

Erin's Hope, Irish Blood and Indefeasible Allegiance: Reconfiguring Citizenship and Nationalism in an Era of Increased Mobility

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ABSTRACT: In the wake of the 1867 Rising—a failed attempt to establish an Irish Republic by force—a ship named the *Erin's Hope* delivered to Ireland a number of Irish-American officers whose objective was to continue the fight. They were arrested immediately, and despite their protestations, charged as British subjects with treason-felony against the Queen. This paper illuminates their plight, the manner in which they attempted to reframe their predicament, and how the UK and the US responded legislatively to such troublesome mobility during a period when Ireland was governed in a draconian fashion and Irish nationalism was stronger amongst the Diaspora overseas. This case study is considered as historical evidence not only of how such concepts as subjecthood, citizenship, expatriation, and naturalization were reconfigured in an era of increased mobility, but also of how Irishness came to be determined by descent, the latter of which is a legacy of colonialism in need of redress in the postcolonial present.

In 2004, a citizenship referendum was passed in the Republic of Ireland in which an overwhelming majority voted in favor of the removal of the constitutional entitlement of persons born on the island of Ireland to become Irish citizens. The resulting amendment to the Constitution ensured that from January 1, 2005, citizenship could be conferred only if at least one parent was either an Irish or British citizen, or determined to be legally resident in the island of Ireland for at least three of the four years preceding the birth. Meanwhile, Irish citizenship also continues to be conferred to adults who are of good character and who meet lengthy legal residency requirements; however, discretion with regards to the latter is exercised by the Minister for Justice and Equality in the case of non-national relatives of Irish citizens and asylum seekers in particular.

Additionally, while it is quite possible to reside on the island of Ireland, to be an Irish citizen and yet not be in possession of an Irish passport (this being more likely among the population of the Republic of Ireland in particular), for those individuals living abroad and who consider themselves Irish, the acquisition of an Irish passport is the principal means by which Irish citizenship can be attained. While Irish citizenship is no longer automatically guaranteed to persons born on the island of Ireland, it continues to be conferred therefore by way of the issuing of passports to individuals around the world, including those *not born* on the island—so long as either one parent is an Irish citizen at the time of birth, or it can be proven that a parent or a grandparent was born on the island. Once the necessary documentation is validated by the nearest embassy or consulate and all applicable fees paid, the birth is subsequently entered into a Foreign Births Register, and an Irish passport issued to the person in question. So long as this occurs before the birth of the next generation, an Irish passport (and therefore citizenship) can conceivably be passed down in perpetuity according to descent, with said persons never being

resident on the island of Ireland.¹ Determining how many such individuals exist is difficult, certainly the fourteen percent of all Irish passport holders who were not resident on the island in 2012 would not all fall into this particular category, yet the fact that the category exists at all—that descent is an official means by which citizenship is unproblematically granted—is arguably a significant issue given the reality of modern Irish society.²

Significantly, the citizenship referendum passed amidst a period of unprecedented immigration into Ireland. For example, between 2002 and 2006, the number of non-Irish nationals living in the state increased from 7 percent to 11 percent of the population.³ Its passing was associated with concerns in particular over “citizenship tourism,” in other words a perceived threat to the state posed by pregnant foreign national women initially seeking asylum, only to subsequently seek “leave to remain” in the state, following the birth of their Irish citizen child. In their extensive discussion of the recent changes to Irish citizenship law, Alan White and Mary Gilmartin argue that they illustrate how dominant understandings of the relationship between a people and a place are articulated in the legal realm, with citizenship wielded as a tool of inclusion and exclusion by those harnessing the power of the state.⁴ As Gilmartin points out, Ireland is not unique in this regard, especially in perceiving mobile migrant bodies to be a threat to the state, with those bodies subsequently becoming key sites in the articulation of national identity.⁵ In the case of Ireland, however, White and Gilmartin argue that these recent developments are just the latest episode in a longer struggle concerning female reproductive rights, and of the state seeking to control the movement of pregnant women at its borders, although in the past the concern was with *citizens leaving* to seek abortions rather than *non-citizens arriving* to give birth.⁶ While this is an important insight, in this paper I seek instead to explore that deeper understanding of Irish national identity that the citizenship referendum arguably drew upon and subsequently enshrined in law; namely the belief that Irishness is determined by descent or, in other words, by the blood flowing in one’s veins—whether at home or abroad. This is something I suggest must be understood as a legacy of colonialism now impacting the postcolonial present.

In his discussion of how the sovereign right of a certain people to a certain territory is commonly justified, the geographer Gerry Kearns points to the crucial role of nationalism and in particular the fact that most nationalisms are “an awkward mixture of both civic and ethnic elements;” in other words delimiting citizenship according to both residency and descent.⁷ Citizenship, therefore, can be described as highly *uneven*, inherently geographical and involving processes that differentiate not only between “us” here and “them” there, but also—as is arguably the case with Ireland—between “us” there and “them” there, and now increasingly between “us” here and “them” who are now here.⁸ The geographers Jen Dickinson and Adrian J. Bailey succinctly capture the contemporary situation when they comment, for example, that “it is widely recognised that the symmetries between territory and identity, and the idea that society and its citizenry are a discrete governable entity contained within the territorial boundaries of the national state, have been progressively fractured by the international movement of people.”⁹ This is certainly the case in Ireland, where there is an urgent need for scholars (and especially geographers) to consider the implications of these shifts; a point made by Gilmartin and White who state that “instead of the fixed certainties of the past, the complexity, dynamism and speed of contemporary international migration demands nothing less than a new theoretical paradigm.”¹⁰

A useful move in that direction, applicable not only in Ireland but also elsewhere, would be to consider—as the geographers Sallie Marston and Katharyne Mitchell suggest—how citizenship is formulated over the *longue durée*; in other words, unfolding, expanding and contracting in specific contexts and in response to changes in the global system.¹¹ Such thinking draws upon the influential work of the geographer Doreen Massey, insofar as it conceptualizes citizenship (and its attendant spatiality) as being a process rather than a “monolithic social category” developed in isolation according to traditional principles.¹² As a result, citizenship can instead be re-envisioned

as an institutional means of articulating degrees of acceptance and community, and therefore a device that is open to being recreated, refashioned and retooled by a range of agents.

While the increased interconnectedness of the contemporary period cannot be denied, nor the impacts that associated processes are clearly having on notions of citizenship, nationalism, and territorial sovereignty, this is not necessarily unprecedented. States have longer histories of dealing with "outsiders" deemed problematic, including not only mobile migrants but also it should be noted, those considered "internal others" according to their race, ethnicity or religion for example, as political communities are forged temporally and spatially through processes of both inclusion and exclusion. Adopting such an approach—which considers citizenship formation over time and is not necessarily bound by state borders—might enable a better understanding of how notions of citizenship, nationalism, and territorial sovereignty were fashioned in the first place, again so as to open up possibilities for their retooling, given the challenge of today forging more tolerant and inclusive multicultural societies.

Interestingly, geographers have been reticent to interrogate mobility, perhaps because it is hard to pin down as a bounded category; a point made by Tim Cresswell, who studies mobility in the modern era and who argues that states in particular have played an enormous role in assigning meaning to its various forms and in controlling it.¹³ Drawing from Cresswell, this paper seeks to illuminate how notions of British subjecthood were asserted territorially and mobilized legislatively in Ireland during the 1867 Fenian Rising, in particular to illegitimize the Irish nationalist political agenda of a small band of highly mobile Irish-American revolutionaries captured in Ireland, at a time when the colonial state was struggling to cope with a sense of Irishness that was not territorially bound. Subsequent developments, it is argued, contributed greatly to an important shift occurring in how citizenship would come to be determined by the United Kingdom and the United States; with British subjecthood giving way to republican citizenship, and an "imperial form of belonging" being eclipsed by one that privileged the individual over the state, and autonomous thought over tradition and religion.¹⁴ Furthermore, what this shift also arguably represented was a major transformation in how states would come to determine national identity; revising such principals as *jus sanguinis* (right of blood) and *jus soli* (right of soil)—and it occurred in a context of increased time-space compression triggered by new technologies of mobility that were moving millions of people like never before, in particular the Irish.¹⁵

In order to better understand the origins of today's dominant sense of Irishness, I therefore argue in this paper that it is necessary to return to this colonial period and the conditions in which it developed. Crucially, the nineteenth century in particular was a period in which the majority of the Irish people were themselves considered in racial terms by a colonial state and denied political representation on the island, and during which they were forced to emigrate in their millions. In the process this global diaspora would forge a common sense of Irishness that relied upon descent and blood ties, and as I have discussed elsewhere, a particularly strong transatlantic nationalist axis dedicated to realizing an independent nation state.¹⁶ In considering this colonial context, the work of Kearns is again useful, in particular his utilization of the theorizing of the Italian philosopher Giorgio Agamben.¹⁷ Here, Kearns argues that Ireland can then be considered a "state of exception" and the majority of its inhabitants a form of "bare life" who were considered to exist *biologically* by the colonial state, but to whom the full rights of British subjecthood did not apply.¹⁸ Building upon Agamben's thinking, however, Kearns suggests that the exceptionalism of the Irish was not only a product of their location but also embodied in racial terms; since they were considered in effect a primitive species, with inherent characteristics making them unreasonable and ungovernable. Consequently, Ireland was governed during the nineteenth century especially

in an almost constant state of emergency, with the British utilizing a range of draconian powers of coercion, in particular the frequent suspension of habeas corpus.¹⁹ As Kearns points out, “the Irish colonial body was territorialized, marked, constrained, exiled, or placed outside the normal regime of liberal justice,” and its safeguards did not apply to Irish bodies.²⁰ In this paper therefore, I suggest that only by better understanding this colonial context, and how it arguably produced an exclusive ethnic sense of Irishness still dominant, might it be possible to forge a more inclusive civic sense of Irishness (articulated through passport and citizenship laws for example) that is better suited to the challenges faced in Irish society in the twenty-first century, rather than those that were faced in the nineteenth.

The Fenian Fleet

With the accumulation of rents in Ireland, the accumulation of Irish in America keeps pace. The Irishman, banished by sheep and ox, re-appears on the other side of the ocean as a Fenian, and face to face with the old queen of the seas rises, threatening and more threatening, the young giant Republic:

*Acerba fata Romanus agunt
Scelusque fraternae necis.*²¹

On an April evening in 1867, an eighty-one foot brigantine named the *Jacknell* slipped down the East River and out of New York City. In its hold, reputedly concealed in sewing boxes, piano cases and wine barrels, was some of the most innovative in modern weaponry, including thousands of breech-loading rifles, Spencer repeating rifles, Enfield and Austrian rifles, in addition to at least three pieces of light artillery in the form of six-pounder field guns, and over a million and a half rounds of ammunition.²² The shipment was bound for Ireland and had been organized by an Irish nationalist organization named the Fenian Brotherhood. In the recent American Civil War, an estimated one hundred fifty thousand Irish-born men had fought in the ranks of the Union Army and a further forty thousand for the Confederacy.²³ The Fenian Brotherhood had close ties with the Union Army, but after the war it had become largely a social organization, organizing weekend picnics and rousing speeches while becoming increasingly factionalized. It nonetheless maintained close ties with the Irish Republican Brotherhood (IRB) in Ireland, contributing funds and military experience to a transatlantic Irish nationalist movement that was then termed Fenianism, and to an attempted revolution in Ireland in 1867. Poorly organized, riddled with British informers, and heavily outnumbered by Crown forces, the 1867 Fenian Rising was an abject failure in which hundreds of individuals were arrested and imprisoned indefinitely under coercive measures, including an act suspending habeas corpus.²⁴ One member of the Fenian Brotherhood who evaded capture however, was an Irish-American officer named Captain Thomas James Kelly, who from his hiding place in Dublin on 13 March 1867, wrote to his comrades in New York city, begging them to send reinforcements; in his letter stating “it is war to the knife, only send us the knife.”²⁵

The *Jacknell* was the only knife that could be mustered and, after rendezvousing with a steamship just off Sandy Point, NY, to receive on board forty battle-hardened veterans of both the Union and Confederate armies, it set sail for Ireland. Nine days later in the middle of the Atlantic Ocean, these men reputedly celebrated Easter Sunday together; standing to attention on deck to receive their commissions and to witness the raising of the Fenian flag and the ship being rechristened the *Erin's Hope* amidst the deafening sound of ceremonial cannon-fire.²⁶

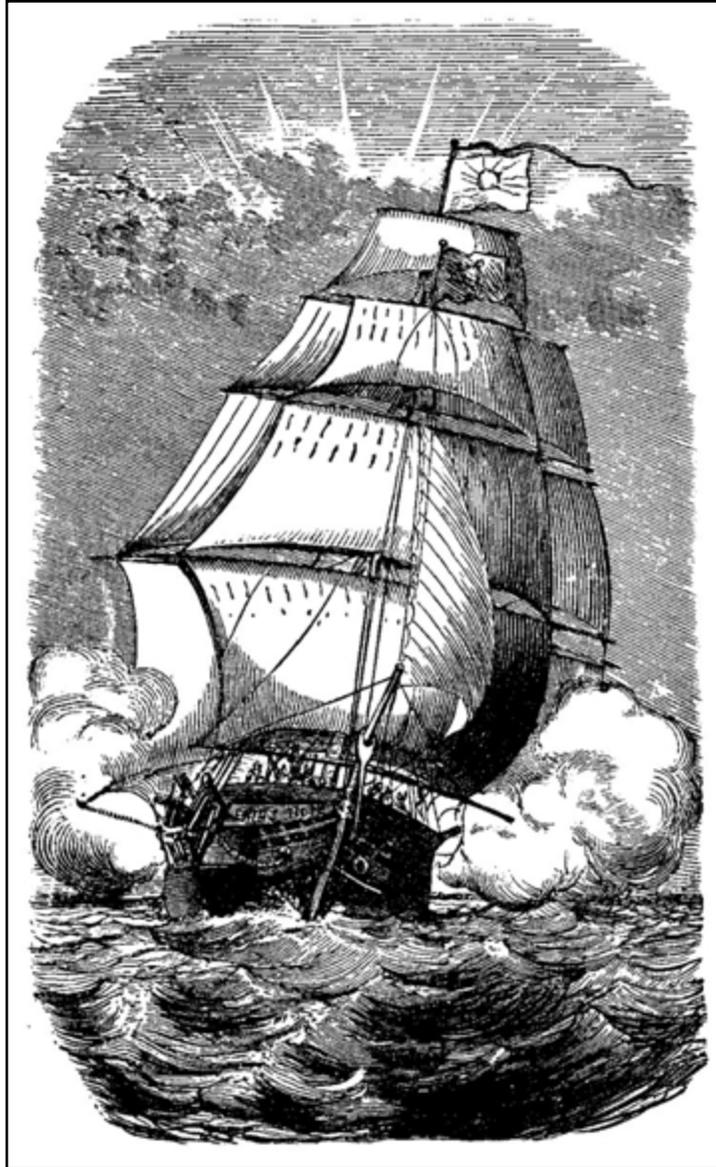


Figure 1. The “Erin’s Hope” saluting the green flag (source: Timothy D. Sullivan, *The Dock and the Scaffold: The Manchester Tragedy and the Cruise of the Jacknall* [Dublin: A.M. Sullivan, 1868], 4).

It was late May by the time the *Erin's Hope* arrived at Sligo Bay, and the men were disheartened to discover that their prearranged signals—“a certain type of light by night and a furling jib during the day”—solicited no response from land.²⁷ After five days, they were finally approached by a small boat and boarded by a fellow Irish-American officer, who duly informed them that the revolution had failed, and that hundreds of suspected Fenians were now imprisoned, but if they sailed south, they might still rendezvous with a small band still engaging colonial forces in County Cork.²⁸ Despite some internal disagreement, they did just this, sailing south while managing to avoid the suspicion of British naval frigates, possibly because brigantines were then a common sight in coastal trade. Off the coast of County Cork, however, again they received no response to their repeated signaling and so it was decided to go ashore in nearby

County Waterford.²⁹ Subsequently, on 1 June 1867, approximately twenty-eight men landed near Helvick pier, south of Dungarvan, in a small fishing boat so heavily weighed down that it grounded; forcing the men to wade ashore carrying only what small arms and ammunition they could on their person.³⁰ The men immediately split up into small parties, but a nearby coastguard station witnessed their landing and notified the Royal Irish Constabulary (RIC), a well-armed paramilitary police force that served the Crown. Conspicuous by their wet American clothing and the unfamiliarity of most with the locality, the majority were quickly arrested and detained under the coercive measures then in effect.³¹ Two of the men however, Patrick J. Keane and Frederick Fitzgibbon, reportedly made it as far as Cork before being captured, the latter of whom was described in the press as having “served all through the American war, and is literally covered with scars.”³² Meanwhile, the *Erin’s Hope* avoided detection and returned to New York with the remainder of the Irish-American officers and its cargo intact.

“You are an Irishman; your goose is cooked”

On the same day that these men set foot on Irish soil, some for the first time and others not since they had fled as children, an editorial in the *Times* of London argued that individuals of their ilk (many of whom had been captured earlier in the year) be treated exceptionally; in other words, not as British subjects with any legitimate political grievance, but rather as soldiers of fortune or “filibusterers” who deserved the severest of punishments:

[I]t is material to observe that several, if not most, of the Fenian leaders are not “insurgents” in any proper sense of the term. If they are Irishmen at all, they have long ceased to be Irish subjects of HER MAJESTY, and, instead of being driven into rebellion by oppression, either real or imaginary, they have come over from America on a filibustering errand and with filibustering objects. This makes a very great difference, and entirely deprives them of whatever extenuation may be pleaded on behalf of a “political offence.” Filibustering is not a political offence, but piracy on a grand scale,³³

Responding to the argument that these imprisoned Irish-American officers be considered foreigners, an editorial in Dublin’s *Weekly News* (an Irish nationalist newspaper not yet suppressed) described this “pretence” as “silly and ridiculous,” pointing to the fact that the Irish nation was not territorially contained on the island and instead consisted of “two great sections of the Irish race in Ireland and America.”³⁴ Given the fact that it was then evident that the Irish Executive to the British Government intended to bring a number of these individuals to trial, the editorial proceeded to level charges of hypocrisy against the British, asking pointedly: “Will the privilege of foreigners be then accorded to them? Nothing of the kind. They will be taken as subjects of the Queen, taken in insurrection.”³⁵

That summer of 1867, the Attorney General for Ireland assembled the case for the Crown against the *Erin’s Hope* prisoners. Already their fate had attracted controversy, for example the spectacle of their being publically marched in chains from one County Waterford jail to another had triggered stone-throwing from onlookers directed at accompanying members of the RIC, who responded with a bayonet charge that killed one man and seriously injured another.³⁶ Furthermore, two of the men, William J. Nagle and John Warren, penned letters from their jail cells that were subsequently published widely across the transatlantic Irish world. In these letters, the men claimed that their only crime had been to espouse American principles while in the United States, that their rights as American citizens had been violated, and that the US ambassador to Great Britain, Charles Francis Adams, had failed in his duty to protect them and their fellow American citizens incarcerated in Ireland.³⁷ For example, writing on July 9, 1867, Nagle stated

Dear Father: I was arrested on the 1st of June, in company with Colonel J. Warren, on the bridge crossing the Blackwater from Waterford into Youghal. We were kept in the Youghal Bridewell until the morning of the 14th, when we were sent to this place, marched through the streets of both places hand-cuffed like felons. We are now held under a warrant from the lord lieutenant of Ireland, and will remain prisoners so long as the fears and purposes of the government may require the suspension of the writ of *habeas corpus*, unless some action is taken by the authorities or government of our country. This is not exclusively an individual case, but becomes a question of right involving the liberty of every American citizen that sets foot on this soil. I ask the government of my country, which I have faithfully served, whose laws I have never violated, to secure to me that liberty which is my birthright, and of which I am now deprived without any cause or plea of justification by an authority I do not recognize –a government to which I owe no allegiance, and whose laws I have in no way infringed upon....³⁸

On August 31, 1867, a letter written by Warren was published in Dublin's *Weekly News* entitled "A voice from the dungeon—a question for the American people," in which he addressed "the Irishmen in the United States" and stated the following:

In proof, on your arrival here you may be supplied with a passport, and consider yourself perfectly safe: but be careful –you may have brought an Irish bond [...]. Well, you arrive: you wear a good coat and a villainous moustache, and you have acquired a habit of standing erect and dashing ahead, swinging your hand, and, your republican barbarism, if you meet a lord you don't take your hat off: you look him right in the face: you don't get nervous: in fact, you care as little about him as about a common man. You wear the murdering square-toes... all go to prove that your education is dangerous; that you don't worship monarchy; that you're a republican—a freeman. You're pounced on; you get indignant; what right have the mercenaries of England to interfere with you, an American citizen? But now you have spoiled it. If you had kept your mouth shut you might have had some chance. A little of the brogue is left; you are an Irishman; your goose is cooked.³⁹

Nagle and Warren here both contend that they are being treated exceptionally by the colonial state on the basis of their being Irish according to descent and that this was superseding their Americanness, even in the case of Nagle who could prove he was American-born. Endorsing the men's reframing of their predicament—as being one in which their rights as American citizens were being violated—while nonetheless maintaining that such individuals were unquestionably Irish, an editorial in the *Weekly News* subsequently posed the question: "If the Government of America does not protect its citizens according to the law of nations, let us ask why does it give them the empty name of citizenship?"⁴⁰

While the United Kingdom had not supported the Confederacy, in the wake of the Civil War the United States did seek reparations from the United Kingdom for the damage done to the Union navy by Confederate ships built in British dockyards. It was this diplomatic discord that Nagle and Warren, who might be considered interstitial actors operating in the cracks between the two states, no doubt hoped to exploit to secure their release. The publication of their letters consequently had the desired effect, triggering a great deal of public clamor especially among Irish Americans and veterans of the Union Army, so much so that the US Secretary of State, William H. Seward, eventually bowed to political pressure and instructed Adams to intervene on the men's behalf. Despite the fact that Ireland was then ostensibly part of the United Kingdom

(following the Act of Union in 1801), Adams nonetheless wrote to the British *Foreign Secretary*, Lord Stanley, to seek clemency for the men; asserting that they had committed no crime in Ireland, and suggesting that “time served” might be considered punishment enough.⁴¹

Adams received no reply, however; an incident having taken place in the north of England now making clemency much more difficult to attain. On September 18, 1867, a man armed with a revolver in each hand had stepped brazenly into the path of a horse-drawn prison van on a busy Manchester city street, and aiming both barrels at the driver, ordered him to pull up. Witnessing one of his horses shot from beneath him, the driver and his accompanying police escort fled, where from a safe distance they witnessed the van being broken open while a number of armed men maintained a perimeter. Locked inside was Captain Kelly and in a neighboring compartment another Irish-American officer and his *chargé d'affaires*, Captain Timothy Deasy; the two men having been recently apprehended in the vicinity and subsequently positively identified in court by an informer.⁴² Also inside the van however, was a police sergeant who refused to unlock the door and was consequently killed instantly when a bullet was reportedly fired into the lock so as to gain entry.⁴³ With the van open and the dead sergeant dragged out, the two released prisoners and members of their rescue party fled through a crowd of angry bystanders, and while Kelly and Deasy managed to evade recapture and subsequently returned to the United States, a number of individuals were apprehended amidst the melee.

The following day, the London *Times* described the rescue as an outrage “characteristic of Irish-Americans” and called for such “audacious practices of American rowdyism” to be treated severely.⁴⁴ Later it proposed that:

There are two elements in this precious plot—one American and the other Irish, and they are combined in the most desperate of characters with which we are brought into contact. To Irish wildness and inconsequence is added the familiarity with danger and bloodshed acquired in the American war.⁴⁵

The Special Commission and its aftermath

Events in Manchester cast a pall over the trial of the *Erin's Hope* prisoners, the first three of whom—William J. Nagle, John Warren, and Augustine Costello—appeared before a Special Commission convened in Dublin in late October, presided over by the Lord Chief Baron of Ireland David Richard Pigot and the Right Honorable William Keogh.⁴⁶ Here they were charged *as British subjects* with being treasonably engaged in a criminal conspiracy to overthrow the rule of Queen Victoria in Ireland and to establish an independent Irish republic, their crimes adjudged to have taken place in County Sligo where they had originally intended to come ashore. Added to the docket was a fourth individual named William Halpin, allegedly a Fenian General who had been arrested aboard a steamship in County Cork earlier in the year, bound for New York City.⁴⁷

The three *Erin's Hope* prisoners were represented by counsel provided by the American Consul at Dublin, namely Mr. Heron QC, who in an audacious move on the opening day of proceedings demanded that, as American citizens, his clients should each be tried by a jury *de mediatate linguae*, an ancient legal precedent that afforded non-British subjects a half non-British jury.⁴⁸ The justices granted Mr. Heron's request in the case of Nagle, who was American born, and subsequently adjourned his trial. They denied it, however, in the case of Warren and Costello on the basis that they had been born on the island of Ireland—the Lord Chief Baron firmly asserting the “Doctrine of Indefeasible Allegiance,” and stating for example:

I cannot allow that proposition to be put forward without meeting it with a prompt and unhesitating denial. According to the law of England, a law which has been

administered without any variation or doubt from the very earliest times, he who once is under the allegiance of the English sovereign remains so forever.⁴⁹

Quoting from Blackstone's Commentaries on the Laws of England, he expanded:

Natural allegiance is such as is due from natural born subjects. This is a tie which cannot be severed or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature [...]. Indeed the natural born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties of owing service to two masters; and it is unreasonable, that, by such voluntary act of his own, he should be able at pleasure to unloose those bonds by which he is connected to his natural prince.⁵⁰

As the first man in the dock, Warren immediately protested, "as a citizen of the United States, against being arraigned, or tried, or adjudged by any British subject."⁵¹ After being informed that only his solicitors could address the court on his behalf, Warren then dramatically abandoned all legal defense, asserting: "I instruct my counsel to withdraw from the case, and I place it in the hands of the United States Government; which Government has now become the principal."⁵²

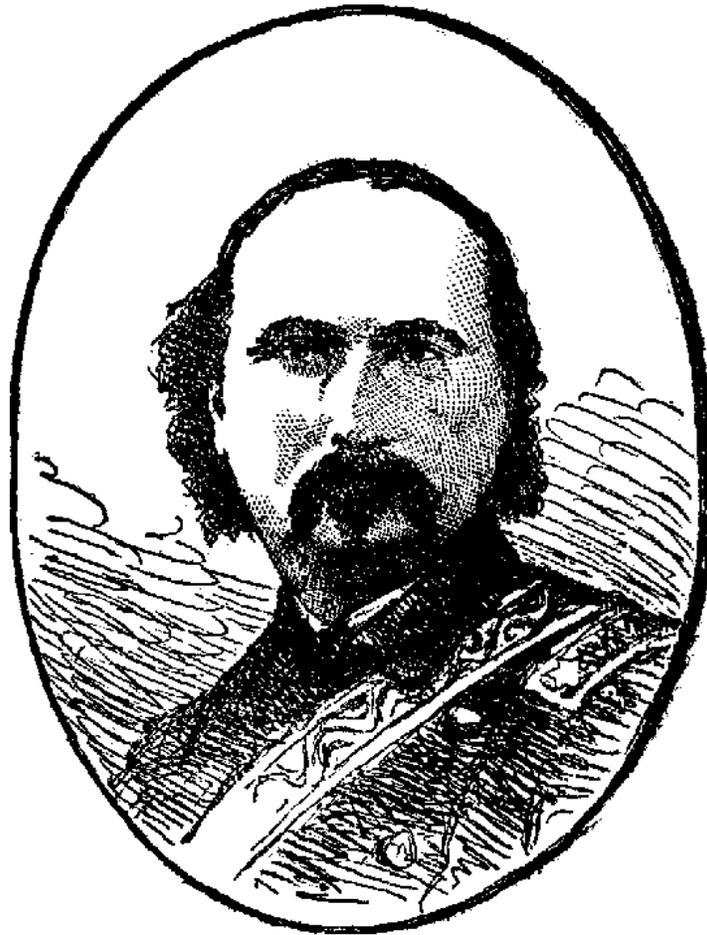


Figure 2. Colonel John Warren (source: Sullivan, *The Dock and the Scaffold*, 73, 82).

He would plead not guilty, but over the course of the following week the prosecution presented the case for the Crown against him, including the testimony of an informer who swore that Warren was a member of the Fenian Brotherhood and damning evidence provided by various fellow members of the *Erin's Hope* expedition, obtained in return for their release. Before sentence was passed, Warren took full advantage of his opportunity to address the court, pointing out that he was not in Ireland for the Rising, that being a member of the Fenian Brotherhood in the United States was not illegal, that he had been tortured in custody, and again that he was not a British subject but an American citizen. On November 2, 1867, he was nonetheless found guilty of treason-felony, but in a sign that his line of defense had perhaps proven somewhat successful, his sentencing was postponed.⁵³

Appearing next in the dock, Costello also alleged that he had been mistreated in custody, while disputing the jurisdiction of the court on the basis of his being a naturalized American citizen; stating:

I did forswear allegiance to all foreign potentates, and more particularly I forswore all allegiance to the Crown of Great Britain. Your lordships say that the law of the land rules that I had no right to do anything of the kind. That is a question for the governments to settle. America is guilty of a great fraud if I am in the wrong.⁵⁴



Figure 3. Captain Augustine Costello (source: Sullivan, *The Dock and the Scaffold*, 73, 82).

Unlike Warren however, he did not direct his counsel to withdraw, and after the Crown had presented much the same case against him, Mr. Heron QC pointed to the number of soldiers, policemen and detectives in the courtroom, and to events taking place simultaneously in Manchester—to argue that his client was not receiving a fair trial.⁵⁵ He was nonetheless found guilty of treason-felony, but only after his trial was aborted and a second one begun anew, following the discovery of incriminating letters in his jail cell –evidence which Costello alleged the prosecution had forged.⁵⁶

The last man to appear in the dock was William Halpin, who also immediately asserted that he too was an American citizen, before proceeding to conduct his own defense, according to some press reports quite expertly. In his final statement before verdict was passed, he defiantly espoused his American republican principles, much to the consternation of the seated Justices:

You are now trying a man who has lived all his life-time in a country where freedom is venerated and adored. You may believe, gentlemen, that you have the spirit of freedom here; but I claim, gentlemen, that the real spirit of freedom has fled these shores many a century ago—has sped across the Atlantic, and perched upon American soil... Perhaps you have read the Declaration of American Independence. In that declaration, drawn up by one Thomas Jefferson, it is stated that every man born into this world is born free and equal; that he has the right—the inalienable right—to live in liberty and the pursuit of happiness.⁵⁷

Halpin was nonetheless also found guilty of treason-felony, and in mid November he and Warren were sentenced to fifteen years penal servitude each, while Costello was sentenced to twelve years on account of his younger age. On being informed of their sentencing, Halpin boldly proclaimed that he would take “fifteen years more for Ireland any day,” while Warren sarcastically commented that he “would not take a lease of this kingdom for thirty-seven and a half cents.”⁵⁸ The three men might have considered themselves lucky to have escaped the death penalty, however, especially if they had received word of the fate awaiting the five men found guilty of murdering the police sergeant in Manchester. These men were Phillip Allen, Michael Larkin, Thomas Maguire, Edward O’Meagher Condon and Michael O’Brien, all of whom had professed their innocence to no avail, while the last two were American citizens who had also disputed the jurisdiction of the court.⁵⁹ Unlike in Dublin however, counsel was not provided to the American citizens, so convinced was US Ambassador Adams of their guilt.⁶⁰ After Maguire was granted a dramatic “eleventh-hour” full and unconditional pardon (a victim of mistaken identity apparently), Adams finally intervened to secure a commuted sentence for Condon on the basis that he was American-born, however he did not intervene in the case of O’Brien who was a naturalized American citizen. On 23 November, O’Brien was subsequently executed by hanging alongside Allen and Larkin; the three men soon immortalized in Irish nationalist mythology as the “Manchester Martyrs.”⁶¹

The execution of an American citizen whose appeals to his own government went unanswered, and the sentencing of a host of others had raised a number of important issues between the United Kingdom and the United States in need of resolution, concerning subjecthood, citizenship, expatriation and naturalization. Meanwhile in November 1867, another attempt to rescue an Irish-American officer from British custody went terribly awry at Clerkenwell in London, when an explosion not only destroyed the wall of a prison but also a part of a working-class neighborhood, killing twelve people and seriously eroding what British public sympathy there was with the Fenians in the wake of the Manchester executions.⁶² Realizing that there had to be a better way of dealing with the threat posed to the British state by these mobile Irish nationalist actors, a prominent lawyer named Vernon Harcourt –with close ties to the British Liberal Party

that would come to power the following year –wrote a series of letters to the editor of the London *Times* under the pseudonym of *Historicus*. In his first letter, entitled “Who is a British subject?,” Harcourt argued that it was untenable in an era of mass migration to continue to advocate the principal of *jus soli* (right of soil), in other words to claim indefeasible allegiance from British subjects who had renounced that subjecthood in the process of becoming naturalized citizens elsewhere.⁶³ What’s more, he argued that to also combine that with the principle of *jus sanguinis* (right of blood) was outdated and should be abolished, in other words to extend the doctrine of indefeasible allegiance to individuals born overseas and argued to be of British descent by virtue of their parentage.⁶⁴ Drawing from various legal authorities, Harcourt argued that the laws concerning subjecthood, citizenship, expatriation and naturalization therefore required revision, in particular so that members of the Fenian Brotherhood could no longer hope to escape justice on a technicality, or cause further diplomatic discord by claiming that their rights as American citizens had been ignored. He wrote that: “The more clearly the men are recognized as American citizens the more directly responsible the American Government would be for their conduct abroad.”⁶⁵ And the accompanying editorial agreed: “We admit that, on grounds of policy not to say commonsense the argument for revision is irresistible. We see, then, no good reason why the British Government should decline any friendly overtures that may be made by the United States with a view to its amendment.”⁶⁶

Having read this, that very same day US Ambassador Adams telegraphed Secretary of State Seward, suggesting that they make a “friendly overture” to the British Government on the subject. The two men were anxious to remedy the incongruence which clearly existed between the two states regarding these matters; an incongruence that individuals such as Nagle and Warren had attempted to exploit, and which was still contributing to a rising tide of Anglophobia in the U.S., increasingly drawing American politicians into the fray. Writing to Seward on December 11 he proposed, therefore, that they take advantage of this unique moment to improve Anglo-American relations:

The mode in which this difficult matter is treated by both writers, affords encouragement to the belief that something may be done to harmonize the rule as well here as at home into one system. In my opinion nothing is more desirable in order to remove amicably the cause for future collisions on this subject.⁶⁷

Over the course of the following year, US government officials would continue to press their British counterparts for a naturalization treaty, the issue bound up not only with the US presidential election of that year, but also entangled with American demands for reparations for damage inflicted by a British-built Confederate warship named the *Alabama*.⁶⁸ After some initial foot-dragging by the Conservative Government on the issue, the two governments effectively agreed to a number of principles proposed by Secretary of State Seward in March 1868. At this point, a Royal Commission was charged with investigating the legal parameters of the proposals; the British in effect conceding the principle of expatriation and beginning the process of abandoning the Doctrine of Indefeasible Allegiance as gracefully as possible.⁶⁹ In December 1868, the British Liberal party under the administration of William Gladstone replaced that of the Conservative Benjamin Disraeli, and in May 1870, the necessary naturalization legislation was finally signed at the Motley-Clarendon Convention and ratified later that year. Here the British agreed to treat all British subjects who had become naturalized American citizens as if they were American-born citizens, in return for the Americans agreeing to act likewise with British subjects in similar circumstances. Meanwhile, as a result of continuous pressure from the US government, combined with the campaigning of an Amnesty Association and the receptiveness of this Gladstonian

administration, the vast majority of imprisoned Fenians had been freed by 1870--including all of the *Erin's Hope* prisoners, who were shipped back to the United States as a condition of their parole.⁷⁰

Conclusions

John Warren had asserted in court that "the present cases would form a great and momentous epoch in the history of these times," and this historical chapter does serve as an exemplary illustration of the manner in which mobile migrant bodies (such as his own) were deemed threatening to states, resulting in their becoming key sites in the articulation of national identity.⁷¹ In the case of Warren and his fellow *Erin's Hope* prisoners, however, that national identity being articulated was a complex thing.

From an Irish perspective, for example, these men were members of a transatlantic Irish community and possessed a sense of Irish nationalism that had developed overseas and which they subsequently sought to reterritorialize on the island of Ireland, aided in no small part by their political voice, their money, weaponry and expertise.⁷² Who were the Irish in Ireland to question the motives of such men as William J. Nagle; American-born and Irish by descent perhaps, but nonetheless prepared to die advancing the cause of Irish nationalism? Over the course of the late-nineteenth and into the early-twentieth century, such individuals would play key roles as Irish nationalists, arguably culminating in a New-York-born son of Irish and Cuban immigrants becoming the first president of an independent Irish Republic--namely Éamon de Valera. While a state-endorsed, territorialized Irish nationalist narrative would subsequently come to downplay the crucial role that the diaspora played, the proof that they did can arguably still be found in Irish citizenship law and the privileging of descent.

From a British perspective on the other hand, men such as those captured off the *Erin's Hope* were argued to be British subjects according to the Doctrine of Indefeasible Allegiance. In this regard, while the geographer Lynn Staheli points out that "the politics of inclusion may require exclusionary acts," this is arguably an example of the opposite being true: that the politics of *exclusion* may sometimes require *inclusionary* acts. Subsequently, these men become the focus of questions of what it meant to be British. Could that, for example, be passed down according to descent? Did it even apply to the Irish who were arguably conceptualized as 'bare life' and only really considered to be subjects somehow in a court of law, not to mention the question of whether such legal arguments could even continue to be made in an era of increased mobility, expatriation and naturalization?⁷³ Consequently, British laws of subjecthood were redefined; shifting in the direction of a republican notion of citizenship more civic than ethnic, although it should be noted, still excluding the majority of the inhabitants of the island of Ireland. Such a development, however, nonetheless illustrates that citizenship is far from the monolithic social category that state actors might imagine it to be, but rather something that evolves over time--expanding and contracting in response to the threat arguably embodied in individuals deemed to be "out of place" at the scale of the state, for example the *Erin's Hope* prisoners.⁷⁴

Today, approximately one hundred fifty years later, the Irish people utilize the legislative power of the state to privilege descent in citizenship law and passport applications, considering as exceptional those born on the island of Ireland who do not share that descent; their mobility interpreted as a threat to an essence of Irishness still based upon blood. Defining Irishness in this manner, however, is arguably a legacy of colonialism, a means by which diasporic nationalism was mobilized and the racial ascription of the colonizer repurposed as a source of strength. Given the challenges of today forging a more tolerant and inclusive multicultural sense of Irishness on the island, the question is whether it still makes sense to remain shackled to this colonial legacy, to continue to drag this ball and chain around.

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NOTES

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