The Maamtransa murders: The trial of Myles Joyce

The Maamtrasna Murders: The Trial of Myles Joyce

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In 1882, five members of the Joyce family were brutally murdered in a rural part of western Ireland. The Crown prosecuted a group of men for the murders; utilising all its trial powers and privileges, the Crown secured convictions against three men who were sentenced to death, and another five men changed their pleas to guilty and ultimately were sentenced to imprisonment for twenty years. A controversy developed shortly afterwards and continues to this day concerning one of the executed men, Myles Joyce, who was and is widely regarded as being innocent of the charges. This chapter considers the principal procedural issues that arose during the Maamtrasna trials and shows that the Crown's actions were entirely within the contemporary trial procedures. This does not mean that the trial and execution of Myles Joyce was necessarily fair, however; the aggregation of the Crown's tactics, combined with a poor defence and a slanted judicial summary, together with information that came to the attention of the executive authority prior to Myles Joyce's execution, suggest that an innocent man was indeed executed. Thus, a *lawful* trial and execution will not necessarily be a *fair* trial and execution.

I. Overview of the Case and the Controversy

On 17th August 1882, a group of men entered a house in Maamtrasna in rural County Galway (now County Mayo) and murdered four people: John Joyce, his wife Bridget, his mother Margaret, and his daughter Margaret (known as Peggy).[1] Two boys, Patsy aged about ten, and Michael aged seventeen were left seriously injured: Michael later died of his injuries. A police officer spoke with both boys who told him that the men responsible had blackened or disguised faces; the officer later recounted this testimony at the coroner's inquest. A magistrate took statements from both boys. Two days after the killings, three men – Anthony Joyce, his brother John and John's son – gave sworn statements to the police that they had followed the perpetrators for some three miles to

[1] The most convenient account of the Maamtrasna murders and the resulting trials, and the one from which this chapter draws, is Waldron, *Maamtrasna: The Murders and the Mystery*, Dublin: Edmund Burke, 1992.

the Joyce house and saw them enter the house. These witnesses identified ten men as part of the group: Anthony Philbin, Thomas Casey, Myles Joyce, Martin Joyce, Paudeen Joyce, Tom Joyce, Pat Casey, John Casey, Michael Casey and Pat Joyce. The police arrested and charged these men with the Maamtrasna murders. The men were sent to Dublin to be tried before a Special Commission[2] and a special jury.[3]

The trials began on 13th November 1882; the Attorney General and two other Queen's Counsel represented the Crown, while one Queen's Counsel and a junior counsel represented the defendants. The defendants were tried serially and individually for the murder of one specifically named victim. The Crown's case centred on the statements from the three Joyces and the testimony of two of the ten men – Anthony Philbin and Thomas Casey – who had agreed to give evidence against the others, thereby becoming "approvers".[4] The Crown dropped all charges against these approvers. In the first trial, the Crown also called Patsy Joyce but dismissed him having determined that he was unable to give sworn testimony. After two-day trials, Patrick Joyce and Patrick Casey were convicted of the murders of John Joyce and Bridget Joyce, respectively. Both men were sentenced to death. Myles Joyce was the third man tried, for the murder of Peggy Joyce. The defence sought a postponement of his trial in case the jurors might have been inflamed by the evidence in the first two trials, but the application was refused. Myles Joyce was also convicted and sentenced to death. The juries that convicted the three condemned men had spent a combined total of twenty-six minutes in their deliberations. The Lord Lieutenant refused clemency, and all three men were executed at Galway Gaol on 15th December 1882, with Myles Joyce protesting his innocence.[5] Under pressure from their solicitor and their parish priest, the fourth defendant to be

[2] Murders were usually tried at the Assizes which traditionally sat twice a year in the counties, and six times a year in Dublin. The judges presiding over these trials did so on foot of royal commissions. Outside of the regular sittings, the Crown could issue a special commission "as often as the exigency of the times may require it, for the trial and punishment of certain offenders or offences therein particularly mentioned". Hayes, *Crimes and Punishments, or a Digest of the Criminal Statute Law of Ireland*, 2nd ed., Dublin, 1843, at 601.

[3] Most criminal matters were decided by common juries drawn from lists prepared annually of men who met property ownership criteria set by legislation. Special juries were drawn from a more select group of men who owned more valuable property. See Howlin, "Controlling Jury Composition in Nineteenth-Century Ireland" (2009) 30 *Journal of Legal History* 227. The use of a special jury in criminal matters was unusual, but the Prevention of Crimes (Ireland) Act 1882 empowered either the Attorney General or the defendant to demand a special jury.

[4] See below, Section V.

[5] Myles Joyce's execution was botched, and he died slowly from strangulation rather than immediately from a fractured neck.

tried (Michael Casey) changed his plea to guilty, as did the other four defendants, and were formally sentenced to death. These death sentences were commuted to life imprisonment; one of the men, Michael Casey, died in prison and the others served twenty years before being released in October 1902.

The Controversy

The immediate reaction to the trials and convictions appears to have been satisfaction, and even the Irish nationalist press seemed to accept the verdicts. *United Ireland*, a supporter of Parnell,[6] wrote that the "public are satisfied that a disgusting butchery has been avenged upon convincing evidence by juries comparatively fairly chosen".[7] Similarly, *The Connaught Tribune* noted the "strong evidence" of guilt against the condemned men, and suggested that accordingly convictions were a foregone conclusion before any jury.[8] This satisfaction began to evaporate within a short time, however.[9] The night before their executions, Pat Joyce and Pat Casey made independent statements to the Prison Chaplain accepting their own guilt but exonerating Myles Joyce.[10] These statements were presented to the Lord Lieutenant, Earl Spencer, by the defence solicitor as part of the unsuccessful plea for clemency. Most dramatically, in August 1884, Thomas Casey, one of the approvers, publicly recanted his testimony at a Mass before the Archbishop of Tuam.[11] He told the congregation that he had borne false witness against Myles Joyce and the imprisoned defendants both to save his own life and because Crown solicitor, George Bolton, had offered him £300. Bolton was by then mired in scandal: he had been fired as Crown solicitor for embezzlement and for a sexual relationship with a servant girl. Nevertheless, he denied that improper pressure had been brought to bear on Casey. A Resident Magistrate and

[6] Charles Stewart Parnell was the leader of the Irish Parliamentary Party, the principal Irish nationalist political party that pushed for Home Rule in Ireland. He became an M.P. at Westminster in 1875, and soon demonstrated his mastery of political procedure. By the middle of the nineteenth century, he held the balance of power in Westminster, and Gladstone's Liberals formally adopted a policy of Home Rule for Ireland. Parnell, often referred to as the "uncrowned king of Ireland" was toppled in 1890 once his adulterous affair with Kitty O'Shea was revealed. See Bew, *Charles Stewart Parnell*, Dublin: Gill & Macmillan, 1991.
[7] Cited in Waldron, *op.cit*., at 132.
[8] *The Connaught Tribune*, 18 November 1882, cited in Waldron, *op.cit*., at 132.
[9] By the end of 1882, for example, *United Ireland*, wrote that "[b]oth as to the tribunal and as to the evidence, the proceedings against these men bear an indelible taint of foul play". "Accusing Spirits", *United Ireland*, 23 December 1882.
[10] These statements are reproduced in Waldron, *op.cit*., at 142-4.
[11] For an account of this incident, see Waldron, *op.cit*., at Chapter 11.

the Governor of the prison, who had both been present when Casey agreed to turn Queen's evidence, supported Bolton's statement. The three men alleged that Casey was part of a campaign against the administration of the law.

Also in 1884, the imprisoned defendant Michael Casey wrote a letter stating that Myles Joyce had been innocent,[12] and Tim Harrington, a nationalist Member of Parliament, published a book arguing that the Crown had perverted the course of justice and that Myles Joyce had been innocent of the charges.[13] In his book, Harrington pointed out various discrepancies in the evidence given by the Crown's witnesses, and also that Anthony Joyce, the primary "independent" witness, in fact had a grudge against Myles Joyce. In October 1884, Parliament debated Harrington's motion for an official inquiry into Myles Joyce's execution and the imprisonment of the five surviving Maamtrasna defendants. The debate continued across five days and involved luminaries from all parties, including the Prime Minister, William Gladstone. Perhaps surprisingly, the Tory Party – not usually friendly to Irish nationalism – sided with Harrington and the nationalists, but ultimately the government defeated the motion by a considerable majority. Officially, the verdicts stood, but to this day, the trial and execution of Myles Joyce is considered by many to be a gross miscarriage of justice.[14]

II. The Context of the Killings

Nineteenth-century rural Ireland witnessed two long-running intermittent and overlapping conflicts. The first was between tenants and landlords and their agents. Tenant farmers in most of the country had only a tenuous grip on the land they worked, and throughout the eighteenth and nineteenth centuries they agitated to improve their conditions. This effort culminated in the so-called Land War that erupted between 1879 and 1882. Led by the Land League, large numbers of tenant farmers withheld their rent payments, resulting in increased eviction attempts by landlords, which often turned violent. The Land League led boycotts against landlords, their agents and their

[12] Casey's letter is reproduced in Waldron, *op.cit.*, at 227-8. Casey insisted that he had not taken part in the killings, and that his presence at the scene had been coerced. Interestingly, Casey also stated that Pat Joyce was innocent, which contradicts Joyce's own statement.
[13] Harrington, *The Maamtrasna Massacre: Impeachment of the Trials*, Dublin: Nation Office, 1884.
[14] See, for example, Ed Power, "The Brutal Killings that Connemara can't Forget", *Irish independent*, 9 July 2015; Lorna Siggins, "A Wrongful Hanging in Connemara, 1882", *Irish Times*, 20 May 2016.

property, and against anyone who took over farms from which farmers had been evicted. There were also frequent incidents of intimidation by secret societies involving physical attacks, and destruction of property and livestock.[15] The second conflict was political. Secret nationalist organisations launched three full-scale rebellions during the nineteenth century: the United Irishmen (1803), the Young Irelanders (1848) and the Irish Republican Brotherhood (known as the Fenians) (1867-68). Outside of these rebellions, political unrest continued intermittently throughout the century. The most spectacular and notorious event was the Phoenix Park murders in May 1882: a group called the Invincibles assassinated Lord Frederick Cavendish, Chief Secretary for Ireland, and Thomas Henry Burke, the Permanent Under-Secretary and the most senior member of the Irish civil service.

The executive authorities in Dublin, headed by the Lord Lieutenant, had considerable resources with which to meet these challenges. The Royal Irish Constabulary (R.I.C.), formed in 1822, had some 11,000 members by the end of the nineteenth century. The constabulary could be supplemented by the British Army, whose numbers in Ireland reached 25,000 at particularly violent times during the nineteenth century.[16] Unlike England, a centralised system of public prosecution developed in Ireland with Crown solicitors in each county controlled from Dublin Castle.[17] These solicitors employed a variety of prosecutorial techniques such as jury packing to counter the perceived bias of potential jurors.[18] The Crown's prosecutorial powers were strengthened by the enactment of emergency powers statutes known collectively as the Coercion Acts.[19] The Protection of Persons and Property (Ireland) Act 1881, for example, allowed the Lord Lieutenant to order imprisonment without trial.[20] The Prevention of Crime

[15] See Christianson, "Secret Societies and Agrarian Violence in Ireland, 1790-1840" (1972) 46(2) *Agricultural History* 369-84.
[16] Smyth, "Conflict, Reaction and Control in Nineteenth-Century Ireland: The Archaeology of Revolution", in Crowley et al., eds, *Atlas of the Irish Revolution*, Cork: Cork University Press, 21-55, 21-22.
[17] See, for example, the evidence of John Napier, former Attorney General for Ireland, Select Committee on Public Prosecutors, *Report*, 1854-55 (481), at Q.1818.
[18] See the discussion below in section VII.
[19] During the currency of the Union (1801-1922), Westminster enacted over one hundred Coercion Acts applicable to Ireland. Laura Donohue, "Civil Liberties, Terrorism and Liberal Democracy: Lessons from the United Kingdom", in Arnold Howitt and Robyn Pangi, eds., *Countering Terrorism: Dimensions of Preparedness*, Cambridge, MA: MIT Press, 2003, 411-46, at 421.
[20] 44 & 45 Vict., c.4, s.1. Under this legislation, most of the leaders of the Land League, including Parnell, were imprisoned until 1882.

(Ireland) Act 1882,[21] enacted in the aftermath of the Phoenix Park murders, allowed the Attorney General to order the transfer of a trial to Dublin, the use of special juries, and the establishment of a non-jury trial court.[22]

III. Crown View of the Case

The Crown approach to the Maamtrasna case was coloured by the backdrop against which the killings occurred. The R.I.C. assumed the Maamtrasna killings to be an agrarian crime:

> It is supposed that John Joyce belonged to a secret society, and incurred the displeasure of the members by threatening to give information in revenge for being accused of stealing sheep.[23]

Given the backdrop described above and the nature of the crime – an extremely violent set of murders that took place at night in an area of the country that had seen a great deal of agrarian violence – the Crown's view was hardly unreasonable. But that view affected the manner in which the case was dealt with. In particular, the Crown invoked its powers under the 1882 emergency legislation to transfer the trial to Dublin, which put the defence at an immediate disadvantage.[24] This official view was effectively unchallengeable in court as judges tended to defer to the view of the Crown authorities. In the earlier case of *R v. Phelan and Phelan*, for example, the defendant was charged with a murder that the Crown characterised as agrarian in nature.[25] Justice Fitzgerald deferred to the official view:

> It has been said that this was not a crime of an agrarian character. That is a matter as to which the Court must be guided by the opinions of experienced men who are acquainted with the local circumstances. Here we have the Crown solicitor and the sub-inspector of constabulary stating that as a result of their inquiries that the crime was of an agrarian character, the murdered

[21] 45 & 46 Vict., c.25.
[22] This court was never implemented, largely due to opposition from the Irish judiciary.
[23] *Return of Outrages Specially Reported to the Constabulary Office: Homicides Reported in 1882*, at 8. See also the Transcript of Proceedings, at 155 (the Attorney General explaining that Myles Joyce and the other men were "acting under some secret organisation").
[24] See below, Section IV.
[25] (1881) Cox CC 579.

> man being the son of a man who was described as a not over merciful landlord.[26]

Thus, in the Maamtrasna case, had the defence attempted to challenge the Crown's assessment of the incident, the court almost certainly would have accepted the Crown.

IV. Transfer of the Trial

The Maamtrasna trials took place in the Green Street Courthouse in Dublin. This was unusual: in Ireland, as in England and most of the common law world, criminal trials usually took place in the locality in which the offence was alleged to have occurred. As noted above, however, the Prevention of Crime (Ireland) Act, 1882 entitled the Attorney General to direct the removal of a trial to another county if he certified that in his opinion such removal was expedient in the interests of justice.[27] Such a power was not peculiar to Ireland; the Central Criminal Court Act 1856, for example, permitted trials to be removed from provincial courts in England to the Old Bailey in London.[28]

Notwithstanding its legal basis, moving the trial to Dublin had unfortunate consequences for the defence. A jury composed of Dubliners would be unlikely to have much understanding of conditions in the rural west. Yet the core of the Crown's case was the evidence of the three independent witnesses that they had been able to follow the murderers for a considerable distance without being seen. As Waldron notes, Myles Joyce and the other defendants essentially were on trial in a foreign land.[29] This lack of understanding was exacerbated by the inability of the jury to view the scene of the crime.[30] Travelling from Dublin to a remote part of the west would have been impractical: it took the local coroner almost a whole day to travel the twenty-three miles from Oughterard to Maamtrasna[31]This practical difficulty was compounded by the

[26] *Ibid.* The Crown solicitor in question was George Bolton, the Maamtrasna prosecutor.
[27] 45 & 46 Vict., c.25, s.6(1). This section required the Attorney General to formally petition the High Court, but on provision of the appropriate certification, the Attorney General was "entitled as of right" to the order.
[28] 19 & 20 Vict., c.16, s.1.
[29] Waldron, *op.cit.*, at 108.
[30] The Juries Procedure (Ireland) Act 1876, 39 & 40 Vict., c.78, s.11 allowed a trial judge to adjourn a trial to allow for this to happen.
[31] See Waldron, *op.cit.*, at 33.

Crown's decision to charge the defendants serially rather than together[32] – it was clearly impracticable to delay each trial by a week to allow a viewing of the scene. A more practical solution would have been to transfer the trials back to Galway, and the defence requested that this be done before the first trial. The trial judge, Justice Barry, refused the application – probably correctly. The 1882 Act gave the Attorney General what amounted to an absolute right to select the trial venue. Had Justice Barry granted the defence motion, he would have effectively undone one of the key points of the Act. The Dublin juries, therefore, would have to rely for their geographical understanding on witness testimony and on the detailed map prepared by an engineer.[33]

V. Approver Evidence

The Crown's case was built on two pillars: the evidence of the three Joyce witnesses, and that of the defendant approvers Anthony Philbin and Thomas Casey who testified against their fellow defendants. Blackstone described approvement thus: "[A] person, indicted of treason or felony, and arraigned for the same, doth confess the fact before plea pleaded; and appeals or accuses other, his accomplices, of the same crime, in order to obtain his pardon".[34] Traditionally, the approvers' pardon was contingent upon a conviction; if the accomplices were acquitted, the approver would stand convicted by his own confession and would be executed.[35] By the nineteenth century, however, approvers could usually expect the Crown's mercy, notwithstanding the acquittal of their accomplices.[36] By confessing their involvement in the Maamtrasna killings, Philbin and Casey saw the charges against them dropped in advance of the trial hearings.

The value of an approver to a Crown prosecution is obvious: the approver was a part of the criminal enterprise and therefore was in a position to give detailed evidence as to what happened. But the approver also had an incentive both to minimise his own

[32] Given the Crown's theory of the crime – a joint unlawful enterprise – charging each defendant individually seems odd. The Attorney General stated that this was done to ensure fairness to each defendant. Transcript of Proceedings, at 150.
[33] This map is contained in the Maamtrasna file in the National Archives, and is also reproduced on the back sleeve of Waldron's book.
[34] Blackstone, *Commentaries on the Laws of England*, Book 4, 1769, at 324.
[35] *Ibid.*, at 325.
[36] Hayes, *Crimes and Punishments, or a Digest of the Criminal Statute Law of Ireland*, 2nd ed., Dublin, 1843, at 5.

involvement in the enterprise and to deflect attention on to others. Blackstone noted, "[M]ore mischief hath arisen to good men by these kind of approvements, upon false and malicious accusations of desperate villains, than benefit to the public by the discovery of real offenders". [37] Because of this, approver evidence became comparatively rare in English courts by the seventeenth century.[38] In Ireland, however, the courts continued to accept this kind of evidence throughout the nineteenth century. Nevertheless, a judge sitting in the Dublin Commission, Justice Torrens, noted that it was a "wise and salutary rule that, unless the evidence of an approver be corroborated by a faithworthy witness, although it is evidence to go to a jury, an intelligent jury will be slow to convict without such corroboration".[39] The same judge expressed particular concern about the approver appearing to be guiltier than the defendant, who was a young boy. Furthermore, a court had discretion to exclude an approver's testimony (especially if the approver was the principal offender), and more than one approver in a single case was generally frowned upon.[40] Finally, in *R v. Glennon, Toole and Magrath*, Chief Justice Doherty indicated that the approver's evidence should be heard first, before that of other witnesses who might provide corroboration.[41]

In the Maamtrasna case, there are some issues with the admission of Philbin and Casey's evidence. The court permitted the Crown to call the approvers after the Joyces, thereby inverting the usual order of witnesses. In *Glennon, Toole and Magrath*, Chief Justice Doherty noted that having the approver testify first allowed the defence to cross-examine the corroborating witnesses after the approver evidence had been concluded.[42] The Chief Justice did not indicate whether such an inversion would invalidate an approver's evidence; probably, this would be a matter for the trial judge's discretion.

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[37] Blackstone, Book 4, *op.cit*., at 329. The nineteenth-century judiciary made similar comments: see *R v. Farlar* (1837) 8 C & P 106 (Lord Abinger commenting that "when a man is fixed, and knows that his own guilt is detected, he purchases impunity by falsely accusing others") and *R v. Green* (1825) 1 Craw & Dix CC 158 (Justice Jebb stating that "the temptation to save his own life is so strong, that [the approver] can seldom be trusted").

[38] Hale, *History of the Pleas of the Crown*, vol. 2, 1736, at 226-27.

[39] *R v. Dunne* (1852) 5 Cox CC 507. A quarter of a century earlier, an Irish court had indicated that an approver's testimony should be disregarded unless some corroboration existed. *R v. Sheehan* (1826) Jebb CC 54.

[40] See Vaughan, *Murder Trials in Ireland, 1836-1914*, Irish Legal History Society, 2009, at 200-01 (citing Purcell, *A Summary of the General Principles of Pleading and Evidence, in Criminal Cases in Ireland*, Dublin, 1848, at 354-55). Note that Hayes, another contemporary commentator, suggested that the admissibility of an approver's evidence should be left to the discretion of the Crown counsel. Hayes, *op.cit*., at 6.

[41] (1840) 1 Cr. & Dix. 359.

[42] *Ibid*.

Nevertheless, by allowing approvers to give evidence after the Joyces, the benefit identified by Chief Justice Doherty was denied to the Maamtrasna defendants. A further issue arises in respect of Casey's evidence, especially: in their post-trial statements, Pat Joyce, Pat Casey and Michael Casey all indicated that Thomas Casey was one of the men who had actually committed the Maamtrasna killings. If true, his guilt would have been greater than that of many of the defendants, thereby raising the moral issue that troubled Justice Torrens in the *Dunne* case: protecting the main offender while using his testimony to convict and hang a lesser offender. That said, there is no question that Irish law allowed for the admission of approver evidence. Furthermore, the trial judge, Justice Barry, warned the jury of the danger of convicting the defendants on the basis of uncorroborated approver testimony.[43] And the defence counsel specifically reminded the jury of the part played by the approvers' in the killings: "Such a pair as was never seen, they are the originators of this transaction, they are the persons who first seem to have the intention of doing something that night".[44] Ultimately, however, there is no way to know how much impact the approvers' testimony had on the jury's decision to convict Pat Joyce, Pat Casey and Myles Joyce.

VI. Language in Court

The Maamtrasna trials were held in Dublin before an English-speaking jury, an English-speaking judge and English-speaking officials. The defendants, however, spoke only Irish. One of the abiding images of the trial of Myles Joyce was painted by Tim Harrington, M.P., who told Parliament that the "Judge, who tried [Myles Joyce], was to him as much a foreigner as if he were a Turk trying the case in Constantinople. The very crier of the Court, and the counsel who represented him, were foreigners to him; and the whole trial, as far as he was concerned, was an empty show and a farce."[45] Similarly, James Joyce later wrote of a "dumbfounded old man … deaf and dumb before his judge".[46] A trial in which the defendant cannot understand the evidence against him is surely the epitome of unfairness?

[43] Transcript of Proceedings, at 205.
[44] See Waldron, *op.cit*., at 77.
[45] 283 Parl. Deb., HC, 294-95, 13 August 1883.
[46] James Joyce, "Ireland at the Bar" in Mason and Ellmann, eds., *The Critical Writings of James Joyce*, London: Faber & Faber, 1959, 197-200, at 198 (translation from the Italian published as "L'Irlanda all Sbarra" in *Il Piccolo della Sera*, Trieste, 16 Sept. 1907).

This view has been overstated. By statute,[47] the language of the courts in Ireland was English, but Irish speakers could give their evidence in Irish through an interpreter.[48] The Maamtrasna court appointed an R.I.C. officer – Constable Evans – to act as an ad hoc interpreter. Notwithstanding the apparent conflict of interest in a serving police officer acting for the court in this role, it appears that Evans did a good job.[49] Furthermore, the Crown's case was built on two pillars: the evidence of the two approvers and the evidence of the three independent witnesses. The two approvers gave their evidence in English. No translation was provided to Myles Joyce, but until 1915 there was no legal requirement to do so in respect of a defendant who was represented by counsel.[50] The theory appears to have been that what a man's counsel knew, the man was deemed also to know.[51] In any case, the *Freeman's Journal* reported that Joyce indicated, via Constable Evans, that he understood the evidence given in English.[52] This is remarkable as all the accounts suggest that Myles spoke only Irish. Phelan speculates that perhaps there was a misunderstanding between Joyce and Evans: the latter spoke Ulster Irish while the former spoke Connemara Irish.[53] Be that as it may, Joyce received no translation of the approvers' evidence.

As for the evidence of the three independent witnesses – who gave the Crown's primary evidence – being Irish speakers, they gave their evidence in Irish through Constable Evans. As an Irish speaker, Myles Joyce would have had the same linguistic advantage in respect of this key evidence as has been attributed to the Crown in respect of the approvers' evidence and the proceedings overall. Further, as Myles' trial was the third to be heard, all of the evidence to be given was already known to the defence, so the *actual* linguistic disadvantage that Myles suffered was surely rather less than has been claimed.

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[47] Administration of Justice (Language) Act 1737, 11 Geo.2, c.6.
[48] *R v. Burke* (1858) 8 Cox CC 44
[49] Evans received several compliments for his translation efforts from the court. For a summary of these compliments, see Phelan, *Irish Language Court Interpreting, 1801-1922*, unpublished Ph.D. dissertation, Dublin City University, 2013 (copy on file with author), at 88.
[50] *R v. Lee Kun* [1916] 1 KB 337. The King's Bench ruled that the safer and better practice was to ensure that the evidence against a defendant would be translated unless defence counsel specifically indicated that doing so was unnecessary.
[51] *Ibid.*
[52] "The Maamtrasna Murders", *Freeman's Journal*, 20 November 1882, at 2.
[53] Phelan, *op.cit*., at 91.

VII. Jury Packing

As noted earlier, a central nationalist accusation was that the Crown packed the Maamtrasna trial juries with reliable jurors. Using its stand-by power, the Crown was entitled to essentially skip any number of jurors whose names had been called in the ballot without showing cause unless the entire panel had been gone through without empanelling a jury. If this happened, each of the jurors thus skipped would be revisited in turn, and the Crown would have to either accept the juror or show cause why he should be removed. Going through the entire panel was rare so the Crown effectively had an unlimited power of peremptory challenge.[54] That the Crown utilised this power in the selection of the four Maamtrasna juries is beyond doubt, as the following table shows:

Defendant	Total No. of Jurors Called	No. of Jurors Stood By (Crown)	No. of Jurors Peremptorily Challenged (Defence)
Patrick Joyce	68	37	19
Patrick Casey	56	27[55]	17
Myles Joyce	55	27	16
Michael Casey	70	41[56]	18[57]
Totals	**249**	**132**	**69**

Thus, even disregarding the thirteen jurors who were stood by because of their earlier service, the Crown skipped half the jurors whose names were called.

[54] Johnson, "Trial by Jury in Ireland 1860-1914" (1996) 17 *J. Leg. Hist.* 270-93. Similarly, George Bolton, the Maamtrasna prosecutor, told a House of Lords Committee that such a situation had never happened to him. Select Committee on Irish Jury Laws, *Report*, 1881, HL (430), at Q.3956.

[55] This figure includes eleven jurors who had served on the first trial. The Attorney General stated that in the second and third trials he would stand by any juror who had served in the earlier trials. There is no indication that this courtesy was necessary in the third trial. In the fourth trial, the Attorney General was willing to stand by jurors from the third trial only because of a shortage of jurors. In total, six jurors who had served on the first jury were called to serve on the fourth. The defence unsuccessfully challenged four of them – the Attorney General stood by one, the defence peremptorily challenged two, and the fourth was sworn. The other two jurors from the first jury requested excusal; one was peremptorily challenged and the other was stood by (and excused by the court from further service on the grounds of ill health).

[56] This figure includes two jurors who had served on the first Maamtrasna jury and were stood by.

[57] This figure includes three jurors from the first trial; the defence had unsuccessfully challenged two of them, and the third had requested to be excused. The defence peremptorily challenged all three.

The suggestion of unfair jury packing received a boost through the chance discovery of the brief for Peter O'Brien, one of the Crown's counsel. The brief contained the jury panel on which the letter "C" had been marked against the names of many of the jurors. To nationalists, this was proof that the Crown had actively sought the removal of Catholic jurors from the Maamtrasna juries. Yet even the nationalist press acknowledged that half of the men on the first Maamtrasna jury were Catholic,[58] and skipping jurors on the basis of their religion would have been contrary to formal standing instructions on the use of the stand-by power.[59] O'Brien himself claimed that the letter "C" simply indicated the jurors to be challenged, a claim that seems likely to be true. O'Brien had earned the nickname "Peter the Packer", having "built up a reputation for winning cases by the simple if controversial expedient of challenging all jurors whom he considered unreliable."[60] Given the Crown's almost unlimited stand-by power and O'Brien's reputed packing ability, it seems unlikely that any Catholics would have made it on to the Maamtrasna juries had the Crown really wished to exclude them.

So, there is no question that the Crown used its stand-by power to pack the Maamtrasna juries with jurors that it considered reliable, although probably not on the basis of religion. While such tactics were unusual in England,[61] they were used more frequently in Ireland, and were not used secretively. Several Crown solicitors told parliamentary committees that the stand-by power was entirely necessary to counter bias among potential jurors. For example, George Bolton, the Maamtrasna prosecutor and the Crown solicitor for Tipperary, gave evidence to a House of Lords Committee in 1881. He referred to an assize session in Clonmel earlier that year, at which he and the local

[58] See, for example, the comment from the *United Ireland* newspaper in the text above at n.7.

[59] *A Copy of the Instructions given to the Respective Crown Solicitors on each Circuit, respecting the Challenging of Jurors in Crown Cases*, 1842, HC (171), at 1. Guidelines issued by Attorney General Robert Warren in 1868 provided that a juror should be stood by only if the Crown solicitor had reason to believe that the juror might be "hindered from giving an impartial verdict by favour towards the accused, fear of the consequence s to their persons, property, or trade, or any other motive, although same may not amount to a legal ground of challenge, or may not admit of legal proof." Set out in the House of Commons' Select Committee on Juries (Ireland), *First, Second and Special Reports*, 1873, HC (283), at Q.1746-47 (evidence of Constantine Molloy, barrister).

[60] Curtis, *Coercion and Conciliation in Ireland 1880-1892: A Study in Conservative Unionism*, Princeton, NJ, 1963, at 192.

[61] Sir James Fitzjames Stephen wrote that in his career he could remember only one or two trials in which the Crown had stood by a large number of jurors. Stephen, *History of the Criminal Law of England*, vol. I, (1883), at 303. See also Howlin, "Merchants and Esquires: Special Juries in Dublin 1725-1833", in O'Brien and O'Kane, eds., *Georgian Dublin*, Four Courts Press, 2008, 97-109, 107; Howlin, "Controlling Jury Composition in Nineteenth-Century Ireland" (2009) *J. Leg. Hist.* 227-261.

R.I.C. Inspector concluded that out of 167 names on the jury panel, only 12 "would try a case fairly, and give fair weight to the evidence …. [A]s to the rest we were thoroughly satisfied there was not a man on the panel but would acquit under any circumstances, no matter what the evidence was."[62] He went on to say that it was "thoroughly useless to expect a conviction in Tipperary."[63] It is worth noting that many of the cases Bolton discussed in his evidence were neither agrarian nor political in nature. He concluded that the stand-by power was "absolutely necessary".[64] Given the poor conviction rate in Ireland relative to England, [65] Bolton might have had a point: Johnson suggests that tactics such as jury packing were probably necessary to achieve even this low number of convictions.[66]

The defence also utilised its powers to the full in an attempt to pack the juries in its favour. In a felony trial, a defendant was entitled to challenge up to twenty jurors peremptorily,[67] in addition to an unlimited number of challenges for cause. In the four Maamtrasna trials, the defence challenged a total of sixty-nine jurors – nearly ninety percent of the total number permitted to them. The difference, of course, is that while the defence's ability to influence the composition of a jury was limited to twenty challenges, the Crown's power to do so was limited only by the number of jurors who formed the jury panel. As Daniel Crilly noted in 1887, as long as a sufficient number of jurors had been summoned, the defence would exhaust its peremptory powers long before the Crown reached its limit.[68] Thus, through an entirely lawful selection process, a "Castle jury" generally could be ensured.[69]

VIII. Inadmissibility of the Joyce Boys' Statements

[62] House of Lords Select Committee on Jury Laws, *Report*, 1881, HL (430), at Q.3865.
[63] *Ibid*., at Q.3869.
[64] *Ibid*., at Q.3952.
[65] Johnson shows that both the conviction rate and the imprisonment rate were markedly lower in Ireland than in England. Johnson, *op.cit.*, at 274-76.
[66] *Ibid.*, at 286
[67] Criminal Law (Ireland) Act 1828, 9 Geo. 4, c.54, s.9.
[68] Daniel Crilly, *Jury Packing in Ireland* (1887), at 34. Crilly was one of several parliamentarians charged with conspiracy to incite non-payment of rents, and wrote this pamphlet describing his experiences.
[69] This phrase invokes Dublin Castle, the seat of executive power in Ireland.

First-hand eyewitness accounts of what happened in John Joyce's house were available as the two young Joyce boys – Michael, aged seventeen, and Patsy, aged about ten – survived the attacks and gave statements to a magistrate. These statements contained information about the attackers' appearance that might have been useful to the defence in undermining the evidence of the independent witnesses. Tim Harrington, M.P., argued that this information, "if clearly established, puts an end completely to the evidence at trial, and stamps it as a fraud and a murderous perjury."[70] Yet none of the trial juries ever heard the boys' statements.

Michael's Statement

Michael died shortly after making his statement, and the only way that his statement could have been admitted was as a dying declaration. Such a statement obviously could not be tested under cross-examination, but was admissible if "made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth."[71] Two requirements, however, limited the admissibility of statements from deceased witnesses, and both were relevant to Michael's statement. First, the statement had to have been made "under a clear impression that [the deponent] was in a dying state."[72] In most cases, such an impression had to be clear from the statement itself: in *R v. Reaney and Reddish*, for example, the deponent stated, "I have made this statement believing I shall not recover."[73] Michael made no such declaration; the closest he came was that, "I am very sick. I cannot raise myself up. … I have no pain at all."[74] It is unlikely that this comment would have been sufficient to establish Michael's statement as a dying declaration, and therefore the statement probably would have been deemed inadmissible.

Even if Michael's statement was judged to have met the first requirement, the second was fatal to its admissibility. A dying declaration was admissible only "where the death

[70] Harrington, *op.cit.*, at 38.
[71] *R v. Leach* (1789) 1 Leach 500, 502.
[72] *R v. Mooney* (1851) 5 Cox CC 318 (per Pigot LCB at the Dublin Commission).
[73] (1857) 7 Cox CC 209.
[74] See Waldron, *op.cit.*, at 211.

of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declaration."[75] Had the Crown charged the defendants with the murder of all the victims, Michael's statement would have met this requirement as he was one of the victims. Such a charge would have made sense given the Crown's theory of the case – that all the defendants were engaged in a criminal enterprise the purpose of which was to kill the members of the Joyce family. In modern terms, this is known as the doctrine of joint enterprise. But the Crown chose instead to charge each of the defendants with the murder of one specific victim; Michael's death was due to be the subject of the fifth trial. This prosecutorial arrangement meant that as Michael's death was not the subject of Myles Joyce's trial, Michael's statement was inadmissible in Myles' case. It is conceivable that the Crown chose to prosecute each defendant for a specific victim's death in order to limit the admissibility of Michael's declaration – as noted above, this arrangement does not sit easily with the Crown's theory of the crime. The Crown's true intention is unknown, however; as the declaration was probably inadmissible anyway, it seems more likely that the second limitation was merely a useful by-product.

Patsy's Statement

Patsy also made a statement in which he specifically stated his belief that he was dying.[76] The rules on dying declarations were irrelevant to his case, however, as he survived, and therefore was in a position to testify personally. The Crown called Patsy as a witness but the Attorney General determined that he did not understand the nature of an oath and therefore could not give sworn testimony.[77] While technically correct, however, the Crown could easily have arranged for Patsy to receive some moral instruction on the nature of an oath so as to allow him to testify – as Harrington pointed out, "this boy had been in the hands of the Crown officials for three months and surely even [the Crown solicitor] might have told him that Hell was intended for the wicked".[78] It may be that the Crown did not want him to testify – George Bolton, the Crown solicitor, had deemed his evidence to be worthless.[79] So why call him at all?

[75] *R v. Mead* (1824) 2 Barn & Cress 605, 608.
[76] Waldron, *op.cit.*, at 211.
[77] Transcript of Proceedings, at 49.
[78] Harrington, *op,cit.*, at 42.
[79] *Ibid*.

Waldron suggests that calling Patsy was a master tactical decision on Bolton's part:[80] the jurors would have been unaware of how easily Patsy could have been rehabilitated as a witness, but by calling him anyway the Crown gave the impression that it wanted Patsy as a witness. This in turn might have suggested to observers (and to the jurors) that Patsy's evidence, if only it could have been admitted, would have bolstered the Crown's case. Furthermore, calling Patsy showed that the Crown was calling all available witnesses, and therefore was not engaged in any cover-up. Again, the Crown's intentions are unknown, but Waldron's suggestion would explain the Crown's rather desultory efforts to establish Patsy's understanding of an oath. What is less easy to explain is the defence's failure to take steps to rehabilitate Patsy as a witness: the content of his statement to the magistrate had been reported in the *Freeman's Journal* in its coverage of the coroner's inquest, so the defence lawyers should have been aware of this evidence and its potential importance. They could have arranged for Patsy to receive the necessary instruction from a priest in the run-up to the trials, or indeed, after the trials had begun. Yet there is no evidence that they made any such attempt, a failure that surely constitutes a serious dereliction in their duty to their clients.

IX. Conclusion

The dominant view of the Maamtrasna trials in Ireland – then and now – is of a gross injustice perpetrated by the Crown, and that Myles Joyce was an innocent man. The trials raised multiple questions of nineteenth-century Irish criminal procedure; limitations of space required that this chapter focus on only the principal trial issues. This focus demonstrates that the Crown acted within its powers and privileges: the Prevention of Crime (Ireland) Act 1882 permitted the Attorney General to transfer the trial to Dublin; the Crown's efforts to pack the juries were entirely permissible under Irish law and practice at the time; and the exclusion of the Joyce boys' evidence was within the laws of evidence. Even the language issue has been overstated by nationalists: half of the Crown's evidence was given in Irish, and Myles Joyce apparently indicated that he understood the other half. And the Crown's view of the case was not unreasonable given the context in which the killings occurred. Furthermore, many of the practices that the Crown used in the Maamtrasna

[80] Waldron, *op.cit.*, at 73.

prosecutions remain a part of modern criminal trial procedure. Moving a trial to prevent anticipated unfairness among local jurors was permitted in England,[81] and continues to be permissible under Irish law.[82] Emergency powers, which involve the suspension of ordinary trial procedures, are permissible under the Irish Constitution,[83] and modern Irish law allows for trials before a non-jury court in cases involving subversives or organised crime.[84] It remains the case in both English and Irish law that a dying declaration is admissible only in respect of a trial for the homicide of the declarant, and that the declarant must have made the declaration under a settled expectation of death.[85] Accomplice (i.e., approver) testimony is also permitted under modern Irish law, providing juries are warned of the dangers of accepting such evidence without corroboration.[86] Even jury packing – probably the most objectionable aspect of the Maamtrasna trials – continued after Irish independence, despite longstanding nationalist complaints about the practice.[87] Only with the enactment of the Juries Act in 1976 did this practice come to an end in Ireland.[88]

So the Crown did nothing unlawful in its attempts to secure convictions against the Maamtrasna defendants. Yet the fact that the Crown's actions were lawful does not necessarily make them fair. The Crown did not have to transfer the trial to Dublin or pack the jury – these were tactical *choices* rather than actions mandated by law. Michael Joyce's statement was excluded by law, but this arose at least in part from the Crown's *choice* not to charge the defendants with the murder of all the deceased members of the Joyce family. And Patsy's evidence could have been presented to the jury had the Crown *chosen* to arrange for a minimal level of moral instruction, thereby allowing him to give sworn testimony. Each of the Crown's choices fit within the law and practice of the time, and are defensible individually from a narrow legal

[81] The Central Criminal Court Act 1856, 19 & 20 Vict., c.16.
[82] See, for example, Court and Court Officers Act 1995, s.32 (allowing for the transfer of trials from a county Circuit Court to the Dublin Circuit Court).
[83] See Article 28.3.3° of the Irish Constitution (Bunreacht na hÉireann).
[84] The Special Criminal Court, established under the Offences Against the State Act 1939, is comprised of three judges and sits without a jury. It is worth noting that with the enactment of the Prevention of Crime (Ireland) Act 1882, 45 & 46 Vict., c.25, the Crown had the option of establishing a similar court in Ireland but the operative provisions were never implemented.
[85] See McGrath, *Evidence*, Dublin: Thompson Round Hall, 2005, at paras. 5.166-5.178.
[86] *Ibid*., at Chapter 4.C (paras.4.18-4.109).
[87] See Hanly, "The 1916 Proclamation and Jury Trial in the Irish Free State" (2016) 39(2) *Dublin University Law Journal* 373-404, 387-89.
[88] Note that an expert Irish judicial committee endorsed the stand-by power as late as 1966. *Ibid*., at 389.

perspective. The cumulative effect of these choices, however, was to hamstring the defence: the cases were decided by juries with no knowledge or understanding of local conditions and no opportunity to view the scene of the crime; the juries were packed with men the Crown thought reliable; evidence that might have undermined the Crown's central evidence was not put before the jury. In effect, the decks were stacked against the defendants to such a degree that the chances of an acquittal were almost non-existent. Given the brutality of the Maamtrasna killings, one can have some sympathy for the Crown trying to convict the perpetrators, and many of the Maamtrasna defendants undoubtedly were guilty. Patrick Joyce and Patrick Casey, the other two men executed, accepted their guilt. Michael Casey accepted that he had been part of the group but denied killing anyone (a distinction with no legal significance because of the effect of the joint enterprise doctrine). The two approvers had to accept their guilt, and Patrick Joyce and Patrick Casey named Thomas Casey as one of the killers. The other four men pleaded guilty in order to avoid execution; there is no way now to objectively assess whether they were in fact guilty. However, it is not unusual even today for defendants to plead guilty to avoid a heavier sentence, and that fact is not usually taken to indicate innocence.

But there are substantial reasons to doubt Myles Joyce's guilt – discrepancies in the evidence given by the independent witnesses; the fact that one of those witnesses bore a grudge against Joyce; the other two condemned men accepted their own guilt but specifically exonerated Joyce, as did Michael Casey. Yet so successfully had the Crown used its trial powers that Joyce had no real prospect of securing an acquittal notwithstanding his probable innocence. This, surely, comes close to the very definition of an unfair trial. Furthermore, Earl Spencer, the Lord Lieutenant, as the Crown's representative in Ireland, had the power to show mercy on account of these factors. The defence made representations to Spencer, who had access to all the trial information, the excluded statements from the Joyce boys, along with the statements from Patrick Joyce and Patrick Casey exonerating Myles. Spencer ultimately decided, however, that the law should take its course. Undoubtedly, this was his right: the power of mercy was a prerogative of the Crown rather than an entitlement. Nevertheless, there was ample justification for Spencer to issue a pardon or a commutation, and his failure to do so contributes to the sense of injustice at Myles Joyce's execution.

Postscript

On the advice of the Irish Government, the President of Ireland signed a formal posthumous pardon in respect of Myles Joyce on 3 April 2018.[89]

[89] See "President Signs Pardon for Man Hanged for Maamtrasna Murders", *Irish Times*, 4 April 2018. The Government had made its wishes known the previous week: see Press Release from the Department of Justice and Equality, 28 March, available at www.justice.ie.