Roman Catholicism on Trial in Victorian England: The Libel Case of John Henry Newman and Dr. Achilli

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JUROR: I beg your Lordship to understand that we did not consider this case as regards Protestantism and Catholicism. We only looked at it as a matter of fact.¹

John Henry Newman (1801-1890) is one of the best known converts to Roman Catholicism in modern times.² Born in London and educated in Oxford, he became a leader of the Oxford Movement during the 1830s. Asserting the catholicity of the Anglican Church, the Movement sought to reform Anglicanism

¹ W.F. Finlason, Report of the Trial and Preliminary Proceedings in the Case of the Queen on the Prosecution of G. Achilli v. Dr. Newman 202 (2d ed. 1852). William Francis Finlason (1818-1895) was a prolific legal writer and journalist for the Times. He studied at the Middle Temple and became a barrister in 1851. 22 Dictionary of National Biography 637.

by realigning it with the primitive church and with Laudian theology and practice. For Newman, the Movement failed and he converted to Catholicism in 1845. He established Oratorian communities in Birmingham and London, was charged with the creation of a Catholic University in Ireland in the 1850s, and became a Cardinal in 1879. A productive preacher as an Anglican and as a Catholic, Newman wrote several influential theological and educational works. His cause for canonization was submitted to the Vatican in 1989.

I. DR. ACHILLI

In 1851 Newman was charged with criminal libel by Dr. Giovanni Giacinto Achilli, a former Dominican friar who had converted to Protestantism. This battle absorbed Newman’s life and energy for two years while these two religious figures squared off in an arena that was imbued with popular religious debate. In the previous year, English crowds had once again shouted “no popery” as they turned to the streets, hanged and burned effigies of the Pope and bishops, and damaged churches and chapels. The reestablishment of the Catholic hierarchy in England caused the outburst. Upon Pope Pius IX’s declaration,
Cardinal Wiseman unwisely proclaimed the triumph of the Catholic Church in England. As a result, there was an outpouring of anti-Catholic sentiment which England had not seen since the Gordon Riots of 1780. This was an opportune time for Achilli to lecture against Catholicism in England.

Achilli had been on the anti-Catholic lecture circuit in England for several months before John Henry Newman joined a growing public attack against him. Achilli, who had been a Catholic priest, a Dominican monk, and a self-proclaimed convert to Protestantism around 1844, was ideally suited to point out the errors of Rome. Achilli lectured about his imprisonment

repealed the Test and Corporation Acts which required religious conformity of civic and military office holders. Corporations and Test Acts, 1661, 13 Car. 2 st. 2, ch.1; Corporation and Test Act 1672, 25 Car. 2 ch. 2; 9 Geo. 4, ch. 17 (repealed). The Test Act of 1661 was designed to exclude the Protestants of the English Revolution from serving under the reestablished monarchy. The Corporation Act was similarly aimed at Catholics, in order to prevent Catholic control of the country under James II. See generally Ursula Henriques, Religious Tolerance in England 1787-1833, at 83-84, 137-38 (1961) for a discussion of the acts.

Irish pressure led to the passage of the Catholic Relief Act of 1829. 13 William S. Holdsworth, A History of English Law 230 (1952) [hereinafter Holdsworth] (citing 10 Geo. 4 ch.7 (1829)). Parliament and all but the highest offices were opened to Catholics, and Bishops could assume territorial titles as long as they did not coincide with Anglican territories. Id. at 230-31. The Act did not repeal the old penal laws, but they were generally unenforced. Id. at 230; see also 1 Chadwick, supra note 6, at 7-24 (explaining circumstances surrounding passage of acts); Henriques, supra at 83-4 and 137-38; Holdsworth supra, at 230-31. The penal laws were repealed by 7 & 8 Vict. ch. 102 (1844). Edward Norman, The English Catholic Church in the Nineteenth Century 66 (1984).

Wiseman received a pastoral letter from Rome. Upon receipt of the letter, he announced his appointment and the hierarchy. He went on to declare that England “has received a place among the fair churches, which, normally constituted, form the splendid aggregate of Catholic communion; Catholic England has been restored to its orbit in the ecclesiastical firmament, from which its light had long vanished.” Chadwick, supra note 6, at 291. Wiseman ordered the letter to be read in every church in his diocese, and, though intended to be a message to the faithful, it was received as an exultation of the downfall of English Protestants and an attempt to bring Englishmen under the direct control of Rome. Id. at 292-93.

Achilli was not the only lecturer of this type in England. Newman described at least three others in a memorandum to his lawyers. See Newman’s Memorandum for his lawyers, in 14 The Letters and Diaries of John Henry Newman, at 504 (Charles S. Dessain & Vincent F. Blehl eds. 1963) [hereinafter Letters]. Other anti-Catholic lecturers are described in Klaus, supra note 6, at 215-16.

See Nicholas Wiseman, Book Review, 28 Dublin Rev. 469-70, 479 (1850) (reviewing Sir C.E. Eardley, The Imprisonment and Deliverance of Dr. Giacinto Achilli, with Some Account of His Previous History and Labours
by the Inquisition based on his religious beliefs. He repeated this welcome theme throughout England, including Newman's Birmingham. Achilli stated that his religious beliefs had drifted from Catholicism—he had begun to doubt transubstantiation and to accept the Protestant view of justification by faith. For this, he claimed, the Inquisition imprisoned him and suspended him from celebrating mass and other ecclesiastical functions. Achilli's moral position was, however, suspect. Newman believed that there were more than doctrinal reasons for Achilli's expulsion from the Catholic Church.

II. JOHN HENRY NEWMAN'S LIBEL OF DR. ACHILLI

When Newman defended Catholicism against Achilli's attack, he had been a convert to Catholicism for only six years. Nonetheless, they were six years of rapid advancement within the Catholic Church. In those years, Newman founded a residence for himself and his converts at Old Oscott College near Birmingham, went to Rome, and attended the College of the Sacred Propaganda. He entered the Roman Catholic priesthood, and met with Pope Pius IX, who made him the Superior of the English Oratory. He also founded Oratorian communities in Birmingham and London.

In September 1851, Newman published a set of lectures he had delivered to the Birmingham Oratory under the title, \textit{Lectures on the Present Position of Catholics in England}. One lecture vehemently attacked Dr. Achilli. According to Newman,
Achilli had been deprived of his faculty to lecture by the Church, had broken his vows as a priest and as a Dominican, and had had sexual intercourse with numerous women and girls—on occasion in sacred locations and on sacred days. In essence, Dr. Achilli was “the scandal of Catholicism ... by [his] extraordinary depravity.”

Newman's source for this information was a forty page article written by Cardinal Wiseman in 1850 responding to two recently published books about Achilli. The article refuted the facts of both books event-by-event. Wiseman successfully challenged the truth of Achilli's professorships at the Minerva and the Sapienza in Rome and at Macerata, and chronicled Achilli's sexual exploits of the early 1830s in Viterbo. Wiseman exactly debunked Achilli's claims to various high offices in the Catholic Church, such as Visitor of the Roman States and Vicar and Master of the Sacred Palace. Wiseman included extracts of an “official dispatch” of the Naples Police which stated that Achilli seduced a fifteen year old girl, perhaps on Good Friday, according to another source, for which Achilli had been expelled from the city.

Wiseman next turned to Achilli's alleged treatment by the Inquisition. Pointing out various inconsistencies in Achilli's versions of this event, Wiseman concluded that Achilli “was arraigned for his unsound principles, not merely held, but openly expressed, in regard both to morals and to faith. But he was arraigned also for his gross immoralities from the beginning ....” According to Wiseman, these proceedings led Achilli to confess and to be “stripped of all religious rank and position, of all

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16 Wiseman, supra note 11, at 469-70.
17 Id. at 482-83 (“He was proved to have caused the ruin of a girl of eighteen ... [one] of twenty-eight; and a third ... of twenty-four years.”).
18 Id. at 484-85. Wiseman asserted that the office of Vicar of the Sacred Palace was made up. Id. at 484-85 n.*.
19 Wiseman, supra note 11, at 487. “The said Achilli, known for habitual incontinency, took advantage of this opportunity to seduce a girl of fifteen.” The following part of the account was too horrible for Wiseman to translate, so he left it in Italian: “... e dopo averla stuprata la rese incinta, facendo poi sottoporre la giovane a sfogare la libidine anche di altro suo amico.” Id. at 487 n. This may be translated “... and after having raped her and made her pregnant, thus subjected the young girl to the ravishment of the libido of one of his friends.” I thank Drs. Richard and Anna Amelung for the translation.
20 Id. at 490.
priestly honour, jurisdiction, and privilege, reduced to lay communion" in 1841.

Achilli's profligate behavior did not cease with his defrocking. Assuming the title of Cavaliere, or Knight, Achilli lived and travelled with a married woman in Corfu and then in 1843, according to Nicholas Garamone's petition to a Corfu civil court, was responsible for breaking up his home by seducing his wife Marianne Crissaffi. Wiseman also attacked the validity of Achilli's marriage to Miss Heley in Italy in 1849. Wiseman argued that there was no civil law of marriage nor were priests capable of entering into marriage in Italy at that time. The Protestant service conducted by Achilli's friend of the "Italian Evangelical" Society was not valid under Italian law, according to Wiseman. Wiseman in addition disparaged assertions that Achilli was not active in Italian politics, although he was a member of the Circolo Popolare, a "hot-bed of treason, revolution and disorder."

Was Newman right to rely on this account by Wiseman? In the article, Wiseman repeatedly asserted that everything contained in it could be substantiated. "In whatever we have stated, we have been supported by authentic, and generally official documents. These can be brought forward, if necessary, in further proof." At another point in the article, Wiseman wrote, "our express understanding with our readers, [is] that whatever we have here set down, can be proved by judicial records made at the time."

These assertions, coupled with the substantial trust that the English Catholic community placed in Cardinal Wiseman and his Dublin Review, lead Newman to rely on the accounting of events for his lecture. Furthermore, instead of Wiseman's forty pages, Newman's treatment of Achilli filled under five small

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21 Id. at 488, 491.
22 Id. at 492-96. Names are inconsistently spelled throughout the various records, and this article does not attempt to settle on one spelling because the person to whom a particular name refers is clear.
23 Wiseman, supra note 11, at 499.
24 Id. at 501.
25 Id. at 510. Wiseman ultimately failed to produce the documents detailing the assertions he made, which would have saved Newman eighteen months of trial. DESSAIN, supra note 5, at 101.
26 Wiseman, supra note 11, at 492. See generally id. at 493-94, 498 for other assertions.
As part of his defense, Newman's pleadings in the subsequent litigation gave precise dates and places of Dr. Achilli's offensive conduct. Three of Newman's twenty-three examples point to establish the truth of the more general statements made in his lecture and are sufficiently representative of Achilli's sexual offenses:

[First,] that the said G.G. Achilli, in February 1831, at Viterbo, debauched, seduced and carnally knew one Elena Valente, then being chaste and unmarried, and of the age of eighteen years, and then and there robbed her of her honour.

[Second,] that the said G.G. Achilli, at Viterbo and in the neighbourhood, committed sins, similar or worse, and debauched, seduced and carnally knew one Vincenza Guerra, then being chaste and unmarried; also another woman, then being chaste and unmarried, whose name is to the said J.H. Newman unknown; and that the said G.G. Achilli was afterwards at Rome, before the Court of the Holy Office, or Inquisition, found guilty of the said several offenses.

[Third,] that on the 2nd of July 1843, at Corfu, the said G.G. Achilli debauched and made faithless to her husband, one Marianna Crisaffi, the wife of one Nicolo Garamoni, a tailor; and afterwards, on the 1st of August 1843, at Corfu, the said G.G. Achilli publicly cohabited and committed adultery with one Albina, the lawful wife of one Vincenzo Coriboni, a chorus singer, and publicly travelled about with her from Corfu to Zante.

In addition to sexual misconduct, Newman separately alleged religious misconduct. Newman asserted that Achilli was an "infidel" and that while professing himself "a priest of the [Church of Rome]," Achilli had "secretly abandoned and disbelieved the peculiar doctrines of the Church of Rome." Achilli had abandoned "chastity and purity of life" and had "taught against the truth of divers doctrines of the Catholic faith." Newman also asserted that Achilli was "a profligate under a cowl" because he did not follow the rules of his order. Achilli's faculty to lecture, "was, for certain misconduct, deprived by the superior of the Order, one F. Velzi, but which misconduct was concealed and suppressed by the said superior." Achilli had "earned the reputation

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28 Id. at 543-44 n.a.
of a scandalous friar” because he “neglected to attend divine service in the choir” and because he had frequent contact with non-members of the order. This led to Achilli’s defrocking:

On the 16th day of June 1841, at Rome, by the Court of the Holy Office, or Inquisition, the said G.G. Achilli was suspended from the celebration of mass and disabled from any cure of souls, and from preaching and hearing confessions, and from exercising the sacerdotal office.2

Thus, Newman’s defensive pleadings chronicled Achilli’s profligacy from 1828, through his removal from priesthood, to activities of the early 1850s.

Newman knew he was headed for legal difficulties even before he delivered the lecture at the Birmingham Oratory. Although not legally trained, he had considered a career in law. He entered Lincoln’s Inn in November 18193 and apparently kept three terms there.3 When Newman took his fellowship at Oriel College, Oxford in 1822, his friend projected his possible vocations:

\[\text{[I]n Holy Orders, taking pupils in College, and having a Curacy within a short distance, then Public Tutor, Vicar of—, Provost, Regius Professor of Divinity, Bishop of—, Archbishop of Canterbury. Or shall we say thus—, student-at-law, Barrister, Lord Chancellor, or at least Lord Chief Justice of the King’s Bench. Which of these ladders is it your intention of climb? You now have it in your power to decide.} \]

Although Newman chose the first ladder, his admiration of the law continued into his later life.3

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2 Id. at 543-45.
3 GILLEY, supra note 3, at 34.
4 See Letter from John Henry Newman to Mr. Newman (May 16, 1822), in 1 LETTERS, supra note 10, at 140-141. Newman left Lincoln’s Inn on Feb. 12, 1825, owing over 32, which he paid the next month. He must have had more than nominal contact with the Inn. See Letter from John Henry Newman to Mrs. Newman (Mar. 4, 1825), in 1 LETTERS, supra note 10, at 216.
6 See Donald Capps, John Henry Newman: A Study of Vocational Identity, 9 J. SCI. STUDY RELIGION 33, 33-34 (1970). During his trial, Newman wrote to one of his lawyers who had urged Cardinal Wiseman to provide further help to Newman, “[W]hat a wonderful gift it is to be a Lawyer!” Letter from John H. Newman to Edward Badeley (Nov. 13, 1851), in 14 LETTERS, supra note 10, at 423. Even as his trial was impending, Newman refused to “make any appeal to the Public against the Law. If the Law brings me into trouble,” he wrote “the Law must bring me out.” Letter from John Henry Newman to Spencer Robert Lewin (Apr. 25, 1852), in 15
Apart from his own understanding of the law, Newman gathered advice from his lawyer friends, including Edward Bellasis, James Hope, and Edward Badeley. Badeley, however, was the only one to appear on the record in the Achilli case. Even prior to delivering the lecture in July 1851, Newman sought legal advice from his friends James Hope and David Lewis. Hope told Newman that a libel action was possible but that he was not "in much danger." Lewis also believed that Newman was safe, noting the relatively new statute, Lord Campbell's Act: "I think it is Lord Campbell's act which enables a libeller to justify, and under the present state of the law you are, I think, perfectly safe. It will be a marvellous evidence of your great deterioration, if you should go down as a convicted libeller." Unfortunately, both Hope and Lewis were wrong, and by the end of August 1851, Newman knew a legal action was coming.

Achilli prosecuted Newman for the crime of libel in the case styled Regina v. John Henry Newman, D.D. The trial was con-
ducted in the Queen's Bench during the third week of June 1852, and Newman was found guilty. On November 22, 1853, Newman requested a new trial which was argued in the middle of January 1853. The new trial proved unsuccessful and Newman was sentenced on January 31, 1853.

III. LIBEL IN MID-NINETEENTH CENTURY ENGLAND

The law of libel in England has a complex developmental history. The history of libel, written defamation, is entwined with the history of slander, spoken defamation, and is the product of an intermingling of English ecclesiastical law, Star Chamber practice, and the common law. Libel could be either a tort or a crime. The criminal jurisdiction of the Star Chamber has been considered the most important factor in the development of criminal libel.

Fortunately, the law governing at the time of Newman's trial was far less complicated than such a varied jurisdictional past would indicate. By the time of the trial, the separate crime of libel was well established.

Religious in Italy never bear the title D.D. and certainly he has not received it in England. Moreover in the Dominican order, the degree corresponding to that of Doctor in the secular clergy, and also this title, conferred on these by the Dominicans, through special privilege, is given upon a stipulation on oath, to teach the doctrines of St. Thomas Aquinas in every point (jurare in verba Thomae). The Ex-Dominican Achilli is teaching the opposite; and therefore has forfeited his title, which is not like a mere literary one, compatible with various doctrinal teachings.

Wiseman, supra note 11, at 476 n.+

43 Id. at 555-56.
45 8 Holdsworth, supra note 7, at 340-43.
46 Fox's Libel Act of 1792, 32 Geo. III, c. 60 (1792), clarified the function of the jury in libel trials and permitted them to return a general verdict on the question of the libel. 8 Holdsworth, supra note 7, at 374. This act was a Parliamentary response to Mansfield's attempt to remove this power from the jury.

Lord Mansfield C.J., anxious to ensure the conviction of the critics of the
Generally, words which subjected someone to hatred, contempt, ridicule, or caused him to be shunned or avoided had been actionable as defamation prior to the nineteenth century. One contemporary treatise set out the common law requirements of libel as:

(a) a malicious defamation;
(b) expressed either in writing, printing, pictures, or figures;
(c) duly published, or by signs publicly and maliciously made concerning some person;
(d) with the intention of bringing him into public hatred, contempt, or ridicule.

Unlike spoken defamation, libel did not require proof of special damages to the prosecutor or plaintiff. Furthermore, publication replaced the requirement of malice or "without just cause or excuse". Innuendo and colloquium were used to show that the offending words referred to the prosecutor and that the words were, in fact, defamatory.

King and government, ruled it to be a question for the judge, not the jury, whether or not the publication amounted to a libel; and Parliament reversed this decision with Fox's Act in 1792, which made it clear that this is a question for the jury to decide.

J.R. Spencer, Criminal Libel - A Skeleton in the Cupboard (1), 1977 CRIM. L.R. 383, 385 (footnote omitted) (1977) [hereinafter Cupboard 1]; see, 10 HOLDSWORTH, supra note 7, at 672-96.

The 1812 Exchequer Chamber decision of Thorley v. Kerry, 128 Eng. Rep. 367 (Ex. 1812), by Mansfield settled any doubt as to the existence of a separate action based on libel. 8 HOLDSWORTH, supra note 7, at 365.

Baker, supra note 44, at 504; W. Blake Odgers, A Digest of the Law of Libel and Slander (2d ed. 1887) 1-2. Current works on modern English legal history do not address the development of defamation and slander during this period. See, e.g. W.R. Cornish & G. de N. Clark, Law and Society in England 1750-1950 (1989); A.H. Manchester, A Modern Legal History of England and Wales 1750-1950 (1980). Nonetheless, the topic has recently been extensively examined by Cupboard 1, supra note 46; J.R. Spencer, Criminal Libel - A Skeleton in the Cupboard (2) [hereinafter Cupboard 2], 1977 CRIM. L.R. 465; J.R. Spencer, The Press and the Reform of Criminal Libel in Reshaping the Criminal Law: Essays in Honour of Glanville Williams 266 (P.R. Glazebrook ed., 1978) [hereinafter The Press]. Although he characterizes the court's treatment of Newman as unjust, he states that the trial was in 1853, rather that 1852, and that it was Newman, rather than Wiseman two years earlier, who "publicly exposed the fact that Achilli was a fraud." Cupboard 1 at 391-92.


8 HOLDSWORTH, supra note 7, at 364.

Id. at 365, 371, 374; Flood, supra note 48, at 31-38.

8 HOLDSWORTH, supra note 7, at 368-69.
By the time of Newman's trial, a statutory enactment known as Lord Campbell's Act provided for truth as a defense to criminal libel. Although the common law rule that "the greater the truth, the greater the libel" continued to operate, the 1843 act provided an important exception. The truth of the statements could be pleaded as a defense if "it was for the public benefit that the matters charged should be published." Even where such a defense was unsuccessful, the court was competent "in pronouncing sentence, to consider whether the guilt of the Defendant is aggravated or mitigated by the said Plea, and by the Evidence given to prove or disprove the same." This second aspect of the section was opined upon for the first time by Lord Campbell himself in Newman's case.

IV. POLITICS AND PERSONALITIES

A. The Defense

Newman's trial was political from the beginning. Even in the early stages, all involved were aware of the religious dimensions of the trial. Cognizant of this fact, Newman wrote to his lawyer expressing a belief that "a trial will rather be against the Catholic body than me." Newman also knew that Achilli was supported by the Evangelical Alliance, a powerful Protestant organization and that therefore religious polarization would be

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52 6 & 7 Vict. c. 96, sec. 6. (1843). This act was named for the same Lord Campbell who served as the judge in Newman's trial. In 1843 Campbell was instrumental in setting up a Select Committee to study this area of law. The Committee's recommendations were incorporated into the bill drafted by Campbell and Downing Professor Starkie. The most influential factor in creating such reform was pressure from newspapers subject to libel actions. See The Press, supra note 47, at 271-74.

53 The questions of truth as a defense in libel cases and whether the defense was properly within the ambit of the judge or jury have had an interesting and debated history. See John Borthwick, Observations upon the Mode of Prosecuting for Libel According to the Law of England (London, 1830); The Press, supra note 47, at 272; Thomas Andrew Green, Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200-1800, at 318-56 (1985).

54 6 & 7 Vict., c. 96, s. 6 (1843).

55 Id.

56 This observation is made by Flood in his uncharacteristically detailed note of the case. Amusingly for our purposes, Flood described Dr. Achilli as "a Romish priest" rather than a victim of the Inquisition. Flood, supra note 48, at 286 n.(b).


58 "The Evangelical Alliance was founded in 1846 as a non-denominational body,
determinative. Several months before the trial, Newman wrote in a letter his belief that “[t]he Judges are against me, and a Protestant bias pervades the whole Court. It seems certain I cannot get the justice which a Protestant would, though this must not be said publicly.”

Newman began preparing for his defense before charges were even filed against him. In September 1851, Nicholas Darnell and Joseph Gordon were sent to Italy to collect evidence. The following month, Catholic supporters of Newman filled the Corn Exchange led by the Bishop of Birmingham, William Ullathorne.

Wiseman was, at first, an ineffective advocate for Newman. He failed to produce proof of the allegations which he had pub-
lished in the *Dublin Review* and he neglected to give Darnell a letter of introduction to the Neapolitan police strong enough to ensure their utmost cooperation. Wiseman later took the matter seriously and found some of the needed documents, but his efforts were too late to resurrect Newman’s defense. Others travelled to Italy to obtain necessary evidence. A lawyer, James V. Harting, was sent to Rome to gather testimony. Father Vincent Grotti, an Italian Passionist, was also sent to Italy to collect evidence. Maria Giberne was sent to Naples and Viterbo for witnesses and testimony in support of Newman.

These investigators produced several sworn statements and witnesses against Achilli. Gordon elicited a statement by Rosa di Alessandris from Viterbo, one of Achilli’s victims, and the promise that Elena Gippina Giustini would travel to England to give evidence. Father Grotti was assured that Sophia Maria Balisano would arrive in England from Naples to testify against Achilli.

Newman received significant spiritual as well as economic support from donations given by Catholic supporters from France, Ireland, the United States, and around the world. In

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63 Id.; see also Letter from Nicholas Wiseman, in *JOHN HENRY NEWMAN, AUTOBIOGRAPHICAL WRITINGS* (Henry Tristam, ed. 1955) 316; Newman’s Account of the first stages of the Achilli Trial (Dec. 22, 1851), in *14 LETTERS, supra* note 10, at 509.

64 Shortly after the trial, Wiseman was to support Newman’s obtaining a papal brief for the Catholic University and his influence with the Pope. No doubt Wiseman regretted his handling of the Achilli matter; he wrote to Newman, “...ever since the Achilli judgment, I have felt that a mark of honour and favour, and an expression of sympathy from the Church was requisites and this seemed to me the proper mode of bestowing it.” Id.

65 See GILLEY, supra note 3, at 270; FINLASON, supra note 1, at 103-108.

66 See GILLEY, supra note 3, at 270.

67 See id. Giberne enlisted support from her friends the powerful Borghese family and used their influence in gathering evidence. See Letter to Edward Badeley (Dec. 6, 1851), in *14 LETTERS, supra* note 10, at 454-55. Newman wrote to Badeley informing him that “Miss Giberne passes through London on Monday next eighth ... I enclose the instructions I have given her .... Go to them, if possible with a servant of the Borghese family; and use the influence of the family as far as they allow you.” Id. In a detailed set of instructions, Newman informed Giberne how she should gather witnesses and bring them to England to testify. Id.; see also WARD, supra note 59, 281-83 (detailing Giberne’s mission in Italy).

68 GILLEY, supra note 3, at 271.

69 Id.

70 See id. at 273 (estimating that expenses before sentencing amounted to £6,000); *14 DICTIONARY OF NATIONAL BIOGRAPHY* 346 (estimating final contribution and expenditure figures at over £14,000); WARD, supra note 59, at 303 (“The whole 12,000
March 1852, Cardinal Wiseman met with members of the “Newman Defence Fund.” There was a “crusade of prayer” for Newman. For example, “the Poor Clares increased their austerities in his favour, ... Ushaw College laid on a Novena, and the Dominican foundress, Mother Margaret Mary Hallahan ... had her favourite image of the Virgin carried in procession on three successive days.”

In addition to public and religious support, Newman obtained substantial assistance from the legal community. Sir Alexander Cockburn was lead counsel for Newman. Cockburn, recently departed from the position of Attorney General, was about the same age as Newman and had studied law as a fellow at Trinity Hall, Cambridge. As a child, he spent considerable time in Europe and became a skilled linguist. In 1829, he achieved a bachelor of civil law and was made a barrister in the Middle Temple. Cockburn maintained a reputation as a good defense lawyer. In 1843, he represented the murderer McNaughten who was acquitted for reason of insanity. He became a member of Parliament for Southampton in 1847 and was knighted in 1851.

Newman was not altogether pleased with Cockburn, who was somewhat too “profligate” for his liking. In fact, Newman

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1., the costs and expenses of the trial, which was a millstone round Newman's neck was promptly paid by his co-religionists.

2. Great Britain contributed about £6,700, Ireland £2,200, France nearly £3,000; but there were contributions made in North and South America, in Italy, Germany, Holland, Malta, and other places. NEWMAN, supra note 63, at 13. A surplus of £3,000 remained after expenses. Id. at 268.

3. GILLEY, supra note 3, at 271. The “Defence Fund” was made up of a group of wealthy and influential Catholic supporters. Id.

4. See id. at 270. In fact, Newman was organizing his affairs as if he were going to die. On Dec. 22, 1851, Newman wrote a litany for the Achilli trial. Its text appears in 14 LETTERS, supra note 10, at 511-12.

5. GILLEY, supra note 3, at 270.

6. See id.

7. Cockburn became Chief Justice of the Common Pleas in 1856 and Lord Chief Justice in 1859. 4 DICTIONARY OF NATIONAL BIOGRAPHY 633-37. He was a scholar in German, French, Spanish, and Italian. Id. at 634. See generally 15 HOLDSWORTH, supra note 7, at 429-43.

8. See 4 DICTIONARY OF NATIONAL BIOGRAPHY 634.

9. See id. (noting that “[t]hough of a very distinguished courtesy at all times, he was often a little testy in his advocacy” and that “[h]e appeared to the best advantage when conducting a defence”).

10. Id. For a report of the trial, see Daniel M’Naghten’s Case, 8 Eng. Rep. 718 (1843).

11. Id.
made several half-hearted attempts to replace him during the proceedings.80 Surprisingly, after the trial, Newman wrote Cockburn a praising letter of thanks.81 The tone of the letter suggests that Newman would have agreed with Holdsworth's assessment of Cockburn as "one of the most brilliant advocates who had ever practiced at the bar."82 Cockburn was assisted by Serjeant Wilkins, and three barristers: Addison,83 Badeley,84 and Bramwell.85 Bramwell studied law under Fitzroy Kelly, one of the prosecuting lawyers, and most likely would have provided needed insights concerning Kelly's preparation of the case.86

B. The Prosecution

The prosecution consisted of three men: Attorney-General Thesiger, Solicitor-General Kelly, and a barrister, T.F. Ellis.87 Frederick Thesiger was admitted to Gray's Inn in 1818 and later became a barrister in 1824 and bencher in 1834 of Inner Temple.88 He served as a conservative member of Parliament for several localities in the 1840s and 1850s. He was a Peelite and

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80 See Gilley, supra note 3, at 271; see also Letter to Edward Badeley (Nov. 23, 1851), in 14 Letters, supra note 10, at 433 (asking if "the Attorney-General [is] heart and soul enough with us."); Letter to Richard Stanton (Jan. 14, 1852), in 15 LETTERS, supra note 10, at 13 (stating that Attorney General "has ruined my cause as far as it has gone."); Letter to Robert Ornsby (May 2, 1852) in 15 LETTERS, supra note 10, at 79 (expressing belief that "Cockburne has played me false again, and I have given him up"); Letter to James Hope (June 3, 1852), in 15 LETTERS, supra note 10, at 94 (lamenting that "Cockburne won't go" and inquiring whether "for the cause's sake" he ought to go).
81 See Letter to Sir Alexander Cockburn (June 25, 1852), in 15 LETTERS, supra note 10, at 106-07 (expressing "the warmest wish of my heart").
82 15 Holdsworth, supra note 7, at 430.
84 Edward Badeley, an ecclesiastical lawyer, took his M.A. from Brasenose College, Oxford, in 1823, and was made a barrister of the Inner Temple in 1841. 1 DICTIONARY OF NATIONAL BIOGRAPHY 856-57. It seems probable that Newman made Badeley's acquaintance at Oxford.
85 George William Wilshere Bramwell became a barrister of the Inner Temple in 1838 and Q.C. in 1851. 22 DICTIONARY OF NATIONAL BIOGRAPHY 256-57. He was knighted and became a Baron of the Exchequer in 1856, and served as lord justice from 1876 to 1881 and died in 1892. Id.
86 Id. at 256.
served as Attorney-General from 1845 until Peel's fall in 1846. He was appointed Attorney-General again under Lord Derby in 1852. He was later Lord Chancellor, but was dismissed by Disraeli because of "his earlier opposition to the removal of Jewish disabilities."

Fitzroy Kelly has been described as "[a] suave, well-prepared advocate who reaped handsome rewards from a striking ability to procure verdicts." Kelly was admitted to Lincoln's Inn in 1818 where he later, like Thesiger, became a barrister in 1824 and bencher in 1835. A member of Parliament for various constituencies of East Anglia, Kelly was a successful politician and, as standing counsel for the Bank of England and the East India Company, a successful political advocate. His legal career seems to have tracked Thesiger's; he was Solicitor-General from 1845 to 1846, and then again in 1852, when he represented the Crown against Newman. He was later Attorney-General and the last Lord Chief Baron of the Exchequer, an office that disappeared on his death.

Finally, Thomas Flower Ellis received his B.A. from Trinity College, Cambridge, in 1818 where he was a fellow. He became a barrister of Lincoln's Inn in 1824 and was a law reporter. In fact, Ellis was responsible for reporting portions of Newman's trial.

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89 It was well-known that Newman was not a supporter of Peel, a former member of Parliament for Oxford: Newman had called Peel a "Rat" and had published several anonymous letters against Peel in the *Times*. Gilley, supra note 3. This must have heightened the animosity Thesiger had towards Newman.

90 19 DICTIONARY OF NATIONAL BIOGRAPHY 608-09.

91 J. Stuart Anderson in *Biographical Dictionary of the Common Law*, supra note 88, at 503; see also 19 DICTIONARY OF NATIONAL BIOGRAPHY 609 (noting that Thesiger's "chief speech while in office was an eloquent opposition to the removal of Jewish disabilities").


93 Id.

94 Id.

95 Id.

96 10 DICTIONARY OF NATIONAL BIOGRAPHY 1236.

97 6 DICTIONARY OF NATIONAL BIOGRAPHY 709-10. Ellis was at least partly responsible for reporting the January 1853 proceedings. The Queen v. Newman, 1 El. & Bl. 558, 118 Eng. Rep. 544 (Q.B. 1853).
C. The Bench

The trial was before Chief Justice Campbell, "a militant Protestant" and "the son of a Presbyterian minister," who "was hostile to Newman from the first." Like Newman, Campbell had been faced with a choice between a religious vocation and a legal career. Newman had chosen Catholicism and religion. Campbell, about twenty years older than Newman, had chosen Protestantism and law. Upon graduation from St. Andrews at the age of 15, Campbell spent an additional three years studying theology and Hebrew. Although his father expected that he would enter the ministry, "in 1800, after two years of tutoring in London, he decided to serve Mammon and to enter Lincoln's Inn, having obtained grudging parental consent for this change of plan." Campbell took silk in 1827 and Peel appointed him to the prestigious position of head of the Real Property Commission. As a member of Parliament in the 1830s and 1840s, he was a leader for law reform. Among his many bills was the Libel Act of 1843, also known as "Lord Campbell's Act," which Campbell was very active in drafting and passing. In 1850, Campbell became Lord Chief Justice and continued to hold this position during Newman's trial.
ROMAN CATHOLICISM IN VICTORIAN ENGLAND

V. THE TRIAL: CATHOLICISM AND THE COMMON LAW

A. The Information

Attorney-General Thesiger, at the request of Achilli, approached Lord Campbell in the Queen's Bench on November 4, 1851, and asked that a criminal information be issued against Newman for the libel he had made in his lecture. Achilli's affidavit set out Newman's statements and his denial of them. Campbell, "disregarding the 'ribaldry' in portions of the affidavit, believed the statements libelous and let the proceedings continue." Newman, through Cockburn, requested time to gather his evidence to respond to the Information because the subject of his statements "occurred at periods of time long passed, in parts beyond the seas, and places far distant from the kingdom." Newman was given the opportunity to argue for more time.

This first preliminary argument in the case was held November 21, 1851, before the Queen's Bench sitting en banc. Thesiger began by asserting that no extension should be given because "when one man took on himself to slander the character of another, the slanderer should be prepared at once to justify the slander." Furthermore, Thesiger implied that a Catholic convert in Italy could get anything he wanted to defend himself from a Protestant convert. Considering "that one of the parties had turned from, and the other had turned to, the Church of Rome, he could not shut his eyes to the possibility of affidavits being easily procured in Italy." Since the new statute provided truth as a defense, Ellis opined that the proper place for Newman to prove the truth of his statements was at the trial, and not in response to issuing the Information, as the law had been prior to the statute. Ellis also noted that the matter was of public importance due to the public nature of Achilli and Newman's disagreement over Roman Catholicism.

Cockburn and Badeley argued in reply without success. Campbell faulted Newman's affidavit both for its imprecision and because it was unclear whether Newman believed the

102 FINLASON, supra note 1, at 29-35.
103 Id. at 36.
104 Id. at 37.
105 Id.
106 Id. at 40.
statements he had made. Campbell apparently relied on the
new statutory defense to take care of things at trial. The other
Justices, Patteson, Coleridge, and Wightman, followed Camp-
bell’s lead with little comment. Newman would not have more
time to respond to Achilli’s request for an Information from the
court. ¹⁰⁷

The Information initiating the prosecution was served on
Newman on October 27, 1851.¹⁰⁸ The Information recited the
necessary elements for the crime of libel, including the avermen-
t that Newman acted maliciously and published words subjecting
Achilli to “great contempt, scandal, infamy and disgrace.”¹⁰⁹ The
Information stated that the “false, scandalous, malicious, and de-
famatory libel”¹¹⁰ was “in contempt of our said Lady the Queen,
to the evil and pernicious example of all others in like case of-
fending and against the peace of our said Lady the Queen, her
crown and dignity.”¹¹¹

It appears that Achilli, with the choice of bringing either a
criminal or civil action, chose the criminal action as it presented
a harsher attack on Newman. Various factors entered into the
decision to bring a criminal action over a civil action. First, it is
unlikely that Achilli was seeking monetary damages from the
action. The justice Achilli had in his mind would be better
served by a criminal conviction leading to the statutory punish-
ments.¹¹² For libel involving allegations of sexual misconduct,
criminal prosecution was the usual manner of proceeding.¹¹³ A
criminal prosecution entailed certain procedural advantages over

¹⁰⁷ Id. at 42-45.
¹⁰⁸ Letter to George Talbot (Oct. 27, 1851), in 14 LETTERS, supra note 10, at 408.
¹⁰⁹ ODGERS, supra note 47, at 673.
¹¹⁰ Id. at 674; see also Regina v. Newman, 3 Car. & K. 250, 175 Eng. Rep. 541, 544
(Q.B. 1852) (quoting criminal information for libel as “containing divers false, scan-
dalous, malicious and defamatory matters concerning the said G.G. A[chilli]”).
¹¹¹ ODGERS, supra note 47, at 674. The averment of breach of peace was jurisdic-
tionally necessary for the Queen’s Bench, but its truth in fact was no longer re-
quired.
¹¹² Under Lord Campbell’s Act, Newman faced a maximum punishment of impris-
onment for one year and an unlimited fine, or, if the libel was found to be false, im-
prisonment for two years and an unlimited fine. 6 & 7 Vict. c. 96, secs. 4 & 5 (1843).
See Cupboard I, supra note 46, at 391 (indicating that prosecutor often chose crim-
nal actions because of vindictive motives).
¹¹³ Cupboard I, supra note 46, at 391. The author pointed out that “[t]he Victori-
ans were particularly sensitive about allegations of sexual misbehaviour, and before
the First World War allegations of this type almost invariably led to prosecutions
rather than civil actions.”
a civil action. For example, in a criminal action, Newman would be barred from giving evidence on oath at the trial. As already mentioned, truth, unless for the public benefit, would not be a defense. Also, by using a criminal action, Achilli could compel Newman to substitute his name for the publisher's. The threat of potential imprisonment and criminal disgrace weighed heavily on Newman.

Responding to the Information, Newman pleaded too generally, and the Crown demurred. When Newman amended his pleas, the Crown demurred again. Apparently, the prosecution used these delays as a tactic to wear down Newman who was expending vast sums to support witnesses in Paris and England. Two other lawyers, Addison and Crompton, were added to the drafting efforts of Chitty and Badeley.

Finally, Newman's pleas were entered. Newman's first plea was not guilty. Newman's second plea was based on the defense recently created by section six of Lord Campbell's Act: He

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114 Flood, supra note 48, at xlv; see The Press, supra note 47, at 274 (pointing out prosecutors' advantage because in criminal trials defendants could not give evidence as in civil trials).

115 Newman's name was substituted for "Burns and Lambert" on Nov. 4, 1851. Newman's Account of the first stages of the Achilli Trial (Dec. 22, 1851), in Letters, supra note 10, at 509.

116 See Letters, supra note 10, at xiii.

117 Newman's first pleadings were prepared by Thomas Chitty (1801-1878). Letter to Antony Hutchison (Dec. 24, 1851), in Letters, supra note 10, at 479. A member of the dynastic legal family of Chitty, Thomas Chitty was an acknowledged expert in pleading and a legal author. Biographical Dictionary of the Common Law, supra note 88, at 113.

118 Newman complained that, as Achilli put off the trial, "[m]eanwhile our witnesses are all waiting at great expense! how hard this is!" Letter to Archbishop Cullen (Feb. 4, 1852), in 15 Letters, supra note 10, at 28. Newman expressed this concern repeatedly. See Letters to Miss M.R. Giberne (Jan. 17 and Jan. 23, 1852), in 15 Letters, supra note 10, at 16-17, 24 (discussing crisis in which Achilli's objection might hinder Newman bringing witnesses to testify); Letter to Sister Mary Imelda Poole (Feb. 8, 1852), in 15 Letters, supra note 10, at 33-34 (stating that Achilli "never will come to court"); Letter to Henry Wilberforce (Mar. 2, 1852), in 15 Letters, supra note 10, at 56, 58 (same).

119 Letter to Richard Stanton (Feb. 7, 1852), in 15 Letters, supra note 10, at 31-32. Newman, when writing about "Crompton" was probably referring to Sir Charles Crompton (1797-1865). Newman labelled both Addison and Crompton as "first-rate lawyers." Id. at 32. Anthony Manchester has called Crompton "a skillful special pleader and a knowledgeable lawyer" and "regarded as a sound craftsman for he had always been learned in his craft." He became a Justice of the Queen's Bench in 1852. Biographical Dictionary of the Common Law, supra note 88, at 137.
pleaded that his statements were true and that he published them for the public's benefit. Newman asserted that the public was entitled to know the truth about the controversy between Anglicanism and Catholicism and the role Achilli played in it.

Responding to Newman's pleas, the Crown, in its Replication, denied that there was a public benefit and demanded a jury trial. The jury was a "special jury," composed of members of the higher classes, who were overwhelmingly Protestant in composition. Nonetheless, "[m]ost of the special jurors in this case, however, were really of the common jury class. They are called 'merchants,' because the special juries can only be taken from the names so designated (or as bankers or esquires) in the jury lists ...."

Even before the trial, Newman knew that he was going to be found guilty of the libel if the action continued. He had seriously considered the possibility of settling the case with Achilli. Newman knew he could not prove all twenty-three points. With a trial, he sought a moral victory, discrediting Achilli even

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120 ODGERS, supra note 47, at 674-75.
121 See Regina v. Newman, 175 Eng. Rep. 537, 545 n.22 In the amended plea, Newman alleged that the publication of alleged libel "was for the public benefit" because of the public excitement which arose and the many public discussions which took place. Id. As to Achilli's involvement in the controversy and Newman's decision to reveal it, Newman's second plea stated:

[he] took a prominent part in such discussions, and his opinion and testimony were by many persons appealed to and relied on as of a person of character and respectability, with reference to the matter in controversy, it was necessary, for the purpose of more effectually examining and ascertaining the truth ... Achilli [was] not deserving of credit or consideration, by reason of his previous misconduct; and also because ... Achilli ... preach[ed] and lectur[ed] to excite discord and animosity towards [the Roman Catholic Church].

Id.
122 ODGERS, supra note 47, at 675.
123 FINLASON, supra note 1, at 203 n.4; see Cupboard 1, supra note 46, at 384 (indicating that in political libel prosecutions special juries were used because "rich men [had] little sympathy for radicals"); see also James C. Oldham, The Origins of the Special Jury, 50 U. CHI. L. REV. 137, 139 (1983) (defining special juries as "jury of individuals of higher class than usual; jury of experts").
124 See Letter to Peter Cooper (June 11, 1852), in 15 LETTERS, supra note 10, at 98 (indicating that Newman knew he would be found guilty because it was impossible to prove everything).
125 Letter to James Hope (Nov. 25, 1851), in 14 LETTERS, supra note 10, at 434.
126 Letter to Richard Stanton (Jan. 14, 1852), in 15 LETTERS, supra note 10, at 13 (indicating that Newman believed he could prove at least 5 major points and perhaps 5 minor ones more but nothing more).
if it meant his own guilt.\textsuperscript{127}

\textbf{B. The Trial of June 21, 1852}

Both the \textit{Carrington and Kirwan's Reports} and Finlason reported Newman's trial on June 21, 1852;\textsuperscript{128} however, both offered a different version. The version reported in \textit{Carrington and Kirwan's Reports} selectively reported few legal issues, leaving the reader with the impression that the trial was predominantly a business-as-usual discussion of the admissibility of a copy of a decree by the Court of Holy Orders, or the Inquisition. In contrast, Finlason's report of the case clearly identified the issues regarding religion and Achilli's broken solemn vows and plethora of sexual crimes and perversions.

\textbf{1. Carrington and Kirwan’s Report}

According to this report, John Henry Newman and Roman Catholicism were tried in the Queen’s Bench in the context of some very specific and somewhat novel legal issues. The six printed pages, excluding the pleadings reproduced in the notes, minimally comment on the religious aspect.\textsuperscript{129} Technical questions of evidence overshadowed any element of religious bigotry and Achilli’s prominent sexual trysts remain unacknowledged. Both Newman’s original libel and plea of justification were far from the questions of evidence presented. Among the questions were the following:

a. Would the Queen's Bench admit as evidence a decree from the Court of the Inquisition depriving Achilli his right to celebrate mass?\textsuperscript{130}

b. Would the Queen's Bench admit as evidence the \textit{Dublin Review} article upon which Newman relied?\textsuperscript{131}

c. What would happen if Newman could prove the truth of

\textsuperscript{127} Letter to Sister Mary Imelda Poole (Jan. 12, 1852), in 15 LETTERS, supra note 10, at 9-10. \textit{See also supra} note 59.

\textsuperscript{128} Newman was relieved that the trial was finally set. \textit{See Letter} to Peter Cooper (June 11, 1852), in 15 LETTERS, supra note 10, at 98 (announcing date of trial); \textit{see also Letter} to F.W. Faber (June 11, 1852), in 15 LETTERS, supra note 10, at 98-99 (same); Circular Letter to Religious Communities, in 15 LETTERS, supra note 10, at 99-100 (same).


\textsuperscript{130} \textit{Id.} at 547.

\textsuperscript{131} \textit{Id.} at 549.
some, but not all of, the statements he made in his lecture?\textsuperscript{132}

Newman repeatedly asserted that Achilli was suspended from the celebration of mass and other ecclesiastical functions by the Papal Inquisition. Thus, Newman was permitted to try to demonstrate the truth of his assertions.\textsuperscript{133} The judgment of the Inquisition would provide the best evidence for these statements, and at the trial, Mr. Harting was called and produced a copy of the judgment.\textsuperscript{134} Harting testified that he had obtained the copy of the judgment, but he was unable to testify concerning the jurisdiction of the court.

Dr. Grant, a Catholic Bishop, testified that he had received other documents from the Inquisition and that the seal on the judgment presented by Harting was the same as the other documents. With authenticity of the judgment established, Thesiger objected on the ground that "there was no proof that the Court of the Inquisition had jurisdiction over the subject-matter."\textsuperscript{135} Dr. Grant then proved that "[i]n Rome the Court of the Inquisition is the Supreme Court in matters ecclesiastical, and has jurisdiction over the clergy in higher crimes."\textsuperscript{136}

Campbell was convinced that the evidence was satisfactory, but Thesiger raised the objection that the English court could not be sure that Achilli ever had a chance to respond to the charges of the Inquisition. Kelly repeated the objection and moved the debate to one of policy by adding: "This is the first time that a judgment of the Inquisition has been tendered in evidence (at least since the Reformation) in an English Court of Justice."\textsuperscript{137} Kelly's objection echoed the "no popery" of the crowds in the streets who had been listening to stories of the Inquisition's tor-

\textsuperscript{132} Two other questions addressed by the court and recorded in this report were was it proper for Achilli to be excluded from the proceedings during the questioning of witnesses, because he himself was to be a witness, and was it proper for Newman to present witnesses to testify about Achilli's moral character. \textit{Id.} at 546-47.

\textsuperscript{133} It is not clear whether this meant that Campbell accepted the second requirement of the defense, that the words were published for the public benefit. Finlason interpreted Campbell's actions this way. \textit{Finlason, supra} note 1, at 14.

\textsuperscript{134} Regina v. Newman, 175 Eng. Rep. at 547. Vincent Harting (1812-1883) was a solicitor for the dioceses of Westminster, Birmingham, and Southwark and had been educated at Downside and London University. 14 \textit{Letters, supra} note 10, at 546.

\textsuperscript{135} Proof of subject-matter jurisdiction was required under 14 & 15 Vict. c. 99, s. 7 (1851). This statute provided for the admission of foreign judgments in English courts if they bore the proper seal (shown here by Dr. Grant's testimony) and were from the proper tribunal.


\textsuperscript{137} \textit{Id.} at 547.
ture chambers and dungeons filled with bones.

Repeating Thesiger and Kelly, Ellis added, “and this [the Inquisition] is a tribunal of whose authority and seal this Court can know nothing.” Ellis raised an interesting point: if the authority of the Pope was not recognized in England, how could an English court recognize the authority of a papal court? Campbell’s decision to admit the judgment could only have been made in light of the most recent shifts in political and religious toleration of Catholicism in England.

It has been remarked in the course of the argument that this is the first time since the Reformation that the judgment of the Court of Inquisition has been tendered in evidence in an English Court of Justice. Looking at this document, I find that it is a copy of the judgment of the Court of Inquisition, and that such a jurisdiction is exercised at Rome. Thank God it does not extend to this country. But this country will be ready to receive documents emanating from Courts of other countries.

Thus, although he admitted the judgment, Campbell nevertheless felt it necessary to disparage the tribunal from which the judgment emanated. This remark was too noteworthy for even the Carrington and Kirwan’s Report to edit out. Furthermore, Campbell believed that the judgment, although setting out Achilli’s immoralities, did not sufficiently tie them to Achilli’s suspension and disabling. Achilli testified that the reason for the sentence was heresy.

2. Admissibility of the Dublin Review Article

Cockburn hoped to use Wiseman’s article in the Dublin Review to show that Newman had relied on the article in his lecture and that his specific charges of Achilli’s immoral conduct were not concocted merely to respond to the charge. Campbell responded, “I do not think it is evidence,” and rejected the article.

138 Id.
139 Id. at 547-48.
140 Regina v. Newman, 175 Eng. Rep., at 548-49. The Inquisition judgment was admitted into evidence in both Latin and English. Id.
141 Id. at 549. Lord Campbell denounced that the Inquisition judgment was admitted as evidence of Achilli’s immorality. Campbell stated that the judgment was mere “evidence that a sentence was pronounced, not of the facts it recited ....” Id.
142 Id.
143 Id. at 549. Finlason argued in his report of the case that a prior publication, not
According to this report, Campbell admitted little evidence that would prove Achilli's misconduct. In summing up the case for the jury, Campbell stated that there was evidence of a sentence against Achilli, but that the jury would have to decide whether it was for heresy, as Achilli asserted, or sexual misconduct, as Newman asserted. Of the Inquisition's judgment, Campbell said:

Now I think that it is not only admissible evidence, but very strong evidence to prove that such a sentence was pronounced, because the Court of Inquisition no doubt is a regular tribunal in the Roman States, and is presided over by men of learning and piety. But then for what cause was it pronounced? Dr. Achilli says it was for heresy, and that no charge of immorality was brought against him. It is for you to say whether you believe it was for heresy or for immorality. It also purports to recite a confession of Dr. Achilli, but that he denies.

3. Severability of Defense

The jury found Newman guilty, and that Newman proved only his nineteenth point, that Achilli was suspended from celebration of mass and other ecclesiastical functions, to be true. Campbell asked the jury about the truth of the other pleas, and the foreman of the jury responded, "[n]ot to our satisfaction."

The Times reported that those in the court applauded. For Newman to plead successfully his justification defense based on the statute, the truth of each point in the pleading had to be proved.

4. Finlason's Report

The one hundred fifty page Finlason report demonstrated the substantial length and religious nature of the four day trial. Witnesses ranged from poor young Italian women to the
English peerage. Some of the finest lawyers of the day conducted the trial, and it was a true cause célèbre, quite different from the evidentiary ruling as recorded in the English Reports.

a. Day One

On the first day, Thesiger presented the case against Newman by having the libel read. Cockburn answered and asked why Achilli would not be put on the stand immediately, as was the usual practice, and Thesiger promised to produce Achilli later. Cockburn's response lasted about two hours. Then, Elena Justini (Valente), Joseph Giotti, and Sophia Maria Balisano were called as witnesses for the defense. Bramwell, Addison, and Badeley examined the witnesses. Valente testified that she engaged in sexual relations with Achilli, who insisted it was no sin. Balisano described her rape by Achilli from which she became pregnant. Giotti testified that Achilli had a bad reputation and that charges were brought against him in the Bishop's Court. Thesiger and Kelly cross-examined the witnesses. 150

b. Day Two

The second day, eighteen new witnesses were called. 151 The first group of witnesses testified in detail as to Achilli's sexual misconduct: his adultery with the wives of Garamoni and Coriboni; his general immorality; and his hiring of a prostitute as a servant. Hadfield, Watts, the Earl of Shafesbury, and Dr. Bonavia testified about Achilli's misconduct at St. Julian's Protestant College, Malta, for which he was relieved of his professorship there. Harris, Legge, Wood, and Gorman were domestic servants of Achilli's, and testified that Achilli, while living in London, had made sexual advances, had sexual intercourse with, or raped them during their work for him and his wife. Finally, Harting and Grant produced and established the validity of the police record from Naples and the decree of the Holy Office which were both admitted into evidence. A final writing admit-

150 Id. at 53-83.
151 Antonio Russo, Giovanni Patriniani, Bocchiciampi, W.A. Reynolds, Rosina Lavaney, Vincenzo Barga, Rev. G.H. Hadfield, Rev. A. Watts, the Earl of Shafesbury, Dr. Bonavia, Harriet Harris, Mrs. Cadogan, Jane Legge, Sarah Logan, Sarah Wood, Catherine Gorman, James V. Harting, the Bishop of Southwark (Dr. Grant), William Nicholi. Id. at 83-119.
ted was Achilli’s book, *Dealings with the Inquisition*. 152

c. Day Three

The third day, Cockburn unsuccessfully attempted to introduce Wiseman’s article from the *Dublin Review* into evidence. Achilli was then called as a witness by the prosecution. Achilli’s direct examination lasted the morning and his cross-examination took up most of the remainder of the day. 153 Achilli first gave a brief summary of his positions and travels leading up to his trip to England. 154 Achilli denied the assertions made by Newman in detail. He denied the allegations of sexual misconduct, and his confession recorded in the Inquisition’s decree. Finally, Achilli asserted that his dismissal from ecclesiastical responsibilities was based on his religious beliefs. 155

Achilli, on cross-examination by Cockburn, remained silent when asked questions about sexual intercourse with women. Cockburn asked Achilli about his vows as a Dominican and the nature of his secularization in Italy by which he obtained a living. Achilli answered many questions concerning his treatment by the Inquisition, his reasons for being called before it, his suspension, and its surveillance of his activities. Cockburn questioned Achilli concerning his run in with the Garamonis and his trip to Zante with the Coribonis. He explored Achilli’s alleged relations with the English girls mentioned in the pleadings, and also tried to raise Achilli’s conduct with another named Louisa Colchester. Cockburn ended his cross-examination with a probe into Achilli’s theological reasons for leaving Roman Catholicism.

Other witnesses who testified that afternoon were Dominico Pogge, Dominichi Paoli, Captain W. H. Lawrence, Mr. Kirkpatrick, Marianna Crisaffi Garamoni, and Mrs. Achilli. 156 Pogge, an Italian and former Dominican friar who converted to Protestantism testified to Achilli’s good character in Rome. He further stated that Achilli was liked by the ordinary clergy at Viterbo, but did not get on well with the bishop. On cross-examination, Pogge testified that chastity was one of the vows of the Domini-

152 Id. at 117-119. See generally GIANCINTO ACHILLI, *DEALINGS WITH THE INQUISITION* (1851).
153 FINLASON, supra note 1, at 120-49.
154 Id. at 120-24.
155 Id. at 124-29.
156 Id. at 145-49.
cans. Pogge made adamant refusals to answer any of Cockburn's questions concerning his own conversion to Protestantism. Dominichi Paoli served as another character witness for Achilli's reputation in Viterbo. Cockburn questioned Paoli's conversion to Protestantism and his evangelical work. Lawrence, the Inspector-General of the Police in the Ionian Islands, and Kirkpatrick, former Chief Justice of the Ionian Islands, testified that there was a legal action for alimony by Garamoni against her husband. Marianna Crisaffi Garamoni testified that she was a battered wife and that she had sought Achilli that evening to testify against her husband. She denied having sex with Achilli. Finally, Mrs. Achilli testified that Harriet Harris was her servant and that she left the job because Mrs. Achilli complained about the condition of the kitchen.

d. Day Four

The final day contained the closing arguments by Cockburn and Thesiger. The substance of Cockburn's argument was a chronological summary of the events in Achilli's life from the 1830s in Viterbo to the early 1850s in England. Cockburn faced the jury with their clear dilemma: there was no doubt that one group of witnesses was lying. Cockburn tried to impeach Achilli's credibility by emphasizing that Achilli was an Italian, a Catholic, a monk, and had been trained by the Jesuits. Furthermore, Achilli was more self-interested than the poor peasant girls of Italy who testified for Newman. Cockburn noted the reliability of the documentary evidence, the Naples police report, and the Inquisition's decree against Achilli. These were from countries where priesthood was respected and yet, Achilli was investigated there.

Cockburn made ground against Achilli by summarizing his employment of Coriboni and his wife. Although Catholic, Coriboni was used by Achilli as a Protestant clerk in Zante. Cockburn used this event to assert that Achilli's conversion was not

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157 Id. at 145-46.
158 FINLASON, supra note 1, at 146-47.
159 Id. at 147.
160 Id. at 147-48.
161 Id. at 149.
162 Id. at 149-201.
163 FINLASON, supra note 1, at 149-201.
164 Id. at 156-57.
based on heart or intellect, but merely followed "the religion of the breeches pocket." Cockburn outlined Achilli's dismissal from the Protestant College in Malta and his seduction of English servants. Cockburn next addressed the decree of the Inquisition. It was during this portion of Cockburn's closing argument that Campbell interjected his interpretation that the decree did not tie the judgment to the recital of the immoralities set out in the decree. It appeared that Cockburn had an insurmountable popular opinion over which to climb.

Gentlemen, we have heard a great deal about the Inquisition—though the Roman must not be confounded with the Spanish—and none of the atrocities can be imputed to the former which are ascribed to the latter. It is not a court which is approved of in this free country, where religion and everything is unfettered, limited only by the laws necessary for the peace and good order and welfare of mankind. We desire no secret tribunals. But do not let us be unjust on that account!

Cockburn generally discussed Achilli's religious hypocrisy. He argued that Achilli officiated Catholic mass long after he stopped believing in the Catholic doctrine, and that Achilli converted to Protestantism because it was financially expedient.

Cockburn concluded his closing argument with an appeal to the jury to set aside their religious feelings. He reminded the jury of less enlightened days when injustices were committed by the courts and innocent men were killed on the basis of their religion.

It was now Thesiger's turn. He depicted Achilli as an innocent victim of Newman's blasts. Thesiger quickly denied that religion should be a factor.

Gentlemen, my learned friend has suggested that this is a subject of religious controversy; he has referred to the flames of religious bigotry as re-enkindled in this country; he has stated that two champions of antagonistic Churches are before you; and he has supposed that I might possibly seek to excite your religious prejudices, and appeal to your religious feelings. But,

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165 Id. at 160.
166 Id. at 164-66.
167 Id. at 167-69.
168 FINLASON, supra note 1, at 170.
169 Id. at 170-72. Even Finlason noted the parallels to the trial of Titus Oates. Id. at 171 n.e.
170 Id. at 174.
gentlemen, I shall call upon you to decide from no motives of such a nature! I should be perfectly ashamed of myself if I were to endeavour to excite prejudice on such grounds! This is not a question of religious controversy.¹⁷¹

Shortly afterwards, when Thesiger discussed the personal motives of Achilli and Newman, he added:

Dr. Newman has exhibited all the energy and zeal of a proselyte; he, too, turned from the Protestant faith to the Catholic. My learned friend admits that Dr. Achilli, who has embraced the Protestant faith, is a man of great learning and eloquence; he is a most formidable antagonist of that faith which Dr. Newman has embraced; and these feelings may well be enkindled ....¹⁷²

Next, Thesiger addressed the question of why Achilli did not bring an action against Wiseman for the publication of the Dublin Review article. He reasoned that there was no name associated with the article and that "[it] was not until he [Achilli] saw these 'Lectures' appear under a name once respected, that he felt he had met an adversary who was visible ...."¹⁷³ This argument convinced the jury even though it was a weak legal reason because the identity of the author could be compelled in a criminal libel action. It is likely that pressure on Achilli from the Evangelical Alliance to clear his name, in conjunction with the opportunity to discredit Newman, were strong motivations for Achilli's action.¹⁷⁴

Thesiger discredited Newman's specific allegations by showing the inconsistency in dates, or in the ages of the girls Achilli had allegedly seduced.¹⁷⁵ Broadening the scope of his defense of Achilli's character, Thesiger addressed the allegation that Achilli was an infidel. Theology, once again, entered the courtroom:

If it be meant that, because Dr. Achilli did not believe in transubstantiation or auricular confession, that he is therefore an infidel, I say—without the least levity, but with strong feeling—I hope the number of such infidels will daily increase! Gentlemen, with all the trembling anxiety suited to such sacred subjects, I make only those remarks which are necessary to show

¹⁷¹ Id. at 176.
¹⁷² Id. at 177.
¹⁷³ FINLASON, supra note 1, at 178.
¹⁷⁴ KLAUS, supra note 6, at 253.
¹⁷⁵ FINLASON, supra note 1, at 179-80.
that the charge is not substantiated.\textsuperscript{176}

To rebut Cockburn's assertion that Achilli was a hypocrite, Thesiger read passages from Achilli's book in which he questioned transubstantiation and wrote that "the mass is nothing but a lie—a solemn imposture." In the passages read, Achilli equated his struggle with that of Luther's: \textsuperscript{177} "And does anybody believe that because Luther remained in the Church in which he had been born and bred, until his thoughts had ripened into conviction, and the full light of truth poured upon his mind, Luther would properly be characterized as a hypocrite?"\textsuperscript{178}

Immediately afterwards, Thesiger questioned Newman's conversion.

But, gentlemen, who is the person from whom these charges proceed? From Dr. Newman! Was he suddenly converted? Did no doubts intrude into his mind while he was a member of our Protestant Church! Did conviction flash at once upon his soul? Did he lie down at night a satisfied and contented Protestant—disbelieving in transubstantiation, confession, and absolution—and rise up in the morning a full blown Romanist?\textsuperscript{179}

Thesiger then made explicit a theme he had been weaving throughout the trial: Newman's defense was a Popish Plot aided by Roman Catholicism and the Vatican. He reminded the jury of Harting's hesitance to mention his sponsor—a monsignor—and that a priest sent Elena Valente to testify against Achilli for the "glory of God and the honour of the Church."\textsuperscript{180} Finally, Thesiger argued that these Italian witnesses were Catholic. The witnesses, Thesiger insisted, could return to Italy without future fear of public opinion and could be absolved for their lies.\textsuperscript{181}

Thesiger also objected to the way Cockburn cross-examined Achilli. The Finlason version of the trial noted that Cockburn's questions concerning Achilli's sexual conduct were met with silence and a sardonic smile by Achilli. When questioned about intercourse with women other than those involved in the trial, Achilli responded: "Whether I have had intercourse with others I decline to answer, because I am privileged by the judge."\textsuperscript{182}
siger stated that it was unfair for Cockburn to press Achilli concerning his sexual conduct, and that Achilli was correct to assert his privilege. Thesiger used Achilli's refusal to answer such questions as an indication of his great honesty, and as a general shot at Catholicism's vow of chastity.

Thesiger continued to refute the allegations of Newman's original pleading. He discredited the English servants, some of whom were Catholic, because they were low class and homely. "One of them admits she was accused by Mrs. Achilli of being dirty, which is a serious thing, you know, with a servant."

The conspiracy against Achilli was furthered with the judgment of the Court of Inquisition. Thesiger discredited the judgment by stating that he hoped it would be the first and last time an English court would admit an Inquisition judgment as evidence. Thesiger made much of Harting's procuring the document through the introduction of Monsignor Talbot, "private secretary to the pope [sic]." He asserted that the document was fabricated to assist Newman's defense.

Concluding his closing argument, Thesiger reasserted the argument that the case did not concern a religious controversy: "I appeal to you, whether I have, in any way, endeavoured to excite any prejudice; whether I have not endeavoured to detach this anxious and painful inquiry from all those religious considerations in which it has been said to be involved."

Thesiger and Cockburn having concluded, Campbell summed up the evidence for the jury. He began by addressing at length the question of religion:

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183 Id. at 184. Thesiger stated:
Dr. Achilli availed himself of the privilege of the law; but is a man to be denied the justice which the law allows him because at any period of life he may have forgotten those rules of morality which are obligatory on us all?
... I know of no distinction between persons in holy orders and laymen in this respect; nor between the vow made by a monk or priest, and that which is made for us all at our baptism, and which binds all to chastity.

184 Id. at 190.
185 FINLASON, supra note 1, at 191. "It is the first time that a judgment of the Court of Inquisition has been produced in evidence in an English court of justice, and I hope it will be the last! I think probably it will be, after the fate which awaits this judgment, now before us." Id.
186 Id. at 191.
187 Id. at 193.
188 Id.
Gentlemen, some apprehension has been expressed that you might be biassed [sic] by difference of religion. Of that I sincerely believe there is not the remotest chance! even [sic] if you were all Protestants. Even had the credit of the Protestant religion been at stake, I am sure you would give a verdict founded upon the evidence before you. But I cannot see how it can be said that in this case the credit of Protestant religion is at all involved. The character of Dr. Achilli is at stake in the deepest manner; but the charges which are imputed to him took place when he was still of the Roman Catholic religion, and I cannot see how it could affect the Protestant faith that there should have been a Roman Catholic priest, who pretended to come over to the Protestant persuasion, and who deserves no credit for his professions. Then, as to Dr. Newman, there is no danger of his being looked upon by you unfavourably, though he has left the Protestant religion, and is now of the Church of Rome. Gentlemen, no doubt he has acted from the purest motives, and I give him credit for the course he has adopted. What I dislike to see is, clergymen (if there be any such) remaining in the Protestant Church, who, while they are Roman Catholics in heart, and wish to be so in their practice, remain in the Protestant Church; but when a man of piety, honour, and education (like Dr. Newman), feels that he does not belong to the Church of England, and resigns his position in that Church, and all the advantages arising from it, there is no reason to cast any imputation upon him.  

Campbell next instructed that, as to the first plea, the jury should find Newman guilty, because the statements were libellous and published by Newman. Next remained the question of justification according to Lord Campbell's Act which Campbell modestly believed was "a great improvement in our jurisprudence." What remained to be determined was the truth of the statements Newman made. Campbell's comments on the evidence were decidedly against Newman; Elena Valente's testimony was improbable and unconfirmed; Mr. Reynolds's testimony of witnessing some of Achilli's more intimate moments was an extraordinary story; and there was little evidence that Achilli was discharged from Malta for immorality. The decree of the Inquisition fared better. Campbell denied that it was a

189 FINLASON, supra note 1, at 194-95.
190 Id. at 195.
191 Id. at 198-99.
fabrication, but stated that it only showed that sentence was passed on Achilli, not the reasons for the sentence.\textsuperscript{192}

With the exception of these comments, Campbell's summary was relatively free from religious rhetoric to this point. He faltered, however, on his discussion of Achilli's celibacy: "Gentlemen, there was an insinuation that Dr. Achilli, as he had made a vow of celibacy, that it was discreditable that he should have entered the holy estate of matrimony. We must remember, however, that Luther married, and married a nun!"\textsuperscript{193}

Nor could the testimony of a Catholic Bishop and well known canonist overcome popular conceptions of the Inquisition:

With regard to the Inquisition, Dr. Achilli stated that it is not a court competent to adjudicate on questions of immorality. But there he must be mistaken; for Dr. Grant, who is a canonist, well acquainted with the courts, says it has jurisdiction over immorality. It should seem certainly more probably that it should be heresy!\textsuperscript{194}

Finally, Campbell implied that Achilli's credibility was enhanced for his refusal to answer general questions concerning his conduct. With that, Campbell supplied the jury with a list of Newman's pleas of justification and sent them out.\textsuperscript{195}

After being out for about two and a half hours, the jury returned a verdict of guilty. As to Newman's plea of justification, the jury found that only one of the twenty-three points was proved true, that Achilli was suspended from celebration of mass and other ecclesiastical functions. To general cheers, the jury was thanked and dismissed.\textsuperscript{196}

On a personal level, Newman believed he was "inheriting the lot of Catholics, to suffer and to triumph."\textsuperscript{197} The verdict was not only against Newman, but against Roman Catholicism.\textsuperscript{198} Finlason stated that the verdict against Newman showed England's "blind and bitter prejudice against the Catholic Church."\textsuperscript{199}

\textsuperscript{192} \textit{Id.} at 199.
\textsuperscript{193} \textit{Id.} at 200.
\textsuperscript{194} \textit{FINLASON, supra} note 1, at 200.
\textsuperscript{195} \textit{Id.} at 201.
\textsuperscript{196} \textit{Id.} at 202-03.
\textsuperscript{197} \textit{Letter to Mrs. William Froude (July 4, 1852), in 15 LETTERS, supra} note 10, at 120.
\textsuperscript{198} "[I]n the language of a respected barrister, at the close of the evidence for the defence, 'Dr. Newman is morally vindicated.' And it may be added, what is far more important, the Church is vindicated too." \textit{FINLASON, supra} note 1, at vii.
\textsuperscript{199} \textit{Id.} at 1.
He appealed to the righteousness of Englishmen: "They will not sanction a perversion of justice, in order to secure a triumph for Protestantism. They may not appreciate religious houses, but they venerate religion; they may reluctantly tolerate Popery, but they will not perpetrate iniquity."\(^{200}\)

Similarly, the Times wrote: "We consider ... that a great blow has been given to the administration of justice in this country, and Roman Catholics will have henceforth only too good reason for asserting, that there is no justice for them in cases tending to arouse the Protestant feelings of judges and juries.\(^{201}\)

One historian of libel law has called Newman's trial "the most celebrated miscarriages of justice in the nineteenth century.\(^{202}\)

VI. AFTER THE TRIAL

A. New Trial

Newman's lawyers wanted to request a new trial, but Newman was adamantly against the idea. He had suffered greatly from the uncertainty of the outcome during the first trial, and believed he could not continue with the financial burden of legal expenses and maintaining witnesses.\(^{203}\) Nonetheless, at the last minute, his lawyers convinced him to ask for a new trial.\(^{204}\) Newman described the impact of the request this way:

After a most tedious reading of the Judge's notes from 10 to half past 1, Cockburne rose, and began speaking. Campbell in a

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\(^{200}\) Id. at 28.

\(^{201}\) GILLEY, supra note 3, at 271-72.

\(^{202}\) The Press, supra note 47, at 274 n.55.

\(^{203}\) Id. at 28.

\(^{204}\) Id. at 28.

\(^{205}\) Id. at 28.

\(^{206}\) Id. at 28.

\(^{207}\) Id. at 28.

\(^{208}\) Id. at 28.

\(^{209}\) Id. at 28.

\(^{210}\) Id. at 28.
condescending considerate way said "Sir Alexander, Dr Newman doubtless has an affidavit—" as if setting him right in my favor. Cockburn then said, "My Lord, I wish to suggest [to] the Court that there are grounds for a new trial." The effect was wonderful, no one had known what was to be. Campbell at once showed great agitation. Thesiger threw himself back—Tonna and another of Achilli's friends who were opposite to me vanished. Then he began a most masterly exposure of Judge and Jury, till there was a loud cheering from the audience. . . .

Thus, in an eloquent lecture to the bench lasting three hours, on November 22, 1852, Cockburn moved for a new trial. Newman was quite pleased with this turn of events. The request was based on two grounds: (1) that the Dublin Review article should have been admitted into evidence at trial; and (2) that the jury verdict was against the weight of evidence. Rejecting Cockburn's assertion that the admission of a prior libel would be appropriate to demonstrate tacit acceptance of libel's truth, the court nonetheless agreed to hear argument based on Cockburn's second ground.

Arguments as to whether the jury's verdict was against the weight of evidence were made on January 20, 21, and 22, 1853. Ellis's report gives us only a biased glimpse at these proceedings. Significantly, he omitted the arguments of counsel and quickly focused on Campbell's decision. Finding that the verdict was not against the weight of the evidence, Campbell next addressed the issue of whether Newman's punishment was to be mitigated by the truth of some of his statements. Campbell's decision on this matter both explained and praised the provisions of the Libel Act. Several times he praised the wisdom of the "Legislature," appearing to forget that it was he who drafted and introduced the bill. The Act gave the court the discretion to aggravate or mitigate punishment according to the evidence given at trial. Campbell put the question this way: "Where there has been a conviction after a plea of justification, what course is to be fol-

206 See 15 LETTERS, supra note 10, at xiv.
207 Letter to Archbishop Cullen (Nov. 27, 1852), in 15 LETTERS, supra note 10, at 203-204.
210 Id. at 553.
211 Id. at 552-53 (explaining 6 & 7 Vict. c. 96, sec. 6 (1843)).
owed, so that justice may be done, and a due measure of punishment meted out according to the real guilt of the defendant?”

Campbell noted that at least seven of the twenty-three allegations were not supported by evidence at the trial, and that therefore, the jury was correct in finding them not proved. Nonetheless, Campbell found that substantial evidence for at least eight “very heinous” acts of immorality were presented, and that “another jury [would] come to a different conclusion.”

Campbell, however, stated that a plea of justification, even under the statute, was “one and entire” and consequently, Newman could not justify the pleas separately—it was all or nothing. Thus, although a new trial was not granted, the court did consider its own opinion of the evidence in sentencing the defendant.

**B. Sentencing**

Newman supplemented the evidence the court had from the trial with his own affidavit swearing that he believed the charges against Achilli were true. He also produced affidavits from Viterbo of another Italian woman who could not attend the trial due to illness. She stated that Achilli had seduced her when she was sixteen. Newman also wanted to provide a further statement on oath as to what he was told and believed, but which “was not produced or producible at the trial.” When the introduction of this evidence for purposes of sentencing was objected to, Campbell once again had an opportunity to explain his statute: “This part of the affidavit is clearly admissible, under the statute, to shew why this part of the plea was placed on the record; the fact of the plea being one to be considered by the Court in apportioning the punishment.” The admission of new evidence for sentencing seemed contrary to the wording of the statute. The language in the statute clearly stated that the evidence for sentencing would be the same evidence presented at trial.

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213 Id. at 554.
214 Id.
215 Id. at 555.
216 Id.
218 “[I]t shall be competent to the Court, in pronouncing Sentence, to consider whether the Guilt of the Defendant is aggravated or mitigated by the said Plea, and by the Evidence given to prove or to disprove the same.” 6 & 7 Vict. c. 96, sec. 6
Campbell, being more sympathetic toward Newman, admitted the new evidence to mitigate his sentence. However, Newman's counsel pressed on, and tried to introduce evidence which had been held inadmissible at trial. This attempt, however, pushed the distinction between evidence for guilt and evidence for sentencing too far and the court held the proffered document inadmissible.\(^{19}\)

Newman had wished to make a statement before sentencing, but because of a mix-up between his counsel and the bench, the opportunity was passed by. The short statement he would have read affirmed his belief in the truth of what he published about Achilli and in the importance of publishing it. The speech ended with his trust in the law, the judiciary, and God:

My Lords I cheerfully submit to the law of my country. I justly confide in your Lordships' administration of it. Religion reminds me that you are the Ministers of the Most High. History assures me of the impartiality of your Court .... Nothing can I suffer, but will be made up to me a hundred fold hereafter. I am encompassed with blessings and mercies. There is a God above us. He has never failed me; He does not fail me now.\(^{20}\)

Instead of this eloquent closing before sentencing, Newman was subjected to a speech by one of the judges, Sir John Taylor Coleridge, who derided Newman for his deterioration as a convert.\(^{21}\) The following passage represents a final demonstration of the trial's religious nature:

The great controversy between the Churches will go on, we know not, through God's pleasure, how long. Whether, henceforward, you will take any part in it or not, it will be for you to determine; but I think the pages before me should give you this warning, upon calm consideration, that if you again engage in this controversy, you should engage in it neither personally nor bitterly .... If you, for the future, sustain, as you may think you are bound to do, by your publications, the Church of Rome, I in-treat you to do it in a spirit of charity and of humility—in a spirit worthy of your great abilities, of your ardent piety, of your


\(^{20}\) Speech to have been delivered before Judgment, in 15 LETTERS, supra note 10, at 526.

\(^{21}\) See 15 LETTERS, supra note 10, at xiv. But see id. at 557. Despite his "lecture," Sir John Taylor Coleridge considered himself a friend of Newman's and greatly admired the Cardinal.
holy life, and of our common Christianity.\textsuperscript{222}

Thus, on January 31, 1853, Newman “was sentenced to pay a fine of 100 l., and to be imprisoned among the misdemeanants in the first class in the Queen’s Prison till the fine should be paid.”\textsuperscript{223} The sentence was met with laughter, because, it was “tantamount to an acquittal.”\textsuperscript{224} The light penalty had, in fact, been suggested by Finlason in 1852, because of the impression that the trial was a “monstrous miscarriage of justice.”\textsuperscript{225} Newman was, of course, overjoyed. In calm retrospect, Newman wrote: “Thus have the judges virtually revised and reversed the verdict of the jury, and I am grateful to all four for this act of justice.”\textsuperscript{226}

However, it was not an acquittal. The loss was necessary to establish this position, as Newman was aware going into the court the day of sentencing: “I left the house, on the morning of the Judgment, fully believing I should go to prison—so did my friends—not indeed for a long while, for I did not think my Judges wished to kill me, but I think there was a purpose among them to disgrace me.”\textsuperscript{227} In this case, Newman and Catholicism had lost by an ever so slight margin—a reflection of the general position of Catholicism in England society during this period.\textsuperscript{228}

Nonetheless, Newman believed the trial to be a moral victory.\textsuperscript{229} Shortly after the sentencing, Newman realized that it was his responsibility to shape public opinion of the trial: “They hear of the Judgment in the Queen’s Bench—and don’t know if it is good or bad. It is good or bad, as I think it good or bad. If I triumph, they triumph—if I am mortified, they droop.”\textsuperscript{230}

\textsuperscript{222} 15 LETTERS, supra note 10, at 279 n.1.
\textsuperscript{224} GILLEY, supra note 3, at 274. The amount of the fine appears to be in line with other contemporary fines for criminal libels by newspapers. “In the period after 1843 the courts seem to have been considerably more lenient when sentencing in newspaper cases; jail sentences appear to have been rare, and fines of 50 l. or 100 l. the usual penalty.” The Press, supra note 47, at 274.
\textsuperscript{225} FINLASON, supra note 1, at 27.
\textsuperscript{226} Letter to Archbishop Cullen (Feb. 5, 1853), in 15 LETTERS, supra note 10, at 286, 287.
\textsuperscript{227} Letter to Alexander Grant (Mar. 9, 1853), in 15 LETTERS, supra note 10, at 329.
\textsuperscript{228} See, e.g., D.G. PAZ, POPULAR ANTI-CATHOLICISM IN MID-VICTORIAN ENGLAND 2 (1992) (“Anti-Catholicism, in one form or another has been an English characteristic since the Reformation and was especially marked in the nineteenth century.”).
\textsuperscript{229} See Letter to F.W. Faber (June 25, 1852), in 15 LETTERS, supra note 10, at 107-08 n.1 (citing article criticizing verdict).
\textsuperscript{230} Letter to James Hope (Feb. 2, 1853), in 15 LETTERS, supra note 10, at 280, 281.
man became a consummate spin doctor. As for Achilli, revelations about his personal life which were made during the trial, caused him to flee to America where he became a Swedenborgian.231

VII. LITIGATION THEMES

Throughout the course of the trial Cockburn sought to expose the anti-Catholic bias of the forum. In his closing argument, he recognized the extent to which the trial and court were religiously charged:

Gentlemen, I ask you to take these things into your calm and dispassionate consideration. I know the difficulty I encounter—I have felt it from the commencement. I have felt all along the disadvantageous ground upon which I am placed in defending Dr. Newman. We have here two great champions of opposing Churches—two converts from the faiths in which they were bred: both come forward, each to assert and maintain the truth of the Church he has joined; and I am pleading for one, a Catholic, before a Protestant tribunal. And the difficulty I feel must be, in such times as these, greatly enhanced. The spirit of proselytism, re-enkindled after a long sleep, has again arisen; and the Catholic, with upraised cross, and the Protestant with open bible, have entered into the arena to contend for domination over the interests of mankind. God prosper the truth, say I!232

Cockburn asserted that the testimony of Catholics was just as reliable as the testimony of Protestants.233 Addressing the testimony of the English Catholic servant Sarah Wood, Cockburn stated:

What should detract from the truthfulness of her story? Is she too perjured? Yes. Good God! am I in England?—am I in a court of justice? Shall I hear it said—that because it is surmised that she is a Catholic—that she has a book with a cross upon it—that therefore she is to be presumed capable of conspiracy

231 Achilli was accused of committing adultery with Miss Bogue in the United States after sending his wife to Italy in 1859. Deserting Miss Bogue and his son at the Oneida Community in New York in 1860, he left a suicide note. See 14 LETTERS, supra note 10, at 539.
232 FINLASON, supra note 1, at 174.
233 Everyone knew that this was not true in fact. Even before the trial, Newman displayed hope for obtaining Protestant witnesses. See Letter to Edward Badeley (Nov. 11, 1851), in 14 LETTERS, supra note 10, at 420.
and perjury! Is that too not to be believed? How monstrous! ... You will not permit your minds to be clouded by prejudice, and to be perverted by this fanaticism and bigotry (for so it is)! ... I hope you will be enabled to hold the scales of justice fairly even, though your hands may be shaken by the excitement of religious passion, and the warmth of religious zeal! 234

A burst of cheering followed this statement, but Campbell silenced the audience. 235

Although his aim was to expose anti-Catholic bias, and then subsequently to argue his case relying on the substantial testimony and documentary evidence available, even Cockburn could not rid himself of what he thought was the rhetorical value of the bias. Attempting to impeach Achilli’s testimony, Cockburn adopted a tactic which was even better suited to the prosecution; of Achilli, Cockburn stated:

For what is Achilli? ... Is he not an Italian? Was he not educated by the Jesuits? Was he not initiated into all the craft and artifice which is ascribed to that well-known fraternity? ... Is he not a subtle disputant, and an ingenious causist?—brought up amidst Italian priests and monks, himself an Italian, a priest, a monk? 236

Thus, Newman’s own counsel argued against the credibility of Catholic priests. These tactics demonstrate awareness by both sides that a jury would give credence to Protestant testimony and discount Catholic testimony. 237

This factor was utilized and manipulated more so by Achilli’s counsel. Pure and simple, Newman’s defense was a Catholic conspiracy. Thesiger seized many opportunities to extract evidence of this highly believable explanation. Ample evidence was offered including the involvement of the Pope’s personal secretary, Monsignor Talbot to the English Catholic servant, Sarah Wood, who was observed not to eat meat on Wednesdays or Fridays. 238 The jury was convinced that the Catholic Church could easily produce false documents, such as

234 FINLASON, supra note 1, at 166.
235 Id. at 166.
236 Id. at 152-53.
237 See, e.g., FINLASON, supra note 1, at 165 (“Yet he is a Protestant; he is neither a Catholic nor a Tractarian, but a zealous Protestant.”); See also id. at 165 (“And is this witness a Catholic, or an Italian?”); Id. at 162 (“[S]he is not an Italian; she is not a Catholic; she is a most respectable person—a Protestant.”).
238 Id. at 149.
the decree of the Inquisition, and compel the attendance of per-
juring witness like Elena Valente by instructing her that her
 testimony would be for the greater glory of God and the good of
the Church.239

Given that in this case Catholicism was equated with deceit,
a Catholic witness' testimony could be impeached merely be-
cause he or she was Catholic. This idea was exploited to its full-
est by Thesiger, whose general litigation strategy was to conjure
up the possibility of a Catholic conspiracy designed to attack
Achilli. Similar themes existed in English society for 300 years,
and the jury was well convinced by these tactics.

VIII. RELIGIOUS PRACTICES, BELIEFS, AND INSTITUTIONS

A. Popular Aspects: Fascination and Curiosity

This trial reflected the popular fascination with and abhor-
rence of Catholicism.240 Both sides of the dispute used the occa-
sion to probe Catholic practices, beliefs, and institutions. For
example, the first witness, Elena Valente, was asked detailed
questions about whether she confessed her encounters with
Achilli. On cross-examination, she stated:

Next day, I went to the same confessor .... I began to cry, and he
then said, "I knew you were in the hands of a rapacious wolf in
sheep's clothing." Did you tell your mother what had taken
place? No; because the confessor forbade my mentioning it, as
Achilli was an ecclesiastic .... After the first occasion I changed
my confessor, and did not go so often to confession as previously.
I told the second occurrence to my new confessor. Did you tell
him the name of Achilli? No; because it is the custom not to
mention the name of the sinner, but merely the sin.241

Achilli's vow of celibacy as a priest and monk was also in-
vestigated during the trial. Cockburn's first line of questions in
cross-examining Achilli focused on the number of vows he took
when he became a Dominican. Achilli asserted that he took only
a single vow of obedience, excluding separate vows of poverty

239 Id. at 196.
240 See, e.g., FRANK H. WALLIS, POPULAR ANTI-CATHOLICISM IN MID-VICTORIAN
BRITAIN 16-17 (1993) (describing parliamentary papers and select committee reports
as evidence of negative public opinion of Roman Catholics).
241 FINLASON, supra note 1, at 78-9. Another enquiry into an English servant's
confession is found at id. at 103.
Cockburn questioned Achilli at length about the existence of the vows, and when Achilli would not answer questions directly, Cockburn inquired about the vows Achilli took as a priest, to obtain the answer he had been seeking: "You became a priest in 1824? Yes. Is chastity part of the vocation of a priest? Yes (with a sardonic smile)."

Cockburn impeached Achilli by cross-examining another ex-Dominican, Domonico Pogge, who established poverty, chastity, and obedience as essential vows to that order.

The Inquisition was perhaps the most mysterious of Catholic institutions to the English Victorian. There was substantial popular literature concerning the Inquisition, and when Italian republican forces seized the buildings in the Vatican and opened them for public display, the English press reported their gloomy cellars (used either for torturing heretics or for storing casks of wine). It was here that Achilli claimed to have been imprisoned. A document from this very Inquisition listed Achilli's sexual offenses, his suspension from celebration of mass, and a confession. Despite the careful testimony of Harting and Dr. Grant, who explained in detail how the document was obtained in the Vatican and the nature of the Court of the Holy Office, or Inquisition, the jury concluded that it could not be trusted to prove the immoralities committed by Achilli. The Inquisition and its decree were just another form of the Catholic conspiracy designed to harm Achilli.

In addition to probing confession, celibacy, and the Inquisition, the court examined evidence regarding the theological grounds prompting Achilli's conversion to Protestantism. Cockburn attempted to show that Achilli continued to celebrate the mass long after he had stopped believing in it:

When did you openly renounce the Church of Rome, and become a Protestant? So soon as I arrived at Corfu I began to write letters to the cardinal and the Pope. When did you become convinced of the untruth of the Catholic doctrine as to the mass? As to the real presence. Lord Campbell.—Transubstantiation. I began to have doubts upon the doctrine when I was explaining it as professor of philosophy at Viterbo. Did you continue to celebrate mass long after that? I had doubts. Does this describe the

242 FINLASON, supra note 1, at 129-30.
243 Id. at 130.
244 Id. at 145-46.
When pressed further about his conversion with a series of forceful questions by Cockburn, Achilli responded with strength, receiving cheers from the audience. Achilli's doctrine of conversion was surprisingly similar to Newman's: "I believed that conversion rests more in the heart than in the mind." An examination of Achilli's arrest and imprisonment by the Inquisition gave him an opportunity to warm himself theologically to the jury.

Did you admit that you had preached in the pulpit, or taught in the confessional any erroneous doctrine? No; there was no occasion. Why? Because they did not urge it. Now answer the question, not inferentially, but, yes or no, did you make any admission in respect of any matters with which you were charged? (He reflects.) Oh yes; about justification by faith: I was charged with having preached justification by faith. Well, did you, in respect of that, throw yourself on the mercy of the Court? (Achilli paused—professing not to understand.) Do you understand me? (He hesitated.) Did you not in respect of that preaching, throw yourself on the mercy of the Court? (He reflected, and then replied.) I confessed and justified myself by St. Thomas of Aquinas.

Thus, the trial provided a forum for general inquiry into Catholic practices, beliefs, and institutions. Confession, celibacy, monasticism, the Inquisition, and theology were all part of the trial's evidence and were all treated with the judicial scrutiny of the courts. To this extent, the power of law and of the legal system was used to investigate Catholicism on its recent and feared reintroduction into English society.

B. National Aspects: Catholicism and Italianism

Catholicism was not the only exotic element in the trial. Many of the events described during the trial took place far away

240 Id. at 144.
246 Id. at 144.
247 FINLASON, supra note 1, at 137-38.
from England, in Italy, Corfu, and Malta. Several Italian wit-
nesses and one French witness were examined through transla-
tors. Finlason particularly faulted Achilli's abuse of this process;
although he requested an interpreter, Finlason doubted if he
needed one, stating:

[T]he process of interpretation is tedious, and interposes not
only great opportunity for reflection upon the replies to be
given, but breaks the force of cross-examination. It was re-
marked, that when a little excited, he would constantly com-
mence an answer in good English, and then turn to the
interpreter, and put it in Italian. And he soon became even
himself so wearied with the double process of interpreting
questions and answers, that he begged the questions might be
put in English and answered in Italian. Thus he secured him-
sel all the advantages of both systems—hearing in English, an-
swering in Italian—to his own satisfaction, no doubt. 246

If we trust Finlason's report, it is uncanny how, when the
questions became compromising for Achilli, his comprehension
dropped off.

Apart from language differences, the court had to deal with
cultural differences as well. For example, concerning Elena
Valente's contact with a priest before she came to testify, Camp-
bell stated: "You must not be swayed by these peculiarities in a
Catholic country; she might very innocently see her curate before
she came." 247 Even Cockburn fell into equating Italianness with
craftiness. Attempting to impeach Achilli's assertions concern-
ing his alleged affair with Garamoni, Cockburn stated:

What an improbable story is this! What an insult to our under-
standing, to ask us to believe it! Gentlemen, we are not Ital-
i ans, but we are Englishmen: we are not so subtle as Dr. Achilli,
but we possess plain reasoning faculties, which lead us to reject
such stories so utterly irreconcilable. 248

However, Cockburn could not be consistent in pursuing this
logic because many of his important witnesses were Italians.
Reviewing Maria Principe's testimony of her father's grief after
her rape, Cockburn stated: "An Italian and a Catholic, I suppose,
has not the common feelings of humanity! and it is not to be be-
lieved that he can have grieved in sorrow and anguish over the

246 Id. at 120, n.o.
247 Id. at 196.
248 Id. at 159.
ruin of his daughter!"  

Like Catholicism, Italy was both detested and admired, symbolic of baroque decadence and great accomplishment. Ruskin spoke for many Victorians when he expressed his hopes that "the London of the nineteenth century may yet become as Venice without her despotism, and as Florence without her dis-peace." Italy was, in the words of Newman's pleadings, "in parts beyond the seas, and places far distant from this kingdom." Italy was a strange and foreign country where records could be destroyed during revolutions or fabricated through a powerful Catholic network, and where the activities of the police in relation to Achilli's conduct could be easily and openly questioned.

In considering Italy's place in the Victorian mind, Edward Said's observations concerning the Orient may be helpful. This is not to suggest that Italy is geographically east of England (although it is), but rather that Said's investigation of the construction and influence of foreign cultures sheds light on the complex relationship of England and Italy. Said writes: "The Orient was almost a European invention, and had been since antiquity a place of romance, exotic beings, haunting memories and landscapes, remarkable experiences." Italy, too, held such a position in the English mind, and Said's concepts of despotism, splendor, cruelty, and sensuality, could equally apply to Italy. Thus, the same way that Europeans created a complex academic and literary construct of the Orient, the English created Italy. Thus, to demonstrate that a witness was Italian was much more than demonstrating that he or she was a foreigner; it brought in an entire set of prejudices and presuppositions which included untrustworthiness.

251 Id. at 155-56.
254 FINLASON, supra note 1, at 36.
255 Id. at 180.
256 See generally EDWARD W. SAID, ORIENTALISM (1979).
257 Id. at 1.
258 See id. at 4. Each region had its relative "imposter" as well: the Pope in Rome and Mohammed in the Orient. Id. at 60.
IX. CLASS, GENDER AND VIOLENCE

A. Conduct at Trial

From Finlason's report of the case, it appears that the court was conducted with a degree of formality and that both parties gave great deference to the bench. Campbell often asked witnesses questions directly and occasionally made brief comments on the testimony. Outbursts of cheers or of laughter occurred frequently enough to be noted, and Finlason carefully recorded that such interruptions were admonished or tolerated by Campbell. The examination of Achilli and of witnesses of higher class, as well as closing arguments, were handled by Thesiger and Cockburn. During Achilli's examination and cross-examination, he was confronted by several of the women who were his alleged victims including Elena Valente, Maria Principe and her mother. Cockburn wanted these women's expressions and reactions to Achilli's statements to be seen by the jury, but Thesiger objected. Cockburn was unsuccessful in this regard with respect to Valente's testimony, and successful with respect to Principe's. Achilli's demeanor was carefully recorded by Finlason, who meticulously noted when Achilli chose to be silent, smiled, or laughed. However, it is less easy to determine the disposition of the witnesses.

Physical appearances were incorporated into evidence to prove or disprove Achilli’s sexual conduct with witnesses. Maria Crisaffi Garamoni's facial disfigurement, apparently by her abusive husband, became relevant. Finlason wrote that she was:

[very smartly dressed, but very ugly, with nose battered in. She wore a veil over her face, and Sir A. Cockburn desired her to raise it, that her countenance might be seen. The prosecutor's counsel was rather pleased at this, as her present repulsive appearance raised a plausible inference of the improbability of the charge.]

Cockburn attempted to use the battery of Garamoni by her husband as evidence of her infidelity and therefore of her sexual relations with Achilli. Concerning her testimony, Cockburn stated: “Garamoni believed his wife was playing him false (she gives of course the version which might be expected of her—that

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259 Finlason, supra note 1, at 124, 134.
260 Id. at 147 n.n.
she suspects him of unfaithfulness; but when a husband beats the wife, it appears more probable that he suspected her) ...."\(^\text{261}\)

Likewise, Thesiger thought Mrs. Achilli was too handsome to cheat on. At one point, Thesiger asked the jury to weigh Achilli's sexual misconduct by using an objective scale comparing the desirability of the servants with the desirability of Mrs. Achilli. "Gentlemen, you have seen Mrs. Achilli; and after seeing her, and looking on these girls, for instance, Sarah Wood, I ask you, in your own judgment and experience of mankind, whether the mere comparison does not discredit their stories!"\(^\text{262}\)

Throughout the course of the trial, witnesses were judged not only by their words, but also by their demeanor and physical characteristics, and these elements were incorporated into strategic decisions concerning the presentation of witnesses and statements made concerning their testimony.

Servants, particularly women, were considered suspect witnesses. In attempting to raise doubts about English servants' testimony, Thesiger stated that the general theme of Newman's defense was: "Get the servants of every house he has been in! If Catholics, all the better!"\(^\text{263}\) In reaching their verdict, the jury completely ignored the testimony of these women. Furthermore, rapes by Achilli were not treated differently from any other allegation of sexual immorality.\(^\text{264}\)

It follows that if the poor of England were not to be believed, even less so, then, the poor of Italy. To Cockburn, Coriboni was immoral and not to be believed:

Coriboni and his wife; and who were they? Coriboni was a chorus singer: he had a fair wife. To be sure, Achilli says she was neither well-favoured nor ill-favoured; but, however, she sought, it seems, to make up for any deficiencies in the perfection of her charms by a liberal disclosure of such as she possessed. According to the evidence of several witnesses, she was a woman of loose character.\(^\text{265}\)

In fact, poor Italian women appeared to be better suited to

\(^{261}\) \textit{Id.} at 158. \textit{See also} MAEVE E. DOGGETT, \textit{MARRIAGE, WIFE-BEATING AND THE LAW IN VICTORIAN ENGLAND} 50-51 (1993) (describing wife's adultery as grounds for mitigating murder to manslaughter).

\(^{262}\) FINLASON, \textit{supra} note 1, at 190.

\(^{263}\) \textit{Id.} at 190.

\(^{264}\) \textit{Id.} at 190.


\(^{265}\) FINLASON, \textit{supra} note 1, at 159.
entertain the audience at the court than to serve as credible witnesses. They were discounted and made a laughing stock:

I was always beaten, because he had to do with other women. (Laughter.) Was it not because he said you had to do with other men? No, there are many proofs of what I say: two doctors, four lawyers, and many other men. (Much laughter.) What, to prove your innocence? No, no; they will all prove that he is a bad man. (Continued laughter.)

Thus, the case demonstrates that the marginalized of society—the servant, the poor, the Catholic, the foreigner, and the female—were discounted in the courtroom as well.

The court's treatment of Italians, Catholics, and women, serves as a Victorian example of the common law's "refusal to recognise that vast host of the other: the outsider, the stranger, the vagrant, the marginal, the Irish, the coloured, the foreign." Although Goodrich analyzed a Canadian case from 1985 in which Haida Indians were unable to prohibit logging on their land, his general observation is useful in understanding the results of Newman's trial. In Regina v. Newman, linguistic, cultural, religious, and gender barriers created an unassailable fortress protecting Achilli.

X. CONCLUSION

Regina v. Newman reflected the contemporary debate concerning Roman Catholicism in English society. It was a decision dictated not by the evidence, but rather by the society in which the trial was set. Thus, the decision confirmed, both legally and socially, the second-class status of Roman Catholicism in England. Aligning themselves with the unsavory Dr. Achilli, the government and Church of England wanted the verdict to perpetuate their unquestioned control. Nonetheless, the loss to Catholics was slight, as demonstrated by the lack of imprisonment or heavy fine. Public outrage by a minority at the injustice of the trial led to a superficial sentence. Furthermore, even after Newman's guilt was established by the jury, Campbell interpreted the provision of his statute liberally to permit the introduction of new evidence after trial to mitigate his sentence.

266 Id. at 148.
268 See id. at 179-84.
Thus, although the court concluded that Newman had to lose, a superficial loss was sufficient.

The case is a telling example of how minority religions and other cultures are treated in legal systems generally. Because the English had built up centuries of distrust for Catholicism, religion proved to be a useful tool in this litigation. The prosecution resorted to perhaps one of the most enduring themes in England since the Reformation, the theme of a Popish plot or Catholic conspiracy. The English public, and thus, an English jury, was inclined to believe this possibility, even in an era of increasing religious tolerance. Even Cockburn, who argued fiercely for Newman, could not avoid jabs at Catholicism, as he himself was ill equipped to go forward with his novel defense of acknowledging the bias and relying on the objective evidence.

The case demonstrates the construction and interpretation of Italy and Italians by the English. Achilli and the Italian witnesses were considered beings from outside the common understanding of the English judge and jury, who imposed their own ideas about Italy on them, including deceitfulness and craftiness. Italians were simply not to be believed. Women as witnesses were not believed by the jury because they were women, and either foreign or servants.

The defense of truth under Lord Campbell’s act was for the first time interpreted by the courts. In this case, Lord Campbell himself directed the application and interpretation of the provision, and his admission of new evidence solely for the purposes of sentencing is noteworthy. Nonetheless, the new statutory provision establishing the defense of truth and public benefit did not remove the possibility of a politically motivated result, but instead merely shifted such result from the judge to the jury. Thus, this religiously charged trial did much to establish the bounds of the statutory defense.269

Law reporting in Victorian England was likewise a political

269 This religious dimension to libel law was repeated in the 1860s. Toleration of Catholicism was a central issue in other attempts to reform the law of libel in the 1860s. A bill which was introduced by Irish MP’s to restrict private libel actions and to give newspapers greater ability to report public meetings without fear of libel actions was initially unsuccessful because it was introduced by Catholics. “As the sponsors of the original Bill had been Catholics, it produced a Pavlovian reaction from some ultra-Protestants, who denounced it as a Popish plot to buy press support for Catholicism.” The Press, supra note 47, at 276.
enterprise. The report reprinted in the English Reports would lead the reader to believe that the contemporary position of Roman Catholicism in England was only a minor part of the decision. In contrast, the privately printed report of Finlason reveals the underlying dispute, so easily lost in the fine points of evidence preserved in the English Reports. It is the questions of law preserved in the English Reports version which have been assimilated into modern law.

The case also provides further insight into Newman's life. As Newman scholarship continues on its present and generally more objective course, it must take into account the importance of the vocation not chosen in Newman's life, the law. Even before this trial, Newman's thought appears to have been significantly influenced by his interest in English common law. This trial made him even more aware of the power and importance of law in society.

One wonders the impact of Regina v. Newman on the following passage from Newman's Essay on the Development of Christian Doctrine:

[It is sometimes said, and even if not literally true will serve in illustration, that not a few of those who are put on trial in our criminal courts are not legally guilty of the particular crime on which a verdict is found against them, being convicted not so much upon the particular evidence, as on the presumption arising from their want of character and the memory of their former offences.]

The complex personality of Newman leaves us with doubt concerning what he may have thought the ground of his convic-

271 R. v. Chief Metropolitan Magistrate ex parte Ahmed, Q.B. Div'l Ct., Crown Office List CO/85/83, 14 July 1983 (Transcript: Marten Walsh Cherer). For example, the Queen's Bench Divisional Court recently read Campbell's reservations about the content of the Inquisition's decree to support their view that various documents submitted by the U.S. government to extradite a heroin trafficker were not in themselves proof of their content. See also R.L. MCEWEN AND P.S.C. LEWIS, GATLEY ON LIBEL AND SLANDER 575 (6th ed. 1967) (discussing admissibility of nonprosecution of prior defamatory statements); R. v Wells Street Stipendiary Magistrate ex parte Deakin, [1980] App. Cas. 477, [1979] 2 All E.R. 497 (H.L.) (requiring defendant in libel action prove truth of all defamatory statements for acquittal).
272 JOHN HENRY CARDINAL NEWMAN, AN ESSAY ON THE DEVELOPMENT OF CHRISTIAN DOCTRINE, 114-115 (6th ed. 1989, reprint of 1878 edition). Other legal references in the same essay are found at 117 ("loss of documents or other direct testimonies"), 129 ("by the dicta of some later Saints"), 172 (concerning corrupt magistrates), 202 (quoting Blackstone), and 333 (quoting Suarez).
tion in the Queen's Bench actually was—a want of character, or a former offense? In Newman's mind, either reason would be related to his religious beliefs and his conversion to Catholicism. The Victorian jury and bench saw both faults in Newman and reasserted the subordinate status of Catholicism through their decision to convict the convert.