less grave matters, like the minutiae of public sanitation, or local housing provision (e.g. the Housing Amendment Bill, 1952).

‘The lock, stock, and barrel of it all [...] is the County Council,’ as Policeman MacCruiskeen declares in *The Third Policeman*.<sup>12</sup> County councils, as they existed mid-century, were in many ways different beasts to the county councils of twenty-first-century Ireland. If we are to give a synoptic overview of the role of the council in the formative years of the Irish Free State, then it is crucial to consider it as part of a general process of historical transition, whereby Irish bureaucracy was trying to redefine its political remit and move away from the antiquated forms of colonial governance that had been inherited from previous British administrations. Although it was the Local Government (Ireland) Act of 1898 that set the initial terms of local government on the island, Daly outlines how what would become the Department of Local Government and Public Health was the culmination of several decades of institutional transformation. This transformation began in the 1880s, when the Irish Party, Joseph Chamberlain, and many Conservatives were often in alliance to reform the old system of local government that had been run by unelected Boards of Guardians.<sup>13</sup> Local government (especially as it pertained to the administration of public health) became a key focal point in the transition from the policies of pauperism and underdevelopment that informed the

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<sup>9</sup> Mary Daly, *The Buffer State: The Historical Roots of the Department of the Environment* (Dublin: Institute of Public Administration, 1997), 198.

<sup>10</sup> *Ibid.*

<sup>11</sup> ‘Dáil Éireann Debate–Wednesday, 21 May 1952. 131.14: Social Welfare (Children’s Allowance Bill, 1952–Second Stage).’ Available at: <https://www.oireachtas.ie/en/debates/debate/dail/1952-05-21/63/?highlight%5B0%5D=allowances&highlight%5B1%5D=1952>.

<sup>12</sup> *TP*, 83.

<sup>13</sup> Daly, 24.

British Poor Law boards in the mid nineteenth century, which had been presided over by unelected Poor Law Guardians.

'Big House' memoirs provide a graphic insight into the violent tensions internal to the Poor Law administration of justice and local government. In his *Realities of Irish Life*, the land agent William Steuart Trench details the 'conspiracy' against him by local Ribbonmen at Carickmacross in 1843. Trench vividly renders the paranoia of Anglo-Irish gentry in the nineteenth century as he describes assassination attempts, secret plots, and Fenian kangaroo courts—forms of exceptional violence that are not far removed from the episodes of extra-judicial punishment that O'Nolan makes central to his tale in *The Third Policeman*.<sup>14</sup> Trench positions himself as a benevolent colonial Guardian in his account of rural discontent and, in his role as the trustee of native welfare, he complains of his assault by 'the worst passions of the ill-disposed amongst the peasantry.'<sup>15</sup>

The more inclusive spirit of constructive unionism, which would supersede the paternalistic attitude of commentators such as Trench, would eventually allow for the emergence of domestic systems of local government and poor relief managed by bodies such as the Congested Districts Board. These entities were more focused on stable, long-term development than prior efforts of the British government had been, and their functions were subsequently inherited by the Free State under the auspice of the County Councils, who would themselves assume responsibility for the administering of poor relief, public health (in the form of the 'County Homes') and the general infrastructural upkeep of the local districts under their remit.<sup>16</sup> However, despite this seemingly progressive national development, *The Third Policeman* taps into a latent chagrin with the inherited inequities of the local government system. Indeed, the vicissitudes of the pre-independence administration of local justice resurface in the anecdote that Sergeant Pluck tells the narrator about a man 'that had himself let up into the sky in a balloon.' We learn how the man, who was 'a divil for reading books,' had flown into the air 'to make observations.'<sup>17</sup> Pluck relates how when the parishioners pulled the balloon down, the basket was found to be empty with no trace of the man. Subsequently, in a

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<sup>14</sup> William S. Trench, *Realities of Irish Life* (Boston: Roberts Brothers, 1869).

<sup>15</sup> *Ibid.*, 187. The colonial tensions of *The Third Policeman* are evoked by Shelly Brivic, who places the novel in dialogue with the 'Big House' genre of Irish Ascendancy fiction, in 'The Third Policeman as Lacanian Deity: O'Brien's Critique of Language and Subjectivity,' *New Hibernia Review* 16, no. 2 (2012): 112–32. Katherine Ebury also evokes a pre-independence milieu when she points to the English provenance of the names of the Policemen in O'Nolan's novel: 'Fox' and 'Pluck.' With these narrative traces of the past, O'Nolan's text becomes a fable of colonial (and, presumably, postcolonial) power. Katherine Ebury, "'nothing in the world would save me from the gallows": O'Nolan and the Death Penalty,' in Borg and Fagan (eds.), *Gallows Humour*, 47.

<sup>16</sup> Donnacha S. Lucey, "'These Schemes Will Win for Themselves the Confidence of the People": Irish Independence, Poor Law Reform, and Hospital Provision,' *Medical History* 58, no.1 (2014): 46.

<sup>17</sup> *TP*, 158.

miraculous turn of events, the parishioners float the balloon a fortnight later, to find that the man has reappeared when they pull it down, refusing to give an explanation for his disappearance.

Crucially, Pluck describes the diabolical consequences of the man's re-appearance, as he 'went home and shut himself up in his house and told his mother to say he was not at home,' a fact that 'made the people very angry and inflamed their passions to a degree that is not recognised by the law.'<sup>18</sup> In a manner that recalls the kangaroo Ribbon-men courts described by Trench, an impromptu lynch mob is convened, who decide 'to get out their shotguns the next day [...] and tie him up and heat poker in the fire to make him tell what happened in the sky the time he was up inside it.'<sup>19</sup> What is overlooked by O'Nolan's critics is the specific politico-legal undertone of this local legend, as Pluck observes: 'That is a nice piece of law and order for you, a terrific indictment of democratic self-government, a beautiful commentary on Home Rule.'<sup>20</sup> Here, then, we see how the lingering spectre of constructive unionism, or 'Killing Home Rule with Kindness' is associated with instances of extra-judicial violence. A lacuna, or indeterminacy in knowledge (the enigmatic disappearance/re-appearance of the balloon-man), provokes a violent extra-legal reaction from the self-appointed governors of parish virtue, as they are troubled by the paradoxical body of the voyager.

The case of indeterminacy that inspires the lynch mob is of a piece with the general sense of aporia that informs concepts of justice and local government in O'Nolan. Much as *An Béal Bocht* charts a similar history of colonial unreason, the incongruous Home Rule context of *The Third Policeman* is likely an aside to the Irish-language 'island narratives' of writers like Tomás O'Crohan. In his *Island Crosstalk*, O'Crohan describes a conversation between two fishermen whose hauls have suffered due to the historical mismanagement of fishery policy by entities such as the Congested Districts Board. The bureaucratic paradox of constructive unionist policy is laid bare in this narrative, as the mismanagement of the domestic fish market forces precarious workers to dine on lobster instead of their usual, more modest diet. The absurd consequences of Home Rule are lambasted in exchanges like the following:

'Upon my soul, my darling man,' says Séamas, 'whether we ate well or badly, we were never brought to this pass—the day the fisherman won't have a penny for his catch he will have neither bit nor bite and he'll be facing beggary.'

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<sup>18</sup> *Ibid.*, 159.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

'Faith, a good lobster is no bad diet for you; and if you have a good sheep, kill that too [...].'

'By Our Lady,' say Tadhg, 'however much they deserve to be praised, his supply would soon run out and that would be the case with everyone. And if that is to be *the result of the laws of Home Rule*, may the devil sweep them out of the laws of the world!'<sup>21</sup>

What results is a veritable feast of famine—a paradoxical confusion of the usual order of things, which stems from the knowledge-gap that inheres between the law (here, the regulation of fisheries) and its practical application to local communities, such that Irish pauperism is inverted to become upper-class fine dining.

One can certainly argue that the British government's local policy impositions (Poor Law Guardians, unelected officials, Congested District Boards, etc.) gave way to a more democratic system during the Free State era that informs O'Nolan work. However, this process of modernisation did not always produce the most equitable, or even the most democratic of outcomes. In fact, if anything, the ways in which power found expression on the local level often depended on a problematic kind of ambiguity to which O'Nolan was alert. Like the local judgement that is not 'recognised by the law,' the emergence of local government led to legal aporias, exceptional circumstances, and a circularity of logic that allowed the postcolonial state to disguise its role as an arbitrary decision-maker.

Indeed, the action of local government between the 1930s and 1950s can be seen as a continual effort to short-circuit the relationship of command between the state and local government. The initially 'democratic' liberty to make decisions on matters such as housing allocation, that councillors had enjoyed in the early years of the Free State, had led to a culture of corruption. This was evidenced by the trial, and subsequent imprisonment, of two local councillors in South Tipperary in 1930 for accepting bribes.<sup>22</sup> Cases such as this inspired the County Management Acts of the 1930s and 40s, which limited the power of elected councils and helped curtail such instances of corruption. However, by the 1950s (when O'Nolan was a Principal Officer), this dynamic was somewhat inverted, as section 4 of the 1955 City and County Management (Amendment) Act effectively placed many decision-making powers back into the hands of local councils. This was the legal caveat whereby executive functions that were technically accorded to the county managers (county officials whose powers of bureaucratic oversight were

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<sup>21</sup> Tomás O'Crohan, *Island Cross-Talk: Pages from a Diary*, trans. Tim Enright (Oxford: Oxford University Press, 1986), 32 [emphasis added].

<sup>22</sup> 'Charge Against Councillors,' *The Irish Times* (14 November 1930): 10.



often viewed with suspicion by councillors) now became subject to a proviso that gave the elected councillors extended powers to direct the executive management to make certain decisions. These changes in policy with regard to county councils affected the hierarchal makeup of local government, revealing a tension between electoral politics (in the form of elected councillors) and bureaucracy (in the form of the executive management). As the relative power of either faction went to-and-fro with the introduction of new legislation, a reversible, circular dynamic often occurred. Indeed, a parasitic relationship can be observed between locally distributed power structures and more centralised powers of oversight, which at times resulted in a positive feedback loop by virtue of which local councillors became a virtual law unto themselves (as evidenced by the cases of corruption mentioned). Here, we have a likely candidate for the 'touchy subject' that Phelan hints at in his memoir, as O'Nolan's department was drafting the local government policies (such as the Local Government Act of 1953) which would enlarge the 'reserved function' of elected councillors when it came to authorising expenditure on infrastructural projects (such as the construction of roads).<sup>23</sup> While it was not until the 1955 Acts that a complete resurgence of councillors' power was copper-fastened, the internal departmental rumblings of 1953 (as described by Phelan) suggest that a contentious period of transition was unfolding behind the scenes.

### **O'Nolan and Biopolitics: A State of Exception?**

We can point to a constellation of overlapping conceptual concerns in the recent critical literature on O'Nolan's fiction and journalism which speak to the cognitive dissonance internal to Irish government and the complicated relationship between the law and state sovereignty. These recent trends form part of a broader tendency in the scholarship to construct an image of 'Flann O'Brien: the writer of Irish biopolitics.' Joseph Brooker, Ruben Borg, Katherine Ebury, Jennika Baines, Maebh Long, Steven Curran, and Michael McAteer have all noted an abiding concern in O'Nolan's work with biopolitical themes—a lineage of political thought that runs from Walter Benjamin and Carl Schmitt, through Michel Foucault, to recent work by Giorgio Agamben and Roberto Esposito (to name a few). Agamben's theories of 'the state of exception' and 'bare life' are clearly on display in these critics' treatments of themes like the Pauline trope of 'conversion,' as outlined by Borg in his essay, 'Reading Flann with Paul: Modernism and the Trope of Conversion.'<sup>24</sup> The latter philosopheme (Pauline conversion) is central to

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<sup>23</sup> 'Local Government Bill, 1954,' Available at: <[https://data.oireachtas.ie/ie/oireachtas/bill/1954/14/eng/ver\\_c/bills1945-55-1a-06.pdf](https://data.oireachtas.ie/ie/oireachtas/bill/1954/14/eng/ver_c/bills1945-55-1a-06.pdf)>.

<sup>24</sup> Ruben Borg, 'Reading Flann with Paul: Modernism and the Trope of Conversion,' in *Flann O'Brien: Problems with Authority*, eds. Ruben Borg, Paul Fagan, and John McCourt (Cork: Cork University Press, 2017), 219–29.

Agamben's conception of the aporetic relationship between the law and ontology at the end of *The Use of Bodies*.<sup>25</sup> St Paul's argument for a new Christian law that will supervene upon the old Mosaic one is typical of the aporetic, or paradoxical nature of biopolitical theories of power. Additionally, Agamben's model of biopolitics theorises an 'inclusive exclusion' of the legal subject's bare life (*zoe*) from the political order—what Agamben calls the '*exceptio*' whose 'exclusion [of bare life] founds the city of men.'<sup>26</sup> Along these lines, Ebury offers us an insight into O'Nolan's preoccupation with the vagaries of the relationship between the subject-before-the-law and the inequities of Irish political governance. In her essay, "'nothing in the world would save me from the gallows": O'Nolan and the Death Penalty,' Ebury describes the exclusion, or abandonment of the subject, as the 'blurred distinctions between murder and death penalty' in *The Third Policeman* point to the 'extrajudicial nature of justice.'<sup>27</sup>

The theme of biopolitical paradox is also treated in Baines's analysis of personhood in stories such as 'Two in One,' where she hints at the aporetic status of the embodied *subject-before-the-law* in O'Nolan's tales of mistaken identity.<sup>28</sup> McAteer and Long continue this critical fascination with the precarious legal status of the body in O'Nolan's fiction, placing it in a postcolonial context. While McAteer is concerned with the foundational relationship between legality and violence,<sup>29</sup> Long reads the tensions between colonial and postcolonial legal systems in *An Béal Bocht* and *At Swim-Two-Birds* as hinging on an animalistic bare life, or what she calls the 'pig language' of colonial Corca Dhorcha.<sup>30</sup> Likewise, both Curran and Brooker have commented on *Cruiskeen Lawn*'s rhetoric vis-à-vis questions of the law and sovereignty (key biopolitical questions). For the latter critics, the way in which O'Nolan's journalism describes the contortions of logic that underpin Irish sovereignty and the law raises issues of

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<sup>25</sup> Agamben uses the Pauline trope of messianic conversion (in which the old mosaic law is replaced by a new one) to outline his theory of a non-proprietary 'use' of the body. Throughout *The Use of Bodies*, Agamben raises the possibility of an 'inoperative' and 'deponent' metaphysics—a dynamic conception of the living body and its potentiality that is not exhausted by classical notions of *essence*. He quotes St Paul's Letter to the Corinthians that refers to 'those who buy as not possessing, and those who use the world as not abusing' in order to construct this non-essentializing ontology—one that is paradoxically 'in tension with itself' and that 'revokes and deactivates [...] without altering its form.' Giorgio Agamben, *The Use of Bodies: Homo Sacer IV*, 2 (California: Stanford University Press, 2016), 56.

<sup>26</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (California: Stanford University Press, 1998), 7.

<sup>27</sup> Ebury, 'O'Nolan and the Death Penalty,' 45.

<sup>28</sup> Jennika Baines, 'The Murders of Flann O'Brien: Death and Creation in *At Swim-Two-Birds*, *The Third Policeman*, *An Béal Bocht*, and "Two in One"', in *Flann O'Brien: Contesting Legacies*, eds. Ruben Borg, Paul Fagan, and Werner Huber (Cork: Cork University Press, 2014), 207–18.

<sup>29</sup> Michael McAteer, 'Law and Violence in Ferguson's *Congal*, Yeats's *The Herne's Egg*, and O'Brien's *At Swim-Two-Birds*,' in Borg and Fagan (eds.), *Gallows Humour*, 197–216.

<sup>30</sup> Maebh Long, *Assembling Flann O'Brien* (London: Bloomsbury, 2014), 118.

anti-democratic politics and the extra-constitutional tactics of totalitarianism.<sup>31</sup> Taken collectively, these multiple examples of biopolitical themes in the critical literature point to a new way of looking at O’Nolan as a writer not just of postcolonial fantasias—someone who might marinate their tales of Irish life with a dollop of magical realist playfulness—but more-so as a political theorist who applies a Borgesian wit when exploring the hallucinogenic intricacies, the shifting complexities, and the ontological paradoxes of power.

O’Nolan’s Myles na gCopaleen persona often presents himself as a political insider with a unique insight into the chicanery of power—one who perceives a sinister supervenience of state power over individual liberty. In a series of columns from 1944, Myles condenses much of the scaremongering government rhetoric about totalitarianism that had inflected Irish politics during the Free State, and that led to the passing of impromptu legislation, like the Constitution (Amendment no.17) Act of 1931 (which extended police powers in dealing with anti-state agitation). After the accession of Fianna Fáil in 1932, and the gradual subsidence of red-scare accusations of totalitarianism against De Valera, *Cruiskeen Lawn* continues to place emphasis on how top-down policy impositions tend to surreptitiously co-opt the *local* energies of Irish culture. Speaking in 1944 of Bishop Dignan’s proposals for public health reform, Myles imagines a scenario in which the entire body of civil society is replaced with a state-sponsored welfare ‘Society.’ Myles begins by quoting Dignan’s proposal: ‘The Society is not a State service—that must be made quite plain to the public from the beginning [...] The people must be made aware that the Society is their own.’<sup>32</sup> He continues over the next several days to lambast the economic naiveté of the programme, also warning of its extra-constitutionality, and how it might allow a non-state agency to dictate public policy:

(Roots in drawer.) I have here a copy of your Constitution, enacted by your good selves in 1937 [...]. I find that the State is your own, that you have gone to great pains indeed to found and develop it. [...]

Am I too serious, too severe? No reader, it is *you* who are Irish. It is *you* who may be *made* join, and nurture with your dough, this priceless super-State ‘society.’ Send not for whom the bell tolls: it tolls for thee.<sup>33</sup>

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<sup>31</sup> Joseph Brooker, ‘Estopped by Grand Playsaunce: Flann O’Brien’s Post-Colonial Lore,’ *Journal of Law and Society* 31, no.1 (2004): 36. Steven Curran “‘Could Paddy Leave off Copying Just for Five Minutes’: Brian O’Nolan and Eire’s Beveridge Plan,’ *Irish University Review* 31, no.2 (2001): 368.

<sup>32</sup> Myles na gCopaleen, *Cruiskeen Lawn*, *The Irish Times* (26 October 1944): 3.

<sup>33</sup> *Ibid.*

Myles uses the word 'regimentation' in relation to Bishop Dignan's outsized scheme, conjuring a sense of Hannah Arendt's 'banality of evil'<sup>34</sup> in describing the potential infiltration of everyday life by the surreptitious forces of a new state-adjacent organism: 'Regimentation by the state (I use the word in its *ordinary* evil sense) is a foul thing. What do you make of a modest proposal to have your people kicked around by a "society" which is not the State?'<sup>35</sup>

O'Nolan's commentary on this debacle reflects the mindset of those who saw such state schemes as threatening to introduce forms of bureaucratic authority that would assume extra-governmental control of domestic affairs. Indeed, the surrender of policymaking power to a private body, or a parallel bureaucracy that would be entirely unanswerable to elected government, raises the bogeyman of fascist authoritarianism. This dystopian scenario is not far from the police state of *The Third Policeman*, as Myles imagines, 'jack-booted secret police from Cork ranging the country in "travelling motor clinics"'—apparatchiks who would become the vanguard of a new alliance between unlimited state power and its local organs.<sup>36</sup>

This kind of short-circuiting of state power and its local manifestations is evocative of Agamben's biopolitical analysis of the 'facticity' of power—its self-presupposing, or autochthonous nature, especially under fascist dictatorship.<sup>37</sup> Here, Agamben addresses the problem posed by both Carl Schmitt and Martin Heidegger (who had fascist tendencies in their own right) in his analysis of self-positing forms of sovereignty. As Schmitt wrote in *The Concept of the Political* (1932), 'society should integrate itself into the state,' and what results is 'the total state which no longer knows anything absolutely nonpolitical.'<sup>38</sup> When Ebury argues that in O'Nolan's writing we see an 'emptying out of the concept of the legal subject,'<sup>39</sup> it is tempting to view O'Nolan as theorising the evacuation of the political subject that occurs under totalitarianism and its hyper-politicisation of civil society on the grassroots (or indeed, local) level. Agamben captures this idea of evacuation in his book *Stasis*, where he sees a distinction between the '*pleromatic*' political state (the 'full-bodied' state of mutual recognition) and the '*kenomatic*,' or 'empty' political state.<sup>40</sup> Here, Brooker's prior work is insightful, as he outlines the biopolitical implications of O'Nolan's wranglings over the concept of legal sovereignty. Brooker writes of a kind of failure of civil society to positively and fully enjoy its civil franchise, noting how O'Nolan's

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<sup>34</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (London: Penguin, 2006).

<sup>35</sup> Myles na gCopaleen, *Cruiskeen Lawn, The Irish Times* (26 October 1944): 3 [emphasis added].

<sup>36</sup> Myles na gCopaleen, *Cruiskeen Lawn, The Irish Times* (28 October 1944): 3.

<sup>37</sup> Agamben, *Homo Sacer*, 153.

<sup>38</sup> Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: University of Chicago Press, 2007), 25.

<sup>39</sup> Ebury, 'O'Nolan and the Death Penalty,' 38.

<sup>40</sup> Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 48.

writing 'points to a problem of legitimacy, identifying a *discrepancy between law and life*. In this sense the "normative" quality of the Constitution, its successful integration with social practice, is minutely but pointedly eroded.'<sup>41</sup>

O'Nolan's vision of the relationship between central planning and its local manifestation—a relationship that threatened to reinforce the 'facticity' of power—is thus eminently biopolitical. Firstly, works like *The Third Policeman* speak to the absolute pervasion of civil society by nefarious forms of power, through the metaphor of the 'atomic principle' that results in cases of mistaken identity and injustice. Secondly, the various aporias and contradictions that O'Nolan describes suggest ambiguities within the political order. From the biopolitical perspective, sites of ambiguity often function as openings—what Agamben terms '*l'aperto*,' or 'the open'<sup>42</sup>: vacuums of political meaning and semantic aporia that sovereign power uses as a pretext to articulate its own legal pronouncements. The contested valence of local government power (discussed earlier) would be one such example of these hiatuses in the power-relation between the state and civil society, revealing as they do the 'discrepancy' between law and life that Brooker writes of, and with this an imbalance between the sovereign dictates of the state and the democratic management of local life.

Despite the tendency of biopolitical theories to insist on the irresistible violence of top-down sovereign power, characters in *The Third Policeman* tend to hyperbolically inflate more *local* issues, where even the most trivial complaints about regional affairs become biting critiques of the institutions of governance. 'The County Council is the culprit,' as MacCruiskeen declares elsewhere in the novel.<sup>43</sup> Here, MacCruiskeen exemplifies the kind of sceptical attitude that some actors on the local level may have felt towards the overweening supervision of municipal actors by the government, and by executive oversight at the county level. In an *Irish Times* article entitled 'Why Irish Local Government is So Useless,' Diarmaid Ferriter has a decidedly 'top-down' model of sovereign power in mind, as he recounts the words of the former Fianna Fáil Tánaiste, Séan MacEntee. While Ferriter argues that local government has tended to be rather ineffectual when it comes to the management of Irish life, he notes how, as an opposition TD in 1929, MacEntee (and others who were worried about the government's diminishment of local powers) foresaw that 'a [county] manager, wearing the jackboots of the minister [would] be able to walk rough-shod over councillors' desires and their opinion.'<sup>44</sup>

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<sup>41</sup> Brooker, 'Flann O'Brien's Post-Colonial Lore,' 36.

<sup>42</sup> Agamben, *Homo Sacer*, 49.

<sup>43</sup> *TP*, 82.

<sup>44</sup> Diarmaid Ferriter, 'Why Irish Local Government is So Useless,' *The Irish Times* (23 November 2019). Available at: <https://www.irishtimes.com/opinion/diarmaid-ferriter-why-irish-local-government-is-so-useless-1.4092165>.

Although O’Nolan was himself an agent of state power, the *Cruiskeen Lawn* columns address this pervasive, populist rhetoric of suspicion that led various parties to question the democratic *bona fides* of government overseers like the county managers. Whilst local governments were suspicious of the tendency of central government to intervene in municipal affairs, episodes like the 1932 election (in which De Valera’s Fianna Fáil came to power for the first time), were occasioned by popular anxieties about the supposed communist-totalitarian influence within government. By 1951, as the Mother and Child Scheme was becoming a rallying point for the progressive rhetoric of the *Irish Times* columnists, conservative lobbyists could also accuse the Health Minister of seeking to institute fascist values in his scheme for social welfare reform. Indeed, a letter from the Church Hierarchy to Taoiseach John Costello of 1951 called Dr Browne’s proposed scheme ‘a ready-made instrument for future totalitarian aggression.’<sup>45</sup>

The *Cruiskeen Lawn* columns tap into this popular discourse, as they often seem genuinely concerned by a potential usurpation of the state by volatile surges of populist sentiment. The notion of a *self-assuming* form of power—one that could short-circuit the relationship between sovereign power and civil society, presenting itself as an organic expression of popular will—aligns strongly with Agamben’s theory of the autochthonous nature of biopolitics. Agamben’s *Homo Sacer* project points up the way in which ambiguities, or zones of ‘indistinction,’ create hiatuses, or crises of legitimacy within the political order that allow autonomous actors to intervene who can make determinate decisions amidst prevailing uncertainty.<sup>46</sup> As a prime example, Agamben refers to Hitler’s self-arrogation of sovereign power amidst the unrest and uncertainty which threatened the Weimar constitution.<sup>47</sup> Regardless of whether we can truly consider Ireland as a clear-cut example of this kind of ‘state of exception,’ there is a limited case to be made for Ireland fitting the mould of Agamben’s general theory of exceptional politics. As mentioned, suspicions about the supposedly ‘democratic’ nature of political representation naturally arose in the Irish context as a result of uncertainties and contradictions between the state and its local distributions of power. Additionally, the fact that Cumann na nGaedhél was to a large degree the ‘government’ party in the formative years of the Free State (Sinn Féin/Fianna Fáil did not enter opposition until 1927), coupled with the often-ambiguous status of discretionary powers under the local government system discussed previously—particularly its

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<sup>45</sup> Mark O’Brien, ‘How *The Irish Times* Exposed the Mother and Child Scandal 70 Years Ago Today,’ *The Irish Times* (12 April 2021). Available at: <https://www.irishtimes.com/culture/books/how-the-irish-times-exposed-the-mother-and-child-scandal-70-years-ago-today-1.4524235>.

<sup>46</sup> Agamben, *Homo Sacer*, 43.

<sup>47</sup> Agamben, *State of Exception*, 38.

aporetic mode of conduct—posed a unique problem for how observers conceived of national sovereignty in early 20<sup>th</sup> century Ireland, and raised the question of what the appropriate model for a truly deliberative democracy should be.

### Local Government/General Malaise

While O’Nolan inflated the demonic threat of fascist populism in his critique of a super-state ‘society,’ both *The Irish Times* and the organs of Fianna Fail politics had used the fear of local political anarchy to sell their own unique brands of national scaremongering. Before it began championing an anti-conservative agenda in the early 1950s, throughout the 1930s Smyllie’s newspaper had bristled at the populism of De Valera’s party, and indeed it referred to local small-holders and farmers—perhaps the core Fianna Fail demographic—as ‘notorious anarchists.’<sup>48</sup> A crisis of legitimacy occurred in the transition from Cosgrave’s Cumann na nGaedheal to the party of De Valera involving an intensified media focus on the latter’s role in a perceived breakdown of law-and-order. Indeed, many special provisions in the law in the 1920s and 30s (like the aforementioned 1931 ‘Amendment no.17’ Act, which gave legal definition to republican ‘disorder’), are instances of government working autonomously to solidify its sovereign remit via acts of emergency decree.<sup>49</sup> In terms of how O’Nolan charts the nefariousness of government on the local level, we might read the events of *The Third Policeman* as responding to perceived injustices in law enforcement and local justice, and how these injustices often had a symbiotic relationship with state policies that sought to capitalise on the ‘disorder’ which they, in fact, inspired.

Tom Walker points to a specific instance of local violence as the possible inspiration for *The Third Policeman*’s critique of local policing. He recounts the case of a rural Garda named O’Sullivan who was killed by a booby-trap bomb near Knock in 1929.<sup>50</sup> In Walker’s estimation, this isolated act of anti-state violence (an incident analogous to the booby-trapped black box in Old Mathers’s house) may have been part of a wider culture of terrorism. However, as Elliott Mills points out, Walker’s limited focus on the War of Independence requires an enlarged perspective.<sup>51</sup> Here, we can enlarge our frame of reference to form a picture of generalised rural militancy when we consider other

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<sup>48</sup> Bryce Evans, “‘Notorious Anarchists’: The Irish Smallholder and the Irish State During the Emergency, 1939–45,” in *Riotous Assemblies: Rebels, Riots, and Revolts in Ireland*, eds. Maura Cronin and William Sheehan (Dublin: Mercier, 2011), 196.

<sup>49</sup> ‘Constitution (Amendment No. 17) Act, 1931.’ Available at: <http://www.irishstatutebook.ie/eli/1931/act/37/enacted/en/html>.

<sup>50</sup> Tom Walker, “‘A True Story’: *The Third Policeman* and the Writing of Terror,” in Borg, Fagan, and McCourt (eds.), *Problems with Authority*, 127.

<sup>51</sup> Elliott Mills, ‘Origin, Iterability, and Violence in *The Third Policeman*,’ in Borg and Fagan (eds.), *Gallows Humour*, 264.

cases that involve anti-police terrorism—a militancy that was a reaction to perceived inequities in the local distribution of justice.

Local historian, Denis Marnane recounts the case of one Superintendent Curtin, a garda who was responsible for bringing to trial several rural labourers accused of IRA membership in 1931.<sup>52</sup> As Marnane details, the accused men, who were discovered staging an armed drill practice on farmland at Solohead in Tipperary, had been agricultural workers who had been radicalised after their displacement from farmland that had been reappropriated by a local judge.<sup>53</sup> The trial of the men ultimately collapsed, and Superintendent Curtin was assassinated not long after. In a plot not unlike the fatal discovery of Old Mathers's booby-trapped 'black box' in *The Third Policeman*, the key piece of physical evidence in the case was a 'box' alleged to have contained the Solohead Company's guns.<sup>54</sup> However, the pervasive stereotype of these IRA recruits as feckless 'corner-boys' is subverted by other fine details of the case: namely, their previous acts of sabotage, in which they drove cattle onto the land in Tipperary that they had been dispossessed of. As Marnane argues, the case demonstrates a generalised anti-government discontent that manifested on the local level:

Increasingly, the IRA involved themselves in land agitation—in Tipperary, for example, by playing a role in local campaigns for the distribution of Land Commission estates. The Depression also had the effect of reducing emigration, thereby adding to the pressure on land and the reservoir of discontent from which the IRA could draw recruits.<sup>55</sup>

It is noteworthy, in this regard, that Superintendent Curtin used the collapse of the Solohead trial to opine to the Commissioner of the Special Branch that the state should 'abolish the jury system in cases of political nature.'<sup>56</sup> Marnane notes how law enforcement had itself internalised the biopolitical notion of a short-circuit between discourses of state and discourses of civil society, pointing to a confidential Garda report from 1931 which states that 'the extremist movement in this country is a strange mixture of political revolutionaries and social revolutionaries.'<sup>57</sup> The subsequent electoral contest of 1932 (between Cosgrave and De Valera) served only to amplify these national contradictions (between an imposing government and a disenfranchised

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<sup>52</sup> Denis Marnane, 'The Assassination of Superintendent Curtin,' *Tipperary Historical Journal* (1992): 12.

<sup>53</sup> *Ibid.*, 11.

<sup>54</sup> *Ibid.*, 16.

<sup>55</sup> *Ibid.*, 9.

<sup>56</sup> *Ibid.*, 17.

<sup>57</sup> *Ibid.*, 9.



regional population). The rationale of a 'state of emergency' had allowed the state to articulate a juridical scheme for containing republicanism, resulting in the Public Safety (or 'Emergency Powers') Acts, of which the 1931 constitutional amendment was the culmination. What is less often observed, however, is how the Land Commission's territorial appropriations (usually involving compulsory purchase orders) allowed for a targeted political engineering of local spheres of influence. This intervention of the state in citizens' freedom to hold property frequently involved dispossessing those with medium-sized properties, based on the political allegiance of the property-owners respective to the government party of the time. On the local level, therefore, both the judicial (mis)management of local land disputes (of which Fianna Fáil themselves would eventually become guilty during their tenure) and the discontent with local representatives of law and order, were part of the tense regional politics that informs the decade of the 1930s in which *The Third Policeman* was produced.

From this perspective, the conflict in *The Third Policeman* with Old Mathers—a propertied man who had 'spent a long life of fifty years in the cattle trade'<sup>58</sup>—represents not so much a tension with the old 'Big House' class of landed colonial power, but rather the dissatisfaction with a new dispensation of regionalised property disparity. This new phase of post-independence inequity was thoroughly local in its impact, and it is perhaps unsurprising that when Sergeant Pluck reflects on the 'untold damage' of the atomic principle that is menacing his parish, he sees local government as the ultimate site of political unease:

'Would it surprise you to be told,' he said darkly, 'that the Atomic Theory is at work in this parish?'

'It would indeed.'

'It is doing untold destruction,' he continued, 'the half of the people are suffering from it, it is worse than the smallpox.'

I thought it better to say *something*.

'Would it be advisable,' I said, 'that it should be taken in hand by the Dispensary Doctor or by the National Teachers or do you think it is a matter for the head of the family?'

'The lock stock and barrel of it all,' said the Sergeant, 'is the County Council.'<sup>59</sup>

In this instance, the pervasive phlogiston that insinuates itself in people's bodies according to an 'atomic theory' becomes the most apt metaphor for O'Nolan's conceptualisation of the micro-physics of municipal power. Siobhán Purcell has written of how the

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<sup>58</sup> TP, 16.

<sup>59</sup> TP, 83.

body is coded as local in *The Third Policeman*, and she argues for the 'regionality' of biopolitical concerns in the novel.<sup>60</sup> Indeed, we see how regional entities like the local medical 'dispensary' become part of the joke when it comes to O'Nolan's satire of municipal bodies. The incongruous conflation of government and contagious disease in the Sergeant's complaint seems less absurd when we consider O'Nolan's role in Local Government and Public Health, and it anticipates the growing tendency for public health issues to become hyper-politicised as talking points in popular political debate (as would happen with Bishop Dignan and Dr Browne's reform plans in the 40s and 50s).

The atomic principle that pervades the parish leads to other disturbances on the local level in the world of *The Third Policeman*, and O'Nolan conjures a milieu in which local governance is in circular symbiosis with state power. Sergeant Pluck's anecdote about his ancestor's threatened prosecution speaks both to the arbitrariness of local justice in the text and to the way in which sovereign decisions often operate by means of circular logic and paradox. The Sergeant describes the case of his great-grandfather, who had swapped molecules with a horse such that he became a 'horse in everything but extraneous externalities':

That was the size of it. His old horse Dan was in the contrary way and gave so much trouble, coming into the house at night and interfering with young girls during the day and committing indictable offenses, that they had to shoot him. The police were unsympathetic, not comprehending things rightly in these days. They said they would have to arrest the horse and charge him and have him up at the next Petty Sessions unless he was done away with. So my family shot him but if you ask me it was my great-grandfather that they shot and it is the horse that is buried up in Clooncoonla Churchyard.<sup>61</sup>

The Sergeant explains how his ancestor had morphed into a kind of centaur — an emblem of ambiguity: half man, half horse. This physical ambiguousness is accompanied by a *legal* ambiguity pertaining to his status as a person, to the extent that he is given the impossible choice of either appearing before the local Petty Sessions Court or being summarily executed. The impossibility of 'appearing' is key here, as his non-human form rules out the possibility of *habeas corpus* (being present at trial), the consequence of which is a circular logic, whereby there is no adequate way for the defendant to appear before the law as a human being so that they might faithfully represent themselves *qua*

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<sup>60</sup> Siobhán Purcell, 'Reading the Regional Body: Disability, Prosthetics, and Irish Literary Tradition in *The Third Policeman* and *Molloy*,' in Borg and Fagan (eds.), *Gallows Humour*, 190.

<sup>61</sup> *TP*, 91.

legal personage. We learn how the great grandfather is eventually shot by the family, with a legal aporia contained in the fact that it is only as a *post-mortem* entity that his *all-too-human* personhood is confirmed. That the family, rather than the court, is tasked with this extra-judicial execution, suggests a further confusion of roles between the state/judiciary and civil 'society' -at-large.

The Sergeant's gripe with the local administration of justice has an atavistic tenor that conjures the inequities of the colonial prehistory of the state. In terms of the history of local governance, it is significant that the Petty Sessions courts – where the Sergeant's great-grandfather was in danger of being tried – along with the Courts of Assize, would have formed the jurisdictional core of the local legal system in the pre-independence era. These courts were formally assimilated into what would become the Irish District Court system under the Free State. Although the Free State adopted a jury-system of justice that was in many ways more equitable than the older system (which tended to concentrate power in the hands of presiding judges), it was nevertheless supplemented by special legal provisions, which extended judges' powers of prosecution, such as the 1924 Occasional Powers Act<sup>62</sup> and various Public Safety Acts. The Cumann na nGaedheal government which enacted these reforms, was, in a way, the state party at the time—it was virtually unopposed in the Dáil, due to De Valera's refusal to participate in national life. Hence, while not a clear-cut example of pure executive decree – the kind of rule that we might associate with a 'state of exception' – there was a degree of administrative *fiat* involved in the way that the Cosgrave government enacted extraordinary laws to securitise their newly minted polity: a Pauline act of conversion, as it were.

What seems like an ancestral grudge on the part of the Sergeant therefore hints at the lingering dissatisfaction of the local functionaries of the law (in this case, the police) with top-down forms of power insinuating themselves into local affairs. Despite their own attempts to unduly execute the narrator, the policemen's rhetoric nevertheless hints at a latent unease with the unjust exercise of violence, and with the cynical and overbearing application of the law as it had survived in vestigial forms across the transition from colonial polity to Free State. While MacCruiskeen appears sceptical of the county council, Pluck's complaint about local justice describes a similar contempt for municipal mismanagement: a fine case of 'Home Rule,' one might say. As with several other dubious cases in the novel—chief amongst them being the narrator's unjust death sentence—the historical injustice suffered by the Sergeant's ancestor exemplifies O'Nolan's concern with aporia and biopolitical exception: the failure of a subject to appear adequately before the law as a person, even when there is an exceptional and excessive application of juridical powers.

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<sup>62</sup> 'Enforcement of Law (Occasional Powers) Act, 1924.' Available at: <https://www.oireachtas.ie/en/bills/bill/1924/8/>.

The local distribution of justice, ratified by a state willing to extend an extraordinary remit to its local arbiters reinforces the biopolitical dimension of O’Nolan’s writings. As cases which exemplify Agamben’s concept of the state of exception, the examples of injustice detailed confirm a force that ‘separates the [juridical] norm from its application in order to make its application possible.’<sup>63</sup> The law’s amphibology (its aporetic ambivalence) is foregrounded by the way in which the policemen’s narratives of justification appear to contradict each another in *The Third Policeman*. ‘If you have no name,’ declares Sergeant Pluck, ‘the law cannot touch you.’<sup>64</sup> However, the narrator enquires, later in the novel:

‘You mean that because I have no name I cannot die and that you cannot be held answerable for death even if you kill me?’

‘That is about the size of it,’ said the Sergeant.<sup>65</sup>

Here we have two contrary interpretations of how the law enfranchises the subject-before-the-law. Like Agamben’s and Derrida’s famous readings of Kafka’s parable ‘Before the Law’ (in which a man is simultaneously barred from and granted entry through the gates of the *polis*), the narrator is both subject to and barred from enjoying the franchise of the law. From the biopolitical standpoint, this inclusive exclusion of the narrator is the basis of the failure to be fully recognised as a political subject with rights appurtenant. The onto-legal indeterminacy of this exceptional kind of subject is central to O’Nolan’s story, as the narrator achieves the dual status of being both a legally-interpellated political subject *and* a sacrificial scapegoat. Here, Agamben’s writing on the pre-history of *homo sacer* is pertinent, as he describes the condemned man in Ancient Rome—one who has been deemed untouchable by the state owing to his profanation of sacred laws, and yet can be put to death by the ordinary citizenry without legal consequences.<sup>66</sup> Like the narrator of O’Nolan’s novel, this sacrificial figure remains oblique to, or untouchable by the law, according to a paradoxical logic of *noli mi tangere*.

The bearing of this onto-legal taboo structure on issues of local government can be pinpointed in the finer details of the medico-legal narrative that the policemen advert to in their description of the narrator’s projected death. Ebury writes of the ‘extrajudicial’ death sentence of the narrator as an example of an ambiguous ‘life-in-death.’<sup>67</sup> She also

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<sup>63</sup> Agamben, *State of Exception*, 36.

<sup>64</sup> *TP*, 61–2.

<sup>65</sup> *TP*, 102.

<sup>66</sup> Agamben, *Homo Sacer*, 72.

<sup>67</sup> Ebury, ‘O’Nolan and the Death Penalty,’ 35.

refers to the history of the Irish hangman and how the state tended to look beyond its sovereign borders when employing its executioners, with the most prolific hangman being Albert Pierrepont, who was English.<sup>68</sup> What is also of importance in O'Nolan's depiction of hanging is how he consciously uses the medico-legal diction of a coroner's 'cause of death' narrative. His subtle use of this diction is evident when the policemen distinguish (or fail to distinguish) between the narrator's hanging 'by the windpipe'<sup>69</sup> and 'fracture of the spinal string.'<sup>70</sup> The so-called 'hangman's drop' (the supposedly 'humane' fracture of the C2 vertebra) had been implemented by the British government as a method of execution in 1872, following the scientific drive for penal reform led by Samuel Haughton (who developed a formula for the 'long-drop' technique) and the Capital Punishment Amendment Act of 1868.<sup>71</sup> For both asphyxiation and the clinically-administered fracture to be equally acceptable in the policemen's minds would therefore make judicial and extra-judicial methods somehow interchangeable. The District Coroner's Courts who used such medico-legal language to determine a cause of death were tied to the local judicial boundaries that would eventually become identical with the County boundaries in the Free State. Indeed, in Dublin, the Coroner's Courts were mostly administrated by the Dublin City Council until its assimilation into the Department of Justice in 2018.<sup>72</sup> The wholesale adoption of the local court boundaries as boundaries of the county councils is thus a further symbolic example of the symbiosis between bureaucracy and the law, of government and judiciary, and of the state and its local functions.

### Before the Law: The Cavan Case

The interplay between local government and state (in)justice occupied O'Nolan in another aspect of his official career. In 1943, he served as secretary to the Tribunal of Enquiry into the deaths of thirty-five young girls in a fire at an orphanage in Co. Cavan. The institution, which was run by the Poor Clare order of nuns, would more accurately be described as an industrial school by modern standards. Thanks to the pioneering work of Heather Laskey and Mavis Arnold in the 1970s and 80s, we now have a fuller picture of the kinds of abuse and neglectful conditions that existed at the school,<sup>73</sup> which funnelled many of its children into the manual labour institutions and

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<sup>68</sup> *Ibid.*, 40.

<sup>69</sup> *TP*, 98.

<sup>70</sup> *TP*, 102.

<sup>71</sup> Julian B. Knowles, 'The Abolition of the Death Penalty in the United Kingdom: How it Happened and why it Still Matters,' *The Death Penalty Project* (2015), 13. Available at: <https://www.deathpenaltyproject.org/wp-content/uploads/2017/12/DPP-50-Years-on-pp1-68-1.pdf>.

<sup>72</sup> 'History – Dublin District Coroner.' Available at: <https://www.dublincoronerscourt.ie/history>.

<sup>73</sup> Mavis Arnold and Heather Laskey, *Children of the Poor Clares: The Story of an Irish Orphanage* (Belfast: Appletree Press, 1985), 10.

laundries. The abuses at these institutions have been highlighted by (albeit often in spite of) recent investigations like the Mother and Baby Homes Commission, and the collaborative movement for redress is ongoing for those involved in groups like Justice for Magdalene's Research and the Magdalene Oral History Project.<sup>74</sup>

During the inquiry it was revealed that the nuns had failed to evacuate the girls in a timely fashion, and as Frank McNally relates, it was suggested that the girls had remained locked in their rooms until it was too late, as they were 'reluctant to have the girls seen in their night clothes.'<sup>75</sup> The tribunal recorded this fact in its report, but it nevertheless placed no blame on the Catholic Church (one of whose orders had staffed the institution), nor the department of Education (who were responsible for inspecting it), nor indeed the government departments whose budgets ultimately funded it. Rather, we see how the wording of the report of the tribunal places the blame for the deaths on the lack of fire-fighting resources available to the school—emergency provisions whose maintenance were the responsibility of Cavan County Council. The blame for the mass death is displaced onto the local level, and much of the report's conclusions are deflections that talk about the strain on safety resources due to the wartime emergency.<sup>76</sup>

Indeed, if we look at the wording of the report, we can see how it uses a subtly ambiguous, and exculpatory language, as it blames the County Council in a rather qualified manner:

It is unfortunate that the members of the Council and its advisers did not give fuller consideration to the rescue aspects [...]. The Council, on fuller consideration would not have accepted arrangements which entailed the avoidable confusion and delay that did occur and which did not deal in a more explicit manner with mobilisation arrangements and duties of personnel.<sup>77</sup>

The report was produced by a statutory tribunal, which was appointed (pursuant to resolutions adopted by the Dáil and the Seanad) by order of the Minister of Local Government and Public Health, under the Tribunals of Inquiry (Evidence) Act, 1921. The report thanks 'Mr Brian O Nuallain' for his 'assiduous care' in helping to compile the report, even though his signature is absent. However, the absence of a signature is not at all unusual, and it can be taken that O'Nolan is fulfilling what is invariably the role of

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<sup>74</sup> 'Final Report of the Commission of Investigation into Mother and Baby Homes (2021).' Available at: <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes>.

<sup>75</sup> Frank McNally, 'An Irishman's Diary,' *The Irish Times* (14 February 2013).

<sup>76</sup> 'Report of the Tribunal of Inquiry into the Fire at St Joseph's Orphanage, Main Street, Cavan, 23 Feb. 1943,' 15. Available at: <https://aran.library.nuigalway.ie/handle/10379/2204>.

<sup>77</sup> *Ibid.*, 16.

a secretary to a tribunal (or any other state-appointed commission). This would involve the drafting of the report itself for agreement by the members of the tribunal, subject to any amendments that the chair (in this case, senior counsel Joseph McCarthy) or other members might require. However, officially, a report is the report of a tribunal as a collective, even if the wording of a report is exactly as worded by the secretary.

Despite this, O’Nolan’s *obiter dicta* are nevertheless revealing. Arnold and Laskey quote a limerick allegedly composed by O’Nolan and the barrister, T.F. O’Higgins (who represented the Electricity Supply Board at the tribunal), in the aftermath of the enquiry, which suggests the malleability of truth from a legal perspective:

In Cavan there was a great fire;  
Joe McCarthy came down to inquire,  
If the nuns were to blame,  
It would be a shame,  
So it had to be caused by a wire.<sup>78</sup>

The ‘wire’ mentioned is a reference to the circuitry of the faulty clothes-dryer which was allegedly to have caused the fatal fire. In any case, O’Nolan and O’Higgins are clearly lampooning (in a carnivalesque admixture of literary style and legal-bureaucratic drossing) the absurdity of the situation. The latent philosophical import of the limerick is apparent, as it satirically communicates the tendency for large-scale loss of life to be dismissed as inconsequential ‘bare life’ by the pronouncements of a government-adjacent legal profession. Once again, we see how local government becomes a site of ambiguity that allows the state to mask its own failures and to articulate a rather circular legal narrative of culpability.

In its early decades, the department of Local Government and Public Health was itself deeply implicated in the care of wards of the state (such as those in the orphanages). As Donnacha Lucey details, institutions such as the County Homes were administered by the county councils, and they were defined as places of refuge for ‘harmless lunatics,’ ‘unmarried mothers,’ and orphaned children.<sup>79</sup> The overlap between these institutions of last resort and the more carceral elements of state care was substantial. Despite the ethical dubiousness of this overlap of incarceration and care, it can be seen as a transitional moment in the passage from British rule to Free State that ‘helped to dilute past associations with pauperism’ (‘pauperism’ here signifying the old system of pre-independence poor relief, like workhouses).<sup>80</sup> This passage was by no means without

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<sup>78</sup> Arnold and Laskey, 47.

<sup>79</sup> Lucey, 51.

<sup>80</sup> *Ibid.*, 57.

severe injustices, however, and it condenses key issues around the inequity of state governance, local government, and the biopolitical management of human life in O’Nolan’s Ireland.

If theories of biopolitics are ultimately concerned with the perseverance of ‘bare life’ under exceptional circumstances, it is perhaps fitting that a disabled outlaw like Finnucane, the destitute amputee, comes to rescue the narrator in *The Third Policeman* from the scaffold. In critiquing the postcolonial hangover of institutions of care in the post-independence era, where pauperism and the mismanagement of justice are allowed to persist, O’Nolan voices a cutting bureaucratic frustration, as he was uniquely placed to perceive how inconstancies of the law and state governance impacted individuals on the local level. As a writer of Irish biopolitics, the way in which he indirectly documents the refusal of the state to acknowledge its local sins brings to light the imperfect logic—an insurmountable aporia—that sustained a less-than-equitable system of government.

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**Competing Interests**

The author has no competing interests to declare.

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