

Loyalty and Disloyalty: The Fenian treason trials, 1865-1867, and the evolution of British counter-insurgency policies in nineteenth-century Ireland

Executive Summary

- Fenianism is often seen as the first modern terrorist group.
- Between 1858 and 1870, Fenianism in Ireland became a source of real concern for the British authorities in Ireland, and their security policies in particular.
- The abortive rising in 1865 and the failed rising in 1867 saw hundreds of men arrested and stand trial before Special Commissions in Dublin, Cork and Limerick for treason-felony and membership of a secret society.
- The last Special Commission called in Dublin before 1865 was in 1803 for the trial of Robert Emmet. But the British government's counter-insurgency policies for Ireland had evolved since 1798. Special Commissions were not martial law, and in its speed and severity, punishment would be civil, deliberate and discriminating, ensuring that martyrs would not be made out of the Fenian prisoners.
- The manuscripts of the trials of Fenian prisoners between 1865 and 1867 afford a view of Dublin Castle gathering information about, and moving against the movement in Ireland.
- By examining the manuscripts of the trials, as well as contemporary newspaper reports, the paper aims to shed light on the measures taken by the Castle authorities to crush Fenianism in the mid-nineteenth century, and the manner in which information was gathered and used by the Castle in the legal steps taken against the prisoners.
- The paper also looks at reaction to the trials and particularly the sentences handed down to Fenian prisoners, which were viewed as unduly harsh.

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Abstract:

This paper examines the previously under-researched manuscripts of the trials of Fenian prisoners in Ireland between 1865 and 1867 that are archived in the Oireachtas Library, Dublin. It concentrates on the trials of those arrested in connection with the Irish People newspaper, a Fenian paper, in 1865, and the trial of Captain John McCafferty, an Irish-American, for his part in the Fenian movement. The manuscripts of the trials of Fenian prisoners between 1865 and 1867 afford a view of Dublin Castle gathering information about, and moving against the movement in Ireland. By examining the manuscripts of the trials, as well as contemporary newspaper reports, the paper aims to shed light on the measures taken by the Castle authorities to crush Fenianism in the mid-nineteenth century, and the manner in which information was gathered and used by the Castle in the legal steps taken against the prisoners. The trials for treason-felony also provide a fascinating insight to issues of loyalty and disloyalty in nineteenth-century Ireland, as well as the evolution of British counter-insurgency policies.

We have men from the Nore, from the Suir, and the Shannon,
Let tyrants come forth, we'll bring force against force;
Our pen is the sword and our voice is the cannon,
Rifle for rifle, and horse against horse.
We made the false Saxon yield many a red battlefield
God on our side, we shall triumph again,
Pay them back woe for woe, give them back blow for blow,
Out and make way for the bold Fenian Men.
(*The Fenian Men, Songs of the Irish Republic, Houses of the Oireachtas Library*)

Introduction

Fenianism is often seen as being one of the first modern terrorist organisations.¹ The problem with this is that there are over 150 variations for the definition of terrorism on offer.² With the Prevention of Terrorism Acts, modern British governments have illustrated the complaint that 'various definitions range from the absurdly over-specified to the unacceptably over-general'.³ Walter Laqueur interprets terrorism as the use of covert violence by a group for political ends, it is usually directed against a government, less frequently against another group or party. The ends, he says, may vary from the redress of specific 'grievances' to the overthrow of a government and the taking over of power, or to the liberation of a country from foreign rule.⁴ However, the Fenians should really be characterised as insurgents. Insurgency is often assumed to be synonymous with terrorism. One reason for this is that insurgencies and terrorism often have similar goals. But, Bard O'Neill argues that insurgency may be defined as a struggle between a non-ruling group and the ruling authorities in which the non-ruling group consciously uses the political sources (that is, organisational expertise, propaganda and demonstrations) and violence to destroy, reformulate or sustain the basis of the legitimacy of one or aspects of politics.⁵ Insurgency then is a movement – a political effort with a specific aim. This sets it apart from both guerrilla warfare and terrorism, as they

¹ See, for example, Michael Burleigh, *Blood and Rage: a cultural history of terrorism* (London: Harper Press, 2008).

² Nicholas J. Perry, 'The Numerous Federal Legal Definitions of Terrorism: The problem of too many grails', *30 J. Legis*, 249, (2003-2004)

³ Brian Jenkins, *Insurgency and Terrorism in a Liberal State, 1858-1874*, (Liverpool: Liverpool University Press, 2008), xi.

⁴ Walter Laqueur, *The Age of Terrorism* (London: Little, Brown and Company, 1987), 100.

⁵ Bard O'Neill, *Insurgency and Terrorism: from revolution to apocalypse* (Washington, D.C.: Potomac Books, c2005), 15-45.

are both methods available to pursue the goals of the political movement. That said, certainly for mid-Victorians, Fenianism became another word for terrorism.⁶

Successive British governments genuinely believed that the Fenians were committed not only to insurgency but also to terror. In 1866, the Lord Lieutenant of Ireland was quick to describe as a ‘system of terror’ the intimidatory measures adopted by the Fenians to prevent information being given to the authorities.⁷ Brian Jenkins argues that for a liberal state of the mid-nineteenth century, especially one that lacked a written constitution, no less than for modern democratic societies, the effective countering of terrorism posed peculiar problems.⁸ The rule of law and respect for due process, even in terms of subversion, are cornerstones of a liberal state, so the methods used by Britain to deal with the Fenian threat are interesting, and I would argue that these particular trials highlight the evolution of British counter-insurgency policies. This paper examines the trials of Fenian prisoners between 1865 and 1867. The prisoners were tried for treason-felony and the paper highlights the nature of loyalty and disloyalty in nineteenth-century Ireland. A close reading of a sample of the trial manuscripts that are archived in the Oireachtas Library fills a gap in a historiography that is becoming over-crowded.⁹ Many of these trial manuscripts are unique to the Oireachtas Library, and as such have never been examined in any detail. This paper argues that the trials offer a number of insights to the Fenian movement, and particularly the evolution of British penal policy and counter-insurgency policies in nineteenth century Ireland.

On 17 March 1858, a small group of men, including Thomas Clarke Luby, Charles Kickham, John Devoy and John O’Leary, founded the Irish Revolutionary (later Republican) Brotherhood. Their objective was the overthrow of ‘English rule’ and the creation of an independent Irish republic. Although it was noted by the *Quarterly Review* in 1832 that ‘it was very generally understood that, when the Rebellion of 1798 was suppressed, there remained in Ireland very large numbers who conceived themselves still bound by the treasonable oaths they had taken’,¹⁰ George Boyce argues that there was no particular reason

⁶ Jenkins, *The Fenian Problem*, xi.

⁷ *Ibid*, xii-xiii.

⁸ *Ibid*, xiv.

⁹ For much of the twentieth century, the reading public knew the Fenians only through the published memoirs of patriarchal figures such as John O’Leary, John Devoy, Michael Davitt, Joseph Denieffe and Jeremiah O’Donovan Rossa. Most of what has been written concentrates on the 1867 rebellion, and the networks that were created in America in particular. Another key aspect of the historiography is the examination of the longevity of the Fenian movement and tracing its evolution from the late 1850s until 1922.

¹⁰ *Quarterly Review* quoted in ‘Irish Rebellions. No. 3 The Fenians of 1866’, *LSE Selected Pamphlets*, 1867.

in Ireland itself, for the founding of the Fenian Brotherhood in 1858, apart from the disgust felt by more advanced and idealistic nationalists at what they regarded as the corruption and futility of Irish politicians at Westminster.¹¹ But from an international perspective, these were exciting times. Britain had suffered a *frisson* at the spectacle of the apparent near-loss of her Indian empire under the onslaught of mutinous sepoy; Anglo-French tension was high, and anti-British feeling among the Irish emigrants in America was high, particularly as many of the men of 1848 had fled to America where they had found an outlet for their political activities.¹²

The growing influence of Fenianism in Ireland was notably enlarged when in 1863 James Stephens established the *Irish People* newspaper with an office within a stone's throw of Dublin Castle. Thomas Clarke Luby was the proprietor, John O'Leary the editor and O'Donovan Rossa the business manager. Charles Kickham became a regular contributor. The paper was launched on 28 November 1863. Two days later Daniel Ryan, superintendent of the G division of Dublin Metropolitan Police, reported the first issue of the Fenian paper; on 23 December he doubted that it would attain an extensive circulation in the country.¹³

The task of countering the growing Fenian threat had fallen to an unusually youthful Lord Lieutenant. Carlisle's death in 1864 had brought the 38-year-old Lord Wodehouse to Dublin. Wodehouse privately observed 'Governing Paddy has never been a hopeful or pleasant task, but it is a duty which Englishmen must perform as best they can'.¹⁴ A number of coercive measures had been adopted in Ireland since the beginning of the century, 'to protect the peaceful and loyal inhabitants of Ireland against the murderous outrages of the various secret societies by which it has been infested'.¹⁵ Between 1800 and 1830 alone, there had been thirteen instances of coercive acts imposed, including the suspension of the Habeas Corpus Act and the introduction of the Insurrection Act, which enabled the Lord Lieutenant to suspend trial by jury, and making it a transportable offence for a man to be found out of doors from sunset to sunrise.¹⁶ Yet Lord Strathnairn, then Commander-in-Chief of British forces in

¹¹ George Boyce, *Nineteenth Century Ireland: The search for stability* (Dublin: Gill & Macmillan, 2005), 139.

¹² *Ibid.*

¹³ Chief Secretary's Office (hereafter CSO), 1863/11941, in Breandán Mac Giolla Choille, 'Fenian Documents in the State Paper Office', *Irish Historical Studies*, Vol. 16, No. 63 (March, 1969), 264.

¹⁴ Jenkins, *The Fenian Problem*, 34-35.

¹⁵ 'Irish Rebellions. No. 3 The Fenians of 1866', *LSE Selected Pamphlets*, 1867.

¹⁶ Full details of the coercive measures can be found in 'Irish Rebellions. No. 3 The Fenians of 1866', *LSE Selected Pamphlets*, 1867.

Ireland, was sceptical of these measures, arguing that there was but ‘a cumbrous and temporary palliative...not a permanent remedy’.¹⁷ Pacification and conciliation would be the basis of British policy in the years to come, but there would simultaneously be vigour in countering conspiracy, incitement and rebellion, as well the tightening up of laws and punishments for the publication of sedition and the activities of secret societies.¹⁸

It was reported that in 1865 Ireland was prosperous, but apprehensions of Fenian conspiracies were already beginning to be entertained.¹⁹ Up until the end of 1863 the existence of the Fenian organisation in Ireland and hence the extent of the growth of the movement, which had been founded in Dublin some five and a half years earlier, was unknown to the Castle executive.²⁰ But, intelligence reports from the United States and almost all parts of Ireland grew steadily more alarming throughout the summer of 1865. There was widespread drilling and rumours in the stockpiling of arms.²¹ This increased activity is evident in statistics of court proceedings for 1865. While the returns for 1866 remarked that the year 1865 showed a reduction of around 22 per cent in serious crime, or those presented at court for serious crime in Ireland, there was an increase in the cases of treason-felony from 11 in 1864 to 41 cases in 1865, an increase of 273 per cent. This was the more remarkable, in that in 1863 there had been no cases of treason-felony whatsoever. These figures are especially significant in view of what was to come. In February, 1866, Earl Russell moved in the House of Lords the suspension of the Habeas Corpus on the ground that ‘an extensive and formidable conspiracy exists on Ireland, against which all the regular forces of the law have been put in force, but without success’. The Bill was passed and was to be in force for six months. The Act was continued at the end of that time until 1869.²²

Between 1863 and 1865 plans were being put in place for a rising in Ireland. September 1865 was marked as being an opportune time to strike. However, on 15 September 1865, relying on information from the key informer within the *Irish People*, Dublin Castle struck first, and raided the offices of the Fenian newspaper.²³ Thomas Clarke Luby, John O’Leary and

¹⁷ Sean McConville, *Irish Political Prisoners, 1848-1922: theatres of war* (New York; London: Routledge, 2003), 109.

¹⁸ *Ibid.*

¹⁹ Issac Saunders Leadam, ‘Coercive Measures in Ireland, 1830-1880’, *LSE Selected Pamphlets* (1880), 24.

²⁰ Mac Giolla Choille, ‘Fenian Documents’, 266.

²¹ McConville, *Irish Political Prisoners*, 122-123

²² Leadam, ‘Coercive Measures in Ireland’, 24-25.

²³ See Mac Giolla Choille, ‘Fenian Documents’, 272.

O'Donovan Rossa were arrested. James Stephens and Charles Kickham were arrested a month later at Sandymount. All would be detained at Richmond Bridewell prison to await trial by Special Commission.

Fenianism had brought politics into British prisons again. When the Fenian rebellion of 1867 is examined, many compare the trials and convictions to those of the Young Irelanders in 1848.²⁴ But the punishment policy in the 1860s to deal with the Fenians was radically different, and oftentimes still being shaped by several considerations. The Prime Minister, Lord Derby, responded to the Fenians' abortive rising of March 1867 by insisting that revolution needed to be smothered immediately, rather than be tackled piecemeal. To accomplish this, he wanted the leaders, particularly the Irish-Americans, tried before Special Commissions.²⁵ It would be quite necessary to make a prompt and severe example of them, and that he did. The appointment of a Special Commission for the trial of the various persons arrested on the charge of being connected in some way or another with the Fenian conspiracy, caused general satisfaction. Such prompt action, it was hoped, would produce a salutary impression on the 'misguided men who had been, or were likely to be tempted, by American gold and promises of American help to enlist under the Fenian flag'.²⁶

Class and the Fenian Movement

Whereas it was decided that as gentlemen under the punishment the Young Ireland leaders would be given wide privileges, this grace did not extend to the Fenians. As John Newsinger remarked, according to Stephens, the Irish Republican Brotherhood (IRB) recruited 'the farmers' sons, the mechanics, the artisans, the labourers and the small shopkeepers'. In this respect it was, he asserted, 'wholly and unequivocally democratic'.²⁷ The evidence Newsinger presents supports his contention. While the movement's membership was overwhelmingly working-class, its leadership in the main came from the lower middle class. Nevertheless, these men were leading a movement with a democratic social composition. One of the best guides to the IRB's social composition is provided by the occupational background of the 1,100 men arrested between 1866 and 1868 under the Habeas Corpus Suspension Act. Of these, no less than 47.8 per cent (520) were artisans or skilled workers,

²⁴ See, for example, McConville, *Irish Political Prisoners*, and John Newsinger, *Fenianism in Mid-Victorian Britain* (London: Pluto Press, 1994).

²⁵ McConville, *Irish Political Prisoners*, 144.

²⁶ 'Irish Rebellions. No. 3 The Fenians of 1866', 18.

²⁷ Newsinger, *Fenianism in Mid-Victorian Britain*, 29.

6.4 per cent (69) town labourers and 5.3 per cent (58) farm labourers, while another 9.1 per cent (99) were clerks or schoolteachers and 3.6 per cent (39) were shop assistants.²⁸ The class issue remains pertinent when examining the Fenians, and one, that while noted in the historiography, does not get examined in any real depth. Seán McConville notes that almost twenty years after the Young Irelanders had been suppressed, Lord Strathnairn, informed the British Cabinet that there was widespread disaffection with British rule in Ireland. It existed not only among the lower social classes but also in a large portion of the middle classes. Shopkeepers, artisans, second-rate civil engineers, some of the young clergy, as well as small farmers and farmers' younger sons, were in sympathy with the Fenians.²⁹

The main opposition to the Fenians within Ireland came from the middle class and the Catholic hierarchy, but this opposition to Fenianism was based more on its threat to their basic interests rather than Fenianism's hostility to British rule.³⁰ The most outspoken critic was Cardinal Cullen, who from as early as 1850 was cautioning against secret societies.³¹ In his pastoral letter for Lent in 1867, the Cardinal referred to the several admonitions against secret societies, issued by himself and the Irish bishops in 1861, 1862, 1864 and 1865, and repeating these admonitions, he observed

While condemning Fenianism and all secret societies, you can assure your flocks that we are far from being enemies of rational liberty, or from being opposed to the employment of constitutional means to obtain the redress of grievances, and to establish our rights when we are oppressed. Let us complain; let us call on our representatives to plead our cause; let us cover the table of the House of Commons with petitions; but let us at the same time be convinced that it would be extreme folly to have recourse to violence or arms.³²

While the great mass of the people stood aloof from the Fenian organisation in 1865, Isaac Butt, barrister for the Fenian leaders (and later MP) suggested that it would be a mistake to

²⁸ *Ibid.*

²⁹ McConville, *Irish Political Prisoners*, 107-108.

³⁰ *Ibid.*, 108.

³¹ In September 1950, archbishop Cullen, as delegate of the Holy See, presided over the National Council of Thurles and signed the address of the Synod. In the address, he cautioned against 'those publications in which...a spirit of sedition is insinuated and efforts are made to induce you to make common cause...[with] those apostles of socialism...', 'Ireland and the Holy See: A retrospect 1866 v 1883: Illegal and seditious movements in Ireland contrasted with the principles of the Catholic Church as shown in the writings of Cardinal Cullen', *LSE Pamphlets*, 1883.

³² 'Ireland and the Holy See', *LSE Pamphlets*, 1883.

suppose that this proceeded from loyalty. Of loyalty, in the true sense of the word, he argued, ‘there is very little in Ireland’.³³

A comparison of the Fenian trials of 1865-66, and Captain John McCafferty’s trial in 1867 to the Chartist trials of 1848 in England proves more useful. English radicals and republicans had certainly an evident impact and influence on Fenianism in Ireland. This is particularly noticeable with the proclamation of the Irish Republic in February 1867. McConville suggests that the text of the proclamation displays the influence of English radicalism, appealing as it did to English workers.³⁴ While the Chartist movement in Britain was particularly active around the time of the Young Irelanders, it perhaps had more in common with the Fenian movement of the 1860s.³⁵

Between 1839 and 1848, the government and legal authorities in England and Wales were confronted with a popular movement of unprecedented size and energy. The numbers involved in the Chartist movement were much greater and they were diffused over a wider geographical area and longer timespan, than any other protest movement up to recent times.³⁶ Many departments of the political and legal system were engaged at some level in dealing with Chartist activity, from the Crown and Home Office to the local magistrates and special constables.³⁷ What is interesting is that the Chartist trials have been perceived by some historians as a tool of class warfare implemented by partisan legal authorities. John Saville, examining the Chartist trials of 1848 argues that they were ‘exercises in the miscarriage of justice, the obliteration of reason by prejudice, and the subversion of legal principles by partisanship of a virulent order’.³⁸ The examples he gives of legal personnel’s partisan behaviour include their use of spies in the collection and presentation of evidence in court, the handing down of high prison sentences in some cases, and the partisan language of judges in their charges to the grand jury and in their summing up to the jury. Procedures enabling

³³ Isaac Butt, ‘Ireland’s appeal for amnesty: a letter to the Right Honourable W.E. Gladstone, MP’, *Bristol Selected Pamphlets* (1870), 20.

³⁴ McConville, *Irish Political Prisoners*, 126-127.

³⁵ While there had been some violence in 1848, it was minimal, and it was seen in the context of the extremities of the Famine. This was not the case with either the Chartist movement in England or the Fenians in the 1860s, who were seen as more militant. The covert nature of the Fenians also made them appear more of a danger and a source of apprehension.

³⁶ Jacqueline Fellague Ariouat, ‘Rethinking partisanship in the conduct of the chartist trials, 1839-1848’, *Albion: A Quarterly Journal Concerned with British Studies*, Vol. 29, No. 4 (Winter, 1997), 596.

³⁷ *Ibid.*

³⁸ John Saville, *1848: The British State and the Chartist Movement* (Cambridge: Cambridge University Press, 1987), 174.

the defence to prepare for trial had a considerable influence on the subsequent development and outcome of the trial. All parties indicted for treason were entitled, at least ten days before their arraignment, to a copy of the indictment, witnesses' depositions, and lists of both the jury panel and witnesses for the prosecution.³⁹ Many of these same issues arose during the trials of Fenian prisoners between 1865 and 1867.

The Special Commissions

A Special Commission, charged with the trial of several prisoners accused of being members of an organisation, established for treasonable purposes, was opened on 27 November 1865 at Green Street in Co. Dublin. James Stephens (who had escaped prison on 24 November 1865), John O'Leary, Thomas Clarke Luby, Jeremiah O'Donovan Rossa, Charles Kickham, Daniel Byrne, James O'Connor, Hugh P. Brophy and Edward Duffy were charged with high treason by having for the previous three years in Ireland, America and elsewhere, conspired and combined with the members of the Fenian Brotherhood, of which they were members, to levy war against the Queen in Ireland, subvert her royal authority therein, and establish a republic.⁴⁰ The necessity, and 'inevitability' for departing from the ordinary administration of the criminal judicature was noted as being 'painful and nationally humiliating', but it was also noted that such a course was unusual, at least in Dublin.⁴¹ It had been over sixty years since a similar tribunal sat in Green Street – the last Special Commission for Dublin having been issued in 1803 for the trial of Robert Emmet. That is not to say that there had not been Special Commissions held in other parts of the country. Special Commissions were more commonplace in Limerick and Tipperary where agrarian crimes were more frequently committed. But since 1803, the only Special Commission which was issued for what could be called the trial of political prisoners was in 1848, which sat in Clonmel and at which William Smith O'Brien, Terence Bellew McManus, Thomas Francis Meagher and Patrick O'Donohue were convicted of high treason.⁴²

The most serious charge was treason-felony in 1865. The Treason-Felony Act had been passed in 1848 and allowed the government to try the Young Ireland leaders for treason

³⁹ *Ibid.*

⁴⁰ Oireachtas Library, CSO, 9/10/10 and 9/10/11

⁴¹ *Freeman's Journal*, 28 November 1865.

⁴² *Ibid.*

without having to impose the death sentence, which was mandatory in cases where high treason was proven.⁴³

The evidence required to prove treason-felony was also less exacting. The prisoners brought to trial before Justices William Nicholas Keogh and David Fitzgerald had recently become notorious through media reports as members of the ‘Fenian conspiracy’. The charge of treason was complicated. Judge Keogh noted in his address to the Grand Jury:

From the earliest period, in consideration of the enormity of the offence, of the sacred character of the Sovereign and the safety of society itself, the crime of treason against the person of the Sovereign was held to attach the inward workings of the mind – to the compassings, imaginings and intentions of the accused. It was provided by an early statute in the reign of Edward III, to encompass or imagine the death of the King...but the secrets of the hearts are known only to One, for the protection of the accused it was provided that, in order to establish the guilt, the intent should be proved by some open act or deed of the party charged...So too, from the earliest times it was held to be high treason to levy war against the Sovereign, but then to constitute treason of that description there should have been an actual levying of war, and the intent to levy did not, like intending the death of the king, constitute the offence...⁴⁴

Therefore, to prove treason to depose the Queen, the compassings, imaginings, devices or intentions must be expressed, uttered or declared by publishing some printing or writing, or by some overt act or deed, before one could be found guilty of treason-felony.⁴⁵ The Special Commissions in Dublin, Cork and Limerick made deadly use of the Fenian papers and documents, which had been seized at the *Irish People* offices, during the trial to prove the intention of treason-felony.

Lord Chief Justice, Mr Justice Fitzgerald and William Keogh, two Catholic judges, presided over these trials. Neither of these choices were devoid of controversy. Keogh stood condemned by Archbishop Cullen as ‘the worst enemy of Catholicity we have under the name of Catholic’.⁴⁶ E.R.R Green also notes that Keogh made himself notorious by his careerism and his cynical conduct as a member of the Tenant League.⁴⁷ Fitzgerald, as member of the Privy Council had been party to the arrest of the men now to be brought

⁴³ Frank Rynne, ‘Focus on the Fenians: the *Irish People* trials, November 1865-January 1866’, *History Ireland*, November/December 2005.

⁴⁴ Oireachtas Library, CSO, 9/10/10, Trial of Charles J. Kickham. See also: *Freeman’s Journal*, 18 December 1865

⁴⁵ *Ibid.*

⁴⁶ Alan O’Day, *Reactions to Irish Nationalism, 1865-1914* (London: Hambledon, 1987), 135

⁴⁷ E.R.R Green, ‘Kickham and O’Leary’, in T.W. Moody (ed.), *The Fenian Movement* (Cork : Mercier Press, 1968), 81

before him in court.⁴⁸ The question would have to be asked: could he conduct their trials fairly and impartially? The juries empanelled were not devoid of controversy either. Isaac Butt noted that in the Catholic county of Cork, a county containing 495,000 Catholics and 49,000 Protestant inhabitants, a panel of 400 names was returned to the Special Commission; and of these, only forty names were those of Catholics. Many of the juries who tried the prisoners were exclusively Protestant.⁴⁹

The prisoners were represented by Isaac Butt QC, who was rising to prominence for his defence of Fenian prisoners around this time. R. Dowse, QC., afterwards a well-known figure in the House of Commons, also appeared as Counsel for the prisoners during the trials under review.

In the case of Thomas Clarke Luby, who pleaded not guilty to treason-felony, the Attorney-General referred to the establishment of the *Irish People* – a newspaper, he remarked, set up for the very purpose of promoting the cause of revolution in Ireland.⁵⁰ The paper was published from November 1863 until its suppression on 15 September 1865. The Attorney-General drew the jury's attention to an article, dated 28 November 1863, which alleged that 'emancipation had done more harm than good. To benefit Ireland, it should never have been separated from the national cause. It and Ireland's independence should have sunk or swam together; and it should have been won by the sword'. This, the Attorney-General surmised, promoted rebellion and revolution in Ireland.⁵¹ In his summing up speech to the jury, Kickham stated that this article was included in the indictment for the purpose of prejudicing the jury's decision:

The Attorney General has selected articles in which one of the judges is mentioned by name in the strongest language. I must say that Judge Keogh stated that he never saw the *Irish People* newspaper. If he had seen these articles he would, perhaps, have tried to avoid sitting in judgement on those who are accused of being the writers. But the Attorney General placed these articles so that the judge could not open the book without seeing them. He placed them first in the book for the purpose of prejudicing the minds of Catholic judges against the prisoners. The special commission was also granted for the purpose of giving the Crown the power of selecting the judges to try the prisoners...⁵²

⁴⁸ Jenkins, *The Fenian Problem*, 41.

⁴⁹ Butt, 'Ireland's appeal for amnesty' (1870), 13.

⁵⁰ *Belfast Newsletter*, 30 November 1865.

⁵¹ *Ibid*

⁵² Oireachtas Library, CSO, OCA000072, Trial of Charles J. Kickham.

The case against Luby also relied on letters found at the offices of the *Irish People* when it was raided in September 1865. One letter from James Stephens, dated 9 March 1864, and referred to throughout the trials as the ‘Executive Document’, appointed Luby, O’Leary and Kickham ‘as a committee of organisation, or executive, with the same supreme control over the home organisation (Ireland, England, Scotland, &c) I have exercised myself’. Stephens further empowered them to appoint a committee of military inspection, and a committee of appeal and judgement.⁵³ Another resolution was found, entitled ‘The Irish at Home’ and was for private circulation only. The resolution proclaimed the Republic of Ireland to be virtually established. The prosecution used this resolution to prove that not only were the prisoners plotting the overthrow of the Queen, but the actual and complete superseding of her authority, by a substitution of an Irish Republic, of which Luby, O’Leary and Kickham were the principal officers.⁵⁴

The Executive Document would also be used in the case against Charles Kickham, and caused a certain amount of controversy. Kickham’s defence team applied on behalf of Kickham that a writ of *corpus* be directed to bring Luby and Charles Underwood O’Connell as witnesses for him. In the affidavit, Kickham stated that the document had been used against Luby and O’Leary and that he believed it would be used against him. He said it would be of importance to show that this document was never out of Luby’s possession. Kickham stated that he was never aware of the document and never acted upon it. The testimony of Luby, who at this point had already been transported to Pentonville Prison to begin his twenty year sentence, would be crucial to Kickham’s trial. The Attorney-General opposed the application on account that Luby was now out of their jurisdiction. At this point, Kickham called on his counsel to withdraw from his defence, stating ‘The Crown have it in their power to produce Mr Luby and Mr O’Connell, and as they have refused to do so, I look on this trial as a mockery’.⁵⁵

The Press reaction

The trials in 1865-1866 demonstrated an assault on the press by legal authorities and the government. The impassioned commentaries of the nationalist press were a source of Executive concern. The Solicitor General, James Lawton, favoured action, listing a number

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Oireachtas Library, CSO, OCA000072, Trial of Charles J. Kickham

of popular weeklies that both enjoyed a ‘wide circulation’ and fostered a ‘widespread spirit of disloyalty’.⁵⁶ In 1848, the suspension of habeas corpus had allowed the state, without much regard for legal right, to suppress journals considered seditious, imprison their proprietors and seize property.⁵⁷ In 1866, however, public opinion was against these sorts of assaults on the freedom of speech. Judge Keogh noted in his address to the Grand Jury that while the jury would be examining publications of a seditious nature that would prove guilt of treason-felony, they had to take account of the fact that ‘the liberty of printing and publishing is one of the best safeguards of our liberties’.⁵⁸ British newspapers decried the treatment of Christopher O’Keefe in particular, ‘a literary gentleman who earned his living by his pen, but who...had nothing to do with Fenian organisation’.⁵⁹ It was noted that O’Keefe’s main crime seemed to be that he wrote articles for the *Irish People* which the Lord Lieutenant deemed seditious, and ‘For this offence – an offence of which, in the Irish Government acceptance, every English journalist has been guilty’, O’Keefe was sentenced to ten years’ penal servitude.⁶⁰

The British press, with radical exceptions, concluded that the ‘criminal justice system had operated in a manner that, if not unblemished, was reasonably fair’.⁶¹ The sentences handed down to Fenian prisoners during this time, however, were particularly harsh, and this did not go unnoticed by either the judges presiding over the trials, nor the British press. There was particular uneasiness about the fact that it appeared to be an attack on the freedom of the press. Luby and O’Leary, editors of the *Irish People*, were each given twenty years, while O’Donovan Rossa received a life sentence. Indeed, on sentencing Charles Kickham, who received twelve years, Judge Keogh expressed great sympathy with him, partly because he was nothing more than a writer, being of very weak frame, almost blind and deaf to a most distressing degree, and a writer whose works had been spoken very highly of by the critics.⁶²

⁵⁶ Jenkins, *The Fenian Problem*, 33

⁵⁷ *Ibid.*

⁵⁸ *Freeman’s Journal*, 28 November 1865.

⁵⁹ *Reynold’s Newspaper*, 21 January 1866.

⁶⁰ *Ibid.*

⁶¹ Jenkins, *The Fenian Threat*, 42

⁶² Oireachtas Library, CSO, OCA000072, Trial of Charles J. Kickham.

The 1867 Rising and Captain John McCafferty

While events were to show that these arrests, convictions and sentences had dealt the Fenians a critical blow, this was not obvious at the time.⁶³ A new plan was formulated and it was agreed that a rising would be planned for February 1867. It had been the intention of one group of Fenian leaders that the Irish rising should be powered by a shipment of arms stolen from England. A plan was made by the Irish American, Captain John McCafferty and the journalist John Flood. Captain John McCafferty was an American citizen born in Ohio. What is most interesting about McCafferty is that he is tried twice for treason-felony, relating to two different instances.⁶⁴ Like many of those who promoted Irish nationalism, he had played a part in the American Civil War. Unlike the majority of Irishmen involved in the American Civil War, McCafferty joined the Confederate army. The Attorney-General for his second trial noted that he had served in a notorious corps, Morgan's Guerillas of the Confederate State. At the end of the conflict in 1865, he took the amnesty oath, and soon thereafter left New York, bound allegedly for Paris. At the conclusion of the civil war a large number of military adventurers, of whom McCafferty was deemed as one, were thrown out of employment and their services were apparently eagerly scoured by the Fenian leaders. McCafferty, along with others, was sent to Ireland to organise an insurrection. He arrived at Queenstown in 1865, and before he landed was arrested on suspicion, and important Fenian documents were found on him.⁶⁵

McCafferty was tried for treason-felony with a mixed jury, which was a special provision historically made for aliens in the criminal justice system, and consisted of half aliens, half locals. Mixed juries were rarely empanelled in Ireland, and there are few reported cases of such juries even being sought by defendants. In fact, John McCafferty's first trial in 1865 was the only reported instance of the use of a mixed jury in Ireland.⁶⁶ McCafferty pleaded not guilty in 1865. His defence argued that as an alien, McCafferty had owed no allegiance to the Queen before he entered the country, and thus could not be held liable for conspiring or acting outside the jurisdiction. The Attorney General argued that McCafferty had entered the country with treasonable documents in his possession, and that this became treason as soon as he stepped on British soil. After considerable debate, the judges retired to consider the issue, and eventually ruled that there was insufficient evidence to establish the overt acts of treason

⁶³ McConville, *Irish Political Prisoners*, 124.

⁶⁴ See Niamh Howlin, 'Fenians, Foreigners and Jury Trials in Ireland, 1865-1870', *Irish Jurist*, 45, (2010).

⁶⁵ Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of Captain John McCafferty.

⁶⁶ Howlin, 'Fenians, Foreigners and Jury Trials in Ireland, 1865-1870', 66-69.

alleged. They concluded that McCafferty ought to have the benefit of the doubt and ordered the jury to acquit, on the ground that, as an alien McCafferty was not liable for acts done outside the jurisdiction.⁶⁷

However, McCafferty did not, as the Attorney General during his second trial commented, ‘profit by the lesson of mercy which he received’.⁶⁸ After the acquittal, McCafferty did not waste any time leaving the country and he returned to New York, where he was introduced to a fellow Fenian, John O’Mahony. In 1866, McCafferty left once again but to Britain and landed in Liverpool, and with a person named as John Flood, was elected a member of the Fenian Directory. Soon after this, he and Flood drew up plans which included the invasion of the Castle at Chester, which was a lightly guarded ammunition base, for 11 February 1867, carrying off the arms, seizing a train, tearing up the rails to prevent pursuit, and cutting the telegraph wires to prevent communication, proceeding to Holyhead and embarking on board one of the mail steamers, thus endeavouring to effect a landing in Ireland with weapons and ammunition for the planned rebellion in March 1867.⁶⁹ Quite an elaborate plan – and one, the Crown prosecutors said, which would certainly have been successful were it not for information given to the authorities in Liverpool by a John Joseph Corydon.⁷⁰

According to the plan, large bodies of persons arrived in Chester on 11 February and McCafferty and Flood received numbers of these parties at the railway station. But in the course of the morning news arrived that the affair had been ‘blown upon’. McCafferty became anxious and dispatched a man named Austin Gibbons to Birkenhead to tell the other parties that there was no use in their coming as the authorities had received information and the attack would not go ahead. Flood and McCafferty went to Whitehaven where they procured a passage on board the collier *New Draper* to Dublin. The two men sought passage on the collier brig because they knew that the passenger steamers would be under surveillance. However, as a consequence of information received by the authorities, when the *New Draper* arrived at Dublin on 23 February, that port was also being watched. There was an attempt by McCafferty and Flood to escape but they were soon arrested.⁷¹

⁶⁷ *Ibid.*, 75.

⁶⁸ Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of John McCafferty.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

McCafferty gave the name William Jackson and was taken to Mountjoy prison. There, however, when searched by the warder Thomas Nolan, a ring was discovered in McCafferty's sleeve of his top coat between the lining and the cloth. The ring contained a photograph and inside it there was engraved: 'Presented to Captain John McCafferty, IRB, by the Detroit Circle of the Fenian Brotherhood as a token of esteem. Detroit, April 20, 1866'. This was one of the most damning pieces of evidence used against McCafferty in his trial for high treason. Once again, McCafferty pleaded not guilty to treason-felony on the grounds that as a US citizen, he did not owe loyalty to the British crown.⁷²

In many of the Fenian trials, the Crown relied on a number of somewhat dubious witnesses to make the case against the prisoners. This was particularly notable in the trials of Luby, Kickham, Brophy, O'Leary and McCafferty, but the witnesses in themselves shed some light on aspects of the Fenian movement. Sean McConville notes that informers, spies and revolutionaries exist everywhere and at all times in symbiosis – but especially so in Ireland. Each conspiracy had an accompanying flock of informers; for some, loyalties, identities and even objectives were in a near constant state of flux. Secrecy, the oath and compartmentalisation of the 'circle' was intended to provide some form of protection against penetration.⁷³ But as Boyce argues, a central organisation made it all the more easy for Dublin Castle to penetrate.⁷⁴ Certainly, the key witness used in the *Irish People* trials was the informer Pierce Nagle. Nagle first offered his services as an informer in 1864 while in America. Apparently, Nagle 'felt his sensibilities bruised by Stephens' domineering manner', and while in New York called on the British consulate officials to offer his services as a spy.⁷⁵ From America he obtained a job in the office of the *Irish People* in Dublin and continued to keep the G Division informed of Fenian activities taking place there. He provided Dublin Castle with a list containing the names of all the people who distributed the paper throughout the country and also the names of those who were in touch with the Fenian leadership. It was Nagle who supplied Superintendent Daniel Ryan, head of G Division with an 'action this year' message on its way to the IRB unit in Tipperary in September 1865. With this information, Ryan raided the offices of the *Irish People*. During the trials, Nagle testified on the comings and goings of key Fenian figures in the newspaper, who they were in contact with, and confirmed the handwriting on key documents of a seditious nature,

⁷² *Ibid.*

⁷³ McConville, *Irish Political Prisoners*, 118.

⁷⁴ Boyce, *Nineteenth-Century Ireland*, 145.

⁷⁵ Joe Ambrose, *Seán Treacy and the Tan War* (Cork: Mercier Press, 2007), 35.

particularly in regard to Charles Kickham.⁷⁶ In the case of James O'Connor, the book-keeper at the *Irish People*, the Crown's case was built almost entirely on the testimony of Pierce Nagle. O'Connor, addressing the jury, impugned the evidence of Nagle, who, he said, 'improved in his swearing every day'.⁷⁷

The first witness to be called in McCafferty's case was a James McGough, a private in the Military Train. McGough gave evidence of his having joined the Fenian conspiracy and his desertion from the regiment, with 11 other men.⁷⁸ The Fenians claimed to have recruited some 8,000 Irishmen serving in the British army in Ireland and more in regiments stationed in Britain or abroad. The garrison in Dublin, according to Devoy, included some 1,600 sworn members of the Brotherhood.⁷⁹ It's hard to know how accurate this information is, but the witness brought against McCafferty certainly backs up the claim. McGough admitted that he had been 'seduced' by McCafferty to desert and join the Fenian movement. McGough essentially admitted doing this for clothes and money – he was paid 1s 6d a day while he was a deserter. What is perhaps significant, and what makes his evidence dubious, is that he was taken back to the Military Train without any form of punishment.⁸⁰ This was not the first time that the authorities had paid for men to gather intelligence. In the trials against the *Irish People* prisoners, the Crown's counsel relied on the testimony of Herman Schofield, a Polish nationalist who had been recruited by the British Counsel in New York to spy on the Fenian movement in America, particularly John O'Mahony, in order to get a copy of his handwriting so he could be identified as the author of seditious publications and letters.⁸¹

The next witness in McCafferty's case was a Thomas Talbot, a Head-Constable in the police. He deposed that his superiors had sent him to Tipperary in 1865 and 1866 to infiltrate the Fenian movement and act as a spy. Talbot passed himself off as a water-bailiff by the name of John Kelly and was accepted in the movement. When questioned on whether he swore the seditious Fenian oath, he claimed that he hadn't. Instead he obtained the secret sign from a Fenian named Morrissey while Morrissey was drunk. (It was a shake of the hand and a wink).⁸²

⁷⁶ Oireachtas Library, CSO, 9/D/11, and OCA000072.

⁷⁷ Oireachtas Library, CSO, 9/D/11 and 9/D/12, Trial of James O'Connor.

⁷⁸ Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of John McCafferty

⁷⁹ Newsinger, *Fenianism in Mid-Victorian Britain*, 41.

⁸⁰ Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of John McCafferty.

⁸¹ *Freeman's Journal*, 1 December 1865.

⁸² Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of John McCafferty.

The case against McCafferty also relied on the testimony of an informer called Patrick Devany, who had taken the treasonable oath. In the case against Luby, Kickham, O'Leary and Brophy, the testimony of the informer Patrick Power was relied upon to prove guilt. Like Devany and Talbot, Power infiltrated the movement, and he also took the seditious oath. He confirmed that the substance of the oath was to take up arms when called on, to establish an Irish Republic, and to be obedient to superior officers.⁸³ The defence noted that this evidence should be received with caution, as the witness had essentially indicted himself. The defence noted that the use of spies and informers against McCafferty should surely be inadmissible in a court of law, especially because none of their testimonies were corroborated with any other witness. In addressing the jury, Butt warned that 'Your own unwavering belief in the guilt of the prisoner will not suffice unless certain legal requirements are complied with...'⁸⁴

In summing up the case for McCafferty, Butt admitted that the case had been fairly and temperately conducted, but McCafferty had great reason to complain of the manner in which it had been brought into court, for Butt had no prior information of the witnesses that were called on behalf of the Crown. This, he contended, was a violation of the rule that the prisoner should have known who were to be the witnesses against him. And in the case of high treason, where McCafferty's life was at stake, unless the jury were satisfied that the prisoner had had perfect fair play, they ought not to convict him.⁸⁵ McCafferty too makes this point when addressing the jury on his own behalf and he noted 'I have been led to believe from the moment of my arrest that the Government of Great Britain did not intend to deal fairly with me...'⁸⁶ Charles Kickham also lamented the unfair nature of his trial when addressing the jury in his trial. He felt he had already been found guilty before his trial had even taken place, particularly in relation to the Executive Document which had been used in the case against O'Leary and Luby. He said

... no prisoner has ever been more unfairly treated than I have been. Not only have I had to bear many calumnies and misrepresentations in common with others who have been tried, but since the commencement of the commission, at every trial and in every speech made by the counsel for the Crown, I have been brought before the public. This occurs not only in the documents where my name is mentioned, and which have been brought forward in evidence, but even the judges on the benches have done it ...

⁸³ *Freeman's Journal*, 1 December 1865.

⁸⁴ Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of John McCafferty.

⁸⁵ Oireachtas Library, CSO, 9/A/13, OCA000087B, Trial of John McCafferty

⁸⁶ *Ibid.*

I consider I have been tried and found guilty five times in this courthouse, and I do not know how many times in Cork ...⁸⁷

There were calls in Britain for mercy and leniency with the Fenians, on account of the political nature of their crimes.⁸⁸ Sean McConville notes that the unwillingness of common-law to distinguish between political and ordinary crime is a controversy which has dogged English jurisprudence for centuries. The classic defence of a refusal to differentiate was that in a free society, where political expression and organisation was not stifled, where the rule of law and separation of powers guaranteed a judiciary free of politics, and where the jury guarded against executive intervention and tyranny, there was no reason to engage in unconstitutional politics and certainly no justification for political trials and *custodia honesta*.⁸⁹ The political nature of the Chartist movement was noted by the press from as early as 1848. Likewise, the treatment of Fenian prisoners was subjected to fierce debate and condemnation. J.P Hennessey, an MP for King's County, made a speech on 'The Treatment of Political Prisoners', with special reference to the Fenians who were convicted at the Special Commission in Dublin in 1865.⁹⁰ His report said that the moment the sentence was pronounced each prisoner was removed to a cell beneath the dock, where his hair was cropped close and his beard whiskers shaved off. He was stripped naked, his clothes taken away and a canvas shirt, brown jacket and trousers of a convict given to him. In Mountjoy prison, in Pentonville and at Portland, Hennessey went on to say, they had undergone 'greater suffering than had ever been inflicted in our time upon political offenders in any part of the civilised world'.⁹¹ In Mountjoy they were engaged in picking oakum for three months, afterwards in shoemaking and tailoring, and the convicts appeared to be punished with a severity inconsistent with health, as many needed medical prescriptions.⁹² As McConville notes, the criminal process and penal system was designed to allocate blame and intended to be retributive and deterrent.⁹³

⁸⁷ Oirachtas Library, CSO, OCA000072, trial of Charles J. Kickham.

⁸⁸ See *The Dundee Courier and Argus*, 12 October 1866 and *Liverpool Mercury*, 16 October 1866. See also: Butt, 'Ireland's appeal for amnesty: a letter to the Right Honourable W.E. Gladstone, MP', (1870).

⁸⁹ McConville, *Irish Political Prisoners*, 3.

⁹⁰ *Liverpool Mercury*, 16 October 1866.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ McConville, *Irish Political Prisoners*, 8.

On 4 May 1867, John Bright, MP for Birmingham, presented to the House of Commons a petition relating to the Fenians, urging that as political offenders they should be treated ‘with as much leniency as was consistent with the preservation of order’. The petition called for the revision of sentences already passed on Fenians – ‘sentences of great, and ... generally excessive ... severity’. It also called for Fenian prisoners to be recognised as political prisoners and therefore to be confined separately from common criminals.⁹⁴ The case of Cornelius O’Mahony, a clerk in the *Irish People* newspaper, was also noted for its severity in the British press.⁹⁵ The jury could not agree to a verdict on the case. The ordinary practice in such cases was to discharge the prisoner. But in this instance, the ordinary practice was departed from; O’Mahony was recommitted for another trial and sentenced to five years.

Conclusion

The trials before the Special Commissions in 1865-66 were designed to quash the Fenian conspiracy in Ireland. However, it was noted that the conspiracy ‘seemed to spread all the more rapidly, through the public discussions to which they give rise; and the restless activity of Celto-Yankee agents, who continued to ply their treasonable craft with insolent impunity’.⁹⁶ How to deal with ‘these incendiary traders in sedition and treason’⁹⁷ was now the main question to be resolved with ‘firmness and promptitude’ for the British government, and one which caused anxiety.⁹⁸ The New York correspondent of the *Times* shared the anxiety, when he stated:

The strength and wealth of the society have been under-estimated, and much mischief has thereby been done. The only conclusion to which anyone who enquires into this brotherhood can come to is that for some years hence it will be desirable that the English Government should watch the progress of Fenianism, and not regard it as a plot too weak and silly to have any possibilities of danger within it. The extent of its ramifications may sometimes be exaggerated on this side of the Atlantic, but there is enough incontestable evidence to show that the Fenians are rich, numerous and increasing.⁹⁹

This will explain the suspension of habeas corpus in 1866. But Isaac Butt made a different case. He noted:

⁹⁴ ‘The Petition presented by Mr Bright to the House of Commons, relating to Ireland and the Fenians, with all that took place in Parliament in reference to it’, *Bristol Selected Pamphlets* (1867).

⁹⁵ *Reynold’s Newspaper*, 21 January 1866.

⁹⁶ ‘Irish Rebellions. No. 3 The Fenians of 1866’, *LSE Selected Pamphlets*, (1867), 19.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *The Huddersfield Chronicle and West Yorkshire Advertiser*, 15 January 1866.

Of the real strength of the Fenian organisation, no means have ever been supplied to us to judge. I have on other occasions observed upon the strange fact, that in all the prosecutions which took place – in all the elaborate statements by which those prosecutions were successively opened – in all the revelations of informers by which they were sustained – there has never need a calculation made, or even a guess hazarded, of the actual strength or resources, or numbers of the organization, against which so much power was directed and so much preparation made.¹⁰⁰

Butt goes on to suggest that the ‘great military preparations on the part of the Government kept up and aggravated the terrors of the community’.¹⁰¹ But Special Commissions were deemed the only way to legally suppress the threat of Fenianism. There was certainly an evolution in British counter-insurgency tactics in Ireland from 1798. Military law existed in the aftermath of 1798, making martyrs out of those tried. The Special Commissions would not be martial law. Between 8 April and 19 June 1867, 169 prisoners were put on trial before the Special Commissioners in Dublin, Cork and Limerick. The great majority (110) pleaded guilty; fifty-two were convicted after jury trial and 7 were acquitted. Eight were found guilty of high treason, of which McCafferty is one, and sentenced to death.¹⁰² McCafferty was sentenced to be hanged on 12 June 1867. McCafferty accepted the sentence and expressed his willingness to again take part in rebellion if there were any possibility of success. Their sentences were commuted not long after.¹⁰³ 25 received lengthy sentences of penal servitude and the remainder were variously imprisoned.

These trials, and the Fenian threat forced Irish affairs back onto the British political agenda. Gladstone noted in 1868 that ‘It is only since the termination of the American war, and the appearance of Fenianism that the mind of this country has been again turned to Irish affairs’.¹⁰⁴ While the Fenian prisoners were dealt with through legal channels, and by imposing harsh and restrictive penal sentences on them, there was also a move to conciliate Ireland, particularly by religious equality through the passing of the Irish Church Act in 1869.¹⁰⁵ Butt noted that Gladstone’s argument for the Act was the Fenianism had forced on English public opinion the conviction that it was necessary to conciliate Ireland.¹⁰⁶

¹⁰⁰ Isaac Butt, ‘Ireland’s appeal for amnesty’, (1870), 12.

¹⁰¹ *Ibid*, 13.

¹⁰² McConville, *Irish Political Prisoners*, 129

¹⁰³ *The Standard*, 21 May 1867.

¹⁰⁴ HC Debates, 30 March 1868, vol. 191, c.491.

¹⁰⁵ The Act proposed the disestablishment and partial disendowment of the Church of Ireland, involving the reduction of Church property to £10 million.

¹⁰⁶ Butt, ‘Ireland’s appeal for amnesty’ (1870), 23.

What is clear from an examination of the trials is that the Fenian threat was taken very seriously by Dublin Castle authorities. By viewing the threat as an insurgency threat, the trials offer an insight into the concerns and preoccupations of the Dublin Castle and Irish Office administrations. The trials also highlight a view of Dublin Castle gathering information about, and moving against the movement in Ireland, including the use of spies and informers. This would come to be a main tenet of British counter-insurgency and counter-terrorism policies throughout the rest of the nineteenth and into the twentieth century.